

2011 DRAFTING REQUEST

Bill

Received: 08/01/2011

Received By: tkuczens

Wanted: As time permits

Companion to LRB:

For: Garey Bies (608) 266-5350

By/Representing:

May Contact:

Drafter: tkuczens

Subject: Education - school boards
Courts - immunity liability

Addl. Drafters:

Extra Copies: pg

Submit via email: YES

Requester's email: Rep.Bies@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Provide immunity from liability to school districts that make schools and grounds accessible for certain recreational activities

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	tkuczens 09/07/2011	csicilia 09/13/2011	jfrantze 09/13/2011	_____	ggodwin 09/13/2011		
	tkuczens 10/10/2011	csicilia 10/11/2011		_____			
/P2	tkuczens 11/15/2011	csicilia 11/21/2011	rschluet 10/11/2011	_____	mbarman 10/11/2011		

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/P3			jfrantze 11/21/2011	_____ _____	sbasford 11/21/2011		
/1	tkuczens 12/14/2011	kfollett 12/14/2011	phenry 12/14/2011	_____ _____	sbasford 12/14/2011	sbasford 01/04/2012	

FE Sent For: *None*

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Bill

Received: **08/01/2011**

Received By: **tkuczens**

Wanted: **As time permits**

Companion to LRB:

For: **Amy Loudenbeck (608) 266-9967**

By/Representing: **Lonna Morouney**

May Contact:

Drafter: **tkuczens**

Subject: **Education - school boards
Courts - immunity liability**

Addl. Drafters:

Extra Copies: **pg**

Submit via email: **YES**

Requester's email: **Rep.Loudenbeck@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

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Topic:

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For: Amy Loudenbeck (608) 266-9967

By/Representing: Lonna Morouney

May Contact:

Drafter: tkuczens

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Courts - immunity liability

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11/5/11
12/1/11

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2011 DRAFTING REQUEST

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Received: 08/01/2011

Received By: tkuczens

Wanted: As time permits

Companion to LRB:

For: Jeff Fitzgerald (608) 266-2540

By/Representing: Jason Bauknecht

May Contact:

Drafter: tkuczens

Subject: Education - school boards
Courts - immunity liability

Addl. Drafters:

Extra Copies: pg

Submit via email: YES

Requester's email: Rep.Fitzgerald@legis.wisconsin.gov

Carbon copy (CC:) to: tracy.kuczenski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

See attached

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P3 gs 11/21
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FE Sent For:

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By/Representing: Jason Bauknecht

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Handwritten: P2 y's 10/11
11
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/?	tkuczens	P1 js 9/13	11 9/13	pk 9/13			

FE Sent For:

<END>

Kuczenski, Tracy

From: Kite, Robin
Sent: Thursday, July 28, 2011 4:15 PM
To: Grant, Peter; Kuczenski, Tracy
Subject: FW: Drafting Request

Attachments: MN Joint Use.pdf

This looks like an education draft to me. Do you agree?

Robin

From: Bauknecht, Jason
Sent: Thursday, July 28, 2011 2:13 PM
To: Kite, Robin
Subject: Drafting Request

Robin, would you be the one to draft similar language to the attached? If not, could you please forward this along to the proper drafter?



MN Joint Use.pdf
(90 KB)

Thank you for your help.

Jason Bauknecht
Speaker Fitzgerald's Office
266-2540

CHAPTER 57—H.F.No. 1343

An act relating to civil actions; providing immunity in certain cases involving the use of school facilities for recreational activities; amending Minnesota Statutes 2010, section 466.03, subdivision 6e, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 466.03, subdivision 6e, is amended to read:

Subd. 6e. **Parks and recreation areas.** Any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services, or from any claim based on the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, if the claim arises from a loss incurred by a user of park and recreation property or services. Nothing in this subdivision limits the liability of a municipality for conduct that would entitle a trespasser to damages against a private person, except as provided in subdivision 23.

Sec. 2. Minnesota Statutes 2010, section 466.03, is amended by adding a subdivision to read:

Subd. 23. **Recreational use of school property and facilities.** (a) Any claim for a loss or injury arising from the use of school property or a school facility made available for public recreational activity.

(b) Nothing in this subdivision:

(1) limits the liability of a school district for conduct that would entitle a trespasser to damages against a private person; or

(2) reduces any existing duty owed by the school district.

Sec. 3. **EFFECTIVE DATE.**

Sections 1 and 2 are effective the day following final enactment and apply to causes of action arising on or after that date.

Presented to the governor May 23, 2011

Signed by the governor May 24, 2011, 2:23 p.m.

Kuczenski, Tracy

From: Kuczenski, Tracy
Sent: Sunday, July 31, 2011 12:38 PM
To: Bauknecht, Jason
Subject: RE: Drafting Request

Rm 211 W

Hi Jason -

I believe recreational immunity for activities on or the use of school property and facilities is covered by current law s. 895.52, Recreational activities; limitation of property owners' liability. That section defines property owner to include "governmental body" and, in turn, defines "governmental body" broadly to include "A county or municipal governing body, agency, board, commission, committee, council, department, district or any other public body corporate and politic created by constitution, statute, ordinance, rule or order." A school district would fall under this definition.

Section 895.52 (2), stats., limits the liability for recreational activities undertaken on property and substantially limits the duty of the property owner, here, the school district, to keep the property safe for recreational activities, inspect the property, or provide notice of an unsafe condition.

Let me know if I am missing something or have misunderstood your request.

Thanks,
Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

Tracy F. w/ AJ Wilson 8/1/11
Goal: help create incentive for schools to allow events inside the schools and with the same scope of limited liability.

From: Kite, Robin
Sent: Thursday, July 28, 2011 4:15 PM
To: Grant, Peter; Kuczenski, Tracy
Subject: FW: Drafting Request

This looks like an education draft to me. Do you agree?

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Subject: Drafting Request

Robin, would you be the one to draft similar language to the attached? If not, could you please forward this along to the proper drafter?

Thank you for your help.

