



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5093/1
JK&KRP:kjf/jld/emw

2017 ASSEMBLY BILL 838

January 16, 2018 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Rules.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to repeal** 70.105, 70.47 (7) (c), 70.47 (8) (j), 70.47 (16) (c), 74.37 (4) (d) and
2 74.37 (6); and **to amend** 70.47 (8) (d), 70.47 (13), 70.47 (16) (a), 73.03 (2a) and
3 74.37 (4) (c) of the statutes; **relating to:** changes to board of review proceedings
4 and elimination of the property tax assessment freeze (suggested as remedial
5 legislation by the Department of Revenue).

Analysis by the Legislative Reference Bureau

This bill eliminates provisions related to board of review proceedings for hearing objections to property tax assessments that the Wisconsin Supreme Court found unconstitutional in *Metropolitan Associates v. City of Milwaukee*, 2011 WI 20, 332 Wis. 2d 85, 796 N.W.2d 717, and *Nankin v. Village of Shorewood*, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141.

The bill also eliminates the property tax assessment freeze applicable to certain replacement property. Under current law, if a property owner 1) conveys property under threat of condemnation or through condemnation proceedings for the benefit of a public entity to be used for public purposes and 2) acquires a property to replace the conveyed property (replacement property), a municipality may “freeze” the assessed value of the replacement property, for up to five years, at an amount equal to the assessed value of the conveyed property in the year immediately preceding the conveyance. However, in *Gottlieb v. City of Milwaukee*, 33 Wis. 2d 408, 147 N.W.2d 633 (1967), the Wisconsin Supreme Court held that the uniformity clause of the Wisconsin Constitution requires that all property that is taxed must be taxed in its

ASSEMBLY BILL 838

entirety and at the same rate that applies to all other property in a taxation district. The court concluded that a property tax assessment freeze applicable to urban redevelopment corporations was unconstitutional because it constituted a partial exemption from the property tax.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Revenue and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 70.105 of the statutes is repealed.

NOTE: Deletes a property tax assessment freeze applicable to certain replacement property that was found unconstitutional by the Wisconsin Supreme Court in *Gottlieb v. City of Milwaukee*, 33 Wis. 2d 408, 147 N.W.2d 633 (1967).

2 **SECTION 2.** 70.47 (7) (c) of the statutes is repealed.

NOTE: SECTIONS 2, 4, 7, and 10 delete provisions the Wisconsin Supreme Court found unconstitutional in *Metropolitan Associates v. City of Milwaukee*, 2011 WI 20.

3 **SECTION 3.** 70.47 (8) (d) of the statutes is amended to read:

4 70.47 (8) (d) It may and upon request of either the assessor or the objector shall
5 compel the attendance of witnesses for hearing, except objectors who may testify by
6 telephone, and the production of all books, inventories, appraisals, documents and
7 other data which may throw light upon the value of property, and, with regard to an
8 objection that is subject to sub. (7) (c) or (16) (c), may, on a showing of good cause,
9 compel the attendance of witnesses for depositions.

NOTE: SECTIONS 3, 5, 6, 8, and 9 repeal language the Wisconsin Supreme Court found unconstitutional in *Metropolitan Associates v. City of Milwaukee*, 2011 WI 20, and reinstate statutory language that existed prior to the modifications made by 2007 Wisconsin Act 86 deemed unconstitutional by the court.

10 **SECTION 4.** 70.47 (8) (j) of the statutes is repealed.

ASSEMBLY BILL 838

1 **SECTION 5.** 70.47 (13) of the statutes is amended to read:

2 70.47 (13) ~~REVIEW CERTIORARI.~~ Except as provided in this subsection and in ss.

