

2011 DRAFTING REQUEST

Bill

Received: 02/07/2011

Received By: tkuczens

Wanted: As time permits

Companion to LRB:

For: Gordon Hintz (608) 266-2254

By/Representing: Cecely Castillo

May Contact:

Drafter: tkuczens

Subject: Education - school boards

Addl. Drafters:

Extra Copies: pg

Submit via email: YES

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

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

Pre Topic:

No specific pre topic given

Topic:

authorizing school boards to transfer a gift or grant to certain charitable organizations

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>
/?	tkuczens 02/07/2011	chanaman 02/09/2011		_____			
	mshovers 02/09/2011	csicilia 03/04/2011		_____			
	mshovers 03/04/2011	jdye 03/16/2011		_____			
/1			mduchek 03/17/2011	_____	lparisi 03/17/2011		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	mshovers 03/23/2011	jdyer 03/29/2011	rschluet 03/29/2011	_____	lparisi 03/29/2011		
	tkuczens 04/28/2011	jdyer 04/28/2011		_____			
/3			rschluet 04/28/2011	_____	sbasford 04/28/2011	sbasford 08/04/2011	

FE Sent For:

None

<END>

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	mshovers 02/09/2011	csicilia 03/04/2011		_____			
	mshovers 03/04/2011	jdyer 03/16/2011		_____			
/1			mduchek 03/17/2011	_____	lparisi 03/17/2011		

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	tkuczens 04/28/2011	jdyer 04/28/2011		_____ _____			
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Drafter: **tkuczens**

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Extra Copies: **pg**

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	mshovers 02/09/2011	csicilia 03/04/2011		_____			
	mshovers 03/04/2011	jdye 03/16/2011		_____			
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/2	mshovers 03/23/2011	jdye 03/29/2011	rschluet 03/29/2011	_____	lparisi 03/29/2011		

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

Pre Topic:

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/?	tkuczens 02/07/2011	chanaman 02/09/2011		_____			
	mshovers 02/09/2011	csicilia 03/04/2011		_____			
	mshovers 03/04/2011	jdye 03/16/2011		_____			
/1	1/2 MES 3/22/11	2/3/24 jld	mduchek 03/17/2011		lparisi 03/17/2011		
			3/22/11		3/29		

FE Sent For:

<END>

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Drafter: tkuczens

MES

Subject: Education - school boards

Addl. Drafters:

Extra Copies:

pg, EUM

Submit via email: YES

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

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

Pre Topic:

No specific pre topic given

Topic:

authorizing school boards to transfer a gift ^{or grant} bequest or endowment to certain charitable organizations

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>
/?	tkuczens	1 ³ / 16 jld	<i>(M)</i>	3/7 jld / ok			

FE Sent For:

<END>

Kuczenski, Tracy

From: Grant, Peter
Sent: Monday, February 07, 2011 1:41 PM
To: Kuczenski, Tracy; Mueller, Eric
Subject: Drafting request

I got voice mail from Cecely in Rep. Hintz's office. They would like 07-3039 drafted for this session.

Peter

2/8/11
per Cecely - also provide same authority to counties & municipalities

1349/1
LRB-303972
TKK/jld/rs
MES
RMNR KEEP
dnote

LPS-
PWF
please

2007 BILL

2011

3/3/11

Reyer

towns, and counties ✓

- 1 AN ACT to amend 43.58 (7) (b), 118.27 and 119.18 (16) of the statutes; relating
- 2 to: authorizing library boards and school boards to transfer a gift, bequest or
- 3 endowment to certain charitable organizations.

Analysis by the Legislative Reference Bureau

~~Under current law, the library board of a public library may transfer donations made to the library to the treasurer of the municipality or county in which the library is located; entrust them to a public depository; or transfer them to the library board's financial secretary.~~

~~This bill allows a library board to transfer donations made to the library to a charitable organization exempt from federal income tax under the Internal Revenue Code (IRC), provided the organization agrees in writing to use the donation to provide financial or material support for the public library and to comply with any terms of the donation. The bill also allows a school board to transfer donations made to the school board to a charitable organization exempt from federal income tax under the IRC, provided the organization agrees in writing to use the donation to provide financial or material support for the school district and to comply with any terms of the donation.~~

4

Internal Revenue Code (IRC)

unrestricted

INSANE

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

or grantor

Under current law, the school board of a school district may receive gifts or grants of money, furniture, and other property, and must use or invest the gift in the manner specified by the donor. In the absence of specific direction regarding the use or investment of the gift or grant, the school board may determine how to use the gift or grant in accordance with the law applicable to trust investments.

