



# DUEY STROEBEL

STATE SENATOR • 20<sup>TH</sup> DISTRICT

## Testimony on SB 688

*January 10, 2024*

Thank you Chairman Tomczyk and members of the Senate Committee on Transportation and Local Government for having a hearing on SB 688. How local governments procure goods and services is right at the heart of longstanding state law. We must balance the competing goods of local flexibility with avoiding waste, fraud and abuse. SB 688 does this uniquely by loosening a rule on the one hand and creating a rule in an indefensible void on the other.

The first part of SB 688 is to increase the cost threshold when most local governments must bid out a contract from \$25,000 to \$50,000. I know there have been proposals in prior sessions to move this number even higher than \$50,000. Those proposals have failed before, in part, because of the policy tradeoffs I mentioned before. Doubling the thresholds is meaningful reform for many local governments while keeping the total at a level to keep lawmakers comfortable. Every dollar is important, but there is a logical diminishing benefit to a formal bid process as project costs get smaller because of the time and fixed costs associated with going to bid. Inflation has also been a factor here.

The second part of SB 688 is to finally establish some statewide standard for school district bidding practices. SB 688 would require school districts to have the same bid process as all other local governments for both construction and supplies at \$150,000 or higher. In discussions with colleagues and staff, many legislators are unaware there is no bidding requirement for school districts. One can forgive a legislator for thinking this because the status quo makes Wisconsin an extreme outlier. My office had LRB work with NCSL to get a thorough report on the bidding law in all 50 states. Attached with my testimony is the result of those months of research.

As of compilation of the data, 47 states had a public bidding requirement on school district construction. Wisconsin joins only New Hampshire and Connecticut that allows a construction project of any size to be awarded on a no-bid basis. 41 states have a bidding requirement on supplies and equipment. We chose \$150,000 as the threshold as a nod to the fact that Wisconsin districts have had no regulation in this arena before and a threshold well above the national and regional average would be hard to argue is unduly burdensome. At \$150,000, among states with a law SB 688 would make Wisconsin tied for the 12<sup>th</sup> most lenient threshold for construction and tied for the 4<sup>th</sup> most lenient for supplies and equipment.

SB 688 is an attempt to draw a line that I believe reasonable Wisconsinites agree should be drawn somewhere.

Some of my colleagues might ask, why do we need this legislation for the small, parochial projects school districts might do? Let me provide the committee with some context. In the elections held during the timeframe of the prior biennial budget (April 2022, November 2022 and April 2023) school districts held 103 capital referenda. 75 passed. The total approved borrowing was over \$2.4 billion. The State of Wisconsin's all funds capital budget, plus transportation bonding, for the same time period was \$1.638 billion. The largest source of construction projects in Wisconsin has no governing bidding law. There is nothing stopping any school district from awarding a no-bid contract, even in advance of referendum passage. The potential for bad incentives on electioneering, feasibility studies and consulting work is also very real since the potential exists for unwritten understandings about who is guaranteed to get a contract. Sadly, this is a common occurrence.

Competitive bidding laws are pervasive across the country because they serve an important function. When large amounts of money are being distributed, the potential exists for waste, fraud and abuse. Whether with good intentions, less than good intentions or a simple lack of knowledge, public officials can be persuaded to award a contract that is not in the best interests of all stakeholders. I believe this understanding is intuitive across political ideology.

In conclusion, SB 688 raises the bidding threshold for most local governments while creating some long overdue rules for school districts. Good government is a Wisconsin tradition that transcends political party. I hope to have your support in this reform to strengthen that tradition going forward.



## Procurement Procedures in K-12: Purchasing Thresholds

*Compiled May 2023*

This document contains a compilation of the procurements laws and policies applicable to local education agencies (or local government units), as opposed to state-level government procurements, and covers three areas of purchasing: 1) construction; 2) contractual services, and 3) supplies and equipment.

