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To: Wisconsin State Senate
From: Curt Witynski, J.D., League of Wisconsin Municipalities
Date: February 8, 2018
Re: Opposition to AB 770, the Developers' Bill

The League of Wisconsin Municipalities opposes AB 770, which is another legislative effort to preempt local powers and impose unfunded mandates on cities and villages. We urge you to oppose passing this bill in the remaining days of the session. While the authors and proponents of AB 770 have made changes addressing some of our issues, most notably with regard to storm water, we continue to have many concerns, including the following:

Condemnation

Courts have long limited the use of the income approach because of the fluid nature of net income evidence; it is dependent upon numerous variables like the motivation of the owner/operator, the economy and economic trends, and even the weather. As a practical matter, the bill fails to adequately account for the difficulty of assessing those factors, and the impossibility of condemning agencies to anticipate the results of such appraisals. Unlike replacement and comparable sales methods, the income approach relies on information exclusively in the possession of the owner. A municipality will have to begin condemnation proceedings based on a comparable sales or cost based approach. However, when the compensation is challenged, the court will now be required to consider the owner's income information, information that the condemning authority had no access to. All condemning authorities will routinely be surprised, finding themselves on the hook, after the fact, for larger than anticipated acquisition costs, and likely awards well over the 15% trigger for paying the other side's attorney's fees. At the very least, income evidence should only be allowed if the landowner submits such an appraisal to the condemnor *prior to the taking*, to give the condemning authority the ability to consider the new information and decide whether to proceed with the taking or not.

Impact Fee Accounting

Requiring an accounting of how each fee will be spent at the time it is paid is burdensome, impractical, and, in many cases, simply impossible. If the goal is to provide transparency, the bill could require "annually, the municipality shall make available an accounting of its impact fees showing revenues received and expenditures made."

Letters of Credit for Impact Fees

There is nothing in current law that prevents a municipality from accepting a letter of credit for impact fees. The City of Madison, for example, already does this for larger projects. However, there is an administrative cost to negotiating and tracking letters of credit. Though this burden

may be relatively small, this provision is still an unfunded mandate. If the state is going to require this of every municipality, the threshold should increase over time. Since these fees go toward capital improvements, the \$75,000 amount should increase yearly based on construction price index. Without some form of indexing, the value of \$75,000 will decrease over time; even small projects will be eligible for this fee deferment, and local governments will be forced to track numerous letters of credit.

Refund Fees to Developer Instead of Property Owner

Current law requires impact fees to be spent within a certain time period or be refunded to the property owner. The bill would require refunds to be given to the developer instead. This not only represents a windfall for the developer, it works *against* the stated goal of making housing more affordable.

An impact fee reimburses the community of the impact that a property places on municipal services. Impact fees are paid at, or before, the time a property is developed. Thus, such fees, like other development costs, will be included in the purchase price of the property. Hence, if the community fails to build the new park it envisioned a subdivision needing, the homeowner whose property triggered the payment of the fee will be given a refund. The homeowner is made whole. By refunding the developer, the property owner will get nothing while the developer, who paid the fee and recovered the fee at the sale of the property, will see a windfall. The refund should be given to future residents to make them whole, rather than a party now unrelated to the property. If the developer hasn't sold the property, they would recover the fee as the property owner—meaning their interests would still be protected in that event.

Surety Bond Requirements

The bill requires municipalities to accept bonds where the bond form “is consistent” with the form used by a company certified by the Department of Treasury. Considering this is a mandate, “consistent with” gives too much leeway to the developer and the surety company. In addition, the only way a municipality can reject a bond is if it demonstrates the bond does “not sufficiently ensure performance in the event of default.” This is an unreasonably high burden. A municipality could be required to accept mandatory arbitration, or to submit to venue in Delaware courts. On their face, such requirements might be sufficient to ensure performance, but the costs would make collecting a losing proposition. The purpose of these bonds is to ensure the taxpayers are not forced to pay the bill. Communities should be allowed to negotiate terms sufficient to protect the public interest. Requiring municipalities to accept certain bonds and limiting their ability to negotiate details simply pushes more risk on to taxpayers.

Park Land Dedication

The bill would grant developers the ability to force municipalities to accept parks in areas that may not serve the community, or even be consistent with city plans. Even worse, the bill grants developers the ability to give municipalities bad/useless pieces of land. As long as it is within or adjacent to the subdivision, communities would have no way to reject land they do not want and cannot use. This does not serve anyone's interests, including developers, and could make the land division process even more difficult for all parties involved.

Prohibiting municipalities from limiting weekend private construction work. Whether and when to allow construction noise to occur on weekends is a quintessential issue of local

determination. We researched municipal ordinances regulating construction noise on weekends. We found that communities are all over the map with regard to prohibiting construction noise on weekends. Some limit the times construction work can occur. Some allow on Saturday, but not Sunday. Many don't regulate it all. That is the genius of local control. The level of regulation reflects the desires and character of the community. This bill prohibits communities from banning or regulating the hours construction would be allowed on weekends.

Mandating municipalities prepare an annual “housing affordability report” and an annual “development fee report.” While we appreciate changes the authors made to earlier versions of these new reporting requirements, including applying them to municipalities exceeding 10,000 in population only, they still represent unfunded mandates. Complying with the annual reporting mandates will require municipal staff to devote time and resources better spent on economic development efforts or efficiently serving builders, developers, and citizens seeking permits.