

DOR Revisor Bills Testimony (Assembly Bills 14 and 15)

January 19, 2017

Article VIII, Section 1 of the Wisconsin Constitution begins: "The rule of taxation shall be uniform..." which is the foundation of the state's uniformity clause.

The uniformity clause of the Wisconsin Constitution generally prescribes that all property be assessed at the same rate (except as provided by constitutional amendment, as is the case with use-value assessment of agricultural property). The 1859 case of *Knowlton v. Supervisors of Rock County*¹ further established that all taxable property shall be taxed at the same rate, and it also provided that the Legislature may create property tax exemptions. For further background, Joe Kreye of the Legislative Reference Bureau summarizes the history and establishment of the uniformity clause in a helpful paper.²

Assembly Bill 14

The first DOR bill requested today involves a 1967 case, *Gottlieb v. City of Milwaukee*,³ in which the Supreme Court found that creating a property assessment freeze on specific property was inconsistent with the state's uniformity clause, and extensively cited *Knowlton* in the decision.

Prior to *Gottlieb*, sec. 70.105, Wis. Stats., provided owners of real property who had to convey their property to a public body under threat of condemnation, the ability to buy replacement property and have its assessment frozen for up to five years. The Legislative Declaration that begins this section, explains that the assessment freeze was a sort of compensation for the owner of the property purchasing a similar piece of property at a higher cost.

However, since the "frozen" property was taxable, per *Knowlton*, non-assessment of that property treated it differently than all other taxable property within the class. *Gottlieb* states:

"Property taxes where such a freeze is in force are not uniform in their impact on property owners. Such lack of uniformity is accomplished by a prohibited partial exemption from taxation...the fact remains undisputed and undisputable that, if redevelopment corporations are assessed at a figure less than that which would be assigned to other taxpayers holding equally valuable property, other taxpayers will be paying a disproportionately higher share of local property taxes. This is not uniformity."

Therefore, an assessment freeze is unconstitutional.

The bill simply removes sec. 70.105 from statutes that created the property assessment freeze construct. *Gottlieb* has held this statute unconstitutional for 50 years now, and its removal from the law books will save taxpayer confusion going forward.

¹<https://books.google.com/books?id=2vcaAAAAYAAJ&pg=PA410&lpg=PA410&dq=Knowlton+v.+Supervisors+of+Rock+County+1859&source=bl&ots=VwG2gTVsqB&sig=wTebCUGhaGAEeiNCDRr3ujHm0-M&hl=en&sa=X&ved=0ahUKEwihpfConrjRAhXH7oMKHUqtB-4Q6AEIKzAD#v=onepage&q=Knowlton%20v.%20Supervisors%20of%20Rock%20County%201859&f=false>

² https://docs.legis.wisconsin.gov/misc/lrb/reading_the_constitution/reading_the_constitution_1_2.pdf

³ <http://law.justia.com/cases/wisconsin/supreme-court/1967/33-wis-2d-408-6.html>

Assembly Bill 15

This bill responds to two distinct Supreme Court decisions, *Nankin v. Village of Shorewood* (2001)⁴ and *Metropolitan Associates v. City of Milwaukee* (2011),⁵ which both deal with equal due process rights as they relate to property tax assessments. In both cases, the court found that statutes provided uneven appeal rights to different taxpayers based on where they lived in the state, and both decisions had the effect of overturning related statutes to create uniform appeal rights.

In *Nankin*, the court overturned an exception in law that precluded residents of counties with populations of over 500,000 from receiving a full trial *de novo* review in the circuit court of their property tax appeals. Statutes provide residents of all other counties in the state the ability to have a *de novo* review in circuit court. The decision reads, in part,

"Nankin contends that the statute is unconstitutional because it violates the constitutional guarantee of equal protection of the law, that is, it treats owners of property located in populous counties differently than owners of property located in other counties without a rational basis. We agree. We also conclude that § 74.37(6) is severable from the remainder of the statute."

The bill repeals the exception created sec. 74.37 (6), Wis. Stats.

Property owners appeal property tax assessments at their local Board of Review. If their appeal is unsuccessful at the Board of Review, they may then appeal to the circuit court. The circuit court provides two types of appeals available to property owners: 1) a limited review of the Board of Review's records (common law *certiorari* review), or 2) a full independent review of the appeal (*de novo* appeal). 2007 Act 86 created an option that allowed municipalities to "opt out" of *de novo* reviews and instead provide their residents either the common law *certiorari* review or a new "enhanced *certiorari*" review at the circuit court level. The enhanced review was a standard between common law *certiorari* and *de novo* and provided additional rights to property owners at local Boards of Review in opt-out municipalities. The law did not stand for long, and the court found in *Metropolitan Associates* that,

"...the treatment taxpayers in opt out municipalities receive under Act 86 is significantly different than the treatment all other taxpayers receive...and hold that all of Act 86's modifications to Wis. Stat. §§ 70.47, 73.03, and 74.37 are unconstitutional."

As a result, statutes are now printed with the unconstitutional portions with notes that follow explaining that the court has ruled them unconstitutional and lists the prior statutory wording after. This is confusing to property owners since the statutes are contradicted by notes afterward.

This bill removes the changes wrought by 2007 Act 86 and reverts the statutes back to what they were immediately preceding that Act's passage, which is what has been in effect since the 2011 *Metropolitan Associates* ruling.

⁴ <https://www.wicourts.gov/sc/opinion/DisplayDocument.html?content=html&seqNo=17506>

⁵ <http://law.justia.com/cases/wisconsin/supreme-court/2011/61857.html>

These two bills will have no effect on property owners as the statutes they update have not been enforced in several years. The sole benefit of their removal is property assessment statutes that are consistent with the Wisconsin Constitution and prevailing court decisions. This benefit is consistent with law revision legislation, and the Department of Revenue urges the passage of both Assembly Bills 14 and 15.

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