BILL

1 **SECTION 1.** 43.58 (7) (b) of the statutes is amended to read:

2 43.58 (7) (b) If a gift, bequest, ~~devise~~, or endowment is made to any public
3 library, the library board may pay or transfer the gift, bequest, ~~devise~~, or endowment,
4 or its proceeds, to the treasurer of the municipality or county in which the public
5 library is situated; may entrust ~~any such funds~~ the gift, bequest, or endowment to
6 a public depository under ch. 34; ~~or~~ may pay or transfer the gift, bequest, ~~devise~~, or
7 endowment to the library board's financial secretary; or may pay or transfer the gift,
8 bequest, or endowment to a charitable organization, described in section 501 (c) (3)
9 of the Internal Revenue Code and exempt from federal income tax under section 501
10 (a) of the Internal Revenue Code, if the charitable organization agrees in writing to
11 use the gift, bequest, or endowment to provide financial or material support to the
12 public library and to comply with the terms of the gift, bequest, or endowment. If the
13 library board pays or transfers the gift, bequest, ~~devise~~, or endowment to the
14 financial secretary, the financial secretary may invest the gift, bequest, ~~devise~~, or
15 endowment as permitted under s. 66.0603 (1m) or 112.10 (4); or may delegate
16 investment authority for the gift, bequest, ~~devise~~, or endowment as permitted under
17 s. 66.0603 (2) or 112.10 (5). The financial secretary shall hold office only during
18 membership on the library board and shall be elected annually at the same time and
19 in the same manner as the other officers of the library board.

20 **SECTION 2.** 118.27 of the statutes is amended to read:

21 **118.27 Gifts and grants.** The school board of a district may receive, accept
22 and use gifts or grants of furniture, books, equipment, supplies, moneys, securities
23 or other property, real or personal, used or useful for school research and educational
24 purposes. All moneys received as gifts or grants shall be placed in the school district
25 treasury but shall be considered segregated trust funds. Whenever a school board

INS
2-20

BILL

1 receives gifts or grants under this section, it shall make such use thereof, or invest
2 the same in the case of moneys, as the donor or grantor specifies. In the absence of
3 any specific direction as to the use of such gifts or grants by a donor or grantor, the
4 school board may determine the use of or invest the same in accordance with the law
5 applicable to trust investments, or may transfer any such gift or grant to a charitable
6 organization described in section 501 (c) (3) of the Internal Revenue Code and exempt
7 from federal income tax under section 501 (a) of the Internal Revenue Code if the
8 charitable organization agrees in writing to use the gift or grant to provide financial
9 or material support to the school district and to comply with ^{any} the terms of the gift or
10 grant. In the use, control or investment of such gifts or grants, the school board may
11 exercise the rights and powers generally conferred upon trustees.

12 SECTION 3. 119.18 (16) of the statutes is amended to read:

13 119.18 (16) GIFTS AND GRANTS. The board may receive, accept and use gifts or
14 grants of furniture, books, equipment, supplies, moneys, securities or other property
15 used or useful for school and educational purposes. The board shall make such use
16 of gifts or grants, or invest the same in the case of moneys, as the donor or grantor
17 specifies. In the absence of any specific direction as to the use of such gifts or grants
18 by a donor or grantor, the board may determine the use of or may invest the same in
19 accordance with the law applicable to trust investments, or may transfer any such
20 gift or grant to a charitable organization described in section 501 (c) (3) of the
21 Internal Revenue Code and exempt from federal income tax under section 501 (a) of
22 the Internal Revenue Code if the charitable organization agrees in writing to use the
23 gift or grant to provide financial or material support to the school district and to
24 comply with ^{any} the terms of the gift or grant. In the use, control or investment of such

BILL

SECTION 3

1 gifts or grants, the board may exercise the rights and powers generally conferred
2 upon trustees.

3 **SECTION 4. Initial applicability.**

4 (1) This act first applies to a gift, bequest, or endowment made to a public
5 library, and to a gift or donation made to a school district, on the effective date of this
6 subsection.

7 (END)

d-note
↓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

date

LRB-1349/dn

TKK:.....

Jld

Representative Hintz: ✓

This is a redraft of 2007 LRB-3039, ✓ with one modification: the treatment of s. ✓ 43.58 (7) (b), as shown in 2007 LRB-3039, was accomplished by 2007 Wisconsin Act 61, and so is not included in this draft. ✓

Let me know if you have any questions.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1349/ins
TKK&MES.....

INS ANL

Under current law, counties are authorized to accept donations, gifts, or grants (gifts) for any public governmental purpose that is within the county's power. Cities and villages have similar authority under their home rule authority. This bill grants to town boards similar authority.

This bill also authorizes a town or county to transfer a gift to a charitable organization, as described in the Internal Revenue Code, if the organization agrees to use the gift to provide financial or material support to the town or county and comply with the terms of the gift. Cities and villages may exercise similar authority under their home rule powers.

INS 2-20

SECTION 1. 59.52 (19) of the statutes is amended to read:

59.52 (19) DONATIONS, GIFTS AND GRANTS. The board may accept donations, gifts, or grants for any public governmental purpose within the powers of the county. The board may transfer any such donation, gift, or grant to a charitable organization described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code if the charitable organization agrees in writing to use the donation, gift, or grant to provide financial or material support to the county and to comply with the terms of the donation, gift, or grant.

History: 1995 a. 201 ss. 104, 111 to 115, 117 to 122, 124, 127, 134, 139, 140, 157, 174, 181, 185, 186, 190, 238, 242, 252 to 256, 354, 356 to 360, 414 to 419, 432; 1995 a. 225 s. 135; 1997 a. 35, 237; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104; 2005 a. 22, 59; 2007 a. 20 ss. 1846, 9121 (6) (a); 2009 a. 369.

