



# ANDRÉ JACQUE

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TO: Members of the Assembly Committee on Jobs, Economy and Mining  
FROM: Representative André Jacque  
DATE: April 3, 2013  
RE: Assembly Bill 76

Chairwoman Williams and Colleagues,

Thank you for holding this hearing on AB 76, which would allow contractors to use the sales and use tax exemption of non-profit organizations and government units, and to directly purchase on their behalf building materials that become a part of that tax exempt entity's facilities.

Currently, municipalities, school districts, and certain nonprofit organizations must purchase building materials themselves in order to utilize their sales and use tax exemption – they may not have the contractor, who will more likely understand the code, construction timelines and compliance requirements, purchase the materials for them. Further, should contractors purchase and re-sell the materials to the tax exempt entity, the contractor must incur the sales tax, which is ultimately passed on to the end-user – that is, the tax exempt entity and the local taxpayers who pay for the building projects of local schools and municipalities.

Due to lack of time or expertise in navigating the required paperwork to utilize the exemption, as well as liability concerns, these eligible organizations are caught between retaining their exemption and all the included costs of contractor coordination and compliance hurdles or to give up their exemption and gain the burden of a substantial cost from sales tax.

According to a 2004 statewide survey of private non-for-profit construction projects, roughly 95% of non-profit or governmental units directly purchased materials for construction, while less than 5% opted to have contractors purchase the materials and incur the additional sales tax.

This is true despite thousands of dollars lost in time and money spent on the additional paperwork, the risks these organizations run through purchasing issues, equipment ordering errors and risks of errors due to lack of expertise.

The simplest and most effective method of correcting this problem, as proscribed by this legislation, is to adopt the model that the State has used successfully for a number of years in the construction of waste treatment facilities [Wis. Stats. §77.54(26)] – namely, contractors simply fill out a written certification confirming for the vendors that the materials being purchased are for resale on a specific tax-exempt project, leaving a paper trail that the DOR can easily audit.

This common sense legislation, which has enjoyed strong bipartisan and diverse organizational support in previous sessions, will not create any new tax exemptions. It will simply reduce government red-tape, simplify current tax procedures, and provide a cost effective way for schools, local governments and other tax-exempt entities to add infrastructure at a lower cost.

Thank you for your consideration, and I welcome any questions you may have.



# AGC of Wisconsin

SKILL RESPONSIBILITY INTEGRITY

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Date: April 1, 2013

To: Members, Assembly Committee on Jobs, Economy and Mining

From: Jim Boullion, Director of Government Affairs

Re: **Support AB 76 - Sales Tax on Construction Materials for Tax Exempt Projects**

Assembly Bill 76 would allow contractors to directly purchase the real property materials (bricks, mortar, etc...) for tax exempt owners just as they can purchase the tangible personal property (cabinets, appliances, etc...) for the projects without charging the local municipalities, churches and schools the sales tax on those materials. **AGC of Wisconsin would like to ask for your support and urges you to pass AB 76**

**The issue** - Under current law, some of the materials used to construct a building that is owned by a tax-exempt entity can not be purchased by the contractor working on the job and then resold to the tax-exempt without paying the sales tax. The Dept. of Revenue considers the contractor who purchases the “bricks and mortar” for a building to be the final “consumer” of these materials, not the tax-exempt owner, therefore the sales tax must be paid. AB 76 changes the law to allow contractors to purchase all of the materials that go into constructing a building for a tax-exempt entity and sell the building to them without charging the sales tax.

**Who is affected?** – Most municipal and charitable tax-exempt entities in Wisconsin who might build a building. This list includes; counties, cities, towns, villages, school districts, churches, civic groups, etc... In addition, every contractor who works on one of these jobs is affected because their risk and workload is greatly increased.

**Who supports the bill?** – As detailed later in this paper, during the 2011 session 18 organizations registered in support, and the bill passed the Assembly Ways and Means Committee unanimously on a bipartisan vote. In 2006, 43 groups registered in favor of the bill. There is no opposition to the bill.

**AB 76 simplifies an existing tax exemptions** - The real world effect of this bill is not to create any new tax exemptions. It simply reduces government “red-tape”, streamlines the current tax procedures and provides a cost effective way for schools, local governments and other tax-exempt entities to provide more services at a lower cost. In this era of trying to save money, cut costs and get more efficiency out of the employees we have, this bill will be a winner for everyone!

