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**Wednesday, March 5, 2014 | 11:00 AM | 412 East
Assembly Committee on Energy and Utilities**

Rep. Jim Steineke Testimony on Assembly Bill 835: ~~8~~ 5 B 636

Relating to: limiting the security a town or municipality may require as a condition of plat approval.

Good morning Chairman Kuglitsch and members of the Committee.

Assembly Bill 835 clarifies the financial expectations for developers when working on infrastructure projects that are initially paid for by a developer and then dedicated (or given) to a municipality (such as roads or underground projects).

Under current law, a county, town, city, or village has the right to approve or object to the creation of a subdivision. As a condition of approval, the governing body of the town or municipality where the subdivision is located may require that the developer make and install any public improvements reasonably necessary.

This bill provides a developer with two financing options for public improvement projects: a performance bond or a letter of credit (which is not currently allowed). Either option will satisfy the governing body's requirement that the subdivider provide security to ensure that the public improvements are made within a reasonable time. The bill establishes a 12 month limit on the timeframe to require security.

The cap on the security amount would be the total cost to complete the improvements that are not completed plus an additional ten percent of the total cost of the completed improvements. When roads are involved substantially completed is defined as when the binder coat is installed on the roads to be dedicated. When no roads are involved substantial completion is when 90 percent of the public improvements by cost are completed

Developers recognize the need to pay for infrastructure that is directed to a municipality and this bill doesn't change that practice. Developers also recognize that some type of process must be in place to provide financial security to the municipalities for completed and uncompleted infrastructure work. AB 835 does not take that process away either, it simply better defines current law.

Thank you for your time and I'd be happy to take any questions.



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To: Senate Committee on Government Operations, Public Works, and Telecommunications
Assembly Committee on Energy and Utilities

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

Date: March 5, 2013

Re: SB 636/AB 835, Limiting the Security a Municipality may Require

The League of Wisconsin Municipalities opposes SB 636/AB 835 as an unnecessary limitation on the amount of security a municipality can require as a condition of plat approval. The bill interferes with the ability of a municipality to protect municipal property tax payers when a developer fails to construct the required improvements in a new development. Our specific concerns regarding the bill are set forth below:

1. **Giving the Developer the Option to Choose the Type of Security.** The bill allows the developer to choose between providing the municipality with a performance bond or a letter of credit. Based on comments we received from our members, most communities now tend to require that developers provide an irrevocable letter of credit as security. That way, if the developer reneges or doesn't respond by the agreed upon time, the municipality can cash the letter of credit and finish the public improvements with the developers resources, not the communities. A letter of credit also ensures that the developer has the financial backing and sufficient resources to complete the project. Moreover, bonding companies typically deny claims and refuse to pay before litigation is filed. Letters of credit are usually paid without a fight, and if there is a fight, the municipality can recover its attorney fees.
2. **Definition of "Substantially Completed."** Most communities run their guarantees from the date the municipality accepts the improvements. Under the bill, the surety would run out 12 months after 90% of the work is done. The surety clock would be ticking as to surety for work that is not even completed yet.
3. **Definition of substantial completion by binder installation.** Binder installation can occur well before street lights, street trees, sidewalks and a lot of other improvements (not to mention the finish course) are completed. That could mean a substantial amount of work has not been started when the bill would consider all of the improvements "substantially completed." Again, this would leave the municipality unsecured or at least undersecured for any guaranty period for later completed items.
4. **The 110% of uncompleted work is light.** Costs are based on engineering estimates, and current prices. Most communities require security to cover 120% of the estimated cost of the uncompleted work.

We urge you to vote against recommending passage of SB 636/AB 835 as an unnecessary interference with a matter of local concern. Thanks for considering our comments.

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Wisconsin Builders Association

DATE: March 5, 2014

TO: Members of the Senate Committee on Government Operations, Public Works and Telecommunications and the Assembly Committee on Energy and Utilities

FROM: Brad Boycks
Vice President of Advocacy
Wisconsin Builders Association

RE: **Support of Senate Bill 636 (SB 636) and Assembly Bill 835 (AB 835) relating to the financial security a town or municipality may require as a condition of plat approval**

On behalf of the members of the Wisconsin Builders Association (WBA), we ask that you support SB 636/AB 835 relating to the financial security a town or municipality may require as a condition of plat approval.

In late 2013 a number of WBA developer members started to meet to discuss ways to streamline the development process in Wisconsin to make the process more predictable and more uniform throughout the state. One of the main issues that came to light was the issue of financial security that developers are required to provide on infrastructure that they pay for and that is dedicated to a municipality or town. The framework provided in SB 636 and AB 835 is the result of conversations with developers to provide a better framework on these issues.

