



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Hearing Testimony

Senate Committee on Economic Development, Commerce and Local Government

October 3, 2017

Chairman Feyen and members of the Senate Committee on Economic Development, Commerce and Local Government, thank you for affording me with the opportunity to testify on behalf of Senate Bill 236 relating to modernizing Wisconsin's competitive bidding thresholds.

Senate Bill 236 increases the competitive bidding threshold for local governments from \$25,000 to \$50,000. For our local partners, costs of public works projects have increased—precipitated primarily by inflation—while the threshold for triggering competitive bidding has remained stagnant since 2005. As a result, local governments have been required to competitively bid for small-dollar projects that in the past, would have fallen below the cap levels. For instance, in 2015, the City of Mequon was required to bid a \$39,000 project to remove ash trees, while, the City of Fond du Lac bid a \$35,000 project for park shelter renovations. Providing more flexibility while continuing to require Class 1 notices for public works projects will benefit our local communities across the state.

Additionally, Senate Bill 236 requires that school districts employ competitive bidding on public works projects exceeding \$50,000. Currently, school districts are *exempt* from having to abide by competitive bidding regulations. This bill requires school districts to competitively bid for large expenditures, chiefly capital improvement projects akin to their local counterparts. According to the Wisconsin Department of Public Instruction, Wisconsin taxpayers, in 2016, approved, via the referendum process, \$1.34 billion in debt issuance for capital improvement projects. Moreover, in 2017 alone, Wisconsin taxpayers approved more than \$700 million via the referendum process; none of which were *required* to competitively bid their projects. By ensuring that, in the future, these projects are subject to competitive bidding requirements taxpayers will save millions of dollars annually and school districts will be encouraged to award projects to the lowest responsible bidder—a practice currently employed by other local units of government.



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Some opponents of Senate Bill 236 have argued that school districts will be forced to select a subpar contractor considering their bid is lowest. After reviewing case law on this subject (*D.M.K., Inc. v. Town of Pittsfield* (2006)) and discussing with Legislative Council, the school **would not** be required to select the lowest bidder unless it deemed the contractor "responsible." Senate Bill 236 codifies best practices employed by the countless school districts that currently utilize self-imposed bidding requirements.

In addition, two amendments were introduced to Senate Bill 236 that were recommended by Legislative Council to provide clarity. Senate Amendment 2 to Senate Bill 236 encompasses all the changes that were made in the previous amendment. Furthermore, Senate Amendment 2 increases the threshold for municipal sewerage districts as well as community redevelopment authorities. Lastly, the Department of Public Instruction recommended amended language to clarify that school lunch programs would not be included in the competitive bidding process. Currently, the school lunch program is bid at the federal level; we saw no need to be duplicative.

I encourage your support of Senate Bill 236. At this time, I would be happy to answer any questions from committee members. Thank you for your time and consideration.



DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on SB 236

October 3, 2017

Thank you Chairman Feyen and members of the Senate Committee on Economic Development, Commerce and Local Government for the hearing today on Senate Bill 236. This legislation is the Threshold Modernization Initiative, and it is designed to create greater transparency in government construction projects while at the same time granting local governments greater flexibility on small and medium sized construction and rehabilitation projects.

This bill raises the threshold for when government construction projects must be put out for competitive bidding. Current law requires many local government entities to employ the competitive bidding process for projects that cost \$25,000 or more. Since 2005 this figure has not been updated to reflect the rising cost of construction materials and labor. Under this bill, with the proposed amendment, the threshold for triggering the competitive bidding process is raised to \$50,000. Materials and labor donated for projects do not count toward this threshold.

Another important part of the bill applies the threshold for public competitive bidding to school districts across the state. This will standardize the current patchwork of policies that dictate when a school construction or rehabilitation project is put out for bidding. In calendar year 2016, Wisconsin school districts authorized more than \$1.34 billion in debt issuance for capital projects. Ensuring that many of these projects are publicly bid will create value for taxpayers and school districts by harnessing the power of the free market to deliver the best possible product in the most cost effective manner possible.

I spoke to about 40 superintendents at one CESA meeting and several indicated they have policies stricter than this proposal. This bill is about leveling this playing field across the state.

The bill also recognizes that some emergencies – such as those caused by natural disasters – may leave no time to solicit bids and so school boards are free to grant contracts for reconstruction and rehabilitation if certain standards are met.

Transparency and accountability are critical when handling public funds, and this proposal increases both. Thank you for considering this legislation.