SECTION 2. 60.23 (34) of the statutes is created to read:

60.23 (34) DONATIONS, GIFTS AND GRANTS. Accept donations, gifts, or grants for any public governmental purpose within the powers of the town. The board may transfer any such donation, gift, or grant to a charitable organization described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code if the charitable organization



INS 2-20
CONT

agrees in writing to use the donation, gift, or grant[✓] to provide financial or material support to the town and to comply with the terms of the donation, gift, or grant.[✓]

(end ins 2-20)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1349/1dn
TKK:jld:md

March 16, 2011

Representative Hintz:

This is a redraft of 2007 LRB-3039, with one modification: the treatment of s. 43.58 (7) (b), as shown in 2007 LRB-3039, was accomplished by 2007 Wisconsin Act 61, and so is not included in this draft.

Let me know if you have any questions.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov



fmr

2011 BILL

O-NOTE

open

✓

1
2
3

AN ACT to amend 59.52 (19), 118.27 and 119.18 (16); and to create 60.23 (34) of the statutes; relating to: authorizing school boards, ^{cities, villages,} towns, and counties to transfer a gift or grant to certain charitable organizations. ✓

Analysis by the Legislative Reference Bureau

Under current law, the school board of a school district may receive gifts or grants of money, furniture, and other property, and must use or invest the gift or grant in the manner specified by the donor or grantor. In the absence of specific direction regarding the use or investment of the gift or grant, the school board may determine how to use the gift or grant in accordance with the law applicable to trust investments.

This bill allows a school board to transfer unrestricted donations made to the school board to a charitable organization exempt from federal income tax under the Internal Revenue Code (IRC), provided the organization agrees in writing to use the donation to provide financial or material support for the school district and to comply with any terms of the donation.

Under current law, counties are authorized to accept donations, gifts, or grants (gifts) for any public governmental purpose that is within the county's power. Cities and villages have similar authority under their home rule authority. This bill grants to town boards similar authority. ~~any city, village,~~ ✓

This bill also authorizes a town or county to transfer a gift to a charitable organization, as described in the IRC, if the organization agrees to use the gift to provide financial or material support to the town or county and comply with the

*
*

(political subdivision)

political subdivision ✓

BILL

* terms of the gift. Cities and villages may exercise ~~similar~~^{this} authority under their home
 * rule powers, but the bill specifies this authority for cities and villages

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

1 **SECTION 1.** 59.52 (19) of the statutes is amended to read:

2 59.52 (19) DONATIONS, GIFTS AND GRANTS. The board may accept donations, gifts,
 3 or grants for any public governmental purpose within the powers of the county. The
 4 board may transfer any such donation, gift, or grant to a charitable organization
 5 described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal
 6 income tax under section 501 (a) of the Internal Revenue Code if the charitable
 7 organization agrees in writing to use the donation, gift, or grant to provide financial
 8 or material support to the county and to comply with the terms of the donation, gift,
 9 or grant.

10 **SECTION 2.** 60.23 (34) of the statutes is created to read:

11 60.23 (34) DONATIONS, GIFTS, AND GRANTS. Accept donations, gifts, or grants for
 12 any public governmental purpose within the powers of the town. The board may
 13 transfer any such donation, gift, or grant to a charitable organization described in
 14 section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax
 15 under section 501 (a) of the Internal Revenue Code if the charitable organization
 16 agrees in writing to use the donation, gift, or grant to provide financial or material
 17 support to the town and to comply with the terms of the donation, gift, or grant.

18 **SECTION 3.** 118.27 of the statutes is amended to read:

19 **118.27 Gifts and grants.** The school board of a district may receive, accept
 20 and use gifts or grants of furniture, books, equipment, supplies, moneys, securities
 21 or other property, real or personal, used or useful for school research and educational

INS
2-17

BILL

1 purposes. All moneys received as gifts or grants shall be placed in the school district
2 treasury but shall be considered segregated trust funds. Whenever a school board
3 receives gifts or grants under this section, it shall make such use thereof, or invest
4 the same in the case of moneys, as the donor or grantor specifies. In the absence of
5 any specific direction as to the use of such gifts or grants by a donor or grantor, the
6 school board may determine the use of or invest the same in accordance with the law
7 applicable to trust investments, or may transfer any such gift or grant to a charitable
8 organization described in section 501 (c) (3) of the Internal Revenue Code and exempt
9 from federal income tax under section 501 (a) of the Internal Revenue Code if the
10 charitable organization agrees in writing to use the gift or grant to provide financial
11 or material support to the school district and to comply with any terms of the gift or
12 grant. In the use, control or investment of such gifts or grants, the school board may
13 exercise the rights and powers generally conferred upon trustees.