Some of the highlights of SB 636 and AB 835 include:

- Provide more information to a developer on what the process is in a statewide, uniform way on the issue of financial security of infrastructure that is paid for by a developer and then dedicated to a municipality
- Allow the developer to choose between a surety performance bond or letter of credit (current law does not define this)
- Put a 12 month limit on the timeframe to require financial security after substantial completion of the improvements
- Cap the amount of financial security established as the total cost to complete the improvements that are not completed plus an additional ten percent of the total cost of the completed improvements
- When roads are involved, substantially completed is defined as when the binder coat is installed on the roads to be dedicated

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- When no roads are involved, substantial completion is when 90 percent of the public improvements by cost are completed
- Developers recognize the need to pay for infrastructure that is then dedicated to a municipality and this bill does not change that practice
- Developers also recognize that some type of process must be in place to provide financial security to the municipalities for completed and uncompleted infrastructure work and this bill does not take that process away but simply better defines the process than current law

Members of the WBA believe SB 636 and AB 835 provide a common sense framework on the issue of financial security a town or municipality may require as a condition of plat approval and ask that you support passage of these bills before the conclusion of session.



TO: Members of the Senate Committee on Government Operations, Public Works and Telecommunications and the Assembly Committee on Energy and Utilities

FROM: Robert C. Procter
General Counsel
Wisconsin Builders Association

DATE: March 5, 2014

RE: **Support of Senate Bill 636 (SB 636) and Assembly Bill 835 (AB 835) relating to the security a town or municipality may require as a condition of plat approval**

Background

- To create a residential or commercial subdivision, a developer follows the procedures under Wis. Stat. ch. 236 to subdivide the property into smaller, legal parcels that can be conveyed to other persons.
- As a condition of the subdivision approval, the approving authority can require that the developer construct at the developer's expense all of the public roads, sewer, gutter, storm water ponds, etc., and then dedicate those improvements to the municipality.
- The approving authority can also require that the developer provide collateral to the approving authority in the form of a letter of credit or some other surety to guaranty completion of the public improvements.

Revisions to Existing Law

- This proposed bill address three issues:
 1. **Amount of Surety**. Sets the amount of surety that an approving authority can require at 110% of the total project costs at commencement of the

Project. Sets the amount of surety at 100% of any uncompleted work plus 10% of project costs after substantial completion.

EXAMPLE: At the time the project commences, the approving authority can require surety in the amount of \$1,100,000 for infrastructure costs of \$1,000,000. Six months later, the project may be substantially complete with \$100,000 of work left to complete. At this point, the approving authority can require surety in the amount of 100% of the unfished work (\$100,000) plus 10% of the total project costs (\$100,000) for a total of \$200,000.

2. **Time Limit.** The bill clarifies that the surety an approving authority requires, can be in place at 110% of total project costs from commencement through substantial completion. At the time of substantial completion, the surety can be put in place for another 12 months for any unfinished work and warranty items, based on the reduced formula.

EXAMPLE: If the project commences on January 1, 2014, and the binder coat for the road is installed on September 1, 2014, then the surety can remain in place through September 1, 2015, subject to the reduced amounts. This statute does not prohibit the approving authority from either drawing on the letter of credit if any unfinished work is not completed within the 12 months, or from agreeing with the developer to extend the surety if the developer cannot complete the work within that time limit.

3. **Surety Bond v. Letter of Credit.** This bill gives developers the options to use either a surety bond or a letter of credit as security.

- **Security.** The security is only as good as the surety carrier or the bank that provides the bond or the letter of credit. Some insurance companies are stronger than some banks, and vice versa.

- Cost. Depending on the market, sometimes surety rates are less than what a bank is charging for a letter of credit, and vice versa.
- Borrowing Issues.
 - Typically letters of credit negatively impact a developer's ability to borrow more so than a surety bond. This lowers a developer's ability to invest in other projects.
 - Banks do not like to provide letters of credit because the bank must count a letter of credit as a loan for purposes of setting the bank's reserves, which makes a letter of credit more difficult to obtain.
- Acceptance. The federal government, the state and municipalities use performance and payment bonds all the time when they hire a contractor directly.

It is very rare that an approving authority in the context of a subdivision is required to make a claim against a surety bond or letter of credit. In our municipal law practice, we have not seen one in 40 years. This bill will allow municipalities to require ample surety to guaranty the completion of the work at all times of the project.

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