There is a presumption that for procurements above the dollar threshold listed, a sealed, competitive bidding process is required. Many states, however, employ purchasing thresholds for small purchases that—while not requiring sealed, competitive bids—require graduated levels of competitive bidding (e.g., must receive at least three qualified bids in writing, must provide public notice over a specified number of days, bidders must be registered by a professional licensing board, etc.).

Note that not all states set thresholds, either in statute or regulation, or for all three purchasing types reviewed (i.e., construction, contractual services, supplies or equipment). Where the dollar threshold has been left blank, a threshold level does not apply, does not exist in state law or cannot be determined based on our reading of applicable state law.

Alabama.....	2	Louisiana.....	5	Oklahoma.....	10
Alaska.....	2	Maine.....	6	Oregon.....	10
Arizona.....	2	Maryland.....	6	Pennsylvania.....	10
Arkansas.....	2	Massachusetts.....	6	Rhode Island.....	10
California.....	2	Michigan.....	6	South Carolina.....	11
Colorado.....	3	Minnesota.....	6	South Dakota.....	11
Connecticut.....	3	Mississippi.....	7	Tennessee.....	11
Delaware.....	3	Missouri.....	7	Texas.....	11
District of Columbia.....	3	Montana.....	7	Utah.....	11
Florida.....	3	Nebraska.....	8	Vermont.....	12
Georgia.....	4	Nevada.....	8	Virginia.....	12
Hawaii.....	4	New Hampshire.....	8	Washington.....	12
Idaho.....	4	New Jersey.....	8	West Virginia.....	12
Illinois.....	4	New Mexico.....	9	Wisconsin.....	13
Indiana.....	4	New York.....	9	Wyoming.....	13
Iowa.....	5	North Carolina.....	9	Endnotes.....	14
Kansas.....	5	North Dakota.....	9		
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Jurisdiction	Type of Purchase	Competition Thresholds	Other Thresholds, Exemptions or Notes	Relevant Law
	<i>Supplies or equipment</i>	\$60,000		<a href="#">La. Rev. Stat. Ann. § 38:2212.1</a>
Maine	<i>Construction</i>	\$250,000	Projects over \$50,000 must also be approved by local referendum.	<a href="#">Me. Rev. Stat. tit. 5, § 1743-A</a> ; <a href="#">Me. Rev. Stat. tit. 20-A, §§ 15901, 15903</a> and <a href="#">15904</a>
	<i>Contractual services</i>	Thresholds are set at the local level.		
	<i>Supplies or equipment</i>			
Maryland <sup>4</sup>	<i>Construction</i>	\$50,000		<a href="#">Md. Code Ann., Educ. § 5-112</a> ; <a href="#">Md. State Fin. &amp; Proc. Code Ann. § 13-109(a)</a> ; <a href="#">Code Md. Regs. 14.39.03.01</a>
	<i>Contractual services</i>			
	<i>Supplies or equipment</i>	\$50,000	May increase to \$100,000 per <a href="#">Md. H.B. 543 (2023)</a> . Please see <a href="#">Endnote 4</a> . for further clarification.	<a href="#">Md. Code Ann., Educ. § 5-112</a> ; <a href="#">Md. State Fin. &amp; Proc. Code Ann. § 13-109(a)</a>
Massachusetts	<i>Construction</i>	\$150,000		<a href="#">Mass. Gen. Laws Ann. ch. 149, § 44A(D)</a>
	<i>Contractual services</i>	\$100,000		<a href="#">Mass. Gen. Laws Ann. ch. 30B, § 5</a>
	<i>Supplies or equipment</i>	\$100,000		
Michigan	<i>Construction</i>	\$28,048 (adjusted annually)		<a href="#">Mich. Comp. Laws Serv § 380.1267</a>
	<i>Contractual services</i>			
	<i>Supplies or equipment</i>	\$28,048 (adjusted annually)	Does not apply to purchase of food in a single transaction costing \$100,000 or less.	<a href="#">Mich. Comp. Laws Serv. § 380.1274</a>
Minnesota	<i>Construction</i>	\$175,000		<a href="#">Minn. Stat. Ann. § 471.345</a>