Jason Bauknecht
Speaker Fitzgerald's Office
266-2540

→ maintain level of safety for market in which building used (liquor, access, egress, stairwells, ingoat condition, etc.)
→ encourage shared use recreational use:
→ educational activities? (heating, living, etc.)
→ heart-healthy: BB, classes, yoga, track, gym-type
* impact of charging a fee. Spectators? Participants?

Hubbard Wilson & Zelenkova
AJ Wilson - ~~Assistant Attorney General~~
255-0566
772-5670 (cell)
awilson@hwz-gov.com

8-19-2011

Rep. Fitzgerald staff (Jason), AJ Wilson, Melissa Horn (♥ Assn.)

- indoor activities (exemption from liability)
- school facilities (esp. a gym or recreation room)

Encourage s.d. to allow access to citizens, orgs,
groups to put together a program or to participate
in a

schools would / set their own terms ^{skill} ~~of use~~ / - or ^{including to refer to} ~~of use~~ ^{operators to}
could enter into a joint lease to, for example, host
yoga classes

* liability shield would extend under the

→ Promote health & exercise (hoops, jump rope, yoga, aerobics)

→ Question: can s.d. charge a fee? yes - fee should
not eliminate liability shield.

* liability shield would only apply to the s.d. (and its
agents & employees) that is accounting
Focus on users of school facilities

^{whatever}
→ ~~standard~~ standard that applies to agents & employees now were
they to promote / participate in outdoor activity (?) ~~could~~
also apply to agents & employees under new exemption,
but Melissa will get back to me.

* Activities that

* Promote exercise -

* Define school recreation facility - broadly. Melissa will provide
language.

Kuczenski, Tracy

From: Melissa Horn [melissa.horn@heart.org]
Sent: Tuesday, August 23, 2011 11:21 AM
To: Kuczenski, Tracy
Cc: AJ Wilson
Subject: Joint Use definitions

Hi Tracy,

I hope you had a great weekend! I wanted to follow up from Friday's conversation around removing liability risk for opening up facilities after hours as a means to promote physical activity and wellness within communities.

Below are the sample definitions we discussed to update Wisconsin's statutes with:

Sample Definitions:

1. Recreation –any indoor or outdoor game or physical activity, either organized or unorganized, undertaken for exercise, relaxation, diversion, sport, or pleasure.
2. School property: all indoor or outdoor structures, facilities and land, whether owned, rented or leased by the school or school district
3. Sport: an activity requiring physical exertion and skill, and which by its nature and organization is competitive, includes a set of rules and generally accepted as being a sport.

Basically, we want to clarify that school facilities *can* be made available for public use, at the discretion of the school district in a way that encourages physical activity and wellness.

Otherwise, I know there were questions we discussed on whether or not to include school officials/promoters and what to do with spectators who are charged a fee. I have a request to our national office and will get back to you tomorrow with a response on that.

Thanks for your help with this!

Melissa Horn

Government Relations Director - Wisconsin

American Heart Association and American Stroke Association, Midwest Affiliate

2850 Dairy Dr., Ste. 300
Madison, WI 53718-6751
Office: 608-221-8866 ext. 2336
Fax: 608-221-9233
Cell: 314.952.4742

Melissa.Horn@heart.org

Heart Disease and Stroke. You're the Cure.

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Join Us on Facebook!





State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-27862 P1

TKK.:|:....

cjs RMR
[Handwritten signature]

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV

in 9/7/11

[Handwritten signature]

wanted 9/14/11

Gov Cat

1

AN ACT/...; relating to: *???*

providing immunity from liability to a school board that provides public access to school grounds for certain recreational activities

PRELIM →

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 1. 120.13 (17) of the statutes is amended to read:

120.13 (17) TEMPORARY USE OF SCHOOL PROPERTY. Grant the temporary use of school grounds, buildings, facilities, or equipment, upon such conditions, including fees not to exceed actual costs, as determined by the school board, to any responsible person for any lawful nonschool purpose if such use does not interfere with use for school purposes or school-related functions. Fees received under this subsection shall be paid into the school district treasury and accounted for as prescribed under s. 115.28 (13). The user shall be primarily liable, and, except as provided in s. 895.523, the school board secondarily liable, for any damage to property and for any

1 expense incurred in consequence of any use of school grounds, buildings, facilities,
2 or equipment under this subsection.

History: 1973 c. 94, 290; 1975 c. 115, 321; 1977 c. 206, 211, 418, 429; 1979 c. 20, 202, 221, 301, 355; 1981 c. 96, 314, 335; 1983 a. 27, 193, 207, 339, 370, 518, 538; 1985 a. 29 ss. 1725e to 1726m, 1731; 1985 a. 101, 135, 211; 1985 a. 218 ss. 12, 13, 22; 1985 a. 332; 1987 a. 88, 187; 1989 a. 31, 201, 336, 359; 1991 a. 39, 226, 269; 1993 a. 16, 27, 284, 334, 399, 450, 481, 491; 1995 a. 27 ss. 4024, 9126 (19), 9145 (1); 1995 a. 29, 32, 33, 65, 75, 225, 235, 289, 439; 1997 a. 27, 155, 164, 191, 237, 335; 1999 a. 9, 19, 73, 83, 115, 128; 1999 a. 150 s. 672; 1999 a. 186; 2001 a. 38, 98, 107, 105; 2003 a. 254; 2005 a. 22, 194, 290, 346; 2005 a. 443 s. 265; 2007 a. 20 ss. 2738, 9121 (6) (a); 2007 a. 36, 70, 97; 2009 a. 14, 28, 76, 146, 185, 208, 218; 13.92 (2) (i).

3 **SECTION 2. 895.523** of the statutes is created to read:

4 **895.523 Recreational activities in a school building or on school**
5 **grounds; limitation of liability. (1) DEFINITIONS.** In this section:

6 (a) "Injury" means an injury to a person or to property.

7 (b) "Nonprofit organization" means an organization or association not
8 organized or conducted for pecuniary profit. ✓

****NOTE: Is this definition adequate?

9 (c) "Recreational activity" means any indoor or outdoor physical activity, sport,
10 team sport, or game, whether organized or unorganized, undertaken for the purpose
11 of exercise, relaxation, diversion, or pleasure and sponsored, organized, or promoted
12 by a nonprofit organization.

