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TO: Members, Legislative Council Study Committee on Publication of Government Documents and Legal Notices  
FROM: Dan Rossmiller, WASB Government Relations Director  
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On behalf of the Wisconsin Association of School Boards (WASB), and the 421 school boards across the state that we represent, thank you for the opportunity to testify before the study committee.

From the outset, I want to make it absolutely clear that school boards **do not** want to stand in the way of providing required notices and other required written information to the public. However, school boards **do** want flexibility regarding how to provide such required information to their communities. We appreciate the opportunity to offer policy suggestions to this study committee.

The WASB's positions on policy issues are generally determined by resolutions adopted by our Delegate Assembly, which meets annually at the time of the State Education Convention in January. One representative from each WASB member school board is entitled to vote at the Delegate Assembly. Earlier this year the delegates approved the following resolution:

**Resolution 1.60 Elimination/Reduction of Newspaper Notice/Publishing Requirements**

The WASB supports legislation allowing school districts to publish statutorily-required notices electronically on the school district website and other social media maintained by the school district in lieu of publishing these notices in newspapers.

Certainly, school board members are interested in improving operational efficiency and reducing costs, which having the option to provide information via the school district website (and perhaps supplemented by other social media maintained by the district) may afford. However, boards most want to be able to choose the method of providing notice that best meets local circumstances in terms of both cost to taxpayers and effectiveness in reaching the desired audience.

In school communities where Internet penetration is low and download speeds are slow, they may choose to continue to utilize newspaper publication. Where the public is more capable of using electronic delivery, board members want the option to use electronic delivery. As an organization, we favor allowing this to be a local decision based on local needs and circumstances. To the extent legislation is necessary, our members' position reflected in the resolution is that the law should generally set the clear goal of making information available to the public and leave the means for providing that information to local control.

This resolution language was proposed before 2015 Wisconsin Act 79 took effect but is no less relevant following the enactment of this new law.

Prior to Act 79, section 895.05 (1) of the state statutes had long provided that, instead of issuing a legal notice under Chapter 895 by means of paid publication in a qualified newspaper, the governing body of a municipality (defined to include a school district) had the authority to direct the use of an alternative method of publication or posting under the following three conditions:

- 1) There must be no statutory requirement for the municipality to have an official newspaper. (This requirement is not an issue for school districts because no school district is subject to such a requirement.)
- 2) The specific legal notice in question must not be subject to an exception that disqualifies it from the alternative posting process.
- 3) If the municipality has designated an official newspaper as a discretionary decision, a legal notice published in any newspaper generally must be published in the official newspaper.

If the governing body of a municipality had directed the posting of a qualifying legal notice in lieu of paid newspaper publication, the version of section 895.02(2) that existed prior to Act 79 stated that the notice had to be posted according to specified deadlines *in at least three public places likely to give notice to persons affected.*

The key change made by Act 79 was to amend section 895.02(2) to authorize an additional alternative method of posting in lieu of publication. Specifically, under Act 79, if the governing body of a municipality (i.e., a school board) substitutes posting for publication, it may now do so by posting the notice in at least one public place likely to give notice to persons affected and placing the notice electronically on an Internet site maintained by the municipality.

For certain legal notices under chapter 985, in lieu of paying for a newspaper to publish the legal notice, Act 79 now expressly permits school boards to direct the administration to post a physical (paper) copy of certain legal notices in one public location, provided that an electronic copy of any such legal notice is also placed on a website maintained by the school district. This discretionary authority to allow direct posting in lieu of newspaper publication applies to some, but not all, chapter 985 legal notices.

We have identified several school district legal notices expressly required to be published as Class 1 notices under chapter 985 that now (post Act 79) appear to be eligible for posting in lieu of publication, if the school board so directs. We find no statutory exception that precludes posting for the following:

1. The annual notice of educational options that school districts must publish under s. 118.57, Stats.

2. The annual notice of the board's notice of board policies on pupil nondiscrimination that school districts must publish pursuant to section PI 9.05 of the state administrative code.
3. Notice of rules related to the designation and maintenance of pupil records that are adopted under s. 118.125(3) Stats.
4. Notice of the annual budget hearing and budget summary as specified under section 65.90(3)(a).
5. Notice of board-approved budget amendments (i.e., changes in the amounts of the various appropriations and the purposes for such appropriations stated in a budget), as provided in section 65.90(5)(a).

