ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Senate Committee on Insurance, Housing and Trade
Public Hearing, January 5, 2016

Senator Lasee and members of Insurance, Housing and Trade Committee, thank you for affording me with the opportunity to testify on behalf of SB445, relating to various revisions to our landlord-tenant laws.

SB 445 is a bill designed to make it easier for landlords to provide every Wisconsin resident with safe, clean and quality housing. This bill enhances public safety and promotes regulatory fairness by requiring that necessary inspections are done on all dwellings, not just non-owner occupied. Doing so protects the well-being and safety of all residents.

This bill codifies current law to ensure that local sprinkler ordinances cannot be inconsistent with the uniform building code for multi-family buildings. This bill also provides a technical clean up on previously passed towing regulations.

SB 445 includes a provision ensuring the safety of tenants by expediting the process by which those involved in criminal or drug-related activity that threatens the health and safety of those around them, are removed from a property.

The United States Department of Housing and Urban Development (HUD), as it relates to Section Eight housing, uses a one-strike provision to remove renters for criminal activity or serious violations of lease agreements. The provisions in this bill closely mirror the HUD standard for criminal or drug-related activity. Our bill also requires that landlords inform tenants of their right to contest the eviction. Additionally, the notice must specify the grounds for the landlord's action.

Property owner rights are protected in this bill as well, by requiring their consent before their property is designated as an historic property by a local unit of government. This bill is not retrospective and does not affect properties currently designated as historic landmarks.

Capitol Office: Post Office Box 8952 • Madison, WI 53708-8952 • (608) 267-2369 • Toll-Free: (888) 534-0060 • Fax: (608) 282-3660
Rep.Rob.Brooks@legis.wi.gov

ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

This legislation also includes a tenant friendly provision that allows landlords to opt for a five day "right to cure" for non-rent breaches instead of just the fourteen day eviction notice in month-to-month leases. This provides landlords and tenants an additional tool to work out possible solutions to a problem. Additionally, SB 445 helps to codify a Supreme Court ruling relating to restrictions on signage content. This bill does not restrict a municipality's ability to regulate the size, color, location or general design of a sign.

I strongly encourage my colleagues on this committee to support SB 445, as it makes much-needed changes to Wisconsin landlord-tenant laws while concurrently ensuring that every resident is afforded with the opportunity to reside in clean, safe and affordable housing. This legislation includes provisions that protect the rights of tenants and landlords.

I would, at this time, be more than willing to answer any questions members of the committee might have. Thank you for your time and consideration.

Capitol Office: Post Office Box 8952 • Madison, WI 53708-8952 • (608) 267-2369 • Toll-Free: (888) 534-0060 • Fax: (608) 282-3660
Rep.Rob.Brooks@legis.wi.gov

disabilityrights WISCONSIN
Protection and advocacy for people with disabilities.

January 5, 2016

Senate Committee on Insurance, Housing, and Trade

Senator Frank Lasee, Chair

State Capitol, Room 412 East

Madison, WI 53708

Dear Senator Lasee and members of the committee;

Thank you for the opportunity to provide comments on Senate Bill 445. We write to raise our concerns about what we see as possible unintended consequences of some aspects of this bill.

We represent people with disabilities struggling with housing related issues on a daily basis. People with disabilities face many obstacles in housing. Many live far below the poverty relying solely on Supplemental Security Income (SSI) as their only source of income. Many people with disabilities need affordable and accessible housing which is in short supply. Many people with disabilities face housing discrimination and are denied reasonable accommodations or are harassed by neighbors and landlords due to their disability. In Wisconsin there are over 6000 people who are homeless on any given night. A great many of those people are people with disabilities.

There are two aspects of this bill that give us pause to believe they may disproportionately impact people with disabilities resulting in them losing their housing. One is the term "criminal activity" and the other is the provision regarding the disposal of personal property left by a "trespasser".

First, the term criminal activity is very broadly defined and includes criminal activity by the tenant, a member of the tenant's household, a guest or other invitee that threatens the health, safety, or right to peaceful enjoyment of the premises. A landlord would be able to require a tenant to vacate on or before at least 5 days from the giving of the notice without an opportunity to remedy the default. It is not necessary that the individual committing the criminal or drug related activity be arrested or convicted, or that there even be police involvement. Such "criminal" activity could include a child with autism whose loud screeches disturb the peace, or an individual with paranoid schizophrenia who repeated calls 911 out of fear, to be forced out of their homes with five days' notice and no opportunity to remedy the problem. We have had individuals with both those issues call us for assistance in working out accommodations with their landlords. Working out such situations will be almost impossible if the individual has already been forced to vacate.

MADISON
131 W. Wilson St.
Suite 700
Madison, WI 53703
608 267-0214
608 267-0368 FAX

MILWAUKEE
6737 West Washington St.
Suite 3230
Milwaukee, WI 53214
414 773-4646
414 773-4647 FAX

RICE LAKE
217 West Knapp St.
Rice Lake, WI 54868
715 736-1232
715 736-1252 FAX

disabilityrightswi.org

800 928-8778 consumers & family

Second, this bill makes remaining without consent criminal trespass and allows a landlord to dispose of the personal property left in a rental property. It is not unusual for people with disabilities to become hospitalized for weeks and even months at a time. Sometimes they are not physically or financially capable of paying their rent while in the hospital. If a person with a disability is hospitalized and does not pay their rent s/he becomes a person remaining without consent making her/him a criminal trespasser and allowing the landlord to freely dispose of her/his property. As a result someone could be released from the hospital to find themselves not only homeless but also possessionless.

We ask that you look carefully at the definitions and provisions of this bill to ensure that people with disabilities who already have a difficult time obtaining and maintaining housing are not further hindered by its provisions.

Monica Murphy

Managing Attorney

Disability Rights Wisconsin

Wisconsin State Fire Chiefs' Association

Together We Make A Difference

800-375-5886 www.wsfca.com

Education • Prevention • Safety • Supression • EMS

DATE: January 5, 2016

TO: Senate Committee on Insurance, Housing and Trade

FROM: WI State Fire Chiefs Association

RE: Oppose SB 445

The Wisconsin State Fire Chiefs Association (WSFCA) asks that you oppose Senate Bill 445. SB 445 will create difficult code enforcement for the property inspectors in Wisconsin.

There are three areas of concern the WSFCA has with SB 445.:

- The first concern is the elimination of pre-existing sprinkler ordinances that approximately eleven communities have in Wisconsin. These local ordinances are in place to create safe rental properties in those communities and have been in place in these communities since 1992. In addition to the elimination of these communities progressive sprinkler ordinances SB 445 will not allow communities to enter into any contracts or agreements to sprinkler a building when both parties agree the building should be sprinklered for the safety of the occupants of the building and the firefighters who will have to enter that occupancy when there is a fire.
- The second concern in SB 445 is the elimination of inspections of rental units. The ability of our inspectors to inspect these rental properties on a regular basis is the reason that we do not have disastrous fires in the State of Wisconsin. This provision sets up the rental properties for potential high dollar losses as well as dangerous conditions for occupants and firefighters.
- The third concern is the elimination of any fees for inspections. The Department of Safety & Professional Services requires inspections of every commercial property, which rental units fall under, once every six months. Fire departments receive our 2% Dues based on the completion of those inspections every six months. The inspection fees imposed by many communities make it possible to maintain those inspections and keep those properties safe for their residents through code enforcement.

The changes proposed for rental properties are not good for the residents of the State of Wisconsin or the safety of firefighters who must enter these properties under less than ideal conditions during a fire incident. Please oppose SB 445.

If you have questions please contact Dave Bloom, Legislative Liaison, WSFCA at 608-444-3324 or at bloomd@town.madison.wi.us.

6737 W. Washington St. • Suite 1300 • West Allis, WI 53214
800-375-5886 • 414-755-6291 • Fax: 414-276-7704
info@wsfca.com • www.wsfca.com

City of Evansville

www.ci.evansville.wi.gov

31 S Madison St
PO Box 76
Evansville, WI 53536
(608) 882-2266

January 5, 2016

Hon. Frank Lasee
Chairman
Senate Committee on Insurance, Housing, and Trade
PO Box 7882
Madison, WI 53707

Re: SB445

Dear Chairman Lasee:

I am writing as Mayor of the City of Evansville to express my strong opposition to SB445 and to its Assembly counterpart, AB568. These bills would strip local governments in Wisconsin of effective tools to exercise their abilities to protect the health, safety, and general welfare of our citizens in the varied conditions of our communities.