13 (d) "Recreational agreement" means a written authorization granted by a
14 school board to a nonprofit organization permitting public access to all or a specified
15 part of the school grounds for the purpose of any recreational activity to be sponsored,
16 organized, or promoted by the nonprofit organization.

17 (e) "School board" means the school board or board of school directors in charge
18 of the public schools of a school district. ✓

****NOTE: Do you want to include charter schools in this draft? Current law defines charter school as a school under contract with a school board or with certain designated entities (see s. 115.001 (1), stats.). However, the school board or entity with which the charter school contracts does not operate the charter school or necessarily own, rent or lease the property on which the charter school is located; as a result, as drafted, this bill would not waive liability for recreational activity on the grounds of a school used as a charter school. Please advise.

1 (f) "School building" means a building designed for and used as a school by a
2 school district. ✓

3 (g) "School grounds" means real property, and any school buildings, accessory
4 buildings, structures, and improvements thereon, owned, leased, or rented by a
5 school board and used primarily for public school purposes. ✓

6 (h) "Sport" means an activity requiring physical exertion and skill and which,
7 by its nature and organization, is competitive and includes a set of rules for play. ✓

****NOTE: I have modified the proposed definition for "sport". I eliminated that
portion of the definition that read: "is generally accepted as being a sport." First, this
clause defined the term, sport, by using the term, "sport," so it is circular. Second, I'm not
sure what you mean by "generally accepted." Generally is a subjective (not exact) term,
and accepted by whom? Let me know if you wish to restore the language or propose
alternative language.

and no

5

8 (2) NO DUTY; IMMUNITY FROM LIABILITY. (a) Except as provided in sub. (3), no
9 school board or officer, employee, or agent of a school board owes to any person who
10 enters the school grounds of the school board to engage or participate in a
11 recreational activity held pursuant to a recreational agreement any of the following:

- 12 1. A duty to keep the school grounds safe for the recreational activity.
- 13 2. A duty to inspect the school grounds.
- 14 3. A duty to give warning of an unsafe condition, use, or activity on the school
15 grounds.

16 (b) Except as provided in sub. (3), no school board, and no officer, employee, or
17 agent of a school board, is liable for the death of, any injury to, or any death or injury
18 caused by, a person engaging or participating in a recreational activity held pursuant to
19 a recreational agreement and taking place on the school grounds of the school board.

20 (3) LIABILITY. Subsection (2) does not limit the liability of a school board or an
21 officer, employee, or agent of the school board for a death or injury caused by a
22 malicious act or by a malicious failure to warn against an unsafe condition of which

4 - in a recreational agreement and being used

1 an officer, employee, or agent of the school board knew and which occurs on the school
2 grounds of a school board designated for use by a nonprofit organization for a
3 recreational activity pursuant to ^{held} ~~of the~~ recreational agreement.

****NOTE: Current law does not extend a limitation of liability to the state or a local unit of government or government agency when the state or that local unit of government or government agency charges a fee for spectators for recreational activities as that term is defined under s. 895.52 (1) (g). See, e.g., s. 895.52 (3) (a) and (4) (a). There is no similar provision in this draft were the school board to charge a fee to spectators to watch the recreational activities sponsored by a nonprofit organization. Is that your intent? ✓

INS X

4 (4) NO DUTY OR LIABILITY CREATED. Except as expressly provided in this section,
5 nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine
6 creates any duty of care or ground of liability toward any person who uses school
7 grounds to engage or participate in a recreational activity.

held pursuant to a recreational agreement ✓

8 SECTION 3. Initial applicability.

9 (1) In this section:

10 (a) "Recreational activity" has the meaning given in section 895.523 (1) (c) of
11 the statutes, as created by this act.

12 (b) "School grounds" has the meaning given in section 895.523 (1) (g) of the
13 statutes, as created by this act.

14 (2) This act first applies to any injury to or the death of, or any injury or death
15 caused by, a person engaged ^{ing} in a recreational activity on school grounds on the
16 effective date of this subsection.

or participating

(END)

by a person engaging or participating in a recreational activity

As a result, regardless of whether the school board charged a fee to spectators ~~of the school board~~ if a spectator is injured while watching that recreational activity, ~~as to fixed in statute~~ the school board district would not be liable for the injuries. (I)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2786/Plins
TKK:.....

1
2
3
4
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Insert ~~AAA~~ X

✓

SECTION 1. 895.525 (5) of the statutes is amended to read:
895.525 (5) EFFECT ON RELATED PROVISION. Nothing in this section affects the
limitation of property owners' liability under s. 895.52 or the limitation of school
boards' liability under s. 895.523.

History: 1987 a. 377; 1995 a. 223, 447; 1997 a. 242; 2005 a. 155.

Kuczenski, Tracy

From: AJ Wilson [awilson@hwz-gov.com]
Sent: Wednesday, September 21, 2011 3:30 PM
To: Kuczenski, Tracy
Subject: Re: P draft on recreational activities

CRB - 2786/P1

Great. Thanks. We'll noodle on rec agreement and let you know but feel free to proceed with it in there.... I'm guessing some interested parties will have their own ideas down the road.

On Sep 21, 2011, at 3:16 PM, Kuczenski, Tracy wrote:

Hi AJ -

Everything you outline sounds good. I just misremembered or misunderstood that entities and individuals other than just nonprofits would be able to approach a school board under this new provision. If I have any other questions, I'll get back to you.

If you had an idea about how to structure what you outline below in a way that does not require some sort of recreational agreement, I am happy to draft it that way, but I am having a hard time figuring how to do that.

Tracy

Tracy K. Kuczenski
 Legislative Attorney
 Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
 (608) 266-9867

From: AJ Wilson [<mailto:awilson@hwz-gov.com>]
Sent: Wednesday, September 21, 2011 3:06 PM
To: Kuczenski, Tracy
Cc: Bauknecht, Jason; Melissa Horn
Subject: Re: P draft on recreational activities

Hi Tracy,

I totally get what you're saying. To step back a bit, below I've summed up what we're striving for and the confines discussed in the Speaker's office. I think we just may need to go back to the drawing board on a few things.