Nevertheless, there are a number of newspaper publication requirements for school districts that were not eased by Act 79.

For example, legal notices related to school board elections conducted under section 120.06 of the statutes are expressly *ineligible* for posting in lieu of publication. This is explicitly stated in s. 895.05 (1): "Posting may not be substituted for publication in school board elections under s. 120.06..." Accordingly, paid newspaper publication is always required for such school board elections notices. For notices related to school district referenda, districts must also be aware of the limitations and procedures found in section 10.05 of the state statutes.

It is unclear whether the authority granted in sections 985.05(1) and 985.02(2) permits the board of a common or union high school district to direct the clerk to post (instead of publish) the Class 2 notices of an annual or special meeting of the district electors. It is possible that the school board may not have the authority to make this choice for the electors of the district. At the same time, allowing electronic posting of the annual meeting notice (in lieu of two newspaper insertions) would appear to serve the goal of providing adequate notice given that (1) the electronic notice could be continuously available online for several days in a row (rather than appearing in just two papers), and (2) the annual meeting statutes currently permit the annual meeting of electors to be held even in the event imperfect notice is given.

Finally, there is the requirement that the proceedings of school board meetings must be published as a Class 1 notice. As defined by state law, the proceedings must include the substance of every official action taken by the board. "Substance" under the law means "an intelligible abstract or synopsis of the essential elements of the official action taken by the board, including the subject matter of a motion, the persons making and seconding the motion and the roll call vote on the motion."

The relevant statutes are ambiguous as to whether a school board may use the authority found in sections 985.05(1) and 985.02(2) to direct the posting of the proceedings of school board meetings in districts in which a newspaper is published. A conservative interpretation of the relevant statutes would



require a school board to follow the options that are expressly identified in section 120.11(4) of the statutes, under which any school district that has a newspaper published in the district must either publish the meeting proceedings in the newspaper published in the district or publicize the proceedings using a district-wide distribution that is paid out of school funds.

In our view, allowing school boards discretion—the option—to post board proceedings in lieu of paid newspaper publication would be a welcome extension of the principle or intent reflected in Act 79. Whether posted or published, the proceedings describe events that have occurred in the past. Neither the act of publication nor posting of a record of past events changes in any way the substance of the events recorded. Proceedings are, to use a phrase, “old news.” By the time they are published, there has likely been an another board meeting, at which those minutes or proceedings were discussed and approved.

Further, districts wrestling with tight finances due to the constraint of revenue limits that have not been adjusted in the last or current fiscal year are searching for ways to conserve scarce resources for programs for children. Every bit of savings counts. Allowing schools to post proceedings and other legal notices in public places and on their web sites will reduce their publication costs. These costs not only include the “hard” costs to a school district of paying to publish the proceedings or other notices, which can be significant, but also may include “soft” costs associated with staff time spent formatting the content, trying to condense the content to reduce the number of column inches needed and ensuring it is prepared on time to meet the newspaper’s publication schedule.

If a board determines that posting its proceedings in one public place and publishing the proceedings on the district’s website is both cost effective and will afford the public an adequate opportunity to access and review this record, it should be allowed discretion to do so. To those who argue that this would limit access to the proceedings to only those with Internet access, we note that the most likely place that those who do not subscribe to the newspaper could go to access a copy is at their public library, which is also a place where Internet access is available.

We are hopeful that the legislation recommended by this committee will ultimately include provisions providing clarity to the ambiguous statutes and allowing for school districts to post certain notices and/or documents on their website as opposed to paying to publish them in a newspaper. We recognize that school boards and local governments need to be transparent and that the public is entitled to certain information, but we also understand that our members believe schools should be able to provide this information in a manner that is cost-effective and in a medium that best serves the local community.