



State of Wisconsin
2021 - 2022 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 3,
TO SENATE BILL 254**

June 22, 2021 - Offered by Senator FEYEN.

1 **AN ACT to amend** 70.511 (2) (a), 74.35 (5) (c) and 74.37 (4) (b); and **to create**
2 893.38 of the statutes; **relating to:** extension of certain approvals that are
3 subject to administrative, judicial, or appellate proceedings, waiver of interest
4 and penalties on late 2021 property tax payments, and waiver of the timely
5 payment requirement for filing certain property tax claims.

Analysis by the Legislative Reference Bureau

This bill allows the extension of certain approvals that are the subject of administrative, judicial, or appellate proceedings that may result in the invalidation, reconsideration, or modification of the approval. The approvals may be extended for an amount of time equal to 36 months plus the duration of the administrative, judicial, or appellate proceedings to which the covered approval is subject. The approvals covered under the bill are, with certain exceptions, 1) unexpired permits or approvals for construction projects issued by the Department of Natural Resources, the Department of Transportation, a political subdivision, or a special purpose district and 2) plats or certified survey map approvals. The extension is exercised by the holder of the approval notifying the governmental unit that issued the approval of the holder's decision to exercise the extension not more than 90 days nor less than 30 days before the expiration of the unextended term or

duration of the approval. In general, the laws, regulations, ordinances, rules, or other properly adopted requirements that were in effect at the time the approval was issued continue to apply to the construction project, plat, or certified survey map during the period of extension.

The bill also allows municipalities to waive interest and penalties on late installment payments of property taxes payable in 2021. Under current law, a late installment payment of property taxes is subject to interest and penalties, with the interest accruing from February 1 of the year in which the taxes are due. For property taxes payable in 2020, if an installment payment due after April 1, 2020, is late, current law allows a municipality to temporarily waive the interest and penalties in cases of hardship if the entire amount due is paid no later than October 1, 2020, and both the county and municipality adopt resolutions authorizing the waiver.

Under the bill, for an installment payment due after January 1, 2021, that is late, a municipality may waive the interest and penalties if the municipality makes a general or case-by-case finding of hardship and the total amount due is paid no later than October 1, 2021. A municipality may waive the interest and penalties only if the county first adopts a resolution authorizing the waiver and establishing criteria for determining hardship and the municipality then adopts a similar resolution, except that the bill authorizes the city of Milwaukee to waive the interest and penalties if the city adopts a resolution, without further action required by the county. Under the bill, interest and penalties will accrue from October 1, 2021, for any property taxes payable in 2021 that are delinquent after that date. The bill requires a county that adopts a waiver resolution to settle the taxes, interest, and penalties collected on or before July 31, 2021, on August 20, 2021, and to settle the remaining unpaid taxes, interest, and penalties on September 20, 2021. The August 20, 2021, settlement must be distributed proportionally to the underlying taxing jurisdictions.

The bill also modifies the provision in current law that generally requires a person to have paid his or her property taxes on time in order to file a claim to recover the unlawful imposition of property taxes, a claim for the excessive assessment of property taxes, or a claim to recover property taxes paid in protest due to an outstanding contested assessment. Current law provides an exception from this requirement for taxes due and payable in 2020 if paid by October 1, 2020, or a later applicable installment date. The bill creates a similar exception for property taxes due and payable in 2021 so that the timely payment requirement does not apply to these taxes if paid by October 1, 2021, or a later applicable installment date.

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

1 **SECTION 1.** 70.511 (2) (a) of the statutes is amended to read:

1 70.511 (2) (a) If the reviewing authority has not made a determination prior
2 to the time of the tax levy with respect to a particular objection to the amount,
3 valuation or taxability of property, the tax levy on the property or person shall be
4 based on the contested assessed value of the property. A tax bill shall be sent to, and
5 paid by, the person subject to the tax levy as though there had been no objection filed,
6 except that the payment shall be considered to be made under protest. The entire
7 tax bill shall be paid when due under s. 74.11, 74.12 or 74.87 even though the
8 reviewing authority has reduced the assessment prior to the time for full payment
9 of the tax billed. The requirement to pay a tax timely under this paragraph does not
10 apply to taxes due and payable in 2020 if paid by October 1, 2020, or by any
11 installment date for which taxes are due after October 1, 2020, nor to taxes due and
12 payable in 2021 if paid by October 1, 2021, or by any installment date for which taxes
13 are due after October 1, 2021.