Our goal is to encourage the availability of indoor school property to the community (i.e. any individual or group) during non-school hours for recreational activities. While our organization often sponsors organized events, we don't want to limit the bill to just providing schools the limited liability during sponsored events. We want anyone to be able to ask a school to use the facility for recreational purposes after school hours and encourage the school to say "yes" by providing the shield -- but maintain the school's ability to say "No" under any

circumstances as well.

Confines discussed in Speaker's office:

We discussed extending existing outdoor liability limit to indoor areas but saw a lot of pitfalls so we decided to focus only on school grounds.

We were a little hung up on current law provision re: spectators but I thought we decided that if spectators were charged a fee - by the school or by an organization sponsoring an event - that the shield would be lost. Because we're concerned with the policy of encouraging exercise and recreation, we were OK with that result as this bill isn't meant to be about encouraging charitable fundraising.

We also wanted to give the school the ability to charge a fee for the cost of the actual expenses associated with allowing use of the property.

As to my earlier answers to your questions re: charter school inclusion, definition of "sport", and the like, those answers are still good where applicable. And if you think the "recreational agreement" language is necessary, we're fine with that.

Thank you very much,
AJ

On Sep 21, 2011, at 1:20 PM, Kuczenski, Tracy wrote:

Hi AJ -

I'm not necessarily confused about what you are asking, but what you are asking is distinguishable from the provisions under current law s. 895.52. The difference between the outdoor recreational immunity for property owners who permit people to engage in outdoor recreational activities on their land, under s. 895.52, stats., and the recreational immunity for school boards for activities that take place on school grounds, as created in this bill, is that the activities occurring on the school grounds under this bill are being organized and sponsored by you or me or the nonprofit or corporation; that is, you or I or the nonprofit entity are providing inducement to come onto the school grounds and engage in an organized activity. In contrast, under current law s. 895.52, the person engaging in the outdoor recreational activities is doing so on his or her own initiative, without an explicit invitation from the land owner to engage in the activity. In fact, the definition of recreational activity under current law explicitly excludes "any organized team sport activity sponsored by the owner of the property on which the activity takes place." See s. 895.52 (1) (g). Also, under current law, when participants are charged money to engage in a recreational activity, immunity does not attach. See s. 895.52 (6) (a). And when spectators are charged money to observe a recreational activity (presumably an organized activity as opposed to a chance outing), the immunity does not attach. See s. 895.52 (3) (a) and (4) (a). This is not to say that I can't draft what you are asking me to draft, just that what you are asking me to draft is different than what current law provides for the outdoor recreational immunity.

You also indicate that "it is up to the school board to grant permission" to a person or entity seeking to use the property; I think it would be difficult for the school board to ***effectively*** (legally) do that without a recreational agreement.

Thanks,
Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: AJ Wilson [<mailto:awilson@hwz-gov.com>]
Sent: Wednesday, September 21, 2011 12:44 PM
To: Kuczenski, Tracy
Cc: Bauknecht, Jason
Subject: Re: P draft on recreational activities

1. We'd like it applicable to everyone - you, me, groups, clubs, for-profits, non profits, etc. - like the outdoor immunity. Because ultimately, it's still up to the school to grant permission, right? I'm sorry if we were unclear on that.
2. Good question, let me ask my folks. Again, just thinking we don't want to create hurdles or things that could be perceived as hurdles. Even if we didn't have language concerning a "recreational agreement", couldn't a school district on it's own require something to that effect - i'm sure their legal counsel would tell them to...
3. Sounds good.
4. Ok, good.

If I'm confused or we've confused you on 1), just give me a holler. 772-5670.

Thanks very much!
AJ

On Sep 21, 2011, at 9:47 AM, Kuczenski, Tracy wrote:

Hi AJ –

1. The attachment of limited liability does not need to occur only when a nonprofit is involved. What other entities do you want included?
2. As for your question about the need for a recreational agreement, in the absence of a recreational agreement, how did you foresee the school setting terms for use and agreeing to

provide access to the entity which is sponsoring the recreational activity? Also, in the absence of a recreational agreement, how does the nonprofit or other entity know the scope of its own liability?

3. I can easily incorporate charter schools into the next draft. In that case, the operator of the charter school (rather than the school board of the school district) and its officers, employees and agents will be relieved of liability.

4. I have no problem retaining the definition for sport.

Thanks,
Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: AJ Wilson [<mailto:awilson@hwz-qov.com>]
Sent: Tuesday, September 20, 2011 4:52 PM
To: Kuczenski, Tracy
Cc: Bauknecht, Jason
Subject: P draft on recreational activities

Hi Tracy,

I'm looking at the draft and it appears that the liability limit only attaches when a non profit's involved. While I think the expectation is that it's unlikely that a school will be willing to open up for just anyone that wants to use the facility, I don't think we want to limit it so much that only a non profit has access... it would create issues for groups that don't have legal non profit status or prevent a "for profit" that is charitably trying to encourage or promote a healthy activity, etc. Likewise, I don't think we'd want to statutorily require a "recreational agreement" - unless you think there are reasons it's necessary?

If I'm reading wrong just let me know and I apologize if this contradicts any impressions you had from our meeting or from the materials you were provided.

To answer your questions contained in the draft. 1) I think we want it to apply to charter schools; 2) the spectator language is fine as is; and 3) AHA for some reason feels strongly about having a definition for "sport" - not sure why - so the "generally accepted" part can be deleted but they'd like "an activity requiring physical exertion and skill, and which by its nature and organization is competitive, includes a set of rules." to stay. I'm not even sure why "sport" is defined separately, but if you don't see a problem having it as described then I guess I'll live.