14 **SECTION 4.** 119.18 (16) of the statutes is amended to read:

15 119.18 (16) GIFTS AND GRANTS. The board may receive, accept and use gifts or
16 grants of furniture, books, equipment, supplies, moneys, securities or other property
17 used or useful for school and educational purposes. The board shall make such use
18 of gifts or grants, or invest the same in the case of moneys, as the donor or grantor
19 specifies. In the absence of any specific direction as to the use of such gifts or grants
20 by a donor or grantor, the board may determine the use of or may invest the same in
21 accordance with the law applicable to trust investments, or may transfer any such
22 gift or grant to a charitable organization described in section 501 (c) (3) of the
23 Internal Revenue Code and exempt from federal income tax under section 501 (a) of
24 the Internal Revenue Code if the charitable organization agrees in writing to use the
25 gift or grant to provide financial or material support to the school district and to

BILL

1 comply with any terms of the gift or grant. In the use, control or investment of such
2 gifts or grants, the board may exercise the rights and powers generally conferred
3 upon trustees.

4 **SECTION 5. Initial applicability.**

5 (1) This act first applies to a gift or donation made to a school district on the
6 effective date of this subsection.

7 (END)

D-note
↓

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1349/lins
TKK&MES:jld:md

The village board may

INS 2-17

^x
SECTION 1. 61.34 (3e) of the statutes is created to read:

*

61.34 (3e) DONATIONS, GIFTS, AND GRANTS. Accept donations, gifts, or grants for
any public governmental purpose within the powers of the village. The board may
transfer any such donation, gift, or grant to a charitable organization described in
section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax
under section 501 (a) of the Internal Revenue Code if the charitable organization
agrees in writing to use the donation, gift, or grant to provide financial or material
support to the village and to comply with the terms of the donation, gift, or grant.

^x
SECTION 2. 62.11 (6) of the statutes is created to read:

*

62.11 (6) DONATIONS, GIFTS, AND GRANTS. Accept donations, gifts, or grants for
any public governmental purpose within the powers of the city. The board may ^{council}
transfer any such donation, gift, or grant to a charitable organization described in
section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax
under section 501 (a) of the Internal Revenue Code if the charitable organization
agrees in writing to use the donation, gift, or grant to provide financial or material
support to the city and to comply with the terms of the donation, gift, or grant.

(end ins)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1349/1dn

~~WJL~~MES:jld:md

date

Representative Hintz: ✓

This version of the bill is drafted according to your instructions in that it creates ss. 61.34 (3e) and 62.11 (6), which specifically authorize villages and cities to accept donations, gifts, or grants for any public purpose and to transfer any such donation, gift, or grant to a charitable organization. These sections are based on ss. 59.52 (19) and 60.23 (34), as amended or created in the bill.

As I stated in the analysis, however, cities and villages may already do this under their home rule authority, so the creation of ss. 61.34 (3e) and 62.11 (6) is not only unnecessary, but may serve to undermine the authority of cities and villages to exercise their home rule authority in the future. This is because if statutes are created to specifically authorize cities and villages to do things that they may currently do under their home rule authority, and thus don't need specific authorization, a city or village that attempts to act under its home rule authority on another matter in the future may be challenged as acting outside of its authority. ✓

A person could argue that since there is no specific statutory authorization for a city or village to do a certain thing, the city or village couldn't act in that area, even if it seems like the city or village has home rule authority to act in the area. The person could point to ss. 61.34 (3e) and 62.11 (6) for the proposition that cities and villages really need specific authorization to act, even if acting within the scope of their home rule authority, or the legislature would not have found the need to enact ss. 61.34 (3e) and 62.11 (6). Therefore, it's possible that the creation of ss. 61.34 (3e) and 62.11 (6) could undermine city and village home rule authority in the future. ✓

Please let me know if you'd like any changes made to this draft.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1349/2dn
MES:jld:rs

March 29, 2011

Representative Hintz:

This version of the bill is drafted according to your instructions in that it creates ss. 61.34 (3e) and 62.11 (6), which specifically authorize villages and cities to accept donations, gifts, or grants for any public purpose and to transfer any such donation, gift, or grant to a charitable organization. These sections are based on ss. 59.52 (19) and 60.23 (34), as amended or created in the bill.

As I stated in the analysis, however, cities and villages may already do this under their home rule authority, so the creation of ss. 61.34 (3e) and 62.11 (6) is not only unnecessary, but may serve to undermine the authority of cities and villages to exercise their home rule authority in the future. This is because if statutes are created to specifically authorize cities and villages to do things that they may currently do under their home rule authority, and thus don't need specific authorization, a city or village that attempts to act under its home rule authority on another matter in the future may be challenged as acting outside of its authority.

A person could argue that since there is no specific statutory authorization for a city or village to do a certain thing, the city or village couldn't act in that area, even if it seems like the city or village has home rule authority to act in the area. The person could point to ss. 61.34 (3e) and 62.11 (6) for the proposition that cities and villages really need specific authorization to act, even if acting within the scope of their home rule authority, or the legislature would not have found the need to enact ss. 61.34 (3e) and 62.11 (6). Therefore, it's possible that the creation of ss. 61.34 (3e) and 62.11 (6) could undermine city and village home rule authority in the future.