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MEMORANDUM

TO: Honorable Members of the Senate Committee on Economic Development,
Commerce and Local Government

FROM: Marcie Rainbolt, Government Affairs Associate

DATE: October 3, 2017

SUBJECT: Support for Senate Bill 236: competitive bidding thresholds and requiring school districts to utilize competitive bidding

The Wisconsin Counties Association (WCA) supports Senate Bill 236 (SB 236), relating to competitive bidding thresholds and requiring school districts to utilize competitive bidding. SB 236 comes at a time when both the cost of labor and building materials continue to rise. That being said, the threshold for competitive bidding has not been altered since 1999 placing undue and unnecessary burden on counties and other local governments.

Senate Bill 236, as amended, would increase the bidding threshold from the current \$25,000 to \$50,000. Although WCA has long requested an increase in the threshold to \$100,000, doubling the threshold will provide relief and generate efficiencies for county purchasing agents. The new \$50,000 threshold will streamline small projects and allow them to be completed in a more timely and efficient manner.

The competitive bidding process takes weeks to complete due to several requirements. Those requirements include advertising twice in the newspaper 10 days apart (with waiting times between the first and second advertisement). The county must then review the bids and select the winner before construction can begin. A project estimated to take two weeks to complete at a cost of \$30,000 can take months to complete because of this outdated process.

SB 236 will allow local governments more flexibility in small construction projects while still being prudent with local taxpayer dollars. WCA requests the committee support SB 236 and the efficiencies it will generate at the local level.



School Administrators Alliance

Representing the Interests of Wisconsin School Children

TO: Senate Committee on Economic Development, Commerce and Local Government
FROM: John Forester, Executive Director
DATE: October 3, 2017
RE: SB 236 – Requiring School Districts to Utilize Competitive Bidding

The School Administrators Alliance (SAA) opposes Senate Bill 236, relating to competitive bidding thresholds and requiring school districts to utilize competitive bidding. But, I want to be very clear. We oppose the portion of the bill that requires school districts to utilize competitive bidding. We also believe that an increase in the bidding thresholds is long overdue.

Senate Bill 236 would require that a school board, before entering into a contract for the construction, repair, remodeling, or improvement of a public school building or public school facilities or for the furnishing of supplies or materials with an estimated cost greater than \$75,000 (Senate Amendment 2 would reduce that figure to \$50,000), must advertise or direct the school district clerk to advertise for proposals and must let the contract to the lowest responsible bidder.

The bill would also prohibit a school board from using a bidding method that gives preference based on the geographic location of the bidder or that uses criteria other than the lowest responsible bidder in awarding a contract.

Mr. Chairman, in the past three months, I have spent a good deal of time reading information about school construction and talking about this bill with school business officials and superintendents as well as people in the construction industry. What I have found is simply school construction is a complicated issue. And I'm certainly not an expert on the ins and outs of the various project delivery methods, whether they be general contractor, construction manager as agent (CMA), construction manager at-risk (CMR) or design-build.

What I do have is an observation about the industry. It appears to me that the industry has evolved such that different companies either specialize in or favor certain project delivery methods. One is left to conclude that the industry itself believes there are multiple ways that a quality project can be delivered efficiently and on time to the project owner.

If that is the case, shouldn't the project owners (and in this case I am referring to school districts in particular) be able to choose how to best meet the unique needs of their students, taxpayers and community at large given the scope, goals and circumstances surrounding a particular project?

Under current law, school districts enjoy the flexibility to choose a project delivery method which suits the project. And, in addition to competitive bidding, school districts also utilize request for proposals (RFPs), quotes and negotiated proposals with one or more vendors. School

administrators oppose SB 236 because they believe they can best meet the needs of their various constituencies by having greater flexibility to choose how to bring their projects to completion.

In their co-sponsorship memo, dated April 20th of this year, the authors raise up required competitive bidding as the one sure way we can always ensure that school districts make their large expenditures in an efficient manner. First, let's remember that most school districts have a competitive bidding policy. So, this bill would not provide any additional tools that school districts don't already have at their disposal. Also, my conversations with school business officials and industry representatives suggest that the cost/efficiency issue is not so clear cut. Coming up with apples-to-apples cost comparisons between project delivery methods is not easy to accomplish.