Give me a call with any questions. 772-5670

Thanks!
AJ



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2786/PT2

TKK:cjs:jf

Insert

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

10/10/11

soon

Gen Cat

SAW

1 AN ACT *to amend* 120.13 (17) and 895.525 (5); and *to create* 895.523 of the
2 statutes; **relating to:** providing immunity from liability to a school board that
3 provides public access to school grounds for certain recreational activities.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 120.13 (17) of the statutes is amended to read:
5 120.13 (17) TEMPORARY USE OF SCHOOL PROPERTY. Grant the temporary use of
6 school grounds, buildings, facilities, or equipment, upon such conditions, including
7 fees not to exceed actual costs, as determined by the school board, to any responsible
8 person for any lawful nonschool purpose if such use does not interfere with use for
9 school purposes or school-related functions. Fees received under this subsection

1 shall be paid into the school district treasury and accounted for as prescribed under
2 s. 115.28 (13). The user shall be primarily liable, and, except as provided in s.
3 895.523, the school board secondarily liable, for any damage to property and for any
4 expense incurred in consequence of any use of school grounds, buildings, facilities,
5 or equipment under this subsection.

6 SECTION 2. 895.523 of the statutes is created to read:

7 **895.523 Recreational activities in a school building or on school**
8 **grounds; limitation of liability.** (1) DEFINITIONS. In this section:

Insert 2-10

9 (b) (a) "Injury" means an injury to a person or to property.

10 (b) "Nonprofit organization" means an organization or association not
11 organized or conducted for pecuniary profit.

***NOTE: Is this definition adequate?

12 (c) "Recreational activity" means any indoor or outdoor physical activity, sport,
13 team sport, or game, whether organized or unorganized, undertaken for the purpose
14 of exercise, relaxation, diversion, or pleasure and sponsored, organized, or promoted
15 by a nonprofit organization ^{a person}.

Insert 2-16

16 (d) "Recreational agreement" means a written authorization granted by a
17 school board ^{or the governing body of a charter school} to a nonprofit organization ^{a person} permitting public access to all or a specified
18 part of the school grounds for the purpose of any recreational activity to be sponsored,
19 organized, or promoted by the nonprofit organization ^{a person}.

20 (e) "School board" means the school board or board of school directors in charge
21 of the public schools of a school district.

***NOTE: Do you want to include charter schools in this draft? Current law defines charter school as a school under contract with a school board or with certain designated entities (see s. 115.001 (1), stats.). However, the school board or entity with which the charter school contracts does not operate the charter school or necessarily own, rent or lease the property on which the charter school is located; as a result, as drafted, this bill

would not waive liability for recreational activity on the grounds of a school used as a charter school. Please advise.

1 (f) "School building" means a building designed for and used as a school by a
2 ~~board or by the governing body of a charter school~~
~~school district.~~

3 (g) "School grounds" means real property, and any school buildings, accessory
4 buildings, structures, and improvements thereon, owned, leased, or rented by a
5 ~~school board~~ ^{or by the governing body of a charter school} and used primarily for public school purposes.

6 (h) "Sport" means an activity requiring physical exertion and skill and which,
7 by its nature and organization, is competitive and includes a set of rules for play.

****NOTE: I have modified the proposed definition for "sport." I eliminated that portion of the definition that read: "is generally accepted as being a sport." First, this clause defined the term, sport, by using the term, "sport," so it is circular. Second, I'm not sure what you mean by "generally accepted." Generally is a subjective (not exact) term, and accepted by whom? Let me know if you wish to restore the language or propose alternative language.

8 (2) NO DUTY; IMMUNITY FROM LIABILITY. (a) Except as provided in sub. (3), no
9 ~~school board,~~ ^{no governing body of a charter school} and no officer, employee, or agent of a school board, ^{or of a governing body of a charter school} owes to any person
10 who enters the school grounds of the school board ^{or of the governing body of a charter school} to engage or participate in a
11 recreational activity held pursuant to a recreational agreement any of the following:

- 12 1. A duty to keep the school grounds safe for the recreational activity.
- 13 2. A duty to inspect the school grounds.
- 14 3. A duty to give warning of an unsafe condition, use, or activity on the school
15 grounds. ^{no governing body of a charter school}

16 (b) Except as provided in sub. (3), no school board, ^{or of a governing body of a charter school} and no officer, employee, or
17 agent of a school board, ^{or of the governing body of a charter school} is liable for the death of, any injury to, or any death or injury
18 caused by, a person engaging or participating in a recreational activity held pursuant
19 to a recreational agreement and taking place on the school grounds of the school
20 board.

↳ a governing body of a charter school;

① (3) LIABILITY. Subsection (2) does not limit the liability of a school board for an
 ② officer, employee, or agent of the school board ^{or of the governing body of a charter school} for a death or injury caused by a
 3 malicious act or by a malicious failure to warn against an unsafe condition of which
 4 an officer, employee, or agent of the school board ^{or of the governing body of a charter school} knew, which occurs on the school
 ⑤ grounds of ^{the} school board ^{or of the governing body of a charter school} designated for use in a recreational agreement and being
 ⑥ used by a nonprofit organization ^{person} for a recreational activity held pursuant to the
 7 recreational agreement.

le *****NOTE: Current law does not extend a limitation of liability to the state or a local unit of government or government agency when the state or that local unit of government or government agency charges a fee for spectators for recreational activities as that term is defined under s. 895.52 (1) (g). See, e.g., s. 895.52 (3) (a) and (4) (a). There is no similar provision in this draft were the school board to charge a fee to spectators to watch the recreational activities sponsored by a nonprofit organization. As a result, regardless of whether the school board charged a fee to spectators, if a spectator is injured by a person engaging or participating in a recreational activity while watching that recreational activity, the school district would *not* be liable for the injuries. Is that your intent?

8 (4) NO DUTY OR LIABILITY CREATED. Except as expressly provided in this section,
 9 nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine
 10 creates any duty of care or ground of liability toward any person who uses school
 11 grounds to engage or participate in a recreational activity held pursuant to a
 12 recreational agreement.

13 SECTION 3. 895.525 (5) of the statutes is amended to read:

14 895.525 (5) EFFECT ON RELATED PROVISION. Nothing in this section affects the
 15 limitation of property owners' liability under s. 895.52 or the limitation of school
 16 boards' liability under s. 895.523.

and of liability of governing
bodies of charter schools

17 SECTION 4. Initial applicability.

18 (1) In this section:

19 (a) "Recreational activity" has the meaning given in section 895.523 (1) (c) of
 20 the statutes, as created by this act.

