



"Leadership in Public School Governance"

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TO: Members, Assembly Committee on Ways and Means  
FROM: Dan Rossmiller, WASB Government Relations Director  
DATE: June 29, 2017  
RE: **SUPPORT for ASSEMBLY BILL 387**, relating to property tax assessments regarding leased property.

The Wisconsin Association of School Boards (WASB), on behalf of all 422 public school boards in the state of Wisconsin, **supports** Assembly Bill 387. 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 particular group of taxpayers or class of property owners is able to 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.

The bill before you today responds to a particular tax reduction strategy and establishes a set of reasonable assessment "ground rules" to reverse a court interpretation that a particular group of retail property owners has used to reduce its property tax burden. The result has been to shift a significant portion of the property tax burden in some communities to other taxpayers, including homeowners and small businesses.

Chain retailers such as Walgreens and CVS drugstores, in particular, have used a store location and marketing strategy that involves developing highly visible corner properties to their rather exacting specifications, which are then leased back from holding companies or private investors who reportedly have with little or no landlord responsibility other than collecting rent. Reportedly, more than 80 percent of Walgreens stores and 95 percent of CVS stores operate under lease arrangements.

Walgreens and CVS argue that the actual sale prices of these properties do not represent market value for property tax purposes. They also argue that the underlying leases are the wrong tool for determining the property's value for property tax purposes. Instead, they argue the assessments should hinge on the amount the landlord could get if the drugstore moved out and a different retailer moved in to these specially designed properties. In essence, they argue that the assessed value of their properties should be less than half of actual sale prices on the open market.

These two firms have already sued more than 100 Wisconsin communities, claiming the rents they pay for their newly-constructed, highly visible corner locations do not accurately reflect the stores' fair-market value for property tax assessment purposes. These properties have typically been developed to the retailer's specifications and then leased to them. This has led to confusion about how to assess the stores. This bill is before you today because these drugstore retailers have been successful in persuading at least one court to accept their arguments about how to value their stores for property tax purposes.

In 2008, the Wisconsin Supreme Court overturned rulings by a circuit court and court of appeals and held in *Walgreens v. City of Madison* that an assessment by the income approach of retail property leased at "above market" rents must be based on market rents rather than the terms of Walgreen's actual leases and that the value added by an "above-market" rent constitutes a contract right, rather than a real property right.

That 2008 decision continues to control how assessors must value Walgreens, CVS, and other single-tenant retail stores, despite changes made to the *Wisconsin Property Assessment Manual* to counteract the effects of that decision.

Walgreens, CVS and other single tenant retail properties are successfully using that 2008 decision to convince the courts that their assessed values should be **less than half of the actual sale prices of the properties on the open market**.

Assembly Bill 387 attempts to reverse this situation in Wisconsin. It legislatively clarifies the long-standing statutory directives, in s. 70.32 (1), Stats., to consider all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed. In short, Assembly Bill 387 makes it clear that when valuing property assessors are to consider any applicable lease provisions and actual rent pertaining to a property and affecting its value.

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.

The bill revises the definition of "real property," "real estate," and "land" to include leases and other assets that cannot be taxed separately as real property, but are inextricably intertwined with the real property, enable the real property to achieve its highest and best use, and are transferable to future owners.

Assembly Bill 387 also defines "lease" to mean a right in real estate that is related primarily to the property and not to the labor, skill, or business acumen of the property owner or tenant. It further:

- Specifies that real property must be valued by the assessor in the manner specified by the property assessment manual at its highest and best use.
- Defines "highest and best use" for the above provision and the definition of "real property," "real estate," and "land" to mean the specific current use of the property or a higher use to which the property can be expected to be put in the immediate future, if the use is legally permissible, physically possible, and financially feasible and provides the highest net return. When the current use of a property is the highest and best use, the bill draft specifies that the value in the current use equals full market value.
- Defines "arm's-length sale" for purposes of determining value under s. 70.32 (1), Stats., to mean a sale between a willing buyer and willing seller, neither being under compulsion to buy or sell and each being familiar with the attributes of the property sold.

In determining the value of leased real property, Assembly Bill 387 specifies that an assessor must consider lease provisions and actual rent pertaining to a property and affecting its value, including sale and leaseback provisions, if all such lease provisions and rent are the result of an arm's-length transaction involving persons who are not related under Section 267 of the Internal Revenue Code for the year of the transaction. The bill defines "arm's-length transaction" to mean an agreement between willing parties, neither being under the compulsion to act and each being familiar with the attributes of the property.

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 property tax base against erosion and prevent more of the property tax burden to other taxpayers who do not have the benefit of elaborate lease arrangements.

For the reasons indicated, we support Assembly Bill 387. Thank you for the opportunity to address the committee today.