Some industry representatives believe that this legislation, if adopted, will remove the opportunity for school districts to realize cost savings through collaborative redesign in the pre-referendum and pre-construction phases of a project. Some veteran school business officials believe that, depending on the circumstances surrounding a particular project, they can bring some projects to completion more cost-effectively using options other than competitive bidding. School facilities officials at one of the ten largest school districts in the state believe that, if SB 236 passes, they would need to add a full-time position to their staff to administer the necessary competitive bidding procedures resulting in an additional new cost. Because they currently use all the flexibility they have under current law to ensure cost-effective vendors, they believe the net result would be increased expenditures, not cost savings.

Let me be clear. School administrators believe that cost is a vitally important consideration. But, I think we need to acknowledge that it is not the only consideration. Project quality and on-time completion are also vitally important considerations for school districts. Poor performance in either of these two areas will likely impact cost to the district over the long term.

Before I leave the cost and efficiency issue, I would like to address one more assertion the authors made in their co-sponsorship memo. In that memo, the authors strongly suggested that, because they are not required to utilize competitive bidding in their capital improvement projects, school districts are not cost-effective. In general, I think that some legislators inside the State Capitol do not have a great appreciation for the level of expertise required of today's school business officials, nor do they understand the level of sophistication with which school districts operate on financial issues.

There is a built-in incentive for school districts to operate as efficiently as they can, and it is succinctly captured in this widely-held principle: By operating as efficiently as possible on the non-instructional side (the business side) of the school district operation, you use the savings to maximize resources available for kids in the classroom.

School administrators have raised several other concerns about SB 236, including:

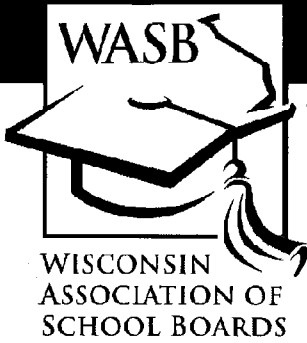
- The impact of the bill on smaller projects and projects that need to be done quickly. Some administrators have expressed concerns that the cost of bidding procedures will outstrip any potential savings on smaller projects. They are also concerned that, because bidding lengthens the process, it can make it more difficult to complete certain projects in the narrow windows we have available for most school construction.
- Some believe that this legislation could create an issue of supply and demand for certain district remodeling projects. In general, districts would likely time the bidding phase

around breaks in district operations (winter and summer breaks) creating an environment of limited contractors, subcontractors, and suppliers, which would, in turn, likely reduce competition and drive up cost.

- Some administrators are concerned that passage of SB 236 could lead to a district using different contractors in each phase of a multi-phase project. For example, as part of their long-range facility plans, some districts may break up their HVAC/mechanical upgrades into several phases to better manage the district fiscal impact as well as the impact on the taxpayer. If districts had to bid each phase, they may end up with several contractors, each doing a phase of the work over time, and undermine district efforts to hold individual contractors accountable for quality. This could also lead to duplication of cost in the design phases.
- Many administrators have expressed concerns about the provisions in the bill that would prohibit any local preference in the contracting process. Districts generally count on the relationships they have established over many years with local vendors. These vendors have a very strong incentive to provide invaluable, high-quality service to the district because they are taxpayers, they may have children in the district and their reputations in the community are on the line as well. These vendors can be counted on to respond quickly to districts needs and often provide significant donations of time and service to the district.

In summary, we oppose Senate Bill 236. We believe that school officials utilize the flexibility afforded them under current law appropriately, cost-effectively and in the best interests of their students, taxpayers and community. We do not believe that a one-size-fits-all model dictated by state government will serve these communities better.

Thank you for your consideration of our views. If you should have any questions on our position on SB 236, please call me at 608-242-1370.



"Leadership in Public School Governance"

JOHN H. ASHLEY, EXECUTIVE DIRECTOR

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TO: Members, Senate Committee on Economic Development, Commerce and Local Government
FROM: Dan Rossmiller, Government Relations Director
DATE: October 3, 2017
RE: **OPPOSITION to SENATE BILL 236**, relating to competitive bidding thresholds and requiring school districts to utilize competitive bidding.

On behalf of all 422 locally-elected public school boards in Wisconsin, the WASB is opposed to Senate Bill 236.

Some will argue that the competitive bidding process is the only way to assure that taxpayers receive value for their tax dollars. We respectfully disagree.

For one thing, if you must take the low bid, you may not be getting the highest quality or craftsmanship. Getting the best price for a job is not necessarily the same as getting the best value for that job.

Many Wisconsin school boards *voluntarily* use competitive bidding for school construction projects. As a matter of local control, these school boards have adopted a board policy to use some form of competitive bidding, even though they are not currently statutorily required to do so.