Particularly I object to the provisions of sections 2, 3, and 4 of the bills, which would condition the local designation and regulation of historically-significant places on the "consent of the owner". I am a former chairperson of the Evansville Historic Preservation Commission and am now in my tenth year of service as Evansville's Mayor. No protest in favor of owner op-out provisions in our historic preservation code has arisen locally during the time I have served in office. To the contrary, surveys of citizen attitudes recently undertaken here have shown strong majority support for historic preservation ordinances "with teeth", and even the willingness of a significant majority of respondents to pay higher taxes to support our local historic preservation program.

Evansville prides itself on the beauty and integrity of our historic resources, including the commercial and residential core of our community. Our downtown is thriving and nearly every commercial space is filled. We have listened to the advice of economic development specialists and business site locators who tell us that new, expanding, and relocating businesses seek out communities with vibrant downtowns and places with a high quality of life. Our local conditions have not come about through random acts, but through directed efforts and investments, public and private, over many years, and during trying economic times.

We want to protect our investments. We recognize that the effects of what is done to one property do not end at the lot lines. If one historically-significant property is allowed to deteriorate or lose its character, that reduced condition affects the value of other properties in a historic district and affects the quality of life in the community generally.

We also want to protect our local taxpayers by keeping available in the future our eligibility to participate in grant programs, including Transportation Enhancement grants, Certified Local Government sub-grants, and other private grants that depend on the quality of our historical resources. Likewise, we want to protect the ability of our residents to take advantage of historic preservation tax credit programs. Those programs benefit not just our property owners, but our local material suppliers and construction contractors.

Please do not impose a one-size-fits-all solution on what does not appear to be a problem in the first instance. Please let us continue, as democratically-elected representatives of our communities, to carry out the legitimate and beneficial will of our constituents.

Sincerely,

Sandra J. Decker

Sandra J. Decker
Mayor
City of Evansville

VIA Hand Delivery

AGENDA ITEM: 6b

City of Evansville

Historic Preservation Commission

Resolution No. 2015-01

WHEREAS, the City of Evansville contains four Historic Districts – the Evansville Historic District, Leonard-Leota Park, the Grove Street Residential Historic District, and the South First Street Residential Historic District – and four additional individual resources – the Evansville Standpipe, St. John's Lutheran Church, the Eager Free Public Library, and the Almeron Eager Funerary Monument – that are listed on the Wisconsin State and National Registers of Historic Places; and

WHEREAS, the Eager Free Public Library was listed on the National Register in 1976, and the Evansville Historic District was listed on the National Register in 1978; and

WHEREAS, the City of Evansville has had a historic preservation ordinance, administered by the Evansville Historic Preservation Commission continuously since the 1980s, as required by State and Federal law; and

WHEREAS, the City of Evansville has obtained the status of Certified Local Government pursuant to State and Federal law, and is entitled to the financial and other incentives and benefits available through such status; and

WHEREAS, Certified Local Government status requires the adoption and enforcement of a preservation ordinance that is not conditioned upon owner consent, and which does not permit owners of property to "opt out" of designation or enforcement provisions; and

WHEREAS, the Wisconsin Assembly introduced 2015 Assembly Bill 568 on December 4, 2015, and the Wisconsin Senate introduced 2015 Senate Bill 445 on December 10, 2015, both of which bills condition local designation of historically-significant property and local regulation of such property on the consent of the owner thereof;

IT IS HEREBY RESOVED that the Historic Preservation Commission of the City of Evansville, pursuant to the authority vested in it by section 62-36(6) of the Municipal Code of the City of Evansville, opposes the enactment of 2015 Wisconsin Assembly Bill 568 and 2015 Wisconsin Senate Bill 445, or similar legislation that would condition local designation of historically-significant property and the local regulation of such property on the consent of the owner thereof; and further urges the Common Council of the City of Evansville to adopt its own Resolution to the same effect.

ADOPTED this 16th day of December 2015 by vote of the Commission.

For the Commission:

Steve Culbertson, Chairperson

Attest:

John R. Decker, Secretary

Testimony of John R. Decker

I appear on behalf of the City of Evansville Historic Preservation Commission to present the committee the resolution of our commission in opposition to SB445 and AB568 adopted by unanimous vote on December 16, 2015. I also present the committee our mayor's letter of today's date in opposition to both bills. I have practiced law in Wisconsin for 39 years, and am a past president of the State Bar of Wisconsin.

If Wisconsin historic preservation commissions are surprising owners with designations or inclusions in districts, they're doing it all wrong. Owners absolutely are entitled to reasonable advance notice, an opportunity to object and present opposing arguments and evidence at a public hearing, to have a written decision, and to appeal within the municipality. These rights are contained in Wis. Stat. ch. 68.

Historic preservation regulation is a form of zoning. It has been around since the 1930s, and has been upheld by U.S. Supreme Court as a constitutional exercise of municipal authority. *Penn Central Transportation Co. v. New York City,* 438 U.S. 104 (1978).

Property ownership rights are not absolute. They are protected by government, but subject to regulation in the interest of public health, safety and general welfare. (*Id.)* Preservation of historically significant properties has been declared to be the public policy of the State of Wisconsin:

> "The legislature finds that the historical, architectural, archeological and cultural heritage of the state is among the most important assets of the state and furthermore that the social, economic and physical development of contemporary society threatens to destroy the remaining vestiges of this heritage. It is therefore declared to be the public policy and in the public interest of this state to engage in a comprehensive program of historic preservation to promote the use and conservation of such property representative of both the rural and urban heritage of the state for education, inspiration, pleasure and enrichment of the citizens of this state." Wis. Stat. sec. 44.30

Since it is a form of zoning, there is concern that owner consent provisions will constitute unconstitutional "spot zoning", as it is not based on standards, has no provision for public input, provides no basis for appellate review, and has no political accountability. *See Step Now Citizens Committee v. Town of Utica Planning & Zoning Committee,* 2003 WI APP109.

There are also equal protection concerns raised by the fact that the bills do not apply to villages, of which 27 in Wisconsin have HP ordinances and commissions.

The owner consent provisions will have the greatest legal and financial effect on Wisconsin's 68 Certified Local Governments, none of which may permit owner consent or opt-out provisions under current regulations.

The deceptively-simple language of sections 2, 3, and 4 will lead to challenges to architectural conservancy zoning, shoreland zoning, farmland preservation zoning, form-based zoning, and property maintenance codes.

The language of sections 2, 3, and 4 shows that it will have an immediate effect, prohibiting municipal regulation of *existing* local listings and districts without owner consent. The language also calls into question the enforceability of *all* conservation easements given to counties, towns, and cities under the Wisconsin Uniform Conservation Easement Act, Wis. Stat. sec. 700.40. There is no grandfathering provision for existing listings, districts or easements.

I close from readings from Scripture:

> "Do not remove the ancient landmark that your ancestors set up.
> Do you not see those who are skillful in their work? "
>
> Proverbs 22:28-29
>
> "Do not remove an ancient landmark or encroach on the fields of orphans,
> For their redeemer is strong;
> He will plead their cause against you."
>
> Proverbs 23:10-11.

- John R. Decker

LEAGUE OF WISCONSIN MUNICIPALITIES

131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

To: Senate Committee on Insurance, Housing, and Trade
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: January 5, 2016
Re: SB 445, Prohibiting Municipal Landlord Registration and Rental Inspection Programs; and Undermining Historic Preservation Ordinances

The League of Wisconsin Municipalities strongly opposes SB 445, which strips from communities the ability to regulate landlords, apartments, and historic landmarks for the health, safety, and general welfare of the community.

This bill is the third in a series of omnibus bills that landlord groups and the Wisconsin Realtors Association have successfully had enacted over the last several sessions. SB 445 goes much farther than the previous bills with regard to preempting local powers. We oppose for the following reasons:

Prohibiting municipalities from registering landlords and implementing rental inspection programs.

- This bill eliminates the ability of municipalities to work with their local landlord groups to address the unique health and safety concerns presented by rental units in the community that do not comply with safety codes.
- By prohibiting municipalities from requiring landlords to register with the community, the municipality has no way of obtaining emergency contact information unless it is provided voluntarily.
- It is important to require contact information for both the owner and property manager, especially an emergency contact who is available 24 hours a day. This provides police, fire personnel, and neighbors with someone to contact if there are emergencies or other issues on the property.
- Rental property inspection programs are an important tool for creating a code enforcement system that effectively identifies problem properties and, through random inspections, deters landlords from engaging in deferred maintenance and lax property management.
- At least 8 of the 13 communities that host UW system four year universities either have a rental registry or rooming house license requirement.

