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## Luther S. Olsen

State Senator

14th District

**TO:** Senate Committee on Agriculture, Revenue and Financial Institutions

**FROM:** Senator Olsen

**DATE:** September 18<sup>th</sup>, 2019

**SUBJECT:** Testimony for Senate Bill 95, 96, and 97

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Thank you Chairman Marklein and members of the Senate Committee on Agriculture, Revenue and Financial Institutions for holding a hearing and allowing me to testify in support of Senate Bill 95, 96, and 97 (SB 95, 96, and 97). These bills were the result from the Study Committee on Property Tax Assessment Practices, which was directed to review current property tax assessment practices and recommend legislation to revise and clarify those practices, and more specifically examining the “dark store” issue and the assessment of leased commercial property. The committee reviewed several bill drafts, finally voting to recommend the following three.

SB 95 authorizes cost-sharing across affected units of local government. Under current law, municipalities are solely responsible for defending and litigating property tax assessments, even though multiple taxing jurisdictions are affected including counties, school districts, and technical college districts. SB 95 authorizes cost-sharing across affected taxing jurisdictions for the cost of hiring expert help for complicated commercial tax assessments and for defending those assessments before the local board of review, the Department of Revenue or Tax Appeals Commission, or in a court action. The bill authorizes such cost-sharing only if it is approved by representatives of three of the four relevant taxing jurisdictions.

Second, the committee recommended SB 96, which makes two changes to the timelines and procedures governing actions to challenge a property tax assessment on the grounds that it is excessive. SB 96 removes a step in the process for challenging an assessment on those grounds. The bill also aligns the timelines for appeals to circuit court after various board of review decisions. Study Committee members agreed that the bill draft will improve the current process for objecting to tax assessments by streamlining it and removing an unnecessary hurdle.

Lastly, SB 97, requires commercial taxpayers to disclose certain documents, with goals of improving the quality of assessments on the front end, and hopefully avoiding litigation in some circumstances. Currently, an assessor may request information about a taxpayer’s income and expenses, but the information is often received quite late in the process. SB 97 itemizes specific types of documents that an assessor may request by January 15 of the current assessment year. If a commercial taxpayer fails to provide the requested documents by March 31, the bill generally prohibits the taxpayer from taking certain actions to object to a property tax assessment. The bill also provides a limited exception and procedure for documents that are not actually in a commercial taxpayer’s possession.

Again, thank you for holding a hearing today. I ask for your support on SB 95, 96, and 97. Legislative Council staff for the Study Committee, are here with me today to help answer any questions.



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To: Senate Committee on Agriculture, Revenue, and Financial Institutions  
From: Curt Witynski, J.D., Deputy Director, League of Wisconsin Municipalities  
Date: September 18, 2019  
Re: **SB 95, Allowing other Taxing Jurisdictions to Share Cost of Property Tax Assessment Litigation**  
**SB 96, Filing Actions for Excessive Property Tax Assessments**  
**SB 97, Allowing an Assessor to Request commercial property owners to submit income and other information critical to the assessment**

The League of Wisconsin Municipalities supports all three bills recommended by the Legislative Council Study Committee on Property Tax Assessment Practices.

**SENATE BILL 95**, authorizes cost-sharing across affected units of local government for certain expenses relating to defending a property tax assessment. The bill authorizes such cost sharing if approved by representatives of three of the four taxing jurisdictions — municipality, county, school district, and technical college district — with taxing authority over a given property. The bill also allows interest on taxes to be charged back to all taxing jurisdictions rather than remaining the sole responsibility of the assessing municipality.

**SENATE BILL 96**, makes two changes to the timelines and procedures governing actions to challenge a property tax assessment on the grounds that it is excessive. First, the bill removes a step in the process for such actions. Second, the bill aligns the timelines for appeals to circuit court after various board of review decisions.

**SENATE BILL 97**, requires commercial property taxpayers to disclose certain documents at the request of an assessor. The bill enumerates the types of documents that an assessor may request and requires the Department of Revenue (DOR) to create a form for such requests. If a commercial taxpayer fails to provide requested documents by a given deadline, the bill generally prohibits the taxpayer from objecting to a property tax assessment. However, the bill provides a limited exception and procedure for documents that are not in the commercial taxpayer's possession.