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2786/P1ins
TKK:cjs:jf

(use 2r)

(a)

Insert 2-10

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that operates

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(b) "Governing body of a charter school" means the person in charge of a charter school established under s. 118.40 (1m) or (2m) or the entity in charge of a charter school established under s. 118.40 (2r).

Insert 2-16

****NOTE: In the absence of a definition for "person," the definition for person at s. 990.01 (26) will apply. That definition defines a person to include "all partnerships, associations and bodies politic or corporate." Is that definition acceptable? ✓

Kuczenski, Tracy

From: Morouney, Lonna
Sent: Wednesday, November 09, 2011 12:38 PM
To: Kuczenski, Tracy
Subject: LRB 2786, relating to school board immunity

Hi Tracy,

Rep. Loudenbeck plans to author this legislation so hopefully you've received word from the Speaker's office granting us access to the draft.

We'd like one change to the draft - on page 2, lines 16 and 17, we'd like to delete the words "and sponsored, organized, or promoted by a person" and on page 2, line 21, the words "to be sponsored, organized, or promoted by a person" to be deleted. We are concerned this language could be misconstrued or mistaken to require a more formal circumstance than we are trying to encourage.

Please give me a call if you have any questions. Thank you!

Lonna

Lonna Morouney
Office of Representative Amy Loudenbeck
45th Assembly District

Office 209 North
608-266-9967 Toll free: (888) 534-0045



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2786/P2 P3

TKK:cjs:rs

Insert
stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

11/19/11

SA

soon

Gen Cat

1 AN ACT *to amend* 120.13 (17) and 895.525 (5); and *to create* 895.523 of the
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3 governing body of a charter school that provides public access to school grounds
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Analysis by the Legislative Reference Bureau

Insert
analysis

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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7 school grounds, buildings, facilities, or equipment, upon such conditions, including
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9 person for any lawful nonschool purpose if such use does not interfere with use for

1 school purposes or school-related functions. Fees received under this subsection
2 shall be paid into the school district treasury and accounted for as prescribed under
3 s. 115.28 (13). The user shall be primarily liable, and, except as provided in s.
4 895.523, the school board secondarily liable, for any damage to property and for any
5 expense incurred in consequence of any use of school grounds, buildings, facilities,
6 or equipment under this subsection.

7 **SECTION 2.** 895.523 of the statutes is created to read:

8 **895.523 Recreational activities in a school building or on school**
9 **grounds; limitation of liability. (1) DEFINITIONS.** In this section:

10 (a) "Governing body of a charter school" means the person that operates a
11 charter school established under s. 118.40 (2) or (2m) or the entity that operates a
12 charter school established under s. 118.40 (2r).

13 (b) "Injury" means an injury to a person or to property.

14 (c) "Recreational activity" means any indoor or outdoor physical activity, sport,
15 team sport, or game, whether organized or unorganized, undertaken for the purpose
16 of exercise, relaxation, diversion, or pleasure and sponsored, organized, or promoted
17 by a person.

****NOTE: In the absence of a definition for "person," the definition for person at s.
990.01 (26) will apply. That definition defines a person to include "all partnerships,
associations and bodies politic or corporate." Is that definition acceptable?

18 (d) "Recreational agreement" means a written authorization granted by a
19 school board or the governing body of a charter school to a person permitting public
20 access to all or a specified part of the school grounds for the purpose of any
21 recreational activity (to be sponsored, organized, or promoted by the person.

22 (e) "School board" means the school board or board of school directors in charge
23 of the public schools of a school district.

1 (f) "School building" means a building designed for and used as a school by a
2 school board or by the governing body of a charter school.

3 (g) "School grounds" means real property, and any school buildings, accessory
4 buildings, structures, and improvements thereon, owned, leased, or rented by a
5 school board or by the governing body of a charter school and used primarily for
6 public school purposes.

7 (h) "Sport" means an activity requiring physical exertion and skill and which,
8 by its nature and organization, is competitive and includes a set of rules for play.

9 (2) NO DUTY; IMMUNITY FROM LIABILITY. (a) Except as provided in sub. (3), no
10 school board, no governing body of a charter school, and no officer, employee, or agent
11 of a school board or of a governing body of a charter school, owes to any person who
12 enters the school grounds of the school board or of the governing body of a charter
13 school to engage or participate in a recreational activity held pursuant to a
14 recreational agreement any of the following:

- 15 1. A duty to keep the school grounds safe for the recreational activity.
- 16 2. A duty to inspect the school grounds.
- 17 3. A duty to give warning of an unsafe condition, use, or activity on the school
18 grounds.

19 (b) Except as provided in sub. (3), no school board, no governing body of a
20 charter school, and no officer, employee, or agent of a school board or of a governing
21 body of a charter school, is liable for the death of, any injury to, or any death or injury
22 caused by, a person engaging or participating in a recreational activity held pursuant
23 to a recreational agreement and taking place on the school grounds of the school
24 board or of the governing body of a charter school.

1 **(3) LIABILITY.** Subsection (2) does not limit the liability of a school board, a
 2 governing body of a charter school, or an officer, employee, or agent of the school
 3 board or of the governing body of a charter school for a death or injury caused by a
 4 malicious act or by a malicious failure to warn against an unsafe condition of which
 5 an officer, employee, or agent of the school board or of the governing body of a charter
 6 school knew, which occurs on the school grounds of the school board or of the
 7 governing body of a charter school designated for use in a recreational agreement and
 8 being used by a person for a recreational activity held pursuant to the recreational
 9 agreement.

10 **(4) NO DUTY OR LIABILITY CREATED.** Except as expressly provided in this section,
 11 nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine
 12 creates any duty of care or ground of liability toward any person who uses school
 13 grounds to engage or participate in a recreational activity held pursuant to a
 14 recreational agreement.