Jurisdiction	Type of Purchase	Competition Thresholds	Other Thresholds, Exemptions or Notes	Relevant Law
	<i>Contractual services</i>			
	<i>Supplies or equipment</i>	\$175,000		<a href="#"><u>Minn. Stat. Ann. § 471.345</u></a>
<b>Mississippi</b>	<i>Construction</i>	Between \$5,000 and \$75,000 purchases may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least 2 competitive bids have been obtained. Purchases over \$75,000 must advertise for competitive bids.		<a href="#"><u>Miss. Code Ann. § 31-7-13</u></a>
	<i>Contractual services</i>			
	<i>Supplies or equipment</i>	Between \$5,000 and \$75,000 purchases may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least 2 competitive bids have been obtained. Purchases over \$75,000 must advertise for competitive bids.		<a href="#"><u>Miss. Code Ann. § 31-7-13</u></a>
<b>Missouri</b>	<i>Construction</i>	\$100,000	School district officials are required to competitively select, through public advertisements for bids, construction expenditures of \$15,000 or higher.	<a href="#"><u>Mo. Rev. Stat. Ann. § 177.086</u></a> ; <a href="#"><u>Mo. Code Regs. Ann. tit. 1, § 40-1.050</u></a>
	<i>Contractual services</i>	\$100,000		<a href="#"><u>Mo. Code Regs. Ann. tit. 1, § 40-1.050</u></a>
	<i>Supplies or equipment</i>	\$25,000		
<b>Montana</b>	<i>Construction</i>	\$80,000		<a href="#"><u>Mont. Code Ann. § 20-9-204</u></a>
	<i>Contractual services</i>	\$80,000		
	<i>Supplies or equipment</i>	\$80,000	An eligible district participating in a cooperative purchasing group may purchase supplies and services through the group without complying with the provisions of subsection 3.	

Jurisdiction	Type of Purchase	Competition Thresholds	Other Thresholds, Exemptions or Notes	Relevant Law
	<i>Contractual services</i>	\$100,000		<u>Utah Admin. Code r. R33-5-108</u>
	<i>Supplies or equipment</i>	\$5,000 ( <u>Individual Procurement Item threshold</u> ) \$10,000 ( <u>Single Procurement Aggregate threshold</u> for multiple individual procurement items purchased from one source at one time) \$50,000 ( <u>Annual Cumulative threshold</u> for purchases made from the same source)		<u>Utah Admin. Code r. R33-5-104 and 107</u>
<b>Vermont</b>	<i>Construction</i>	\$40,000 \$500,000 (for high cost construction contracts)		<u>Vt. Stat. Ann. tit. 16, § 559</u>
	<i>Contractual services</i>			
	<i>Supplies or equipment</i>	\$40,000		<u>Vt. Stat. Ann. tit. 16, § 559</u>
<b>Virginia<sup>11</sup></b>	<i>Construction</i>	\$200,000 \$25,000 (for transportation-related construction)		<u>Va. Code Ann. § 2.2-4303</u>
	<i>Contractual services</i>	\$80,000 (for <u>professional services</u> )		<u>Va. Code Ann. § 2.2-4303;</u> <u>Va. Code Ann. § 2.2-4301</u>
	<i>Supplies or equipment</i>	\$200,000		<u>Va. Code Ann. § 2.2-4303</u>
<b>Washington</b>	<i>Construction</i>	\$100,000		<u>Wash. Rev. Code Ann. § 28A.335.190</u>
	<i>Contractual services</i>			
	<i>Supplies or equipment</i>	\$75,000		<u>Wash. Rev. Code Ann. § 28A.335.190</u>
<b>West Virginia</b>	<i>Construction</i>	\$25,000		<u>W. Va. Code Ann. § 5-22-1(b)(5); W. Va. Code R. 126-202 Attachment 10.1</u>
	<i>Contractual services</i>	\$50,000		<u>W. Va. Code R. 126-202 Attachment 7.11.5</u>
	<i>Supplies or equipment</i>	\$50,000		