Undermining local historic preservation programs.

- Requiring owner consent to require or prohibit any action by an owner of a property related to preservation of the historic or aesthetic value of an historical landmark kills historic preservation efforts. If this bill passes as introduced, a municipality would have no tools to protect the demolition of iconic historic buildings such as a Frank Lloyd Right designed home.

- Any look or character that a community hopes to cultivate in an older downtown or historic neighborhood will be decimated and destroyed if an owner has the option not to do the required improvement based upon the historic nature of the building.
- The combined effect of the two historic preservation pieces of the bill is to reduce municipal Historic Preservation Commissions to advisory bodies with no power of enforcement.

For the foregoing reasons we urge you to not recommend passage of SB 445. Thanks for considering our comments.

memo

To: Senate Committee on Insurance, Housing & Trade
Date: January 5, 2016
From: Tony Gibart, Public Policy Director
Re: Opposition to Senate Bill 445

Wisconsin Coalition Against Domestic Violence
1245 E Washington Avenue, Suite 150
Madison, Wisconsin 53703
Phone: (608) 255-0539 Fax: (608) 255-3560
tonyg@endabusewi.org

This memo outlines End Domestic Abuse Wisconsin's (End Abuse's) opposition to Senate Bill 445. End Abuse is the statewide voice for survivors of domestic violence and the local domestic violence victim service providers throughout the state. We are opposed to Senate Bill 445 because it will directly lead to domestic violence victims being removed from their homes simply because they have been victimized.

1. **Senate Bill 445 undermines the bipartisan victim notice protections enacted last session.**

While the legislation appears to, on its face, protect the rights of crime victims, it actually negates important victim rights, which had bipartisan support and were the product of compromise during the passage of last session's landlord omnibus bill, 2013 Senate Bill 179.

During the debate on 2013 Senate Bill 179, there was bipartisan agreement that, if landlords would be given the power to evict tenants for criminal activity that tenants themselves did not commit, it would be essential that all tenants be given notice of the laws that limit the ability of landlords to evict victims of domestic violence, sexual assault and stalking. The need for this notice is based on common sense: many victims of horrific crimes will not be able to research the Wisconsin State Statutes when confronted with re-traumatizing and intimating eviction notice. Therefore, 2013 Senate 179 was amended to require that any lease that allows for eviction based on criminal activity must include notice of protections for victims of domestic violence, sexual assault and stalking as a condition of that lease being enforceable. (See SSA 1, Lasee, Olsen, Schultz, and SA 18 to SSA1, Lasee, Erpenbach.)

SB 445 makes these protections essentially meaningless. Under section 23 of the bill, landlords will be empowered to evict tenants in an extremely expedited manner via the statutory mechanism provided in the bill. Therefore, the written lease could be silent on the issue of eviction for criminal activity and thus not trigger the notice requirements added under 2013 Senate Bill 179 (s. 704.44(10)). As a result, victims in Wisconsin will be given 5-day notices to vacate their homes without the knowledge of likely defenses against eviction. The practical result is that many victims will be re-victimized by being effectively removed from their homes because their abusers' crimes. The fact SB 445 does not technically allow for the eviction of crime victims is of little practical value. Victims will lack this knowledge because the notice requirements under s. 704.44(10) will have been circumvented. With all that victims have to deal with in the aftermath of abuse, it is unreasonable to expect them to research landlord-tenant law within five days or be in the position of having to spend those five days packing their belongings.

(over)

2. **SB 445 will result in victims being kicked out of their homes. This result will occur whenever landlords are given the right to evict tenants for criminal activity for which the tenants are not responsible, regardless of notice requirements or SB 445's exception for statutory crime victims.**

Although the current protections, which SB 445 undermines, are intended to lessen the number of victims forced to move, the current protections by no means protect all victims. Therefore, creating a 5-day eviction process that operates regardless of the tenant's personal responsibility will result in numerous victims being forced out of their homes as a result of their victimization. Consider the following scenario:

> Anne is a 19-year-old woman who is living with her grandmother while she attends community college. Anne's boyfriend Trevor comes over to the grandmother's apartment to watch a movie for class with Anne while the grandmother is away. After the movie, Trevor tries to take things too far with Anne and she asks him to leave. Trevor becomes irate and starts screaming, calling Anne offensive names at the top of his lungs. As Anne tries to get Trevor out of the apartment, he pushes her to the ground and kicks her in the chest. The neighbors call the police and Trevor is charged with disorderly conduct. Neighbors complain that children heard Trevor screaming offensive words.

Under SB 445, Anne's grandmother could be served with a five-day notice to vacate. Because she is not a statutory "crime victim" the grandmother has no defense to the eviction. Anne, the victim of domestic violence, will also be forced to find a new home because she was not on the lease and could not afford the rent on her own in any case.

In addition, even tenants who are crime victims and meet the statutory definition of "crime victim" will lose their homes under the bill. The bill only provides for a determination of the tenant's status as a crime victim after the tenant is served with a five-day notice to vacate. Many statutory crime victims will not know or understand their rights. These victims will likely believe they have no choice but to find a new place to live within the week and, in that stress and anxiety, leave their homes immediately.

For these reasons, End Domestic Abuse Wisconsin is opposed to SB 445 and strongly urges the committee to reject this legislation. If you have any questions, please contact me at tonyg@endabusewi.org or 608.237.3452.

MADISON TRUST
for Historic Preservation
National Trust Partners Network

January 5, 2016

To: Senate Committee on Insurance, Housing and Trade
RE: SB445 and AB 568

The Madison Trust for Historic Preservation would like to thank the Wisconsin State Legislature for recently voting to preserve millions of dollars of Historic Tax Credits that were threatened in the last budget negotiations. The return on investment of these credits for Wisconsin communities is 133% over 10 years according to a recent study by Baker Tilly accountants. In our minds this is a sound investment in our local communities and we applaud the entire legislature for their foreword thinking. That said, we are here today to oppose SB445 and its companion bill AB568 and request that items 2, 3, and 4 be removed from the proposed legislation because we feel it not only hurts the economic vitality of local communities but also allows for an individual or group of individuals to decide the applicability of local land use control ordinances in a subjective and arbitrary fashion, against the public interest.

There are approximately 120 local units of government that have landmarks or historic preservation commissions in the state of Wisconsin. Since historic preservation ordinances are part and parcel of local zoning ordinances they are an integral part of comprehensive land use plans. If a local unit of government is stripped of its authority to require or prohibit any action of a property owner related to the preservation of the historic or aesthetic value of a property, without the consent of the owner, it will have the practical effect of turning local land use plans and zoning ordinances upside down, making enforcement of these ordinances near impossible to manage.

There are many benefits of living in a local historic district or property, not least of which is the tax incentives available to owners for maintaining their properties. One of the consequences of this legislation will be the increased potential for delisting of National Register properties potentially losing these incentives. When a district experiences a significant amount of changes that result in the loss of the historic character that qualified it for the National Register in the first place it will result in the loss of eligibility for historic tax credits, not only for those individuals who "opted out" of local historic ordinances, but also for those individuals who consented to them. In addition, if this delisting takes place within the recapture period for an owner who utilized the historic tax credit, that owner would have to repay those credits. Millions of dollars for local economies would be in jeopardy if this legislation is enacted.

The economic benefits of historic preservation are well known. For instance:

- Rehabilitation of historic structures is 20% more labor intensive than new construction and creates more jobs than does new construction. Most of these jobs cannot be outsourced, further stimulating Wisconsin's local economy
- Numerous studies have shown that property values in locally designated historic districts are higher than comparable areas that are not historic districts. These differences average between 15%-30% higher. This means higher local tax revenues.
- Heritage tourism is a robust industry in Wisconsin and many local economies could be damaged by the breakup of their cohesive historic districts. These tourists stay longer and spend more money than other types of tourists.

MADISON TRUST for Historic Preservation

National Trust Partners Network

- Recent studies have found that the foreclosure rate in locally designated historic districts is less than half the rate outside such districts.
- Studies have shown that projects that utilize the historic preservation tax credits promote redevelopment in the surrounding areas.

The negative economic consequences of this legislation are very real and should not be considered lightly. For instance:

- Local units of government could face substantial costs to revise and amend local ordinances.
- This bill jeopardizes roughly $100,000 yearly in grant money to Wisconsin communities since an owner consent clause disqualifies approval of a Certified Local Government (CLG) ordinance.
- Lack of these funds will impact economic development by no longer funding the identification and nomination of historic properties to the National Register of Historic Places and will impact other State Historic Preservation Office (SHPO) programs, including qualifying buildings for the State of Wisconsin's Historic Rehabilitation Tax Credit.
- If the $100,000 in federal grants is not passed through to local units of government it may lead to decertification of SHPO and a loss of $I million dollars in annual federal funding for the organization.
- SHPO defunding could jeopardize nearly $9 million dollars of federal tax credits and $9 million dollars in state tax credits annually.

