MARK GOTTLIEB

Speaker Pro Tempore
Wisconsin State Assembly

Testimony of Rep. Mark Gottlieb
Assembly Bill 580
Urban & Local Affairs Committee
November 27, 2007

Mr. Chairman and committee members:

Thank you for hearing Assembly Bill 580 (AB 580), relating to objections to property assessments.

A property owner who believes that his/her property is inaccurately assessed can file an objection with the Board of Review (BOR). If the BOR refuses to change the assessment, the property owner may appeal to circuit court or the Department of Revenue.

Under current law, assessors are required to put forward their complete case at the BOR, but there is no such requirement for property owners. Some property owners file an objection, listen to the assessor's evidence, offer no evidence to support their own position, but then use the assessor's case to devise a strategy for appeal to circuit court. This strategy of bypassing the Board of Review increases the number of circuit court cases and violates the principle that a person should exhaust administrative remedies before resorting to circuit court.

AB 580 gives municipalities authority to adopt a new, optional process for dealing with assessment objections. This new process is designed to: (1) ensure that property owners have timely notice and a fair chance to present their case at the BOR, (2) reduce the number of objections that go to circuit court, and (3) allow the circuit court, in certain circumstances, to set the assessment without remanding the case to the BOR.

In short, the bill:

- Authorizes municipalities to enact an ordinance that would allow taxpayers to request a 60-day extension for a hearing on an assessment objection, giving property owners additional time to prepare their case for the Board of Review.
- Requires the taxpayer and the assessor to present all evidence to support their respective positions at the Board of Review.
- Requires both the taxpayer and the assessor to simultaneously exchange their evidence at least 10 days before the hearing, so both sides can be adequately informed and prepared for the Board of Review.
- Allows the circuit court to set the assessment, based on the record from the BOR, along with any evidence that was not available at the BOR or that the BOR refused to consider.

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This bill is a revised version of 2005 Assembly Bill 1051, which was introduced last session at the request of state assessors. That bill prohibited the circuit court from considering any evidence on appeal that was not presented at the board of review. It was not enacted.

AB 580 is the result of negotiations between municipalities and property owner interests. It is supported by both WMC and the League of Wisconsin Municipalities.

I appreciate the opportunity to testify today, and will be happy to answer any questions you may have.

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To: Assembly Committee on Urban and Local Affairs

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: November 27, 2008

Re: AB 580, Creating an Alternative Process for Objecting to Property Tax Assessments

The League of Wisconsin Municipalities supports AB 580, a compromise, bipartisan bill that makes adjustments to the process for objecting to property tax assessments. The bill is the result of negotiations between WMC, the League, and the Wisconsin Association of Assessing Officers. The League thanks Rep. Gottlieb for his work in forging this piece of legislation.

AB 580 evolved out of a desire by municipalities and assessors to reduce the time and expense of the assessment review process. Some communities regularly experience situations in which property owners decline to present a full case at the board of review level and wait instead to present all their evidence for the first time on appeal in the circuit court.

AB 580 creates a viable alternative solution to the sometimes costly and time-consuming review process currently in place. Not all communities will need to use the option the bill creates. However, for those that do, this proposal benefits both taxpayers and assessors by preserving taxpayer rights, while promoting common sense and professionalism in the assessment process.

The League urges you to vote in support of recommending passage of AB 580. Thanks for considering our comments.

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Assembly Urban and Local Affairs Committee Hearing, November 27, 2007

AB 580 – Objecting to Property Tax Assessments (Rep. Gottlieb)

Description of Current Law and Proposed Change
Once a local assessor values property, posts the values on the assessment roll and signs an affidavit to the roll, the values are presumed to be correct. If a taxpayer disagrees with the valuation of property that is assessed by a local assessor, the taxpayer may appeal the assessment to the Board of Review (BOR), which has authority to adjust assessments when they have been proven incorrect by sworn oral testimony. Generally, the Board is made up of 5 to 9 residents of the town, village or city and the municipal clerk functions as the BOR clerk.

The clerk must publish notice of the first scheduled meeting of the BOR at least 15 days in advance of the meeting and notices of changed assessments must be sent at least 15 days before the meeting. Objections to valuations generally must be made to the clerk within 48 hours of the first meeting, and a written objection must be submitted to the clerk within the first two hours of the meeting. The BOR must establish a time for each hearing. All meetings and deliberations of the BOR must be publicly held and open to all citizens.

The taxpayer must submit his or her estimate of the value of his or her property to the BOR and specify information used to arrive at the estimate. To have an assessment reduced, the taxpayer must prove to the BOR that the property is over assessed when compared to sales of similar property. To have a classification changed, the taxpayer must prove that the property is not classified according to its predominant use.