**What do they do now?** - To utilize their tax-exemption, tax-exempt entities are required to actually make a “direct purchase” of all of the materials for their building from the suppliers and transfer those materials to their contractor (*see the attached flow-charts*). While most tax-exempts and their contractors are able to complete the costly and time consuming paperwork necessary to make the direct purchase option work, some decide to have the building contractors purchase the materials and add the cost of the 5% state sales tax to their buildings.

## Why don't all tax-exempt entities directly purchase materials to save this cost?

- **Lack of Time** - The most common reason is the time and effort it takes to have employees handle the paperwork. It can take hundreds of hours of staff time to handle the purchase orders, invoicing and contractor coordination necessary for just one large project. In these days of staff reductions there is very little extra time to do this.
- **Lack of Expertise** - Even if a school, local government or other tax exempt wants to purchase materials directly to save the 5% tax, they often lack the expertise to handle it. Contractors do what they can to assist, but it takes a knowledgeable person on the owner's side to be sure everything is taken care of properly and prevent costly errors from occurring.
- **Liability problems** – Under the direct purchase method that tax-exempts are currently forced to use, if an error is made in the material and equipment ordering or if a warranty issue develops and the entities that actually purchased these items are different than the one who installed them, conflicts can arise.

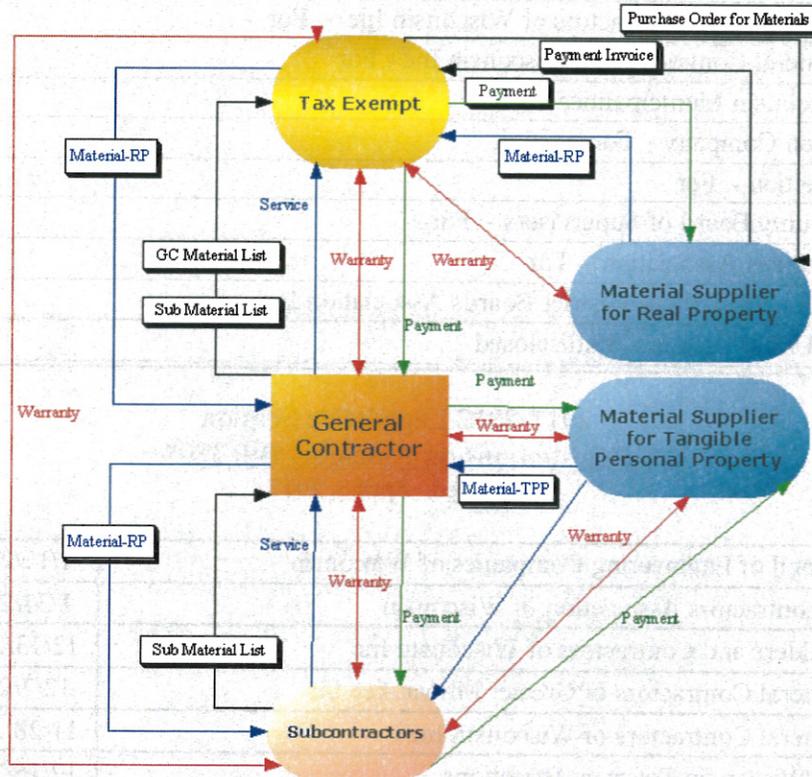
**Why this solution?** - This bill provides the simplest and most effective method of correcting this problem, which is to adopt the model that the State has used successfully for the construction of waste treatment facilities [*Wis. Stats. §77.54(26)*] and special district stadiums such as Lambeau Field and Miller Park [*Wis. Stats. §70.11(36)*]. Contractors simply fill out a written certification (form S-211) confirming for the vendors that the materials being purchased are for resale on a specific tax-exempt project, leaving a paper trail that the DOR can easily audit.

**Real Property vs. Personal Property** – This is also the same process by which the DOR currently allows contractors to purchase “tangible personal property” for tax exempt projects without paying sales taxes. Tangible personal property includes things like gym lockers, bleachers, desks, and other items that can be replaced in a building. We simply would like to be able to use this same process for the purchase of the rest of the materials used in these buildings like bricks, mortar, windows and steel.