In consideration of the above economic impacts we feel this legislation should be rejected as it does not provide any benefit to local economies; In fact it will literally COST the state millions of dollars and put yet another drag on struggling local communities many of which are in tenuous situations already.

In summary, individual property owners have a choice of whether or not to live in a historic district and therefore should understand the conditions inherent in that choice. They should not be allowed to hold a district hostage by having the option to opt out of sensible rules and guidelines of local historic districts created within comprehensive land use plans, decades in the making. SB445 and its companion AB568 would allow a few individuals to refuse to comply with local ordinances, thereby stripping the rights of the general public interest, which created them. Historic Preservation is good for local economies and is good for business. This bill is bad for Wisconsin.

Sincerely,

Sam Breidenbach
President

WISCONSIN HISTORICAL SOCIETY

Information Paper on AB 568 and SB 445

The Wisconsin State Historic Preservation Office (SHPO) has facilitated billions of dollars of economic development in Wisconsin communities through its preservation programs. For every $1 million spent between 18 and 28 jobs are generated. In 2015 alone, tax credit-related historic preservation projects generated $284.7 million in construction and generated 5,176 jobs in Wisconsin. From 1982 through 2015, rehabilitation project investments in Wisconsin have totaled $1.2 billion.

The proposed amendments in AB 568 and SB 445 to 59.69 (4m), 60.64, and 62.23 (7)(em) provide property owners with the right to reject historic landmark designation and the designation's associated regulatory impact. Due to the fact that we have not seen revised language prevents us from fully commenting on the bill; however, we are willing to work with the bill's authors to address concerns. Today, we offer the following comments regarding the potential fiscal and regulatory effects of the bill on the Wisconsin State Historic Preservation Office (SHPO), local units of government, and Wisconsin citizens;

Fiscal:

- The Code of Federal Regulations (36 CFR 61) defines how State Historic Preservation Offices operate and allocate money. Specifically, 36 CFR 61.7(a) requires each state to pass 10 percent of its federal grant to compliant Certified Local Government (CLG) communities.

- This bill jeopardizes roughly $100,000 yearly in grant money to local communities in Wisconsin by placing CLG communities in noncompliance with State and Federal requirements for certified local government status, thereby disqualifying them from grant funding.

- Unspent grant funds must be returned to the federal government.

- The inability to pass through $100,000 in federal grants may lead to decertification of the SHPO and a loss of $1million dollars in annual federal SHPO funding jeopardizing hundreds of millions in rehabilitation tax credits.

- Statewide changes in local designation processes will require the revision of approximately150 landmark ordinances in Wisconsin communities and incur costs to local governments.

Regulatory:

- Districts are collections of properties defined by a single boundary at its perimeter.[1] Allowing properties to opt out of district designation will defeat the purpose of a landmark district designation. Allowing property owners to opt out of county, town or city landmark designation within a district creates a situation where some owners are subject to provisions that neighboring owners are not creating disproportionate treatment and regulatory confusion. District character may only be maintained when all property owners within its boundaries are subject to the same requirements.

- Administrative rules are needed to define what constitutes ownership, how timelines are determined, administrative process, and how consultation with property owners who have opted out occurs.

Contact Information:

Kate Easton
Government Affairs Coordinator, Wisconsin Historical Society
cell 608.513.3845 ***office*** 608.264.6442 ***fax*** 608.264.6545
kate.easton@wisconsinhistory.org

Daina Penkiunas
Deputy State Historic Preservation Officer, Wisconsin Historical Society
office 608.264.6511 ***fax*** 608.264.6504
daina.penkiunas@wisconsinhistory.org

[1] The National Park Service defines a historic district as "a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development." U.S. Department of the Interior, National Park Service, How to Complete the National Register Registration Form (Washington, DC: 1997).

WAUKESHA PRESERVATION ALLIANCE

P.O. Box 1862
Waukesha, WI 53187-1862
www.waukeshapreservation.org
262-278-6658

Senate Committee on Insurance, Housing, and Trade

January 5, 2016

RE: SB 445

According to a leading real estate economist, "it is the differentiated product that commands the high premium. If in the long run we want to attract capital, to attract investment in our communities, we must differentiate them from anywhere else."

Maintaining that uniqueness, which also produces a sense of place and a source of pride, is important when communities are competing for businesses and residents. During the central city master planning for the city of Waukesha, the outside consultants identified Waukesha's historic buildings as one of its greatest assets. National Register designation does not protect this asset. National Register is honorific only and the federal government relies on the local governments to protect their historic properties. This protection comes from local landmark ordinances. SB445 takes away the ability of communities to protect this asset. Not only does it require owner consent to landmark a property, it requires owner consent to regulate and protect historic properties. Therefore, it nullifies the local landmark ordinances which protect one of the biggest assets in many of the communities in Wisconsin.

Study after study has shown that local landmark designated districts have higher property values and maintain those property values better in economic downturns than National Register only districts. The differences in property values in these studies range from 5%-131%, but the average is 15%-35%. The property values in locally landmarked districts increases at a faster rate than National Register only districts. In addition, locally designated districts have lower foreclosure rates than other comparable areas that are National Register only.

Historic preservation is one of the strongest economic development and redevelopment tools in existence. A national consultant on urban planning stated that he has never seen a downtown thrive and be successful without preserving its historic buildings. A study of downtowns in Georgia showed that historic downtowns with local landmark designation had 2.88 business openings for every 1.0 business closings. This compares to other areas which had a total of 1.1 business openings per 1.0 business closings

Local Landmark designation promotes stability. An Indiana study showed that the percent of long term homeowners that had resided in their homes for longer than twenty years was 50% for local historic districts compared to 35% in National Register only districts.

Across the nation, historic and cultural sites draw more tourists than recreational assets. This is called heritage tourism and it contributes billions of dollars to the United States economy every year. Heritage tourists stay longer and spend more money than other types of tourists. In addition, heritage tourists take more trips than other types of tourists. Heritage tourism contributes greatly to the state of Wisconsin's

WAUKESHA PRESERVATION ALLIANCE
P.O. Box 1862
Waukesha, WI 53187-1862
www.waukeshapreservation.org
262-278-6658

economy. Local landmark designation protects local historic resources, so that those communities can then generate revenue through heritage tourism.

I won't go into all the economic benefits of the historic tax credits, but the study done in Wisconsin showed that by year 10 of operation there is a 133% return on investment. In addition, for every $1 of tax credit $1.25 goes directly back into the Federal Reserve. Therefore, historic tax credits generate revenue. The majority of projects that utilize the historic tax credits are in low income census tracts. One of the consequences of requiring owner consent for approvals for changes to locally designated properties will be the delisting of National Register properties. This can happen when a district has a significant amount of changes that result in the loss of the historic character that qualified it for the National Register. This delisting will result in loss of eligibility for the historic tax credits, not only for the owners of the properties who opted out of local control of their historic property, but also for the owners who consented to local control of their historic property. In addition, if that delisting is within the recapture period for an owner who utilized the historic tax credit, that owner would have to repay those credits. In other words, this proposed bill could deprive many historic property owners of their opportunity to take advantage of credits to redevelop their buildings.

I also would like to make sure that this committee understands that historic designation is not arbitrary and historic preservation does not try to save every old building. There are criteria which must be met in order to qualify for the National Register and local landmark designation. These criteria are reviewed by experts in the field of historic preservation and architecture. Not every old building will qualify for historic designation.

In conclusion, it is the Local Landmark designation which protects our historic properties. Those historic properties are one of the State of Wisconsin's most important assets. National Register does not protect historic properties. Therefore, the proposed changes to historic preservation statutes will prevent local governments from protecting one of their most valuable assets that generate revenue and make them competitive for jobs and residents. I have provided you with an Economic Benefits sheet that highlights some of the items that I discussed today and a sheet that has common misconceptions about local landmark designation. I have also provided you with a list of resources for further reading.