We urge the committee to recommend passage of these bills improving both the initial assessment process and the process for litigating over assessments. Thanks for considering our comments.

*YOUR VOICE. YOUR WISCONSIN.*

# WMC

WISCONSIN MANUFACTURERS & COMMERCE

**To:** Senate Committee on Agriculture, Revenue, and Financial Institutions

**From:** Corydon Fish, Wisconsin Manufacturers & Commerce

**Date:** September 18, 2019

**Re:** Testimony on Senate Bills 95, 96, & 97

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Thank you Chairman Marklein and members of the Senate Committee on Agriculture, Revenue, and Financial Institutions for hearing my testimony on Senate Bills 95, 96, and 97. These pieces of legislation are the product of a collaborative process by the Legislative Council Study Committee on Property Tax Assessment Practices (Study Committee).

Wisconsin Manufacturers & Commerce (WMC) is the state chamber of commerce and largest general business association in Wisconsin. We were founded over 100 years ago and are proud to represent approximately 3,800 member companies of all sizes and from every sector of our economy. Our mission is to make Wisconsin the most competitive state in the nation in which to do business. One way WMC works to make our mission a reality is by advocating for a fair and effective taxation system.

Wisconsin has the fourth highest property tax burden in the nation as measured by the property tax on a median-valued home. The process to collect – and when necessary challenge – those taxes are byzantine. Making these processes more efficient and consistent is good for Wisconsin taxpayers. The Study Committee identified three sets of problems with Wisconsin's property tax assessment and appeals process: (1) litigation costs, (2) pace of litigation, and (3) ensuring the assessor has accurate information. The pieces of legislation being discussed today will help address these problems.

- **Senate Bill 95:** This bill creates a joint board of assessment consisting of representatives of the local taxing jurisdictions. The board can be convened by the local municipality serving as the taxation district through the passage of a resolution. Once convened the board may choose to share certain costs related to the assessment of property, including defending an assessment before the board of review or in court. This voluntary cost sharing structure will help alleviate assessment and appeals costs that are currently borne by cities, villages, and towns even though a significant portion of the levy they collect is passed on to other local taxing jurisdictions.
- **Senate Bill 96:** This bill allows a taxpayer to file an action for excessive assessment – a common way to challenge a property tax assessment – in circuit court without first having to

file a claim with the taxation district, which will save time and money for both the taxpayer and taxing jurisdiction. Additionally, the legislation creates a uniform appeal period, which will make the appeals process less cumbersome. WMC requests two technical amendments to this legislation. First, first class cities are exempted from the uniform appeal period. This should be amended. Milwaukee taxpayers should not have different rules that put them at a disadvantage compared to the rest of Wisconsin's taxpayers. Second, while the purpose of the bill is to expedite appeals, some boards of review rarely meet (generally Milwaukee), thus, under the bill as drafted, owners of property in Milwaukee (or any other community that chooses to delay board of review hearings) could be shut out for years from appealing their assessments. The bill should be amended to create a truly uniform appeal period and to fix the unintended consequence of *lengthening* the appeals timeline for taxpayers in municipalities whose board of review does not regularly meet.

- **Senate Bill 97:** This bill allows assessors to request a series of documents containing confidential business information, enumerated in the bill, from a taxpayer. The assessor would then use these documents to help assess a property value under the income approach. If a taxpayer did not provide the documents, then they would not be able use them to challenge their assessment before the board of review and in court. The bill would also require the Department of Revenue to prescribe a standard form listing the documents. While the intent of the legislation – making sure that assessors have more objective information to make more informed decisions about assessments – is laudable, the business community is deeply concerned about some of the bill's shortcomings regarding preserving confidentiality and fairness in the appeals process. Several amendments are needed to address these shortcomings.