It should also be noted that preparing a bid document is itself a cost. Please keep in mind the burden to a small school district where the same person is Superintendent/Principal/Business Manager versus a larger school district or other local government where they have a Facilities Manager who only handles these kinds of duties.

Other boards and districts prefer using the flexibility they have under current law to negotiate with their contractors. Often, these are local contractors from within the school district or nearby communities with whom the district has a good working relationship and knows from experience will provide high quality work at an honest price.

Senate Bill 236 would deny school districts' ability to negotiate with local contractors by requiring schools to use sealed bids for projects above the dollar threshold in the bill and by prohibiting districts from using a bidding method that gives preference based on the geographic location of the bidder or that uses any criteria other than the lowest responsible bidder.

Currently, districts that have longstanding relationships with local construction contractors can work with those contractors to negotiate good deals that keep dollars in the community and can result in hiring of parents whose children attend the district's schools. At the Assembly hearing on the companion bill, school officials from Waunakee testified how this process has worked extraordinarily well for them.

Local contractors have strong incentives to do quality work on these jobs. Not only are their reputations on the line, so is their civic and community pride. They want to do a good job and often donate labor or materials. And unlike the situation with an out of town contractor who might lowball a bid to pick up a

one-time job, if a problem should arise, it isn't hard to get a local contractor to come back into the building to resolve it.

School construction projects also have timing constraints that other local government projects may not have. Much of the work on school projects is scheduled over the summer--between early June and September 1—to minimize disruptions and to avoid exposing children to inherent hazards involved with construction (such as dust, noise, trucks and other heavy equipment, etc.).

School boards value the flexibility they currently enjoy to engage design professionals and other consultants to help the district determine how to provide the best value as well as the flexibility to negotiate with local contractors, which creates a “win-win” scenario for their communities and their taxpayers.

We have 422 school districts in Wisconsin, large and small, urban and rural, each with their own local characteristics and circumstances. One-size-fits-all proposals cannot possibly take these differences into account.

For these reasons, the WASB opposes Senate Bill 236 and asks that you **not** support the bill as written.



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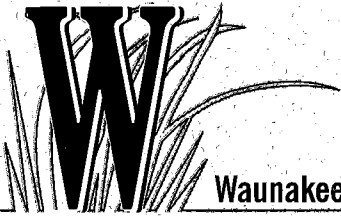
To: Senate Committee on Economic Development, Commerce, and Local Government
From: Curt Witynski, J.D., Assistant Director, League of Wisconsin Municipalities
Date: October 3, 2017
Re: **SB 236, Increasing the Competitive Bidding Threshold for Certain Public Construction Contracts**

The League of Wisconsin Municipalities strongly supports SB 236 for the following two reasons:

1. The bill as proposed to be amended increases from \$25,000 to \$50,000 the amount at which municipal construction projects other than road projects must be competitively bid. Under the bill, the competitive bidding threshold for municipal road projects would remain at \$25,000. The last time the competitive bidding threshold was increased was 2006 when it was increased from \$15,000 to \$25,000. Currently, municipalities must follow a strict competitive bidding process for every municipal construction project over \$25,000. The bidding process is inflexible, takes time, and requires administrative and advertising expenditures. While the bidding process makes sense for large public construction projects, it doesn't for smaller projects such as building a park shelter, adding an ADA compliant bathroom to an old library, or building a playground. SB 236 would give local governments the flexibility to enter into small construction contracts in a less expensive and more efficient manner, saving taxpayer dollars.

2. The bill also expressly exempts from the bidding process any improvements constructed by a person other than the local government and donated to the local government after the completion of construction. This provision makes it clear that roads, park shelters, playgrounds and other improvements constructed by a private party and then donated to a local government are not subject to the competitive bidding requirements. This will enable municipalities to more efficiently engage in public-private projects and accept donated improvements.

For these reasons, we urge the committee to recommend passage of SB 236. Thanks for considering our comments.



Waunakee Community School District

Committed to Children • Committed to Community • Committed to Excellence

TO: Senator Feyen and Members of the Senate Committee on Economic Development, Commerce and Local Government

FROM: Randy Guttenberg, Superintendent
Waunakee Community School District

Julie Waner, Vice-President
Waunakee Community School District -- Board of Education

RE: Testimony on Senate Bill 236

DATE: October 3, 2017

Good morning. Thank you for providing the opportunity for us to share our perspective on Senate Bill 236 related to the competitive bidding of construction projects by Wisconsin Public School Districts. My name is Randy Guttenberg, Superintendent for the Waunakee Community School District, and joining me today is Julie Waner, Waunakee resident and Vice-President of the Waunakee Community School District Board of Education. We are here today to share our concerns with this proposed legislation.