Jurisdiction	Type of Purchase	Competition Thresholds	Other Thresholds, Exemptions or Notes	Relevant Law
Wisconsin	Construction	Thresholds set at local level.	General spending authority to manage property and affairs of school district, <u>Wis. Stat. Ann. §§ 120.12(1) and 120.13(33)</u> ; authority at annual meeting to authorize procurement of school sites and for their general maintenance, <u>Wis. Stat. Ann. §§ 120.10(5) and (5m)</u>  Separate statute applies to 1 <sup>st</sup> Class Cities (Milwaukee), <i>see</i> <u>Wis. Stat. Ann. § 119.16(3)(a)</u> .	<u>Wis. Stat. Ann. §§ 120.12(1) and 120.13(33)</u> ; <u>Wis. Stat. Ann. §§ 120.10(5) and (5m)</u>
	Contractual services			
	Supplies or equipment	Thresholds set at local level.	General spending authority to manage property and affairs of school district, <u>Wis. Stat. Ann. §§ 120.12(1) and 120.13(33)</u> ; authority to purchase books, material and equipment, <u>Wis. Stat. Ann. §§ 118.03 and 120.13(5)</u> ; authority at annual meeting to authorize procurement of textbooks, <u>Wis. Stat. Ann. § 120.10(15)</u>  Separate statute applies to 1 <sup>st</sup> Class Cities (Milwaukee), <i>see</i> <u>Wis. Stat. Ann. § 119.16(4)</u> .	<u>Wis. Stat. Ann. §§ 120.12(1) and 120.13(33)</u> ; <u>Wis. Stat. Ann. §§ 118.03 and 120.13(5)</u> ; <u>Wis. Stat. Ann. § 120.10(15)</u>
Wyoming	Construction	\$50,000		<u>Wyo. Stat. § 21-3-110(a)(viii)</u>
	Contractual services			
	Supplies or equipment	\$25,000	Textbooks excepted	<u>Wyo. Stat. § 21-3-110(a)(viii)</u>

## Endnotes

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<sup>1</sup> State procurement laws apply to school districts.

<sup>2</sup> State procurement laws apply to all “governmental bodies” which appears to include the Public School System.

<sup>3</sup> State procurement laws apply to school districts.

<sup>4</sup> “[E]ducation §5-112, which specifies that ‘if the cost of any school building, improvement, supplies, or equipment is more than \$25,000,’ the school board must advertise for bids. However, it further states that if the \$25,000 amount differs from the amount in State Finance and Procurement §13-109(a), then that amount applies. Currently, SFP §13-109(a) (which sets the small procurement threshold for State agencies) sets the threshold at \$50,000 for all contracts, except for specified construction and capital contracts by the Department of General Services, Maryland Department of Transportation, and Department of Natural Resources. Given the language in §5-112, it’s not clear whether it intends the threshold to be \$50,000 for everything or whether the \$100,000 threshold applies to school construction projects. But that’s not the end of the story. First, [Chapter 161 of 2023](#) raises the State’s threshold to \$100,000 (general) and \$200,000 (construction and capital), effective October 1, 2023. Further, the Code of Maryland Regulations [COMAR 14.39.03.01](#), currently sets the threshold at \$50,000 for public school construction projects (including supplies and equipment tied to those projects). That amount is not tied to any other State statute. From this, I conclude that the current thresholds for local school systems are \$50,000 for construction, supplies, and equipment (you are correct that the statute is silent with regard to contractual services). However, as the threshold for State agencies is scheduled to increase to \$100,000 (and \$200,000 for construction and capital projects), those thresholds may change. At the very least, I would expect that the threshold for supplies and equipment will increase to \$100,000. It is not clear if the threshold for public school construction will change, as the amount set in regulations is not tied to that particular section of code. I will check with counsel for our school construction program and let you know what they say.” (E-mail communication from Maryland Department of Legislative Services, May 23, 2023.)

<sup>5</sup> State procurement laws apply to school districts and charter schools.