Thank you,

Mary Emery
President

ECONOMIC BENEFITS OF HISTORIC PRESERVATION
by Waukesha Preservation Alliance

1. Jobs
    a. Rehabilitation of historic structures is 20% more labor intensive than new construction and creates more jobs than any other economic activity including new construction.
    b. Laborers are almost always hired locally. These are direct jobs.
    c. Eighty percent of investment into historic rehabilitation work ends up going to the workers. This is money that is then spent in other local businesses thus producing induced jobs in the community.
2. Property Values
    a. Numerous studies have shown that property values in locally designated historic districts are higher than comparable areas that are National Register only historic districts and those that are not historic districts. These differences range from 5% to 131% higher value for the locally designated historic districts. Most of the differences were in the 15%-30% range.
    b. Increases in property values were higher in locally designated historic districts compared to National Register only historic districts and comparable areas not in historic districts. Even in these tough economic times the locally designated historic districts have retained their values better than the other areas. The locally designated historic districts appreciated at a rate of 5-35% more than the other comparable areas.
3. Heritage Tourism
    a. Heritage tourists stay longer and spend more money than other types of tourists.
    b. Heritage tourism contributes billions of dollars per year to the U.S. economy.
    c. In addition heritage tourists take more trips than other types of tourists.
4. Environmental Responsibility
    a. Historic buildings contain embodied energy that is lost when they are demolished.
    b. Twenty five percent of landfill material is construction and demolition debris.
    c. New calculations show that it will take 35-50 years for an energy-efficient new building to save the energy lost in demolishing an existing building.
    d. Building reuse has fewer environmental impacts than new construction.
5. Revitalization/Stability of neighborhoods
    a. Recent studies have found that the foreclosure rate in locally designated historic districts is less than half of the rate outside districts. This may be due to the ability of troubled homeowners in the historic districts being able to sell their properties before they go into foreclosure.
    b. In historic downtowns in Georgia there were 2.88 business openings to every 1.0 business closings. This compares to a national rate for all areas, not just historic districts, of 1.1 business openings for every 1.0 business closings.
    c. Seventy five percent of the projects that utilized Federal Historic Preservation Tax credits in Connecticut were in census tracts with less than $25,000 median household income. These credits have become important redevelopment tools.
    d. Studies have shown that projects that utilize the historic preservation tax credits promote redevelopment in the surrounding areas.
    e. Locally designated historic districts promote stability. In Indiana, the percent of long term home owners that had resided in their home for over twenty years was 50% for the local historic district compared to 35% in other comparable areas.

Resource List

- "Benefits of Residential Historic District Designation for Property Owners" by Jonathan Mabry, Ph.D. Department of Planning and Urban Design, City of Tucson.

- "Preservation and Property Values in Indiana" by Donovan Rypkema

- "Historic Preservation Essential to the Economy and Quality of Life in San Antonio" by Place Economics

Common Misconceptions About Local Landmarks Ordinances

1. Property values will decrease once a property is designated a Local Landmark. See the letter to this committee

2. Being a Local Landmark restricts everything that gets done to the building even the paint colors. Waukesha's Landmarks Commission follows the Secretary of Interior's Standards for Rehabilitation of Historic Structures. These standards are fairly simple, they mainly state that as much of the original details and materials should be retained whenever possible. When replacement is necessary then like materials should be used that match the old with regard to profile and appearance. Landmarks Commission does not regulate paint colors unless the individual requests Paint and Repair money from the City. National studies have found that Landmarks Commissions approve close to 90% of proposals they receive. Waukesha's Landmarks Commission is close to that.

3. Being designated a Local Landmark will require the owner to restore the building to its original appearance. Owners are not required to restore a building to its original appearance when it is designated a local landmark. One example is that when the roof needs to be replaced on an historic building, the owner is not required to use the same material as the original roof.

4. If you own a historic building you will not be allowed to add onto your building. Additions are allowed and Landmarks Commission even offers design assistance from an architect. Besides design assistance there are other benefits to being a Local Landmark. There are paint and repair grants available. There is advice on restoration techniques and products. One example is that Landmarks Commission makes sure that the proper mortar mix is used. Older bricks are softer than modern bricks. If a mortar mix is used that is too hard for the soft historic brick, the face of the bricks will eventually pop off from the incompatibility of the two materials during the freeze/thaw cycle.

5. Local Landmarks Ordinances are unnecessary, because the National Register protects the building. National Register Designation does not protect a historic property. The federal government relies on the local governments to protect their historic structures.

City of
BELOIT, Wisconsin

CITY MANAGER * CITY HALL * 100 STATE STREET * BELOIT, WI 53511
Office: 608/364-6614 * Fax: 608/364-6756
http://www.beloitwi.gov
Follow us on Facebook
Equal Opportunity Employer

TESTIMONY BEFORE

THE SENATE COMMITTEE ON INSURANCE, HOUSING AND TRADE

SENATE BILL 445

RELATING TO TERMINATING A TENANCY FOR CRIMINAL ACTIVITY OR DRUG-RELATED CRIMINAL ACTIVITY; DISPOSITION OF PERSONAL PROPERTY LEFT IN RENTAL PROPERTY BY A TRESPASSER; PREEXISTING SPRINKLER ORDINANCES THAT ARE STRICTER THAN THE MULTIFAMILY DWELLING CODE; TOWING VEHICLES ILLEGALLY PARKED ON PRIVATE PROPERTY; TERMINATING CERTAIN TENANCIES FOR BREACHES OTHER THAN FAILURE TO PAY RENT; LIMITATIONS ON THE AUTHORITY OF POLITICAL SUBDIVISIONS TO REGULATE RENTAL UNITS, HISTORIC PROPERTIES, AND SIGNS; PROHIBITING LOCAL GOVERNMENTAL UNITS FROM IMPOSING REAL PROPERTY PURCHASE OR RESIDENTIAL REAL PROPERTY OCCUPANCY REQUIREMENTS; CREATING A CRIMINAL PENALTY; AND MAKING AN APPROPRIATION

Dear Chairman Lasee, Vice-Chair Olsen, Representative Allen, and Members of the Committee:

The City of Beloit began a rental registration and permit inspection program in 1994 in response to serious neighborhood concerns. This program has been supported by our community for over 20 years and addresses public health and safety issues that are unique to Beloit. We currently have 14,803 dwelling units and of these 6,611 (45%) are rental. Over 40% of these rental units or roughly 2,700 units are single family homes, which means a significant number of families are living in rental properties.

For decades, the City of Beloit has had much lower property values than other cities of similar size. The housing crisis further depressed those values and a high number of rental properties in Beloit are inhabited by low-income families. The most vulnerable of tenants frequently do not

complain as they may be unaware of their rights, have language barriers, or fear increased rent or other retaliation. Anti-retaliation laws require knowledge and access to legal services that may be unrealistic for our most vulnerable populations.

Even after having a program in place, new violations are still found during every round of systematic inspections, where one-third of all rental properties are inspected on an annual basis. From 2012 to present, we ensured the correction of 253 rental properties without fire detectors; 95 without carbon monoxide detectors; 61 for insufficient sanitation; and 56 violations for insect, rodent and vermin. In two months of 2015, when we began tracking differently, 33 units were declared unfit for habitation. The list goes on and this is after we have scheduled our visits and informed landlords in writing of the inspection checklist. Clearly, we cannot presume that all landlords will be responsible and ensure appropriate safety for their tenants. How many more properties would not have basic life safety components if we stopped our systematic inspections?

Some landlords are responsible but sadly many of them, particularly those out-of-town and often out-of-state, purchase properties inexpensively, rent them, and do not maintain their units. Without the rental program in Beloit, we would be unable to ensure minimum standards. Even with the program in place there are multiple examples of an LLC purchasing properties and the registered agent resigning after the purchase is executed.

Two of our most challenged neighborhoods have high concentrations of rental properties and high poverty level.

Merrill Neighborhood

- Persons living at poverty level is 39% compared to 24% Citywide
- Persons under 18 living in poverty is 51% compared to 38% Citywide
- 54% of the housing units are rental compared to 45% Citywide
- This neighborhood has been a designated Low-Moderate Income Area by HUD for several decades.
- 957 inspections that identified violations were performed in 2014

Hackett Neighborhood

- Persons living at poverty level is 37% compared to 24% Citywide
- Persons under 18 living in poverty is 45% compared to 38% Citywide
- 61% of the housing units are rental compared to 44.4% Citywide
- This neighborhood has been a designated Low-Moderate Income Area by HUD for several decades
- 1,511 inspections that identified violations were performed in 2014

We are working hard to address tough issues like poverty, unemployment, declining property values, gang and other criminal activities, particularly in our most challenged neighborhoods. Prohibiting the City from continuing its rental registration and inspection program removes a critical tool to helping the City as a whole and these neighborhoods in particular.