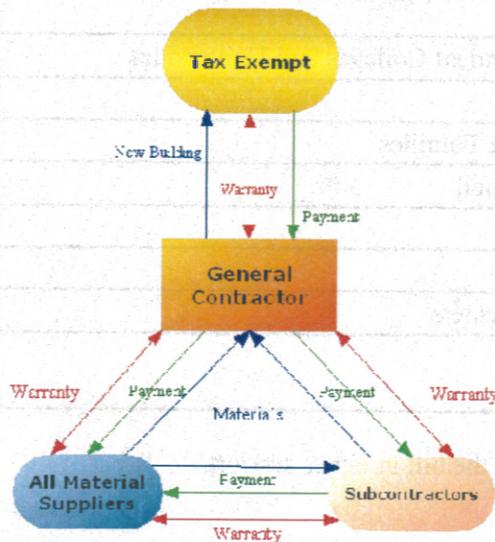
**Will there be “cheating”?** – While no one can guarantee that someone will not try to take advantage of this rule change, it is very unlikely that it will create any new problems. Contractors can already purchase any of these materials for “resale” and not pay the sales tax. The main question is this, why would a contractor take the risk of violating state tax rules and criminal charges simply to save 5% on the purchase of some additional materials? If someone does try to take advantage of the system, there is a very accurate paper trail that is left with every vendor who they buy from. When the DOR audits either the contractor or vendor the odds are very good that they will be found out. The risk/reward calculation just isn't there for most contractors to try and cheat.

**What is the cost?** – In 2011 the Dept. of Revenue fiscal estimate places the cost at \$5.5 million per year. They came up with this number by the use of various estimates because there is no actual reporting of how many tax exempt's actually direct purchase vs. paying the tax. However, based on two surveys done by AGC of Wisconsin in 2001 and in 2004 we are confident that the cost is actually much less. Those surveys showed that the well over 90% of the dollar value of non-road construction projects done by tax-exempts, particularly private non-profit tax-exempts, already avoid paying the sales tax by doing the extra paperwork. We would be glad to share the details of those surveys with anyone who is interested. The real question on the cost of this proposal is not how much it will cost, but rather who are you taking it from and why?

## - Current Law - Tax Exempt "Direct" Purchase



## - Proposed - Flow Through Purchase for all Materials



2013-2014 Legislative Session  
Registrations on Assembly Bill 76\*  
 Updated April 1, 2013

|  |
|--|
| 1. Associated Builders and Contractors of Wisconsin Inc - For        |
| 2. Associated General Contractors of Wisconsin Inc - For             |
| 3. League of Wisconsin Municipalities - For                          |
| 4. M.A. Mortenson Company - For                                      |
| 5. Miron Construction - For  |
| 6. Outagamie County Board of Supervisors - For                       |
| 7. Wisconsin Counties Association - For                              |
| 8. Wisconsin Technical College District Boards Association Inc - For |
| Wisconsin Credit Union League - Undisclosed                          |

2011-2012 Legislative Session  
Registrations on Assembly Bill 380\*  
 Updated: April 3, 2012

|  |            |   |
|--|------------|---|
| American Council of Engineering Companies of Wisconsin         | 1/10/2012  |    |
| American Subcontractors Association of Wisconsin               | 1/31/2012  |    |
| Associated Builders and Contractors of Wisconsin Inc           | 12/13/2011 |    |
| Associated General Contractors of Greater Milwaukee Inc        | 12/7/2011  |   |
| Associated General Contractors of Wisconsin Inc                | 11/28/2011 |  |
| Association of Wisconsin Tourism Attractions                   | 12/16/2011 |  |
| Construction Business Group                                    | 12/7/2011  |  |
| League of Wisconsin Municipalities                             | 11/21/2011 |  |
| Medical College of Wisconsin                                   | 12/14/2011 |  |
| Milwaukee Metropolitan Sewerage District                       | 12/13/2011 |  |
| Miron Construction   | 12/12/2011 |  |
| Operating Engineers Local #139                                 | 12/7/2011  |  |
| Outagamie County Board of Supervisors                          | 12/6/2011  |  |
| Waukesha County  | 12/2/2011  |  |
| Wisconsin Association of Independent Colleges and Universities | 12/22/2011 |  |
| Wisconsin Builders Association                                 | 12/9/2011  |  |
| Wisconsin Council on Children & Families                       | 2/8/2012   |  |
| Wisconsin Laborers District Council                            | 12/2/2011  |  |
| Wisconsin Realtors Association                                 | 12/12/2011 |  |
| Wisconsin Society of Architects                                | 11/18/2011 |  |
| Wisconsin State Council of Carpenters                          | 12/15/2011 |  |
| Wisconsin Towns Association                                    | 12/3/2011  |  |

\* There were no registered opponents of the bill in either session.

