



# DEVIN LEMAHIEU

## STATE SENATOR

### Senate Committee on Government Operations, Technology and Consumer Protection Testimony on Senate Bill 105 May 7, 2019

Chairman Stroebel & Members,

Thank you for holding today's hearing on Senate Bill 105. This bipartisan legislation clarifies that the Wisconsin Fair Dealership Law does not apply to a local or state government entity. This law change is needed to protect the ability of local governments to make contractual decisions that will create efficiencies and benefit taxpayers.

The Wisconsin Fair Dealership Law (*WI Stat 135.02*) was originally enacted in 1974 and generally regulates transactions between suppliers and dealers. According to historical documents the primary legislative intent of the law was to protect Wisconsin franchised small businesses from undue pressure from a franchisor. Gas stations, retailers, motels, hotels and restaurant chains are just some of the types of businesses this law was intended to protect.

In 2017, the Wisconsin Supreme Court determined that the Wisconsin Fair Dealership Law applies to a municipality's relationship with a private contractor. In *Benson v. City of Madison*, the Court concluded that four golf professionals could maintain their lawsuit against the City of Madison for \$1.8 million in damages. The golf instructors had claimed their contracts with the City were terminated without good cause in violation of the Fair Dealership Law.

This ruling is not just a "City of Madison" problem. The ruling created new and substantial liability risks for municipalities across Wisconsin given the large number of activities performed by private contractors for cities and villages. In my own district, Sheboygan Mayor Mike Vandersteen has expressed his support for a law change to address this issue.

In response to this court decision, Representative Dave Steffen and I drafted Senate Bill 105. This bill simply clarifies that the Fair Dealership Law does not apply to contracts with local, state, or federal government entities.

Senate Bill 105 is pro-local control and is supported by the League of Wisconsin Municipalities and the Wisconsin Counties Association.

Thank you for your consideration. I am happy to answer questions. In addition, representatives from the League of Municipalities are here and happy to answer specific questions about the applicable court case.



# DAVID STEFFEN

STATE REPRESENTATIVE • 4<sup>TH</sup> ASSEMBLY DISTRICT

May 7, 2019

## Testimony to the Senate Committee on Government Operations, Technology and Consumer Protection on Senate Bill 105

Chairman Stroebel and Committee Members,

Thank you for the opportunity to testify in favor of Senate Bill 105 relating to the applicability of the Wisconsin Fair Dealership Law.

In 2017 the Wisconsin Supreme Court ruled for the first time that a municipality's contractual relationship with a private contractor is subject to the Wisconsin Fair Dealership Law. This ruling creates new and substantial liability risk for municipalities and their residents given the large number of activities performed by private contractors for Wisconsin cities and villages.

The Fair Dealership Law was originally intended to provide protections for small businesses that make significant investments as a franchisee and their business would be financially devastated if the relationship between them and the franchisor was terminated. An example of this would be owning a restaurant that sells goods/food under a franchise system. This law is meant to protect these businesses from pressure from a franchisor which is not in their best interest.

Prior to this decision, the law had never been extended to relationships between private contractors and municipalities. This decision negatively impacts cities and counties around the state from working with private contractors.

Senate Bill 105 makes a simple change, to clarify that "Person" does not include a governmental entity for the purpose of this law. I encourage you to join me in supporting this legislation.

Thank you,

David Steffen  
State Representative  
4th Assembly District



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To: Senate Committee on Government Operations, Technology and Consumer Protection  
From: Curt Witynski, J.D., Deputy Executive Director, League of Wisconsin Municipalities  
Date: May 7, 2019  
Re: **SB 105, Exempting Local Governments from the Fair Dealership Law**

The League of Wisconsin Municipalities urges you to support SB 105, authored by Sen. Devin LeMahieu and Rep. David Steffen at the League's request. The bill exempts the state and local governments from the Fair Dealership Law, Wis. Stat. sec. 135.

Prior to 2017, no one within local government was aware of this law let alone thought that it might apply to local governments. In June 2017 the Wisconsin Supreme Court reversed the decisions of two lower courts and ruled for the first time that a municipality's contractual relationship with a private contractor is subject to the Wisconsin Fair Dealership Law, which governs contractual obligations between those who sell goods or services and those who benefit from the sales. Benson v. City of Madison, 2017 WI 65. The ruling, the first of its kind in any state, created new and substantial liability risks for municipalities and their residents given the large number of activities performed by private contractors for Wisconsin cities and villages. In a 5-2 decision, the Court concluded that four golf professionals could maintain their lawsuit against the City of Madison for \$1.8 million in damages over claims their contracts with the city were terminated in 2012 without "good cause" and adequate notice in violation of the Fair Dealership Law.

The Wisconsin Fair Dealership Law, like similar laws across the country, protects the economic interests of "dealers" (e.g. franchisees like filling stations, sports equipment stores, hotels and restaurant chains) against unfair treatment or practices by the "grantors" of the dealership or franchise. The law applies to arrangements in which there is a "community of interest" between the two parties, such as a shared financial interest or coordination of activities. Prior to this decision, the law had never been extended to relationships between private contractors and municipalities.

Needless to say, this decision negatively impacts the ability of all cities, villages, towns and counties and perhaps even the state, to privatize service delivery and to make decisions to end contractual relationships based on efficiencies and cost savings that benefit taxpayers.

This bill reverses the *Benson* decision by exempting the state and local governments from the Fair Dealership Law.

We urge you to vote to recommend passage of SB 105. Thanks for considering our comments.

*YOUR VOICE. YOUR WISCONSIN.*