



"Leadership in Public School Governance"

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TO: Senator Luther Olsen, Chair, Senate Education Committee
Members, Senate Committee on Education; Interested Persons

FROM: Dan Rossmiller, Government Relations Director

DATE: March 7, 2012

RE: Changes to **Senate Bill 382**, relating to: providing immunity from liability to a school board or the governing body of a charter school that provides public access to school grounds for certain recreational activities.

The Wisconsin Association of School Boards (WASB) did not initiate Senate Bill 382 and to date has not taken a position either for or against this bill. We do have several suggestions, however, as to how it could be improved to make it more workable for school boards, parties to recreational agreements, and participants in recreational activities under the bill. We list these suggestions below:

Changes to the bill itself:

1. The WASB believes the bill should specify that the immunity from liability provided by the new statutory section (§ 895.523 , Stats.) created by the bill is in addition to the immunity from liability provided by the existing recreational immunity statute (§ 895.52, Stats.). The existing recreational immunity statute (§ 895.52) covers outdoor activities (e.g., on tennis courts, ball diamonds, playgrounds, etc). This could be accomplished by creating a new subsection in proposed § 895.523 that "Nothing in this subsection affects the limitation of property owner's liability under s. 895.52."

Rationale: We currently presume that the existing recreational immunity statute applies to schools and charter schools as governmental units. We do not want the passage of this bill to lead courts or others to conclude that the new statutory section (§ 895.523, Stats.) created by the bill is the only immunity from liability provided to schools and charter schools.

Changes to Senate Amendment 1:

1. Section 1 of the amendment (at page 1, lines 2 to 4) effectively limits the fees that may be charged by a school board under recreational agreements by defining the "actual costs" that a school board may charge for. There is, however, no reference to fees in the newly created § 895.523, Stats. Additionally,

the proposed § 895.523, contains no cross-reference to §120.13(17), Stats., where this definition is placed.

It would be useful for all parties to a recreational agreement if new language were inserted into the newly created § 895.523, Stats. to specify that: “A school board or the governing body of a charter school that provides public access to school grounds for certain recreational activities pursuant to this section may charge a fee provided the fee does not exceed the actual costs as defined in s. 120.13 (17).”

Adding such language would tie these two statutory provisions together so both parties would be on clearer notice about what costs may be charged for.

2. At page 1, line 3 of the amendment: delete “means” and substitute “includes”.

Rationale: There may be other costs, such as costs for the use of exhaustible supplies, that may be incurred that would not necessarily be included under the amendment as drafted. An example might be costs for chalking or marking an outdoor playing field. It is not clear that the list in the bill is all-inclusive. The amendment provides a reasonableness test for costs that should serve as a guide for both schools and participants.

3. At page 3, line 18 of the amendment: after “supervised.” Insert:

“The school board or the governing body of a charter school shall have no responsibility for the supervision of participants who are minors unless the recreational agreement expressly requires the board or governing body to provide supervision.”

Rationale: The WASB is concerned that without this language, courts might wrongly presume that school districts customarily provide supervision of minors when private groups use school facilities. School boards and governing bodies of charter schools should have the flexibility to determine whether they wish to provide supervision or leave supervision to the groups that wishes to use the school grounds or school facilities.

4. At page 3, line 19 of the amendment: delete that line.

Rationale: It is unclear what practical meaning this provision (i.e., proposed paragraph (e)) has. The WASB is concerned that participants are not parties to the agreement and won't know if they are subject to this assumption of risk or not. Further, the amendment provides no requirement that participants receive notice of this statement describing their assumption of risk. The WASB is also concerned that participants who are minors may lack the legal ability to appreciate the nature of the risks or to consent to assuming them. The WASB recommends deleting proposed paragraph (e).

Thank you for your consideration of these proposed changes.