3 ~~s. 70.85 and 74.37,~~ appeal from the determination of the board of review shall be by

4 an action for certiorari commenced within 90 days after the taxpayer receives the

5 notice under sub. (12). The action shall be given preference. If the court on the appeal

6 finds any error in the proceedings of the board which renders the assessment or the

7 proceedings void, ~~or if the court determines that the board lacked good cause to deny~~

8 ~~a request for a deposition subpoena,~~ it shall remand the assessment to the board for

9 further proceedings in accordance with the court's determination and retain

10 jurisdiction of the matter until the board has determined an assessment in

11 accordance with the court's order. For this purpose, if final adjournment of the board

12 occurs prior to the court's decision on the appeal, the court may order the governing

13 body of the assessing authority to reconvene the board. ~~If the appellant challenges~~

14 ~~the value determination that the board made at a proceeding under sub. (7) (e), the~~

15 ~~court shall presume that the board's valuation is correct, except that the~~

16 ~~presumption may be rebutted by a sufficient showing by the appellant that the~~

17 ~~valuation is incorrect. If the presumption is rebutted, the court shall determine the~~

18 ~~assessment without deference to the board of review and based on the record before~~

19 ~~the board of review, except that the court may consider evidence that was not~~

20 ~~available at the time of the hearing before the board, that the board refused to~~

21 ~~consider, or that the court otherwise determines should be considered in order to~~

22 ~~determine the correct assessment. In the event that an objection to the previous~~

23 ~~year's assessment has not been resolved, the parties may agree that the assessment~~

24 ~~for the previous year shall also apply for the current year and shall be included in~~

ASSEMBLY BILL 838

1 the court's review of the prior year's assessment without an additional hearing by the
2 board.

3 **SECTION 6.** 70.47 (16) (a) of the statutes is amended to read:

4 70.47 **(16)** (a) In 1st class cities all objections to the amount or valuation of real
5 or personal property shall be first made in writing and filed with the commissioner
6 of assessments on or before the 3rd Monday in May. No person may, in any action
7 or proceeding, question the amount or valuation of real or personal property in the
8 assessment rolls of the city unless objections have been so filed. The board may not
9 waive the requirement that objections be in writing. Persons who own land and
10 improvements to that land may object to the aggregate valuation of that land and
11 improvements to that land, but no person who owns land and improvements to that
12 land may object only to the valuation of that land or only to the valuation of
13 improvements to that land. If the objections have been investigated by a committee
14 of the board of assessors under s. 70.07 (6), the board of review may adopt the
15 recommendation of the committee unless the objector requests or the board orders
16 a hearing. At least 2 days' notice of the time fixed for the hearing shall be given to
17 the objector or attorney and to the city attorney of the city. The provisions of the
18 statutes relating to boards of review not inconsistent with this subsection apply to
19 proceedings before the boards of review of 1st class cities, except that the board need
20 not adjourn until the assessment roll is completed by the commissioner of
21 assessments, as required in s. 70.07 (6), but may immediately hold hearings on
22 objections filed with the commissioner of assessments, and the changes, corrections
23 and determinations made by the board acting within its powers shall be prima facie
24 correct. Appeal from the determination shall be by an action ~~under sub. (13)~~ for
25 certiorari commenced within 90 days after the taxpayer receives the notice under

ASSEMBLY BILL 838

1 sub. (12). The action shall be given preference. ~~If the court on the appeal finds any~~
2 ~~error in the proceedings of the board that renders the assessment or the proceedings~~
3 ~~void or, with regard to an objection that is subject to par. (c), if the court determines~~
4 ~~that the board lacked good cause to deny a request for a deposition subpoena, it shall~~
5 ~~remand the assessment to the board for further proceedings in accordance with the~~
6 ~~court's determination and retain jurisdiction of the matter until the board has~~
7 ~~determined an assessment in accordance with the court's order. If the appellant~~
8 ~~challenges the value determination that the board made at a proceeding under sub.~~
9 ~~(16) (c), the court shall presume that the board's valuation is correct, except that the~~
10 ~~presumption may be rebutted by a sufficient showing by the appellant that the~~
11 ~~valuation is incorrect. If the presumption is rebutted, the court shall determine the~~
12 ~~assessment without deference to the board of review and based on the record before~~
13 ~~the board of review, except that the court may consider evidence that was not~~
14 ~~available at the time of the hearing before the board or that the board refused to~~
15 ~~consider, or that the court otherwise determines should be considered in order to~~
16 ~~determine the correct assessment. In the event that an objection to the previous~~
17 ~~year's assessment has not been resolved, the parties may agree that the assessment~~
18 ~~for the previous year shall also apply for the current year and shall be included in~~
19 ~~the court's review of the prior year's assessment without an additional hearing by the~~
20 ~~board.~~

21 **SECTION 7.** 70.47 (16) (c) of the statutes is repealed.