Other representatives will be speaking to the historic preservation and pre-existing fire sprinkler portions of this bill, which are also cause for great concern. The City of Beloit implores you to refrain from enacting legislation that inappropriately treats all local governments the same. The history of the Beloit rental registration and inspection program is solid, defendable, and literally saves lives. Our residents and local leaders demanded this service over two decades ago. Please do not prohibit us from continuing it.

Thank you for the opportunity to present our viewpoint on this important proposal.

Sincerely,

Charles M. Haynes
City Council President

Lori S. Curtis Luther
Beloit City Manager

Jeffery Pralle
Director of Legal Affairs
Wisconsin Apartment Association
ONALASKA, WI 54650
608.797.5097
jplegal54@gmail.com

RE: SB 445

Thank you Senators for allowing me to speak and address some concerns,

- It is troubling to me that municipalities seem so intent on inspecting rental properties but ignore single family owner-occupied homes. This appears as if all the housing problems in municipalities lie with rentals.

In the recent past, two La Crosse AALA members have spent much time finding unregistered rentals and gave that information to the inspection department. NOTHING has been done. And these are rentals of concern. Also there are many owner-occupied homes in shambles. There are many older owner occupied homes that have become dilapidated housing stock, lowering property values and public opinion.

Also the 4th Amendment rights against unreasonable search for our tenants should be considered. This does not seem to be of concern to municipal inspections programs. There are complaint systems in place already where tenants can go to remedy an issue. I believe most landlords would be willing to give tenants this information when they come in to sign the lease so they know where to go to address unsafe code violations or any other landlord issues. As a landlord myself, I would do this.

If the safety of the community is of concern to the municipalities, then inspect ALL properties. That is what Act 76 was trying to address: If you inspect one housing group, then you must do the same for all. Treat everyone fairly and equally.

Municipalities often treat landlords and their properties like 2nd class citizens who do not belong in the community. But Landlords provide affordable, and much needed, housing in every community across this great state. Landlords are not out to blight their properties and let them run down. How do we make money or build equity in our properties doing that? Who has that kind of money to lose? Yes, there are some problem rentals...target those. Those are the ones most often ignored, not wanting to deal with the issues. Also there are many problem owner-occupied homes, what about those? If any mayor or city council thinks that the only problem they have are with rental units, then in my opinion, they do not know their city as well as they think. Landlords and the affordable housing they provide in our communities are a valuable asset. And the overwhelming majority of rentals are well taken care of with very satisfied tenants. Don't burden us and our tenants with inspections that are not needed. Do inspections when needed or inspect every property in the city.

WAA is not opposed to rental registration, just unwarranted and costly inspections. And those inspections only raise the cost to the tenants living in those units.

- When it comes to criminal and gang activity (which would need evidence), a landlord, in order to protect the other tenants in their units, needs to be able to deal with the issue quickly and decisively in conjunction with law enforcement. We need more than a 5 Day Notice or even a 14 Day Notice. We need the quick evict option.

- I do not support any deferred payment plans by public utilities for tenants. It is the property owner who will be stuck if the tenant does not pay or leaves the unit before full payment is made. If any deferred payment plans are approved or allowed, the utilities should have to notify the property owner and get their approval of the plan. The utility should also have the obligation to find out when the tenant's lease is up so they will know if the tenant will be in the unit during the payment period.

- I support the passage of SB 445.

Thank You

Jeffery Pralle

Sen. Frank Lasee & Members of the Committee on Insurance, Housing, and Trade:

RE; SB 445

I am in favor of SB 445 Not the ability to remove a tenant that is violating rules or doing criminal activity needs to improve. Right now if I have a bad tenant in this kind of activity, I have to wait through the present process and tell the other tenants this will take time. Please bear with me on this as I have to follow the law. This can cause me to loose good tenants due to one bad tenant. I realize that laws often are changed due to bad tenants not the good ones. I also keep refining my criteria in order to eliminate renting to these kinds of tenants. This narrows the potential pool of tenants to draw from.

I am a member of the Janesville Area Property Association (JARPA) JARPA.org
Also a member of the Wisconsin Apartment Association (WAA) WAAonline.org

Thank you for your time

Dale Hicks
316 N Washington St
Janesville, WI 53548
608-201-3774
dandtrentals@sbcglobal.net

Wisconsin BPDD

WISCONSIN BOARD FOR PEOPLE
WITH DEVELOPMENTAL DISABILITIES

January 5, 2016

Senate Committee on Insurance, Housing , and Trade
Senator Frank Lasee, Chair
State Capitol, Room 316 South
Madison, WI 53707

Dear Senator Lasee and members of the committee:

Thank you for the opportunity to provide comment on SB 445. People with disabilities make up a disproportionate share of the tenant population and are generally lower-income—often below the federal poverty line—than their able-bodied peers. BPDD's analysis finds that elements of the proposal, as written, could result in the increased potential for housing discrimination and unwarranted evictions against people with disabilities.

The term "criminal activity" is unnecessarily broad. Under the proposal it appears virtually any action that is itemized as criminal in Wisconsin Statute and is perceived by the landlord or others as threatening the health, safety, or right to peaceful enjoyment of the premises could be grounds for eviction.

It is not clear that criminal activities have to be observable or documented; it appears that hearsay or anonymous complaints against the tenant, any member of the tenant's household, or guest or other invitee of the tenant would be sufficient for a landlord to deliver an eviction notice that the tenant has no opportunity to remedy. There is no requirement for law enforcement involvement, and the bill specifically states that arrest or conviction for a serious crime is not necessary as a prerequisite for eviction.

Similarly the "drug-related criminal activity" definition is broad and does not require any burden of proof before an eviction notice can be triggered. The definition does not include any exemptions for "possession, use, or distribution of a controlled substance. Many people with disabilities have prescriptions for regulated controlled substances for medical reasons, mental health management, or as part of a treatment for addiction. People with disabilities may have a supply in their possession and be legally using controlled substances.

Likewise many people with disabilities rely on personal care workers or other caregivers coming into their homes to bring and distribute prescribed controlled substances; these individuals temporarily possess controlled substances. Since this bill does not require a burden of proof, any observation or hearsay of a tenant or caregiver handling or consuming pills could be construed as drug related criminal activity and may subject the tenant to eviction.

This bill gives landlords broad discretion to allege criminal activities or drug related criminal activity as a pathway to eviction, without having to witness activities themselves or have any burden of proof to meet before eviction notice occurs. BPDD is concerned that eviction may be used as a mechanism to remove people with developmental disabilities from rental properties. People with developmental disabilities are frequently subjected to heightened scrutiny, are held to a higher standard of behavior than able-bodied peers, and they are often the victims of bias.

Wisconsin Board for People with Developmental Disabilities
101 East Wilson Street, Room 219, Madison, Wisconsin 53703
Voice 608.266.7826 • Toll Free 888.332.1677 • FAX 608.267.3906
Email: bpddhelp@wi-bpdd.org • Website: www.wi-bpdd.org

People with disabilities have suffered a long history of residential discrimination and exclusion. Discrimination is still common. The majority of discrimination complaints the Housing and Urban Development's Fair Housing Enforcement Office receives are from people with disabilities who feel they have been victims of housing discrimination. A 2005 HUD report found that the net measures of systemic discrimination against persons with disabilities are generally higher than the net measures of discrimination on the basis of race and ethnicity.

Housing choice has always been quite limited for people with disabilities. The 5 day timeframe for tenants to vacate the premises after receiving an eviction notice is especially problematic for people with disabilities.

If the tenant has need for accessible housing—first floor, ramped entries, ability to adequately maneuver a wheelchair within the living space—the pool of available spaces that are financially feasible may be limited or non-existent. Some people with disabilities may have specialized equipment that is difficult to move. Many people with disabilities are low income and do not have the financial flexibility to afford available housing options on the market, or storage units for belongings.

Other supports for people with disabilities—location near public transportation, jobs, family, caregivers—are often built around where the person lives; changes, especially abrupt changes, to housing can disrupt all other aspects of a person's life, and can lead to job loss, disruption of personal care or inability to retain the same staff, isolation from family, etc.

BPDD is also concerned that families with household members or young children with disabilities may disproportionately receive eviction notices under this bill.