<sup>6</sup> State procurement laws apply to school districts and charter schools. See [Or. Rev. Stat. Ann. § 174.117\(1\)\(b\)-\(d\)](#); [Or. Rev. Stat. Ann. §§ 279A.010\(1\)\(p\)](#) and [\(LL\)](#).

<sup>7</sup> School districts in Rhode Island are fiscally dependent on their parent municipal government. Therefore, the municipal procurement code that applies to cities and towns extend to school district purchases.

<sup>8</sup> According to data from the National Center for Education Statistics, roughly one third of school districts met this expenditure criteria in fiscal year 2020. See [E|Si tableGenerator](#) Table ID 647391.

<sup>9</sup> According to the Tennessee County Technical Assistance Service (CTAS): “The county education department has its own purchasing law, found in Tenn. Code Ann. § 49-2-203 (a)(3), but this law is largely superseded or modified in those counties that adopt the statutes of the County Financial Management System of 1981. In counties that have adopted the County Purchasing Law of 1957, the county board of education may or may not use the central county purchasing system depending upon the approval of the State Commissioner of Education. [Tenn. Code Ann. § 5-14-115](#).” (County Technical Assistance Service, “[Purchasing in County Education Departments](#).”)

<sup>10</sup> State procurement laws apply to school districts and charter schools. See [Utah Code Ann. § 63G-6a-103](#).

<sup>11</sup> State procurement code ([Va. Code Ann. § 2.2-4300 et seq.](#)) applies to local school divisions under “public body” definition. See [Va. Code Ann. § 2.2-4301](#).



## MEMORANDUM

**TO:** Honorable Members of the Senate Committee on Transportation and Local Government

**FROM:** Marcie Rainbolt, Government Affairs Associate

**DATE:** January 10, 2024

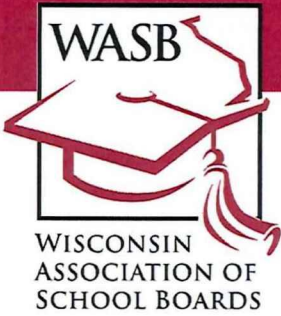
**SUBJECT:** Support for Senate Bill 688: Local Government Competitive Bidding Thresholds

Senate Bill 688 is a necessary update to our long outdated competitive bidding law in Wisconsin. Not only are labor costs increasing but the cost of building materials continues to rise as well. The threshold for competitive bidding has not been altered since 2005 thus putting the counties at a disadvantage when it comes to the completion of small projects.

Under current law, counties are required to go out for competitive bid on any project over \$25,000. Projects at this price point are small and usually not time consuming, yet counties cannot initiate the project without following competitive bidding laws. SB 688 would increase the threshold from the current \$25,000 to \$50,000. Doubling the current competitive bidding threshold is a win for county governments that have been complying with an outdated threshold for nearly two decades.

SB 688 does not change notice requirements. Counties would still be required to provide a class 1 notice for projects between \$5,000-\$50,000.

SB 688 will allow local governments more flexibilities in small construction projects while still being prudent with taxpayer dollars. WCA asks for your support in a much-needed update to the competitive bidding process by supporting an increase to \$50,000.



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DANIEL M. ROSSMILLER, EXECUTIVE DIRECTOR

TO: Members, Senate Committee on Transportation and Local Government  
FROM: Chris Kulow, WASB Government Relations Director  
Ben Niehaus, WASB Member Services Director  
DATE: January 10, 2024  
RE: **OPPOSITION to SENATE BILL 688**, relating to competitive bidding thresholds and requiring school districts to utilize competitive bidding.

Wisconsin school boards are currently not statutorily required to advertise for bids, nor to award construction contracts, or purchase supplies or materials, on the basis of competitive bids. Nevertheless, the vast majority of school boards **do voluntarily** use competitive bidding for school construction projects, and the purchase of supplies and materials, as a matter of board policy. These school boards have decided that competitive bidding is advantageous to their districts.

Nevertheless, many other school boards find that the flexibility they currently have provides certain advantages to their students, taxpayers and communities while still providing value to their taxpayers. We are here today to make a case for the flexibility provided under current law.