Decisions of the BOR may be appealed to the Department of Revenue, the circuit court for certiorari review, or to the municipality. Appeals to the Department must be made within 20 days of the BOR's decision and are allowed only for properties valued at under $1 million. Certiorari appeals to the court must be made within 90 days of the BOR's decision and the court must review the record from the BOR with no new evidence. If the court voids the assessment, it sends the case back to the BOR for further proceedings and retains jurisdiction in the case until the valuation is decided in accordance with the court's order. Appeals of excessive assessments may be made to the municipality. If these claims are denied by the municipality, and the tax was timely paid, the claims may be appealed to the circuit court for de novo review in which new evidence may be presented.

Under the bill, a taxation district would be able to enact an ordinance authorizing a 60-day extension of a hearing with the BOR if a taxpayer were to request the extension and pay a $100 fee. If an extension was granted, the taxpayer and assessor would both have to exchange all evidence on the objection at least 10 days before the hearing. In addition, both the taxpayer and the assessor would have to present all evidence supporting their positions to the BOR, whether or not an extension was requested. The bill would require that the Property

Assessment Manual prepared by the Department specify the evidence to be exchanged by the taxpayer and assessor.

The bill would amend the procedure for a certiorari appeal by the court. Under the bill, a BOR value judgment would be presumed correct, but could be rebutted by sufficient evidence. If the presumption were rebutted, the court would be required to determine the assessment based on the record before the BOR, unless additional evidence was not available at the time of the BOR hearing or the BOR refused to consider the additional evidence. If the court on a certiorari appeal were to void an assessment or proceedings under the bill, it would remand the assessment to the BOR for further proceedings and would retain jurisdiction of the matter until it was resolved in accordance with the court's order. In the event that an objection to a prior year's assessment would not be resolved, the parties could agree that the previous year's assessment would apply to the current year.

The bill would also change the amount of interest that would be paid on claims of excessive assessment made to the municipality from 0.8% per month to the average annual discount rate determined by the last auction of 6-month U.S. treasury bills before the objection per day for the period between the time when the tax was due and when the claim was paid.

Fairness/Tax Equity

- For some taxpayers, the current 15-day time period to gather evidence, including appraisals, and prepare a case so that the BOR can hear challenges to changes in assessments is not enough time. Taxpayers often appear to not be well prepared to present information during a hearing with the BOR, but need to fulfill the requirement to have a BOR hearing before they may appeal the decision to the municipality and then to the circuit court where they present their case for a de novo review. Allowing more time for the taxpayer to prepare a case at the BOR could allow more issues to be settled at an earlier stage in the review process, which would reduce time and costs spent on appeals for both the taxpayer and the municipality.

  However, the 60-day extension could also create timing issues because levies may be set and property tax bills may have gone out. It could result in more late changes to the equalized values determined by the Department.

- The bill would promote communication and the exchange of information between the taxpayers and the assessors by requiring them to exchange evidence at least 10 days before the BOR hearing and to present evidence to the BOR. However, since a certiorari appeal would allow consideration of new evidence that is not allowed under current law, it could be argued that the bill undermines communication in the earlier stages of the appeal.

Impact on Economic Development

- None, since any action would occur after land ownership and land use had already changed.

Administrative Impact/Fiscal Effect

- The Department would incur costs to develop and maintain information that must be specified in the Property Assessment Manual for exchange between the taxpayer and assessor prior to the BOR hearing. The Department anticipates being able to absorb those costs.

Prepared by: Pam Walgren (608) 266-7817
November 19, 2007

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November 26, 2007

Representative Mark Gottlieb
Committee on Urban and Local Affairs
Wisconsin State Assembly
P.O. Box 8952
Madison, WI 53708

RE: AB580 Relating to Claims for Property Tax Assessments

Dear Representative Gottlieb:

This letter is written to request your support of AB580 as drafted. This bill will help streamline and simplify litigation that occurs due to property assessment appeals. Passage would help make the workload and resources of the court system more manageable by requiring the appellant to exhaust already mandated administrative remedies prior to filing a circuit court appeal.

State statutes provide that objections to assessments be heard at the local Board of Review(BOR). After the BOR the taxpayer has a right to have the record reviewed by way of *certiorari* or to have a Department of Revenue review via §70.85. Both of these appeals must be made within 90 days after the appeal was heard at the BOR. Current use of §74.37 allows an additional review if the taxpayer files a claim to the municipality by January 31st stating that the assessment is excessive. This method allows for a *de novo* appeal. This bill both maintains the right for a taxpayer to appeal the assessment by January 31st as excessive and maintains the integrity of local BORs.

In the last few years, mostly commercial taxpayers will file for a BOR hearing, listen to the assessor evidence without producing any evidence of their own and then proceed to circuit court without putting on a genuine appeal. Some of those cases have been referred by judges to mediation, which ironically is another administrative process.

AB580 will help to strengthen administrative procedures by requiring that the court consider evidence presented at the boards of review and will prevent the practice of effectively bypassing the local boards. Appellants will have to test required remedies before taking their cases to circuit court. Ultimately this will result in speedier resolution to property assessment disputes and allow court resources to be used more effectively.. Again, I ask your support for this important legislation.

Thank you for your attention to this matter.

Sincerely,

John Barrett
Clerk of Circuit Court/
Director of Court Services