



Wisconsin Economic Development Association

TO: Chairman Marklein and members of the Senate Revenue, Financial Institutions, and Rural Issues Committee
FROM: Ed White, President – Wisconsin Economic Development Association
DATE: August 30, 2017
RE: **Please support Senate Bill 292** (dark stores legislation)

On behalf of the Wisconsin Economic Development Association (WEDA), I would like to take this opportunity to urge your support for Senate Bill 292. The legislation will close the dark store loophole in Wisconsin and prevent a substantial property tax shift to homeowners and small businesses across the state. It will also ensure the continued effectiveness of Tax Incremental Financing (TIF), which is the primary economic development tool for local units of government.

State tax policy can have a major impact on economic growth. To that point, a competitive and equitable tax environment fosters business development and drives economic activity. Unfortunately, use of the dark store tax loophole by national retail chains and other large (“big-box”) retailers is neither competitive nor equitable, and will have an adverse effect on local business growth.

Under the dark store theory, large retailers argue their stores should be valued as if they were empty or “dark”, rather than a thriving, active business. This selective application of the property assessment methodology benefits one property taxpayer over another. While a handful of large retailers would benefit from lower property taxes, homeowners and local businesses, who comprise a majority of the tax base, would be forced to shoulder a much larger tax burden.

No one enjoys paying taxes, and WEDA members understand why a business – retail or otherwise – would seek to reduce its property tax obligation. In fact, WEDA supports efforts to lower property taxes for all businesses and homeowners. Lower taxes across the board would mean more economic development and job growth. However, simply shifting the tax burden and picking winners and losers would have the opposite effect. WEDA members appreciate the value large retailers bring to Wisconsin communities in terms of economic activity and jobs, but they should pay their fair share of taxes.

If the dark store theory takes hold in Wisconsin, it will shift the tax burden onto other property taxpayers, including local businesses. Ultimately, this will deter small business growth and negatively impact Main Streets in communities across the state.

According to the U.S. Small Business Administration, Wisconsin has 445,000 small businesses that employ 1.2 million people – or just over 50% of all Wisconsin employees. Small businesses truly are the backbone of Wisconsin's economy, but they often operate on tight profit margins

and are more vulnerable to unexpected costs. Wisconsin already struggles with start-up activity, and a sudden dark store-related tax increase will only create another obstacle for start-up businesses.

Regular use of the dark store loophole will also limit the effectiveness of the only reliable economic development tool available to local governments – Tax Incremental Financing. Many TIF districts contain multiple large retailers, and municipalities rely on the tax generated by those retailers to fulfill their TIF obligations. The dark store strategy would have a chilling effect on TIF, not only on the success and growth of current TIF districts, but on the future use of this valuable economic development tool.

Tax Incremental Financing attracts private investment and paves the way for development that may not otherwise occur. It provides unique benefits to businesses that locate within a TIF district, including redevelopment and public infrastructure. In return for those benefits, businesses contribute to the TIF through property taxes. It's what WEDA refers to as the "TIF bargain." If that bargain breaks down, as it would with use of the dark store tax strategy, a TIF district is financially harmed and both taxpayers and the surrounding business community are negatively impacted.

In closing, I would encourage you to support SB 292 and close the dark store loophole in Wisconsin. Without legislative action, a substantial property tax shift is highly likely, presenting a significant risk to economic development across the state. Lastly, while the above comments focused on SB 292, WEDA also supports SB 291 for similar reasons.

Thank you for your consideration.

About WEDA

The Wisconsin Economic Development Association (WEDA) is a statewide non-profit organization dedicated to expanding the economy of the State of Wisconsin. Founded in 1975, WEDA's economic development professionals and active volunteers are dedicated to making Wisconsin a better place to live and work through economic development that focuses on retaining and expanding existing businesses; facilitating investment and entrepreneurship; and attracting new companies, employment opportunities and innovation capital.



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TO: Members, Senate Committee on Revenue, Financial Institutions and Rural Issues
FROM: Dan Rossmiller, WASB Government Relations Director
DATE: August 30, 2017
RE: **SUPPORT FOR SENATE BILL 292**, relating to property tax assessments based on comparable sales and market segments.

The Wisconsin Association of School Boards (WASB), on behalf of the 422 public school boards in the state of Wisconsin, **supports Senate Bill 292**. Our members have an interest in ensuring that property taxes, which comprise a substantial portion of the operating revenues of school districts, are fairly and equitably administered.

Whenever a group of taxpayers or class of property owners can employ a concerted strategy to reduce the share of property taxes paid by that group or class, the result is that a share of the tax burden is shifted to another group or class of taxpayers.