15 **SECTION 3.** 895.525 (5) of the statutes is amended to read:

16 895.525 (5) ~~EFFECT ON RELATED PROVISION~~ ^{PROVISIONS} Nothing in this section affects the
 17 limitation of property owners' liability under s. 895.52 or the limitation of school
 18 boards' liability and of liability of governing bodies of charter schools under s.
 19 895.523.

20 **SECTION 4. Initial applicability.**

21 (1) In this section:

22 (a) "Recreational activity" has the meaning given in section 895.523 (1) (c) of
 23 the statutes, as created by this act.

24 (b) "School grounds" has the meaning given in section 895.523 (1) (g) of the
 25 statutes, as created by this act.

①

(2) This act first applies to ^{the death of or} any injury to or the death of ^e or any injury or ^{or injury} death
caused by, a person engaging or participating in a recreational activity on school
grounds on the effective date of this subsection.

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(END)

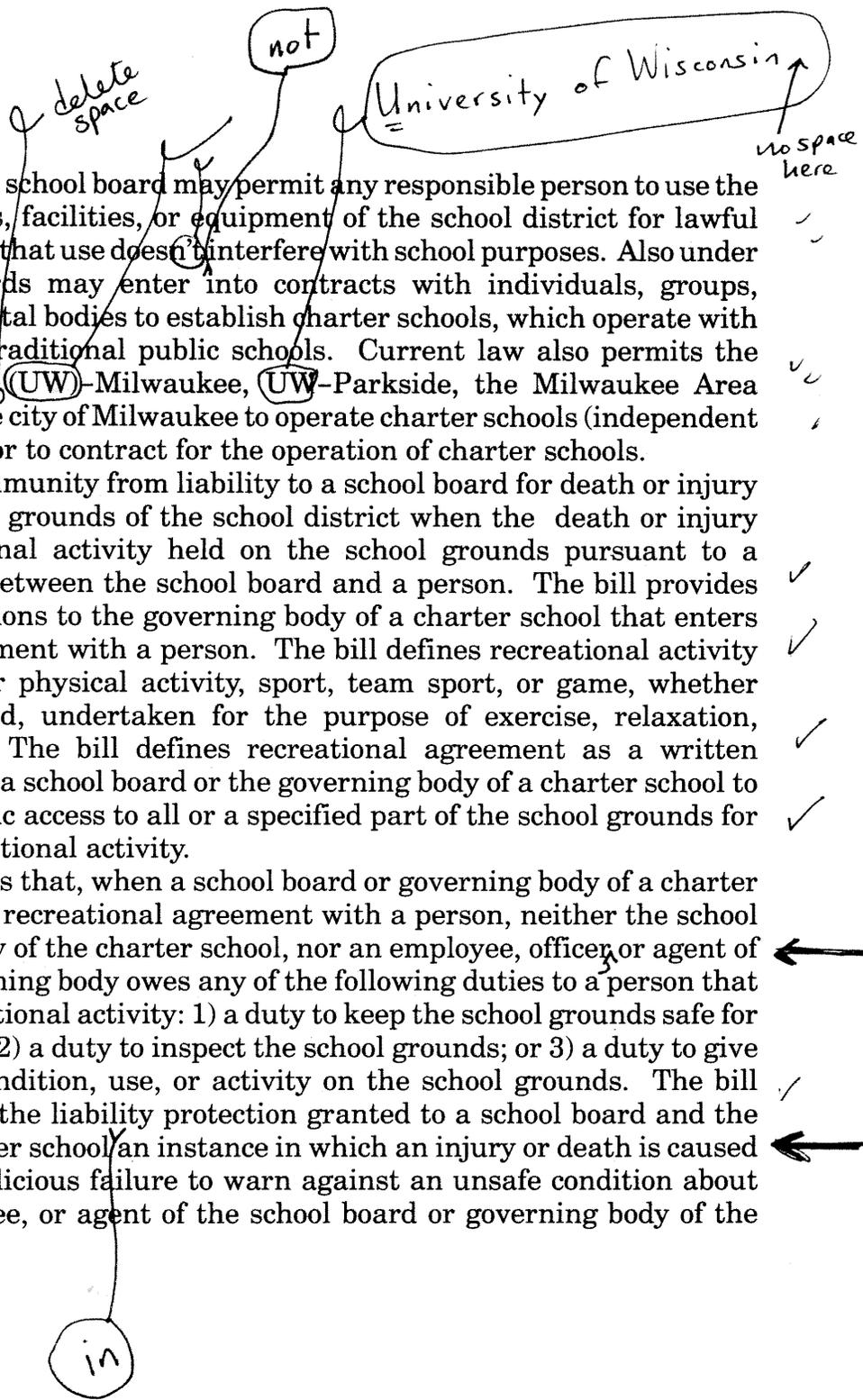
1

Insert analysis

Under current law, a school board may permit any responsible person to use the school grounds, buildings, facilities, or equipment of the school district for lawful nonschool purposes when that use does not interfere with school purposes. Also under current law, school boards may enter into contracts with individuals, groups, businesses, or governmental bodies to establish charter schools, which operate with fewer constraints than traditional public schools. Current law also permits the University of Wisconsin (UW)-Milwaukee, (UW)-Parkside, the Milwaukee Area Technical College, and the city of Milwaukee to operate charter schools (independent charter schools) directly or to contract for the operation of charter schools.

This bill provides immunity from liability to a school board for death or injury that occurs on the school grounds of the school district when the death or injury results from a recreational activity held on the school grounds pursuant to a recreational agreement between the school board and a person. The bill provides identical liability protections to the governing body of a charter school that enters into a recreational agreement with a person. The bill defines recreational activity as any indoor or outdoor physical activity, sport, team sport, or game, whether organized or unorganized, undertaken for the purpose of exercise, relaxation, diversion, or pleasure. The bill defines recreational agreement as a written authorization granted by a school board or the governing body of a charter school to a person permitting public access to all or a specified part of the school grounds for the purpose of any recreational activity.