14 **SECTION 2.** 74.35 (5) (c) of the statutes is amended to read:

15 74.35 (5) (c) No claim may be filed or maintained under this section unless the
16 tax for which the claim is filed, or any authorized installment payment of the tax, is
17 timely paid under s. 74.11, 74.12 or 74.87. This paragraph does not apply to taxes
18 due and payable in 2020 if paid by October 1, 2020, or by any installment date for
19 which taxes are due after October 1, 2020, nor to taxes due and payable in 2021 if paid
20 by October 1, 2021, or by any installment date for which taxes are due after October
21 1, 2021.

22 **SECTION 3.** 74.37 (4) (b) of the statutes is amended to read:

23 74.37 (4) (b) No claim or action for an excessive assessment may be brought or
24 maintained under this section unless the tax for which the claim is filed, or any
25 authorized installment of the tax, is timely paid under s. 74.11 or 74.12. This

1 paragraph does not apply to taxes due and payable in 2020 if paid by October 1, 2020,
2 or by any installment date for which taxes are due after October 1, 2020, nor to taxes
3 due and payable in 2021 if paid by October 1, 2021, or by any installment date for
4 which taxes are due after October 1, 2021.

5 **SECTION 4.** 893.38 of the statutes is created to read:

6 **893.38 Extension of certain approvals. (1) DEFINITIONS.** In this section:

7 (a) “Challenged permit” means a permit or other approval to which all of the
8 following apply:

9 1. The permit or other approval authorizes a construction project.

10 2. The application for the permit or other approval includes a description of the
11 construction project.

12 3. The permit or other approval was issued by a governmental unit and
13 becomes or remains subject to administrative, judicial, or appellate proceedings,
14 whether or not any proceeding reversed the permit or other approval.

15 4. The permit or other approval has or had a finite term or duration, and the
16 term or duration has not expired.

17 5. The permit or other approval is the subject of administrative, judicial, or
18 appellate proceedings that may result in the invalidation, reconsideration, or
19 modification of the permit or approval, provided that the proceedings, or, if the
20 proceedings are reviewing another decision, the proceedings originating the review
21 proceedings were initiated by a person other than the holder of the permit or
22 approval.

23 (b) “Challenged plat or survey” means a plat or certified survey map approval
24 that is the subject of administrative, judicial, or appellate proceedings that may
25 result in the invalidation, reconsideration, or modification of the approval, provided

1 that the proceedings, or, if the proceedings are reviewing another decision, the
2 proceedings originating the review proceedings were initiated by a person other than
3 the holder of the approval.

4 (c) "Construction project" means organized improvements to real property that
5 include the construction or redevelopment of at least one building for occupancy.

6 (d) "Covered approval" means a challenged permit or challenged plat or survey.

7 (e) "Governmental unit" means the department of natural resources, the
8 department of transportation, a city, a village, a town, a county, or a special purpose
9 district.

10 **(2) AUTOMATIC EXTENSION.** A person who has received a covered approval shall
11 obtain an automatic extension of the covered approval by notifying the governmental
12 unit that issued the covered approval of the person's decision to exercise the
13 extension not more than 90 days nor less than 30 days before the expiration of the
14 unextended term or duration of the covered approval. A notification under this
15 subsection shall be in writing and shall specify the covered approval extended. This
16 subsection does not apply to a covered approval for which an automatic extension is
17 not allowed under applicable federal law.