Please let me know if you'd like any changes made to this draft.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

Kuczenski, Tracy

From: Castillo, Cecely
Sent: Wednesday, April 27, 2011 2:29 PM
To: Shovers, Marc; Kuczenski, Tracy
Subject: FW: LIBRARY BILL DRAFTER QUESTIONS (LRB-1349)

Marc,

I'd like to keep the 4:15 call on the schedule to square away any issues and get this drafted, unless you feel his directions are cleared up by his e-mail below.

Tracy – would you need or wish to be on the call?

Cecely Castillo
Office of Representative Gordon Hintz
322 West, State Capitol
608-266-2254 or
888-534-0054 toll-free
cecely.castillo@legis.wisconsin.gov

T. conf. w/Rep. Hintz -

amend s. 43-58(7)(b) to modify criteria applicable to charitable organizations to accommodate community foundations. See 2007 Bill (LRB) 3039 (the amendment language is different than the language in 2007 Act 61...)

From: Hintz, Gordon
Sent: Wednesday, April 27, 2011 2:26 PM
To: Castillo, Cecely
Subject: RE: LIBRARY BILL DRAFTER QUESTIONS (LRB-1349)

Because of all the conflicting legal opinions and thorns related to home rule, lets have the bill more narrowly drafted for the following:

- 1) School Districts
- 2) Public Libraries: In 2007 under Act 61, we amended section 43.58 (7) (b) of the statutes (governing gifts, grant and donations to libraries). Tracy gave her opinion that this avenue was available for libraries now under this.

43.58(7)(b)

(b) If a gift, bequest, or endowment is made to any public library, the library board may pay or transfer the gift, bequest, or endowment, or its proceeds, to the treasurer of the municipality or county in which the public library is situated; may entrust the gift, bequest, or endowment to a public depository under ch. 34; may pay or transfer the gift, bequest, or endowment to the library board's financial secretary; or may pay or transfer the gift, bequest, or endowment to a charitable organization, described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code, the purpose of which is providing financial or material support to the public library. A payment or transfer of a gift, bequest, or endowment by a library board to a charitable organization described in this paragraph made prior to March 19, 2008, is not invalid as lacking statutory authority to make the payment or transfer. If the library board pays or transfers the gift, bequest, or endowment to the financial secretary, the financial secretary may invest the gift, bequest, or endowment as permitted under s. 66.0603 (1m) or 112.11 (3); or may delegate investment authority for the gift, bequest, or endowment as permitted under s. 66.0603 (2) or 112.11 (5). The financial secretary shall hold office only during membership on the library board and shall be elected annually at the same time and in the same manner as the other officers of the library board.

However, Leg Council and the head of the Wisconsin Libraries Association indicated that this does not allow Libraries to transfer to non-profit community foundations. My local city attorney also concurs with this opinion.

A such, can we find a way to just allow school districts and libraries?

From: Castillo, Cecely
Sent: Wednesday, April 27, 2011 10:01 AM
To: Hintz, Gordon
Subject: FW: LIBRARY BILL DRAFTER QUESTIONS (LRB-1349)

Drafter has additional questions. I'm not sure I even understand at this point what the issues are and what the draft needs to include.

Perhaps a phone conversation is in order between you and the drafter - so you can express your questions and what you need the bill to accomplish.

-C

From: Shovers, Marc
Sent: Wednesday, April 27, 2011 9:59 AM
To: Castillo, Cecely
Cc: Kuczenski, Tracy
Subject: FW: LIBRARY BILL DRAFTER QUESTIONS (LRB-1349)

Hi Cecely:

I'm not sure I understand the questions that are being raised. First of all, what are the "conflicting opinions" about the home rule issue? Are you considering removing created ss. 61.34 (3e) and 62.11 (6) from LRB -1349? If you did so, I don't think it would have any legal effect on a city's or village's ability to do what those statutes specifically authorize them to do. As stated in the analysis and the drafter's note to the /2 version of the bill, those provisions codify existing city and village authority and are therefore unnecessary, and possibly counterproductive.

I also don't understand your question about s. 66.0603. I don't believe that this statute has anything to do with the bill. That statute deals with the allowable financial institutions, and types of investments, into which local governmental units may invest funds not immediately needed, such as money that is being set aside to pay future health care costs or retirement benefits for their employees.

As I understand LRB -1349, the bill merely authorizes political subdivisions to forward specified donations to a tax-exempt charitable organization if certain conditions are met; the political subdivision is in effect acting as a conduit for distributing charitable donations to a third party; it is not investing its own funds that it will need in the future, which is the situation addressed by s. 66.0603.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608-266-0129)
E-Mail: marc.shovers@legis.wisconsin.gov

-----Original Message-----

From: Kuczenski, Tracy
Sent: Tuesday, April 26, 2011 6:59 PM
To: Shovers, Marc
Subject: FW: LIBRARY BILL DRAFTER QUESTIONS (LRB-1349)

Hi Marc -

These are questions for you.

Tracy

-----Original Message-----

From: Castillo, Cecely
Sent: Tue 4/26/2011 5:26 PM
To: Kuczenski, Tracy
Subject: FW: LIBRARY BILL DRAFTER QUESTIONS

Tracy,

Below is a question from Rep. Hintz.