Waunakee is located ten miles north of Madison and is a rapidly growing community. We serve 4,300 students in our school district and are growing by about 2% annually. As a result of our student growth we have been and will continue to face the need to remodel, add-on, and build new school facilities. As we make decisions about future building projects, we value the ability to utilize various delivery models to provide a high quality product in a cost effective manner, while supporting our local community and businesses.

Most recently in 2014 we passed a \$44.8M referendum that included a new 155,000 square foot energy efficient school for our 5th and 6th grade students. The projects associated with this referendum came in under budget, and through careful collaboration of our team, we were able to reallocate nearly \$1M to additional work that directly benefited our students, and provided evidence to our community that we were good stewards of their funds. This project included many facets that were competitively bid, but we also capitalized on a Design Assist Approach with companies such as North American Mechanical for our HVAC needs and Westphal Electric for our electrical and data lines. These companies were selected based on an interview and proposal process with our school board, and by including them early on in the process as part of the design team, we were able to be responsive in the design phase to build in efficiencies and cost savings. Under the proposed legislation, we do not believe the process we used for NAMI and Westphal would be allowed, which eliminates the ability to seek out efficiencies on the design end, potentially yielding more change orders and additional cost.

We also built in a geographical preference to work with Endres Manufacturing for steel fabrication, Badgerland Erectors for installation, and Mobile Glass to provide many of our windows. These three companies are located within the boundaries of our school district and our community and school board has placed a value on keeping work with local businesses, as much as possible. Under the proposed changes to this law, geographic preference is not an allowable bidding practice.

These partnerships are valuable to us as is evidenced by over 10-years of history and energy saving experience with NAMI, the ability to support a literal neighbor business, Endres Manufacturing and Badgerland Erectors, the value of high quality services attained at UW-

service rates with Westphal Electric, and our ability to work with a local supplier of windows, Mobile Glass.

These companies provide high quality service, take pride and responsibility in working with the local school district, and provide competitive prices. We bid these services periodically to ensure that we are remaining competitive and responsible for the funds our community trust to us. Additionally, we have confidence built through a legacy of consistent follow through to overcome unforeseen challenges with many local vendors.

We believe that a hard, sealed bid process that requires the low bidder be granted the work, limits our ability to develop longer term partnerships, removes the ability to bring key contractors to the table during the design phase, and works contrary to individual community values. There are real costs when companies need to play "catch up" on the background of past projects, to understand our vision, our community values, and the continuity of services we expect in our projects.

This continuity is particularly important on system-wide initiatives such as when we upgrade and replace infrastructure for our camera and door entry systems. We want to work with one provider for all of our schools, but these projects are often upgraded and installed in phases over time at individual schools, often resulting in multiple bidding processes. Under the provisions of this bill, different vendors could win the work based solely on low bid for each school project. Using multiple vendors is not the most efficient or cost effective way to manage district wide systems. This pattern is also true when working with HVAC and electrical infrastructures.

As school board members, we place great value in the power of local control for managing our taxpayer funds. We work closely with our administration to seek the best value, bid projects per our policies to ensure competitive pricing, and we are a community that expects excellence in our work. We also value our local businesses, and have a policy that encourages us to provide preference to local taxpaying business partners. We believe that the bidding process as proposed in this legislation, particularly related to geographic area, could hurt local collaboration by favoring an outside entity that drops their price just to get our business. The bottom line is not always the best indicator of quality or the only indicator that we as a school board look for when working to provide the type of outcomes our community expects.

We value the confidence we have established with our partners, and our community appreciates the synergy created by supporting local entities whenever possible. We understand the desire to ensure that taxpayer funds are used responsibly. Waunakee is a very fiscally conservative community, and as school board members, we apply our diverse backgrounds to advocate for securing the best value and competitive costs.

But, we believe that Senate Bill 236 will undermine a process that has worked very well for Waunakee. We stand to advocate for the ability to bid when necessary per our district policies, select local businesses when we feel they bring the best value, and to build continuity that leverages planning with trusted business partners to ensure cost efficiencies.

Thank you for your service to our State and thank you for considering our perspective.