Senate Bill 292 is designed to establish a set of reasonable statutory assessment "ground rules" or guidance to curb a strategy that a particular type of property owners—particularly so-called "big box retail chains"—has sought to use to reduce its property tax burden, thus shifting a portion, often significant, of the property tax burden to other taxpayers, including homeowners and small businesses.

The brick and mortar stores of so-called "big box" retailers have proven to be a challenge for property tax assessors. While there will likely always be disputes over assessments between owners and assessors, the problem facing assessors is finding appropriate "comparables" within this market segment of "big box" stores because of some unique characteristics of these properties.

Unlike most other types of property, big-box stores are generally not built to be sold. Instead they are typically built and occupied by the owner—the first generation user. As a result, relatively few first-generation big box store properties are offered for sale. Those that are offered for sale are typically offered in a sale-leaseback transaction in which the property is sold to investors and then leased back to the big box retailer—thus, the big-box chain becomes the tenant.

Even when a big-box chain abandons a store, whether because there may no longer be customer support at that location or due to corporate downsizing or even a poor business decision, chances are good that the abandoned store may not be offered for sale to another retail chain that might profitably operate in that store location. In many cases, big-box retailers' stores have restrictions placed on them when they are sold. These deed restrictions (also known as restrictive covenants) prohibit a rival chain from operating in one of a big-box retailer's former stores. These deed restrictions arguably prevent these properties from being put to their highest and best use as retail stores and limit the number of potential buyers and sales among the pool of the most likely buyers—other retailers. They also prevent the vacant stores from being offered for lease to competing users, preventing potentially ideal users from negotiating and establishing market rent for the property.

This bill is prompted by the fact that big box retailers have argued, often successfully, that fully operational big box stores should be assessed in the same manner as abandoned, obsolete, vacant buildings—so called "dark stores"—earning this approach the nickname the "dark store strategy."

All property owners have a right to challenge their assessment for property tax purposes; however, big box chains have been particularly organized and aggressive in their property tax appeals in other states using this dark store strategy.

Senate Bill 292 attempts to head off this scenario in Wisconsin. It legislatively clarifies long-standing statutory directives, in s. 70.32 (1), Stats., to consider recent arm's-length sales of "reasonably" comparable property and to consider all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

Under current law, assessors must use a three-step process in order to properly assess a property to determine its full value at its highest and best use. The first step in the process is to base the assessment on any recent arm's-length sale of the subject property. If the subject property has not been recently sold, an assessor must next consider sales of reasonably comparable properties. If the assessor determines no such comparable sales are present, an assessor may use a "cost" or "income" assessment approach, considering all factors which have a bearing on the value of the property.

Senate Bill 292 attempts to define comparable sales or rentals of properties in a way that reflects the realities of how big box stores operate in the real estate market in a way that is fair to all taxpayers. The bill requires an assessor to consider all of the following as comparable to the property being assessed:

- Sales or rentals of properties exhibiting the same or a similar highest and best use with placement in the same real estate market segment; and
- Sales or rentals of properties that are similar to the property being assessed with regard to age, condition, use, type of construction, location, design, physical features, and economic characteristics.

The bill defines "real estate market segment" to mean a pool of potential buyers and sellers that typically buy or sell properties similar to the property being assessed, including potential buyers who are investors or owner-occupants.

Senate Bill 292 also provides that a property is not comparable to the property being assessed if the seller has placed restrictions on the highest and best use of the property or if the property is dark property and the property being assessed is not dark property. The bill defines "dark property" as property that is vacant or unoccupied beyond the normal period for property in the same real estate market segment.

This approach has both logic and merit. It clarifies for assessors what the highest and best use of the property is in a common sense way. If a big box store property is occupied by a first-generation user and is operating successfully, the highest and best use of that property is likely to be in its continued use as a first-generation big box store. Its use value and its exchange value would be identical in such a situation. The deed restrictions that often encumber big box properties eliminate potential buyers who would use the property in its highest and best use, thereby artificially lowering the potential sales price of the property. Under the bill, if an assessor determines such a deed restriction changes the highest and best use of the property so that it is no longer comparable or if the deed restriction substantially impairs the property's marketability, it could no longer be considered as comparable. Finally, while the sales or assessments of vacant or unoccupied big box stores ("dark stores") could be given consideration, they could no longer be considered as comparable. The bill directs assessors to ensure that the sale and the comparable have the same highest and best use.

This bill will not increase overall property tax collections or the amount of property tax revenue that any school district may collect. What it does is protect the school districts property tax base against erosion and prevent more of the property tax burden to other taxpayers, such as homeowners, who do not have the benefit of structuring their ownership or rental interests as big box retailers can.

For the reasons indicated, we support Senate Bill 292. Thank you for the opportunity to present our views to the committee today.