BPDD requests the following amendments to SB 445:

- Limit the definition of "criminal activities" to "serious crimes" as defined in Wis. Stats. 969.08(10)(b)
- Define "drug-related criminal activity" within the meaning of 42 U.S.C. § 1437d(l)[1],
- Include a controlled substance exemption to clarify people with disabilities possessing and using prescribed controlled substances and personal care workers or other caretakers possessing controlled substances for the purpose of distributing them as prescribed to the person with a disability are not engaged in drug-related criminal activity.
- Require a tenant to have been arrested for or convicted of a serious crime or drug related criminal activity before a landlord can terminate a tenancy through eviction.
- Require all eviction notices to include standard information, including the date of the notice, summary of the reason(s) cited for the eviction, summary of any incident(s) leading to an eviction decision, the name of the tenant/household member/guest involved in each incident, documentation (arrest records, police reports, witnesses to the incident) of incidents, information on tenant's rights to contest an eviction, the date whereby the tenant must vacate the premises, and information on what will happen to belongings left on the premises after the eviction date has passed.
- Require landlords to report to the state all eviction notices with the age, race, and disability status, of the tenant and members of the household, and specific reason for eviction. Require the state to analyze

---

[1] "the term 'drug-related criminal activity' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in U.S. Code section 802 of title 21).

collected data, and work with landlords where an eviction pattern may indicate non-compliance with the Federal Fair Housing Act.

- Include an exception to allow evicted tenants requiring accessible housing 30 days to vacate the premises.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities.

Our role is to seek continuous improvement across all systems—education, transportation, health care, employment, etc.—that touch the lives of people with disabilities. Our work requires us to have a long-term vision of public policy that not only sees current systems as they are, but how these systems could be made better for current and future generations of people with disabilities.

Thank you for your consideration,

Beth Swedeen

Beth Swedeen, Executive Director
Wisconsin Board for People with Developmental Disabilities

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Public and Indian Housing

Special Attention of: Public Housing Agency Directors Public Housing Hub Offices Directors Public Housing Field Office Directors Resident Management Corporations All Multifamily Hub Directors All Multifamily Program Center Directors	**Notice PIH 2015-19** Issued: November 2, 2015 Expires: This notice remains in effect until amended, superseded, or rescinded.

Subject: Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions

1. Background

For the past five years HUD has been an active member of the Federal Interagency Reentry Council. This Council, made up of more than 23 Federal Agencies, meets on a regular basis to act on issues that affect the lives of those released from incarceration. An important aspect of the Reentry Council's work has been to have each Federal Agency identify and address "collateral consequences" that individuals and their families may face because they or a family member has been incarcerated or has had any involvement with the criminal justice system.[1]

In 2011, former HUD Secretary Shaun Donovan issued a letter to public housing authorities (PHAs) across the country emphasizing the importance of providing "second chances" for formerly incarcerated individuals.[2] Secretary Donovan urged PHAs to adopt admission policies that achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing. A year later, Secretary Donovan encouraged owners of HUD-assisted multifamily properties ("owners") to do the same and reiterated HUD's goal of "helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live." HUD has also previously stressed the troubling relationship between housing barriers for individuals with criminal records and homelessness, stating that "the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn

[1] For more information on the initiatives of the Council members, see https://csgjusticecenter.org/nrrc/projects/firc/snapshots/.

[2] Letter from Shaun Donovan, Secretary, United States Department of Housing and Urban Development, to Public Housing Authority Executive Directors (June 17, 2011), available at http://usich.gov/resources/uploads/asset_library/Rentry_letter_from_Donovan_to_PHAs_6-17-11.pdf.

increases the risk of subsequent re-incarceration."[3]

At a time when an estimated 100 million (or nearly one in three) Americans have some type of criminal record,[4] HUD remains committed to the goal of providing second chances to formerly incarcerated individuals where appropriate and to ensuring that individuals are not denied access to HUD-subsidized housing on the basis of inaccurate, incomplete, or otherwise unreliable evidence of past criminal conduct. With those aims, and in response to requests from housing providers and prospective tenants for guidance from HUD regarding the proper use of criminal records in housing decisions, HUD is issuing this notice.

2. Purpose

The purpose of this Notice is to inform PHAs and owners of other federally-assisted housing that arrest records may not be the basis for denying admission, terminating assistance or evicting tenants, to remind PHAs and owners that HUD does not require their adoption of "One Strike" policies, and to remind them of their obligation to safeguard the due process rights of applicants and tenants.

The Notice also reminds PHAs and owners of their obligation to ensure that any admissions and occupancy requirements they impose comply with applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105.

Finally, the Notice provides best practices and peer examples for PHAs and owners to review.

3. HUD Does Not Require PHAs and Owners to Adopt "One Strike" Policies

HUD does not require that PHAs and owners adopt or enforce so-called "one-strike" rules that deny admission to anyone with a criminal record or that require automatic eviction any time a household member engages in criminal activity in violation of their lease. Instead, in most cases, PHAs and owners have discretion to decide whether or not to deny admission to an applicant with certain types of criminal history, or terminate assistance or evict a household if a tenant, household member, or guest engages in certain drug-related or certain other criminal activity on or off the premises (in the case of public housing) or on or near the premises (in the case of Section 8 programs).[5]

---

[3] Guidance on Housing Individuals and Families Experiencing Homelessness Though the Public Housing and Housing Choice Voucher Programs, HUD PIH Notice 2013-15 (HA), 8 (June 10, 2013), available at http://1.usa.gov/1afx3VY.

[4] Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems*, 2012, 3 (Jan. 2014), available at https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf.

[5] HUD regulations outline the limited instances where denial of admission or termination of assistance is required in the public housing, Housing Choice Voucher and Section 8 multifamily programs. See 24 CFR Part 5, subpart I; Part 960, subpart B; Part 966, subpart A; Part 982, subpart L.

In deciding whether to exercise their discretion to admit or retain an individual or household that has engaged in criminal activity, PHAs and owners may consider all of the circumstances relevant to the particular admission or eviction decision, including but not limited to: the seriousness of the offending action; the effect that eviction of the entire household would have on family members not involved in the criminal activity; and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity. Additionally, when specifically considering whether to deny admission or terminate assistance or tenancy for illegal drug use by a household member who is no longer engaged in such activity, a PHA or owner may consider whether the household member is participating in or has successfully completed a drug rehabilitation program, or has otherwise been rehabilitated successfully.[6]

4. An Arrest is Not Evidence of Criminal Activity that Can Support an Adverse Admission, Termination, or Eviction Decision

Subject to limitations imposed by the Fair Housing Act and other civil rights requirements,[7] PHAs and owners generally retain broad discretion in setting admission, termination of assistance, and eviction policies for their programs and properties. Even so, such policies must ensure that adverse housing decisions based upon criminal activity are supported by sufficient evidence that the individual engaged in such activity. Specifically, before a PHA or owner denies admission to, terminates the assistance of, or evicts an individual or household on the basis of criminal activity by a household member or guest, the PHA or owner must determine that the relevant individual engaged in such activity.

HUD has reviewed relevant case law and determined that the fact that an individual was arrested is not evidence that he or she has engaged in criminal activity. Accordingly, the fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting denial of admission, termination of assistance, or eviction.

An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. In many cases, arrests do not result in criminal charges, and even where they do, such charges can be and often are dismissed or the person is not convicted of the crime alleged. In fact, in the 75 largest counties in the country, approximately one-third of felony arrests did not result in conviction, with about one-quarter of all cases ending in dismissal.[8]

Moreover, arrest records are often inaccurate or incomplete (e.g., by failing to indicate whether

---

[6] See 24 CFR 5.852, 960.203(d), 966.4(l)(5)(vii), 982.310(h) (describing PHA and owner discretion in screening and evictions actions related to criminal activity).

[7] See 24 CFR 5.852(e) ("admission and eviction decisions must be consistent with fair housing and equal opportunity provisions of [24 CFR 5.105]"); see also 24 CFR 960.202(c)(3), 966.6(l)(vii)(F), 982.310(h)(4), 982.552(c)(2)(v).

[8] Brian A. Reaves, Bureau of Justice Statistics, U.S. Dep't of Justice, Felony Defendants in Large Urban Counties, 2009, at 22, Table 21 (2013), http://www.bjs.gov/content/pub/pdf/fdluc09.pdf.

the individual was prosecuted, convicted, or acquitted), such that reliance on arrests not resulting in conviction as the basis for denying applicants or terminating the assistance or tenancy of a household or household member may result in unwarranted denials of admission to or eviction from federally subsidized housing.[9]

With respect to the Section 8 tenant-based and moderate rehabilitation programs, HUD regulations specifically provide that termination of assistance for criminal activity must be based on a "preponderance of the evidence" that the tenant, or other household member, or guest engaged in such activity. For public housing as well, applicants or tenants may not be denied admission or evicted based on mere suspicion that they, a household member, or guest has engaged in criminal activity. Where PHAs or owners seek eviction, they should be prepared to persuade a court that the eviction is justified based on sufficient evidence of criminal activity in violation of the lease.