# Supporters of Changing the Sales Tax on Construction Materials Rule 2005-06 Legislative Session

## SENATE BILL 57 / ASSEMBLY BILL 126\*

Updated: October 13, 2005

### **Construction Associations**

1. Associated General Contractors of Wisconsin - AGC-Wis
2. Associated General Contractors of Greater Milwaukee - AGC-GM
3. Associated Builders and Contractors of Wisconsin - ABC
4. Wisconsin Builders Association - WBA
5. Wisconsin Society of Architects - AIA-Wis
6. American Council of Engineering Companies of Wis. - ACEC-Wis
7. National Electrical Contractors Association of Wisconsin - NECA-Wis
8. National Electrical Contractors Association of Milwaukee - NECA-Milwaukee
9. Mechanical Contractors Association of Wisconsin - MCA
10. Plumbing Heating Cooling Contractors of Wisconsin - PHCC-Wis
11. American Subcontractors Association - ASA
12. Wisconsin Transportation Builders Association - WTBA
13. Wisconsin Underground Contractors Association - WUCA
14. Aggregate Producers of Wisconsin, Inc.

### **Business Organizations**

15. Wisconsin Manufacturers and Commerce - WMC
16. National Federation of Independent Business - NFIB
17. Wisconsin Hospital Association - WHA
18. Aurora Health Care
19. American Red Cross

### **Labor Unions**

20. Wisconsin State Council of Carpenters
21. Operating Engineers Local 139
22. Wisconsin Laborers District Council
23. International Brotherhood of Electrical Workers Construction Electrician Local Unions

### **Local Government**

24. League of Wisconsin Municipalities
25. Wisconsin Alliance of Cities, Inc.
26. Wisconsin Towns Association
27. Wisconsin Counties Association
28. Dane County Cities & Villages Association
29. Kenosha County
30. Waukesha County
31. Outagamie County Board of Supervisors

### **Schools and Not for Profits**

32. Milwaukee Public Schools
33. Wisconsin Association of Independent Colleges and Universities
34. Wisconsin Association of School Boards Inc
35. Wisconsin Alliance of School District Administrators
36. Wisconsin Association of School Business Officials
37. Association of Wisconsin School Administrators
38. Wisconsin Council for Administrators of Special Services
39. Wisconsin Technical College District Board Association
40. Wisconsin Library Association
41. Municipal Environmental Group - Water Division
42. Waukesha County Technical College
43. Municipal Electric Utilities of Wisconsin

\* There were no registered opponents of the bill



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## MEMORANDUM

TO: Honorable Members of the Assembly Committee on Jobs, Economy and Mining

FROM: Kyle Christianson, Legislative & Research Associate *kc*

DATE: April 3, 2013

SUBJECT: Support for Assembly Bill 76

The Wisconsin Counties Association (WCA) supports Assembly Bill 76, which streamlines local government purchasing procedures for infrastructure projects. This bill does not adopt new tax exemptions, but insures local government purchasing is done as efficiently and cost-effective as possible.

Under current law, tax-exempt entities making infrastructure improvements must purchase materials directly from suppliers in order to avoid paying sales tax. Assembly Bill 76 allows building contractors to use the sales tax exempt status of an exempt entity when purchasing goods or services exclusively for construction for the exempt entity.

Although counties can avoid paying sales tax on these materials by making the purchase themselves, this is often a logistical and administrative burden at a time when counties are looking for efficiencies and cost-saving measures. Waukesha County is currently in the process of building a new Health and Human Services building. To date, the county has made \$8.2 million in direct purchases on behalf of its contractor for a tax savings of \$418,362. To realize these savings the county had to complete its own purchase orders and cut separate checks directly to 58 vendors in order to avoid paying the state sales tax.

It is advantageous to counties and other units of local government to allow contractors to purchase materials when constructing or remodeling facilities because it saves the time of county employees and eliminates an additional step in the construction process.

WCA respectfully requests that the Committee support Assembly Bill 76.

Please feel free to contact WCA if you need additional information.

## Wisconsin Wildlife Federation

### Testimony on Assembly Bill 76 before the Assembly Committee on Jobs, Economy and Mining

Chair Williams, Committee Members, on behalf of the Wisconsin Wildlife Federation, thank you for the opportunity to testify before you today in support of Assembly Bill 76 and for the opportunity to present a suggestion for a modest friendly addition to the legislation. We would like to thank Representative Jacque for bringing the bill forward in this session of the Legislature.

The Wisconsin Wildlife Federation is an incorporated 501 (c) (3) tax exempt, nonprofit organization, founded in 1948, comprised of 183 hunting, fishing and trapping organizations and mainly dedicated to conservation education in the State of Wisconsin.