First, to protect the fairness of any judicial proceeding based on the information collected from a taxpayer, an amendment is needed to clarify that simply because the assessor has the power to request certain information or documents, this does not mean that the information or documents are relevant to the value of the property. This is needed because assessors and taxpayers often debate about the most appropriate method to assess property. For example, simply because an assessor can ask for cost information should not necessarily mean that the cost approach is the preferred method to assess property.

Second, more stringent confidentiality protections need to be inserted in this bill. SB 97 will greatly expand the amount of information and documents available to assessors, most of it confidential business information. Currently, there is no prohibition against using this information in open session in any proceeding, including the boards of review, boards of assessors,<sup>1</sup> the Tax Appeals Commission, and circuit court. Sometimes, the parties may ask a court for a protective order obligating parties to file documents under seal and closing proceedings when such information is discussed in court. But, there is no mandate that any of these bodies protect this information. Because SB 97 greatly expands the documents and

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<sup>1</sup> Three communities, Milwaukee, Madison and Kenosha, have boards of assessors.

information that the assessor can demand, it is important to make it clear that these documents are to be kept confidential and to provide ground rules—that do not currently exist—for when and how such confidential information is released. Moreover, since the idea is that assessors will have more and better information on which to set all assessments using mass appraisal, it is important to allow taxpayers the opportunity to challenge mass appraisal analysis to the extent it is based on information that was derived from third parties.

Third, SB 97 creates a separate proceeding to deal with taxpayers whom the board of review determines have not complied with the requirement to provide information and documents to the assessor as required in this bill. If the board dismisses the objection for failure to comply in good faith with the requirements of this bill, the taxpayer's only recourse is to bring a certiorari action in circuit court challenging the determination. If the court determines the board of review was in error, it remands the matter back to the board for further action. If at some point the board of review acts on the merits of the objection, then and only then may a taxpayer begin a separate claim on excessive assessment action in court. In short, this unique procedure ultimately would lead to a taxpayer being required to file *two* lawsuits to seek a reduction of their assessment, which would lead to greater delays and more expenses for taxpayers and local governments.

While the goal of this legislation is laudable, as currently drafted this bill is a disaster for taxpayers in many respects and the Legislature should amend it to protect taxpayers.

Thank you again Chairman Marklein and members of the Committee for the opportunity to testify. Due to the short public notice for this hearing, WMC was unable to secure subject-matter experts to testify in-person on these pieces of legislation and why amendments are necessary. However, I am more than happy to set up meetings between subject-matter experts and Committee members to discuss this legislation – and potential amendments – upon request.



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September 18, 2019

Senator Howard Marklein, Chair and Members  
Committee on Agriculture, Revenue and Financial Institutions

Re: 2019 Senate Bill 97

Mr. Chairman and Committee Members:

Due to a long-time previous commitment, I can't be with you in person. I previously testified before the Legislative Council Study Committee on Property Tax Assessment Practices and one of our Wisconsin district managers, Ed Catani, served on the committee. The committee was extremely thorough and produced three proposed bills: SB 95, SB 96 and SB 97.

We can't support Senate Bill 97 in its present form.

Walgreens leases most of its stores, therefore we are not in possession of certain documents held by the landlord. However, because we pay the real estate taxes - due to our triple net leases - we are authorized to be the entity that appeals real estate assessments, if necessary. This bill would allow an assessor to seek documents that we don't possess. These documents can include (and are not limited to) the landlord's tax return, listing contracts, offers to purchase, letters of intent, closing statements, construction documents, SEC filings, internal valuation documents, and various documents provided to a purchaser at closing. We aren't a party to the leased fee transactions.

Typically, our landlords are not eager to release these documents. Yet, we as the taxpayer will be penalized by a possible dismissal of our board of review appeal unless the board of review determines that we made a good faith effort to obtain the documents. In other words, this legislation will punish Walgreens and other leaseholders who are unable to obtain the required documentation.

We hope Senate Bill 97 can be tweaked so taxpayers that are renters do not lose their due process rights for reasons out of their control.

At the end of the day, Walgreens, like any other taxpayer, just wants to pay our fair share of real estate taxes.

Yours truly,

Brian Grossman  
Director, Property Tax