22 **SECTION 8.** 73.03 (2a) of the statutes is amended to read:

23 73.03 (2a) To prepare and publish, in electronic form and on the Internet,
24 assessment manuals. The manual shall discuss and illustrate accepted assessment
25 methods, techniques and practices with a view to more nearly uniform and more

ASSEMBLY BILL 838

1 consistent assessments of property at the local level. The manual shall be amended
2 by the department from time to time to reflect advances in the science of assessment,
3 court decisions concerning assessment practices, costs, and statistical and other
4 information considered valuable to local assessors by the department. The manual
5 shall incorporate standards for the assessment of all types of renewable energy
6 resource systems used in this state as soon as such systems are used in sufficient
7 numbers and sufficient data exists to allow the formulation of valid guidelines. The
8 manual shall incorporate standards, which the department of revenue and the state
9 historical society of Wisconsin shall develop, for the assessment of nonhistoric
10 property in historic districts and for the assessment of historic property, including
11 but not limited to property that is being preserved or restored; property that is
12 subject to a protective easement, covenant or other restriction for historic
13 preservation purposes; property that is listed in the national register of historic
14 places in Wisconsin or in this state's register of historic places and property that is
15 designated as a historic landmark and is subject to restrictions imposed by a
16 municipality or by a landmarks commission. The manual shall incorporate general
17 guidelines about ways to determine whether property is taxable in part under s.
18 70.1105 and examples of the ways that s. 70.1105 applies in specific situations. The
19 manual shall state that assessors are required to comply with s. 70.32 (1g) and shall
20 suggest procedures for doing so. The manual or a supplement to it shall specify per
21 acre value guidelines for each municipality for various categories of agricultural land
22 based on the income that could be generated from its estimated rental for
23 agricultural use, as defined by rule, and capitalization rates established by rule. The
24 manual shall include guidelines for classifying land as agricultural land, as defined
25 in s. 70.32 (2) (c) 1g., and guidelines for distinguishing between land and

ASSEMBLY BILL 838

1 improvements to land. ~~The manual shall specify the evidence to be exchanged under~~
2 ~~s. 70.47 (7) (e) and (16) (e).~~ The cost of the development, preparation, and Internet
3 publication of the manual and of revisions and amendments to it shall be paid from
4 the appropriation under s. 20.566 (2) (bm).

5 **SECTION 9.** 74.37 (4) (c) of the statutes is amended to read:

6 74.37 (4) (c) No claim or action for an excessive assessment may be brought or
7 maintained under this section if the assessment of the property for the same year is
8 contested under s. 70.47 (7) (e), (13), ~~or (16) (e)~~ or 70.85. No assessment may be
9 contested under s. 70.47 (7) (e), (13), ~~or (16) (e)~~ or 70.85 if a claim is brought and
10 maintained under this section based on the same assessment.

11 **SECTION 10.** 74.37 (4) (d) of the statutes is repealed.

12 **SECTION 11.** 74.37 (6) of the statutes is repealed.

NOTE: Deletes a subsection preventing residents of a county with a population of
500,000 or more from using the process for filing a claim or action for excessive
assessment established in s. 74.37, Stats. The Wisconsin Supreme Court found this
subsection unconstitutional in *Nankin v. Village of Shorewood*, 2001 WI 92.

13 **SECTION 12. Initial applicability.**

14 (1) The treatment of section 70.105 of the statutes first applies to taxes based
15 on the assessment as of the January 1 after publication.

16 (END)