We support the principle behind AB 76 which is to reduce paperwork of nonprofit organizations and municipalities that are tax exempt if construction materials for a tax exempt entity are purchased by a construction contractor. This bill will eliminate the paperwork associated with running the purchase through the tax exempt organization in the first instance rather than through the contractor.

The bill deals with projects associated with municipalities, school districts and nonprofit organizations. We would request that it be extended to situations where a tax exempt nonprofit organization is obtaining the construction materials through a construction contractor for a tax exempt state facility which is operated under contract by a nonprofit organization.

The Wisconsin Wildlife Federation runs the MacKenzie Environmental Education Center in Poynette under a lease from the DNR and under the lease has certain construction/maintenance responsibilities for the facilities including buildings, ancillary facilities and trails. This type of privatized operation of state facilities is not unusual and is increasing in number. Basically even though it is a state facility being improved instead of a local unit of government or tax exempt nonprofit organization, the tax situation regarding state facilities is identical in that, construction materials are being bought by a tax exempt organization for a tax exempt project.

Please consider amending AB 76 to extend the paper work reduction benefits in situations where a tax exempt state facility being improved by an otherwise tax exempt nonprofit organization.

Thank you very much for your time and attention to this issue.

Submitted by George Meyer, Executive Director, Wisconsin Wildlife Federation---April 3, 2013



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Jeffrey J. Beiriger  
jeff@assocmgmtservices.com

April 3, 2013

To: Members of the Assembly Committee on Jobs, Economy & Mining

Re: 2013 Assembly Bill 76

I represent several construction industry groups (a list of which you will find below). On behalf of each of the groups listed, I am writing in support of Assembly Bill 76 relating to a sales and use tax exemption for building materials that become part of a local unit of government or nonprofit facility.

These groups have a shared interest in AB 76 because it simplifies the construction process. Currently, the government unit or the nonprofit entity must purchase the materials in order to claim a tax exemption. This bill would allow the contractor to claim the tax exemption of behalf of the government unit or nonprofit entity.

Sometimes, you never know when worlds are going to collide....

In addition to the construction groups that I work with, I also represent the Girl Scouts of Wisconsin. I ran AB 76 past them and received this response from one of the Chief Executive Officers whose council is located in Manitowoc. She said:

*"I remember when we were doing significant construction, the council had to actually purchase the supplies rather than the contractor purchasing on our behalf or they would not be tax exempt.*

*"On a million-dollar project, it really mattered to us. It was quite a big hullabaloo to do it so we were pretty selective about what the council bought and what the contractor bought (and paid taxes on) and ended up paying tax on the smaller purchases or it would have taken us years complete the project. It also changed, pretty significantly, the bidding process of the project since the materials were not included in the bid process.*

*"If this bill goes through, it will really streamline what was really a horrible process to gain tax exemption on building materials used by a contractor on our behalf."*

So while this bill is supported by the construction industry, it isn't about the construction industry at all. Instead, it is about our customers. They want this process to be simpler....

Please keep in mind, this is not a new tax exemption. Rather, it is a restatement of existing tax exemptions for the affected entities. The policy decision to provide a sales tax exemption to these entities was made years ago. The issue before you today is about streamlining a process so that it is easier to claim the exemption than it is under current law.

Yes, there will be a fiscal note, but consider this: If the exemption had been easier to claim in the first place, there would be no lost revenue to the state. Government entities and nonprofit organizations would never have paid any taxes. The only reason there is "lost" revenue then, is because current law makes it difficult to claim the exemption.

It should be noted that the expense of paying taxes on construction materials results in increased costs to government entities and a reduction in revenues available to the nonprofit to perform its exempt activities. We think it's better to have government units and nonprofits focus their time and financial resources on what they do best and to let contractors - because of their particular expertise not only with field installations, but with planning, ordering, delivery, scheduling, and warranty - handle the purchasing of materials.

The following groups thank you for your consideration and support of the above consideration for Assembly Bill 76.

Construction

Plumbing Contractors Association of Southeastern Wisconsin  
Plumbing-Heating-Cooling Contractors Association of Wisconsin  
Specialty Contractors of Wisconsin  
Southeastern Wisconsin Drywall & Plastering Contractors Association  
Wisconsin Roofing Contractors Association  
Wisconsin Geothermal Contractors Association  
Wisconsin Water Well Association

Nonprofit

Girl Scouts of Wisconsin