Thank you,

-Cecely

Cecely Castillo
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cecely.castillo@legis.wisconsin.gov

From: Hintz, Gordon
Sent: Tuesday, April 26, 2011 5:23 PM
To: Castillo, Cecely
Subject: RE: LIBRARY BILL DRAFTER QUESTIONS

Could you ask Tracy or Mark Shovers if, given the conflicting opinions on the impact on home rule, language could be included in Chapter 66, with a drafting record included that clearly indicates that the proposal is an express grant of authority that is not intended as a limitation on home rule.

The current options under 66.0603 appear to enumerate various investment options for cities and villages. Legislation expanding the options would designate this additional investment option and would not raise any issues of statewide significance beyond what currently exists with this section. WS 66.0603 does not appear to limit other options, however.

I think the concern of the city attorney and others is that if cities and villages simply pass a charter ordinance under home rule to enable making the investment to a foundation, one of the entities listed under 66.0603 could challenge the ordinance, arguing that the similar options in WS 66.0603 already establish that local investments are of statewide significance.

From: Kuczenski, Tracy
Sent: Friday, April 22, 2011 11:39 AM
To: Castillo, Cecely
Subject: RE: Hintz's "library bill" LRB

Hi Cecely -

As I indicated in the drafter's note to LRB-1349/1, section 43.58 (7) (b) of the statutes (governing gifts, grant and donations to libraries) was amended by 2007 Wisconsin Act 61, so I do not need to include that section in this bill.

I'm not entirely clear about your instructions for "museums and parks." Would these be gifts, grants and donations to museums and parks operated by municipalities or by the state? Regardless of the answer to your question, I will need to work with another drafter on that portion of the draft; museums and parks are not within my drafting areas.

Thanks,

Tracy

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

From: Castillo, Cecely
Sent: Thursday, April 21, 2011 2:19 PM
To: Kuczenski, Tracy
Subject: Hintz's "library bill" LRB

Tracy,

OK I think Rep. Hintz would like one more bill draft with a tweak. Attached is your original bill draft. Rep. Hintz would like to add that this bill would apply to libraries, museums and parks. Below is an e-mail he had sent that specifies what he was looking for. Please give me a ring with any questions at 266-2254. Thank you!

Rep. Hintz agrees with you on the home rule issue and does not want to tamper with it so scratch that bill draft. I also attached the Leg Council memo he requested on home rule to give to his local folks that were concerned.

-Cecely

Cecely Castillo
Office of Representative Gordon Hintz
322 West, State Capitol
608-266-2254 or
888-534-0054 toll-free
cecely.castillo@legis.wisconsin.gov

Eileen,

The League of Cities attorney concurred on the removal of Cities due to the impact on home rule. We are getting a Leg Council opinion on it, but have contacted the drafter to see if we can enable libraries, museums and parks outside of city definition even though they are administered by cities.

Gordon

From: Eileen Connolly-Keesler [<mailto:eileen@oshkoshareacf.org>]
To: Hintz, Gordon
Subject: Bill

Gordon, is the bill drafting going better now that we are taking City out and putting in Library, Museum and parks

Eileen Connolly-Keesler
Oshkosh Area Community Foundation
230 Ohio Street- Suite 100
Oshkosh, WI 54902
920-426-3993
www.oshkoshareacf.org



2011 BILL

insert
dnote
RM12

4/28/11
Today

Regen

✓

- 1 AN ACT *to amend* 59.52 (19), 118.27 and 119.18 (16); and *to create* 60.23 (34),
- 2 61.34 (3e) and 62.11 (6) of the statutes; **relating to:** authorizing school boards
- 3 le cities, villages, towns, and le counties to transfer a gift or grant to certain
- 4 charitable organizations. le libraries ✓

Analysis by the Legislative Reference Bureau

Under current law, the school board of a school district may receive gifts or grants of money, furniture, and other property, and must use or invest the gift or grant in the manner specified by the donor or grantor. In the absence of specific direction regarding the use or investment of the gift or grant, the school board may determine how to use the gift or grant in accordance with the law applicable to trust investments.

This bill allows a school board to transfer unrestricted donations made to the school board to a charitable organization exempt from federal income tax under the Internal Revenue Code (IRC), provided the organization agrees in writing to use the donation to provide financial or material support for the school district and to comply with any terms of the donation.

Under current law, counties are authorized to accept donations, gifts, or grants (gifts) for any public governmental purpose that is within the county's power. Cities and villages have similar authority under their home rule authority. This bill grants to town boards similar authority.

This bill also authorizes any city, village, town, or county (political subdivision) to transfer a gift to a charitable organization, as described in the IRC, if the

Insert analysis ✓

BILL

organization agrees to use the gift to provide financial or material support to the political subdivision and comply with the terms of the gift. Cities and villages may exercise this authority under their home rule powers, but the bill specifies this authority for cities and villages.