The bill also provides that, when a school board or governing body of a charter school has entered into a recreational agreement with a person, neither the school board, the governing body of the charter school, nor an employee, officer, or agent of the school board or governing body owes any of the following duties to a person that participates in the recreational activity: 1) a duty to keep the school grounds safe for the recreational activity; 2) a duty to inspect the school grounds; or 3) a duty to give warning of an unsafe condition, use, or activity on the school grounds. The bill provides an exception to the liability protection granted to a school board and the governing body of a charter school in an instance in which an injury or death is caused by a malicious act or malicious failure to warn against an unsafe condition about which an officer, employee, or agent of the school board or governing body of the charter school knew.





State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2786/P8-1

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stays *LRB*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

12/14/11

No change

Regen

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19 buildings, structures, and improvements thereon, owned, leased, or rented by a
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9 (b) Except as provided in sub. (3), no school board, no governing body of a
10 charter school, and no officer, employee, or agent of a school board or of a governing
11 body of a charter school, is liable for the death of, any injury to, or any death or injury
12 caused by, a person engaging or participating in a recreational activity held pursuant
13 to a recreational agreement and taking place on the school grounds of the school
14 board or of the governing body of a charter school.

15 (3) LIABILITY. Subsection (2) does not limit the liability of a school board, a
16 governing body of a charter school, or an officer, employee, or agent of the school
17 board or of the governing body of a charter school for a death or injury caused by a
18 malicious act or by a malicious failure to warn against an unsafe condition of which
19 an officer, employee, or agent of the school board or of the governing body of a charter
20 school knew, which occurs on the school grounds of the school board or of the
21 governing body of a charter school designated for use in a recreational agreement and
22 being used by a person for a recreational activity held pursuant to the recreational
23 agreement.

24 (4) NO DUTY OR LIABILITY CREATED. Except as expressly provided in this section,
25 nothing in this section or s. 101.11 nor the common law attractive nuisance doctrine

1 creates any duty of care or ground of liability toward any person who uses school
2 grounds to engage or participate in a recreational activity held pursuant to a
3 recreational agreement.

4 **SECTION 3.** 895.525 (5) of the statutes is amended to read:

5 895.525 (5) ~~EFFECT ON RELATED PROVISION PROVISIONS.~~ Nothing in this section
6 affects the limitation of property owners' liability under s. 895.52 or the limitation
7 of school boards' liability and of liability of governing bodies of charter schools under
8 s. 895.523.

9 **SECTION 4. Initial applicability.**

10 (1) In this section:

11 (a) "Recreational activity" has the meaning given in section 895.523 (1) (c) of
12 the statutes, as created by this act.

13 (b) "School grounds" has the meaning given in section 895.523 (1) (g) of the
14 statutes, as created by this act.

15 (2) This act first applies to the death of or any injury to, or any death or injury
16 caused by, a person engaging or participating in a recreational activity on school
17 grounds on the effective date of this subsection.

18 (END)

Basford, Sarah

From: Kuczenski, Tracy
Sent: Tuesday, January 03, 2012 3:16 PM
To: Morouney, Lonna
Cc: Basford, Sarah
Subject: RE: LRB-2786/1 relating to immunity from liability for school boards

Hi Lonna –

Here's what I discussed with Sarah Basford in our front office: I will change the request sheet so that Rep. Bies is the author. Then, someone from Rep. Bies' office can simply send an email to LRB legal requesting that the bill be jacketed. I am copying Sarah on this email so that, if either you or Rep. Bies' aide has any questions, you can respond to Sarah. Okay?

Thanks,
Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Morouney, Lonna
Sent: Tuesday, January 03, 2012 3:07 PM
To: Kuczenski, Tracy
Subject: RE: LRB-2786/1 relating to immunity from liability for school boards

Thank you, I found the email to Rep. Loudenberg but she did not make the jacket request. Should I do that now and then pass it on to the Bies office or should the Bies office contact you and make the jacket request?

Lonna Morouney
Office of Representative Amy Loudenberg
45th Assembly District

Office 209 North
608-266-9967 Toll free: (888) 534-0045

From: Kuczenski, Tracy
Sent: Tuesday, January 03, 2012 3:00 PM
To: Morouney, Lonna
Subject: RE: LRB-2786/1 relating to immunity from liability for school boards

Okay. I will change the author. Did Rep. Loudenberg already request that the bill be jacketed? You request a jacket by hitting a "button" that reads "Jacket for Assembly" on an email that would have been sent from the LRB with a PDF copy of the introducible bill...

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Morouney, Lonna
Sent: Tuesday, January 03, 2012 2:57 PM

To: Kuczenski, Tracy

Subject: RE: LRB-2786/1 relating to immunity from liability for school boards

Yes, please change his name to the author.

I will try to locate the jacket and pass it on to Rep. Bies. Thanks Tracy!

Lonna Morouney
Office of Representative Amy Loudenberg
45th Assembly District

Office 209 North
608-266-9967 Toll free: (888) 534-0045

From: Kuczenski, Tracy
Sent: Tuesday, January 03, 2012 2:54 PM
To: Morouney, Lonna
Subject: RE: LRB-2786/1 relating to immunity from liability for school boards

Hi Lonna –

We only issue one jacket for each bill. If Rep. Loudenberg has a jacketed copy of the bill, you would need to provide Rep. Bies with the jacket. Let me know if you have any questions.

Do you want me to change the request form to indicate that Rep. Bies is the author?

Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Morouney, Lonna
Sent: Tuesday, January 03, 2012 2:49 PM
To: Kuczenski, Tracy
Subject: LRB-2786/1 relating to immunity from liability for school boards

Hi Tracy,

We decided to pass LRB-2786 on to Rep. Bies. Could you send a jacketed copy of the bill to his office? Thank you!

Lonna

Lonna Morouney
Office of Representative Amy Loudenberg
45th Assembly District

Office 209 North
608-266-9967 Toll free: (888) 534-0045

Basford, Sarah

From: Nowlan, Andrew
Sent: Tuesday, January 03, 2012 4:54 PM
To: Basford, Sarah
Subject: LRB 2786

Sarah,

Can we please get LRB 2786 jacketed for Rep. Bies in the Assembly?

Thank you,

Andrew Nowlan
Research Assistant
Office of Rep. Garey Bies