For these reasons, a PHA or owner may not base a determination that an applicant or household engaged in criminal activity warranting denial of admission, termination of assistance, or eviction on a record of arrest(s).

Although a record of arrest(s) may not be used to deny a housing opportunity, PHAs and owners may make an adverse housing decision based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the PHA or owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct. The conduct, not the arrest, is what is relevant for admissions and tenancy decisions.

An arrest record can trigger an inquiry into whether there is sufficient evidence for a PHA or owner to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination. PHAs and owners can utilize other evidence, such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct in fact occurred.

5. Protecting the Due Process Rights of Applicants and Tenants

Federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV applicants with notification and the opportunity to dispute the accuracy and relevance of a criminal record *before* admission or assistance is denied on the basis of such record. Public housing and Section 8 applicants also must be afforded the right to request an informal hearing

---

[9] See, e.g., U.S. Dep't of Justice, *The Attorney General's Report on Criminal History Background Checks* at 3, 17 (June 2006), http://www.justice.gov/olp/ag_bgchecks_report.pdf (reporting that the FBI's Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and "the most comprehensive single source of criminal history information in the United States," is "still missing final disposition information for approximately 50 percent of its records").

or review *after* an application for housing assistance is denied.

As with admissions decisions, federal law requires that PHAs provide public housing, project-based Section 8, and Section 8 HCV tenants with notice and the opportunity to dispute the accuracy and relevance of a criminal record before they evict or terminate the tenant's assistance on the basis of such record. Moreover, PHAs and owners may only terminate the tenancy or assistance of a public housing or project-based Section 8 tenant through either a judicial action in state or local court, or, in the case of a Section 8 HCV participant, through an administrative grievance hearing before an impartial hearing officer appointed by the PHA. In either case, the tenant must be afforded the basic elements of due process, including the right to be represented by counsel, to question witnesses, and to refute any evidence presented by the PHA or owner.

6. Civil Rights Requirements and Consistent Application of Procedures and Standards

PHAs and owners must ensure that any screening, eviction, or termination of assistance policies and procedures comply with all applicable civil rights requirements contained in in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act of 1990, and the other equal opportunity provisions listed in 24 CFR 5.105. To that end, a PHA or owner should institute protocols that assure that its procedures and standards are consistently applied and that decisions are made based on accurate information. Inconsistent application of standards or decisions based on partial or inaccurate information may result in liability under federal civil rights laws. See, e.g., Allen v. Muriello, 217 F. 3rd 517 (7th Cir. 2000) (allegation that African American applicant for federal housing assistance was given less opportunity to contest erroneous record of criminal activity than two similarly situated white applicants established a prima facie case of discrimination under the Fair Housing Act).

7. Best Practices and Peer Examples

PHAs and owners are encouraged to adopt admissions and continuing occupancy policies based on the best practices highlighted below to guard against unwarranted denial of assistance, termination from program participation, or eviction from federally assisted housing. These best practices incorporate clear standards for using information about criminal history in an admission or continuing participation decision. PHAs and owners are also encouraged to read the Shriver Report entitled "When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing."

Examples of PHA Best Practices on the Use of Criminal Records

A. Many PHAs have adopted written admission policies that limit their criminal record screening to assessments of conviction records.

Examples of PHA Best Practices on Screening for Criminal Activity

A. Some PHAs allow public housing and Housing Choice Voucher applicants to address and present mitigating circumstances regarding criminal backgrounds prior to admission decisions. In some cases, doing so has produced cost savings due to fewer decision appeals.

B. Some PHAs have adopted lookback periods that limit what criminal conduct is considered during the screening process based on when the conduct occurred and/or the type of conduct. For example, when screening HCV applicants, one PHA has adopted a twelve-month lookback period for drug-related criminal activity and a twenty-four month lookback period for violent and other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

C. Some PHAs have adopted admission policies that enumerate the specific factors that will be considered when the PHA evaluates an individual's criminal record, including:

a. Whether the applicant's offense bears a relationship to the safety and security of other residents;
b. The level of violence, if any, of the offense for which the applicant was convicted;
c. Length of time since the conviction;
d. The number of convictions that appear on the applicant's criminal history;
e. If the applicant is now in recovery for an addiction, whether the applicant was under the influence of alcohol or illegal drugs at the time of the offense; and
f. Any rehabilitation efforts that the applicant has undertaken since the time of conviction.

D. Some PHAs have implemented pilot programs that allow formerly incarcerated persons who have been released from prison within the past two or three years to be added to an existing voucher of a family member if all involved agree to participate and the formerly incarcerated individual agrees to six months to one year of supportive services with nonprofit partners.

E. One PHA has hired an offender reentry housing specialist who collaborates with a formerly incarcerated individual's parole officer, landlord, and treatment provider to ensure successful reentry into the community.

Example of PHA Best Practices on Evicting and Terminating Assistance for Criminal Activity

A. Some PHAs have adopted policies that list the circumstances that will be considered prior to a termination of the lease on the basis of criminal activity, including:

a. The seriousness of the offending action, especially with respect to how it would affect other residents;
b. The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking;
c. The effects that the eviction will have on other family members who were not involved in the action or failure to act;

d. The effect on the community of the termination, or of the PHA's failure to terminate the tenancy;
e. The effect of the PHA's decision on the integrity of the public housing program;
f. The demand for housing by eligible families who will adhere to lease responsibilities;
g. The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action; and
h. The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future.

8. Paperwork Reduction Act

The information collection requirements contained in this Notice were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C 3501-3520). Compliance and Enforcement are covered by OMB controls numbers 2502-0205, 2577-0232, 2577-0220, 2577-0230, and 2577 - 0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

9. Contact Information

If you have questions regarding this Notice, please contact your local HUD Field Office.

/s/
Lourdes Castro Ramirez
Principal Deputy Assistant Secretary for
Public and Indian Housing

/s/
Edward Golding
Principal Deputy Assistant Secretary for
Housing

Wisconsin REALTORS® Association

TO: Senate Committee on Insurance, Housing and Trade

FROM: Joe Murray, Director of Political and Governmental Affairs
Wisconsin REALTORS Association

DATE: Tuesday, January 5, 2015

RE: SB 445-Revisions to landlord-tenant law

The Wisconsin REALTORS® Association (WRA) supports SB 445, legislation that modifies several provisions to landlord-tenant law in Wisconsin. While this legislation covers a variety of landlord-tenant issues, the WRA strongly supports the following provisions:

Time of Sale (TOS) – This legislation clarifies that the elimination of time of sale (TOS) requirements that passed as part of 2015 Wis. Act 55 includes the elimination of TOS requirements regarding "occupancy" and "purchasers" of properties, not just sellers. This maintains the spirit of the law passed by the legislature in 2015.

Criminal Activity – SB 445 allows a landlord to evict a tenant with a 5-day notice without the person being arrested or convicted of the criminal activity or drug-related criminal activity, if the tenant engages in criminal or drug-related criminal activity that threatens the health, safety or enjoyment of other tenants, the landlord, or others living near the tenant. This would not apply to tenants who are victims of crimes. If the tenant contests the eviction, the landlord is required to prove the charge by the "greater preponderance of the credible evidence" of the allegation. The court may uphold or dismiss the eviction and, if the court determines the case is frivolous, the court can impose sanctions on the parties in violation.

Right to Cure – This legislation allows landlords the option of serving tenants a 5-day right to cure for breaches other than failure to pay rent. Current law only provides one option for non-rent breaches, a 14-day eviction. This provision gives landlords and tenants the opportunity to remedy the default and avoid eviction for the first breach. This option would apply to month-to-month tenancies.

Municipal Utilities – Under current law (2013 Wis. Act 274), municipal utilities are no longer required to offer tenants who are behind on utility payments a deferred payment plan. Utilities have the option to offer these plans. SB 445 clarifies that deferred payment plans are optional and do not require PSC approval.

Landlord Registration/Fees – SB 445 would allow municipalities to require a rental unit to be registered if registration consists of only providing the name of a contact person and an address and phone number at which that person may be contacted. This bill would prohibit local landlord certification, licensing or registration to own, manage, or operate residential rental property. Municipalities would be allowed to inspect rental properties based on a complaint from a tenant or member of the public, an inspection based on an exterior physical inspection by a building inspector, and inspections required by state and federal law and charge a uniform fee.

We ask for your support of SB 445.