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

SECTION 1. 59.52 (19) of the statutes is amended to read:

59.52 (19) DONATIONS, GIFTS AND GRANTS. The board may accept donations, gifts, or grants for any public governmental purpose within the powers of the county. The board may transfer any such donation, gift, or grant to a charitable organization described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code if the charitable organization agrees in writing to use the donation, gift, or grant to provide financial or material support to the county and to comply with the terms of the donation, gift, or grant.

SECTION 2. 60.23 (34) of the statutes is created to read:

60.23 (34) DONATIONS, GIFTS, AND GRANTS. Accept donations, gifts, or grants for any public governmental purpose within the powers of the town. The board may transfer any such donation, gift, or grant to a charitable organization described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code if the charitable organization agrees in writing to use the donation, gift, or grant to provide financial or material support to the town and to comply with the terms of the donation, gift, or grant.

SECTION 3. 61.34 (3e) of the statutes is created to read:

61.34 (3e) DONATIONS, GIFTS, AND GRANTS. The village board may accept donations, gifts, or grants for any public governmental purpose within the powers

Insert 2-1

BILL

1 of the village. The board may transfer any such donation, gift, or grant to a charitable
2 organization described in section 501 (c) (3) of the Internal Revenue Code and exempt
3 from federal income tax under section 501 (a) of the Internal Revenue Code if the
4 charitable organization agrees in writing to use the donation, gift, or grant to provide
5 financial or material support to the village and to comply with the terms of the
6 donation, gift, or grant.

7 **SECTION 4.** 62.11 (6) of the statutes is created to read:

8 62.11 (6) DONATIONS, GIFTS, AND GRANTS. The council may accept donations, gifts,
9 or grants for any public governmental purpose within the powers of the city. The
10 council may transfer any such donation, gift, or grant to a charitable organization
11 described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal
12 income tax under section 501 (a) of the Internal Revenue Code if the charitable
13 organization agrees in writing to use the donation, gift, or grant to provide financial
14 or material support to the city and to comply with the terms of the donation, gift, or
15 grant.

16 **SECTION 5.** 118.27 of the statutes is amended to read:

17 **118.27 Gifts and grants.** The school board of a district may receive, accept
18 and use gifts or grants of furniture, books, equipment, supplies, moneys, securities
19 or other property, real or personal, used or useful for school research and educational
20 purposes. All moneys received as gifts or grants shall be placed in the school district
21 treasury but shall be considered segregated trust funds. Whenever a school board
22 receives gifts or grants under this section, it shall make such use thereof, or invest
23 the same in the case of moneys, as the donor or grantor specifies. In the absence of
24 any specific direction as to the use of such gifts or grants by a donor or grantor, the
25 school board may determine the use of or invest the same in accordance with the law

BILL**SECTION 5**

1 applicable to trust investments, or may transfer any such gift or grant to a charitable
2 organization described in section 501 (c) (3) of the Internal Revenue Code and exempt
3 from federal income tax under section 501 (a) of the Internal Revenue Code if the
4 charitable organization agrees in writing to use the gift or grant to provide financial
5 or material support to the school district and to comply with any terms of the gift or
6 grant. In the use, control or investment of such gifts or grants, the school board may
7 exercise the rights and powers generally conferred upon trustees.

8 **SECTION 6.** 119.18 (16) of the statutes is amended to read:

9 119.18 (16) GIFTS AND GRANTS. The board may receive, accept and use gifts or
10 grants of furniture, books, equipment, supplies, moneys, securities or other property
11 used or useful for school and educational purposes. The board shall make such use
12 of gifts or grants, or invest the same in the case of moneys, as the donor or grantor
13 specifies. In the absence of any specific direction as to the use of such gifts or grants
14 by a donor or grantor, the board may determine the use of or may invest the same in
15 accordance with the law applicable to trust investments, or may transfer any such
16 gift or grant to a charitable organization described in section 501 (c) (3) of the
17 Internal Revenue Code and exempt from federal income tax under section 501 (a) of
18 the Internal Revenue Code if the charitable organization agrees in writing to use the
19 gift or grant to provide financial or material support to the school district and to
20 comply with any terms of the gift or grant. In the use, control or investment of such
21 gifts or grants, the board may exercise the rights and powers generally conferred
22 upon trustees.

23 **SECTION 7. Initial applicability.**

SECTION 7

BILL

The treatment of sections 118027 and 119018(16) of the Statutes

1 (1) This act first applies to a gift or donation made to a school district on the
2 effective date of this subsection. grant

3 (END)

Insert 5-3

D-note
(after inserts)
↓

1 **Insert analysis**

Under current law, the library board of a public library[✓] may transfer donations made to the library to the treasurer of the municipality or county in which the library is located; entrust them to a public depository; transfer them to the library board's financial secretary; or transfer them to a charitable organization exempt from federal income tax under the IRC[✓] ~~which~~ has as its purpose providing financial or material support to the public library. This bill permits the library to transfer a donation to any charitable organization exempt from federal income tax, provided the organization agrees in writing to use the donation to provide financial or material support for the public library and to comply with any terms of the donation.[✓]

2 **Insert 2-1**

3 **SECTION 1.** 43.58 (7) (b)[✓] of the statutes is amended to read:

4 43.58 (7) (b) If a gift, bequest, or endowment is made to any public library, the
5 library board may pay or transfer the gift, bequest, or endowment, or its proceeds,
6 to the treasurer of the municipality or county in which the public library is situated;
7 may entrust the gift, bequest, or endowment to a public depository under ch. 34; may
8 pay or transfer the gift, bequest, or endowment to the library board's financial
9 secretary; or may pay or transfer the gift, bequest, or endowment to a charitable
10 organization, described in section 501 (c) (3) of the Internal Revenue Code and
11 exempt from federal income tax under section 501 (a) of the Internal Revenue Code,
12 the purpose of which is providing[✓] if the charitable organization agrees in writing to
13 use the gift, bequest, or endowment[✓] to provide financial or material support to the
14 public library and to comply with the terms of the gift, bequest, or endowment.[✓] A
15 payment or transfer of a gift, bequest, or endowment by a library board to a
16 charitable organization described in this paragraph made prior to March 19, 2008,
17 is not invalid as lacking statutory authority to make the payment or transfer. If the
18 library board pays or transfers the gift, bequest, or endowment to the financial



1 secretary, the financial secretary may invest the gift, bequest, or endowment as
2 permitted under s. 66.0603 (1m) or 112.11 (3); or may delegate investment authority
3 for the gift, bequest, or endowment as permitted under s. 66.0603 (2) or 112.11 (5).
4 The financial secretary shall hold office only during membership on the library board
5 and shall be elected annually at the same time and in the same manner as the other
6 officers of the library board.

History: 1971 c. 152 ss. 10, 20; 1977 c. 26, 418; 1985 a. 176; 1985 a. 177 ss. 42, 43, 48 to 50, 52; 1985 a. 225, 332; 1987 a. 252; 1993 a. 399; 1995 a. 201, 264; 1997 a. 150; 2005 a. 226; 2007 a. 61; 2009 a. 33.

7 **Insert 5-3**

8 ~~(Q)~~ [#] The treatment of section 43.58 (7) (b) of the statutes first applies to a gift,
9 bequest, or endowment made to a public library on the effective date of this
10 subsection.

(end ins 5-3)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1349/2dn
TKK&MES:jld:rs

date

↑
Keep

Representative Hintz:

This draft modifies s. 43.58 (7) (b) [✓] to permit a public library to transfer a gift, bequest, or endowment to:

“a charitable organization, described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code, ~~the purpose of which is providing if the charitable organization agrees in writing to use the gift, bequest or endowment to provide financial or material support to the public library and to comply with the terms of the gift, bequest, or endowment.~~”

As we discussed briefly on the phone yesterday (April 27, 2011), [✓] it is my understanding that a community foundation can be a 501 (c) (3) charitable organization exempt from federal income tax under section 501 (a) of the IRC. [✓] However, it is also my understanding that federal law requires the community foundation to retain some independent control over the distribution of assets donated to the community foundation. [✓] It is possible that the proposed amendment to s. [✓]43.58 (7) (b), and specifically the language relating to the written agreement between the public library and the charitable organization, [✓] would conflict with requirements under federal law relating to the control and distribution of assets held by a community foundation. [✓] I thought you should be aware of this issue. [✓]

Let me know if you have any questions or wish to make any additional changes.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1349/3dn
TKK:jld:rs

April 28, 2011

Representative Hintz:

This draft modifies s. 43.58 (7) (b) to permit a public library to transfer a gift, bequest, or endowment to:

“a charitable organization, described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code, the purpose of which is providing if the charitable organization agrees in writing to use the gift, bequest or endowment to provide financial or material support to the public library and to comply with the terms of the gift, bequest, or endowment.”

As we discussed briefly on the phone yesterday (April 27, 2011), it is my understanding that a community foundation can be a 501 (c) (3) charitable organization exempt from federal income tax under section 501 (a) of the IRC. However, it is also my understanding that federal law requires the community foundation to retain some independent control over the distribution of assets donated to the community foundation. It is possible that the proposed amendment to s. 43.58 (7) (b), and specifically the language relating to the written agreement between the public library and the charitable organization, would conflict with requirements under federal law relating to the control and distribution of assets held by a community foundation. I thought you should be aware of this issue.

Let me know if you have any questions or wish to make any additional changes.

Tracy K. Kuczenski
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E-mail: tracy.kuczenski@legis.wisconsin.gov

Basford, Sarah

From: Kuczenski, Tracy
Sent: Wednesday, August 03, 2011 9:57 AM
To: Basford, Sarah
Subject: FW: LRB 1349/3

Hi Sarah –

Can you jacket this bill for introduction with this email as authorization? Or do you need something more?

Thanks,
Tracy

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

From: Tierney, Mike
Sent: Wednesday, August 03, 2011 8:43 AM
To: Kuczenski, Tracy
Subject: LRB 1349/3

Hi Tracy,

You had been working with Cecely on LRB 1349/3 related to authorizing school boards and libraries to transfer a gift or grant to certain charitable organizations.

Could you please send me a PDF of the draft? We would also like to have it jacketed for introduction.

Thank you.

Mike Tierney
Office of Rep. Hintz