18 **(3) TERM OF EXTENSION.** The term or duration of a covered approval extended
19 under sub. (2) is an amount of time equal to 36 months plus the duration of the
20 administrative, judicial, or appellate proceedings to which the covered approval is
21 subject. For purposes of calculating the duration of administrative, judicial, or
22 appellate proceedings under this subsection, proceedings begin on the date of the
23 initial filing of the proceedings, or, if the proceedings are reviewing another decision,
24 the proceedings originating the review proceedings and end on the date of the final
25 order disposing of all proceedings.

1 **(4) EFFECT OF ORDERS.** A covered approval extended under sub. (2) is subject
2 to any order concerning the covered approval that is issued in an administrative,
3 judicial, or appellate proceeding, including a suspension, injunction, restraining
4 order, invalidation, reconsideration, or modification.

5 **(5) CHANGE OF LAW.** Except as provided in s. 66.10015, the laws, regulations,
6 ordinances, rules, or other properly adopted requirements that were in effect at the
7 time the covered approval was issued shall apply to the construction project, plat, or
8 certified survey map during the period of extension. This subsection does not apply
9 to the extent that a governmental unit demonstrates that the application of this
10 subsection will create an immediate threat to public health or safety.

11 **(6) REGULATION OF SAFETY AND SANITATION.** This section does not limit any state
12 or local unit of government from requiring that property be maintained and secured
13 in a safe and sanitary condition in compliance with applicable laws, administrative
14 rules, or ordinances.

15 **(7) EXCEPTIONS.** This section does not apply to any of the following:

16 (a) A covered approval under any programmatic, regional, or nationwide
17 general permit issued by the U.S. army corps of engineers.

18 (b) A covered approval that authorizes a water pollutant discharge under s.
19 283.31, 283.33, or 283.35 or construction or operation of a stationary source under
20 s. 285.60.

21 (c) The holder of a covered approval who is determined by the issuing
22 governmental unit to be in significant noncompliance with the conditions of the
23 covered approval as evidenced by written notice of violation or the initiation of a
24 formal enforcement action.

25 **SECTION 5. Nonstatutory provisions.**

1 (1) INTEREST AND PENALTIES ON LATE PROPERTY TAX PAYMENTS. Notwithstanding
2 ss. 74.11, 74.12, and 74.87, for property taxes payable in 2021, after making a general
3 or case-by-case finding of hardship, a taxation district may provide that an
4 installment payment that is due and payable after January 1, 2021, and is received
5 after its due date shall not accrue interest or penalties if the total amount due and
6 payable in 2021 is paid on or before October 1, 2021. Interest and penalties shall
7 accrue from October 1, 2021, for any property taxes payable in 2021 that are
8 delinquent after October 1, 2021. A taxation district may not waive interest and
9 penalties as provided in this subsection unless the county board of the county where
10 the taxation district is located first adopts a resolution authorizing such waiver and
11 establishing criteria for determining hardship, and the taxation district
12 subsequently adopts a similar resolution; except that a 1st class city may waive
13 interest and penalties as provided in this subsection if the city adopts a resolution
14 authorizing such waiver and establishing criteria for determining hardship, and no
15 action with respect to a resolution may be required of the county board of the county
16 where the 1st class city is located. A county that has adopted a resolution authorizing
17 the waiver of interest and penalties under this subsection shall settle any taxes,
18 interest, and penalties collected on or before July 31, 2021, on August 20, 2021, as
19 provided under s. 74.29 (1), and settle the remaining unpaid taxes, interest, and
20 penalties on September 20, 2021. The August 20, 2021, settlement shall be
21 distributed proportionally to the underlying taxing jurisdictions.

22 **SECTION 6. Initial applicability.**

23 (1) The treatment of s. 893.38 first applies to a challenged permit, as defined
24 in s. 893.38 (1) (a), or challenged plat or certified survey, as defined in s. 893.38 (1)

1 (b), about which administrative, judicial, or appellate proceedings are pending on the
2 effective date of this subsection.

3 (END)