Senate Bill 688 would take away school districts' ability to negotiate with not only local, but other regional contractors within Wisconsin by requiring schools to use competitive sealed bids for projects, materials and supplies of more than \$150,000. Senate Bill 688 will prohibit districts from using criteria that gives preference based on the geographic location of the bidder, or other desired specifications, such as quality of service and timeliness. Districts that have longstanding relationships with local contractors and vendors can work with these companies to negotiate for the best return on investment while spending resources locally, keeping dollars in the community, and within Wisconsin. Local contractors have strong incentives to provide quality work, as do vendors to provide only the best products as not only is their reputations on the line, so is their community pride.

Unscrupulous out of state contractors may be more likely to underbid and provide inferior product and services, possibly cutting critical steps in quality, simply to secure what they know is a **guaranteed** acceptance by the board of the lowest bid due to the requirements of Wisconsin law. Those from afar will not have to face the district or its citizens regularly. If the end product is not as desired, and finish and duration is compromised, local and regional contractors are more likely to return to resolve the matter than a vendor that is located further away or out-state. In short, local/hometown and regional contractors and supply vendors generally provide better customer service and end-products.

The authors and proponents of Senate Bill 688 will argue that public accountability and good business practice should demand that sealed competitive bids of school construction projects, in addition to supplies and materials used for general operations be solicited through advertisements, and that contracts always be awarded to the lower responsible bidder. They will argue this is the only way to assure that taxpayers receive value for their tax dollars. We disagree.

This view ignores the age-old problem that if you have to take the low bid, you may not be getting the highest quality. **Getting the best *price* for a job is not the same as getting the best *value* for that job.**

A major concern of SB 688 is that it also does not account for, and removes school board discretion, in making future purchasing decisions based upon past experiences with construction projects, contractors and vendors who provide critical supplies, materials and services. Although school districts can create the specific bid specifications, this does not mean that vendors who previously provided an inferior product or service cannot resubmit for a similar product or service in the future; they can again be the low bidder and subsequently come in and provide a service or product that subsequently costs the district more in money, time and lost opportunity for student instruction. Also, related to bid specifications –boards would not have the discretion to choose a bid that may exceed bid specifications, but provide a greater return on investment when all costs and benefits are weighed.

**School districts would lose flexibility, speed, and nimbleness if SB 688 passes.**

Because school boards may already utilize competitive bidding on a voluntary basis when awarding construction contracts, SB 688 confers no authority on school boards and school districts that they don't already have. It only **imposes** restrictions on school boards by taking away flexibility that many boards and districts currently use to generate taxpayer value through the use of alternative project delivery methods like those I have described. School boards value the flexibility they currently enjoy engaging design professionals and other consultants to help the district determine how to provide the best value and the lowest cost as well as the flexibility to negotiate with local contractors, which creates a "win-win" scenario for their communities and their taxpayers.

**This bill would also impose competitive bidding on the purchase of supplies and materials which expands the scope of this mandate far outside of construction or capital projects.**

Relative to the purchase of supplies and materials, districts (particularly in rural areas) may have longstanding partnerships with vendors, in addition to shared partnerships, with other school districts and even their local municipalities in purchasing goods and materials. Many of these purchases are through agreements and contracts that provide the best return on investment in these collaboratives. This bill will likely upset these relationships and could have implications beyond just the school districts who benefit from these partnerships.

This bill seems to make the presumption that only cost should determine the best return on investment in service to students. The fact that the bill authors admit that most legislators assume school districts are already subject to mandatory competitive bidding indicates that this proposal seems to be a solution in search of a problem.

To reiterate, **"Getting the best *price* for a job is not the same as getting the best *value* for that job."**

There are many dynamics that may arise before, during, or after any project, along with unforeseen situations that may arise at any given time. There are many moving parts, often with a variety of different service providers. We believe that our school board members will continue to utilize the flexibility afforded in current law to make the best decisions when issues arise. Both for the students they serve and the taxpayers that invest in the education of the children served.

For all these reasons, the WASB opposes SB 688.