



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

To: Wisconsin State Assembly
From: League of Wisconsin Municipalities Lobby Team
Date: November 6, 2019
Re: Support for SB 105, **Exempting municipalities from the Fair Dealership Law**

The League of Wisconsin Municipalities urges the Assembly to concur in SB 105 and exempt the state and local governments from the Fair Dealership Act, Wis. Stat. sec. 135. The Senate unanimously passed the bill in June. The Assembly has taken no action on the bill yet.

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.

The *Benson* 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. Because the Fair Dealership Act does not consider insufficient capital to be good cause for ending a contractual relationship, the Act would force a municipality with inadequate financial resources to be bound to a contract or face a lawsuit for violating the Fair Dealership Law if it terminated the contract.

SB 105 reverses the *Benson* decision by exempting the state and local governments from the Fair Dealership Law. We urge the Assembly to concur in the Senate's passage of SB 105. Thanks.