

2013 DRAFTING REQUEST

Bill

Received: **12/12/2012** Received By: **tkuczens**
 Wanted: **As time permits** Same as LRB:
 For: **Alberta Darling (608) 266-5830** By/Representing: **Bob Delaporte**
 May Contact: Drafter: **tkuczens**
 Subject: **Education - MPS** Addl. Drafters:
 Extra Copies: **pg, flk**

Submit via email: **YES**
 Requester's email: **Sen.Darling@legis.wisconsin.gov**
 Carbon copy (CC) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Authorize the City of Milwaukee to sell eligible school facilities to eligible buyers

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 2/15/2013			_____			
/P1	tkuczens 3/4/2013	wjackson 3/5/2013	jfrantze 2/19/2013	_____	lparisi 2/19/2013		State
/P2	tkuczens 3/14/2013	wjackson 3/22/2013	rschluet 3/22/2013	_____	srose 3/6/2013		Local

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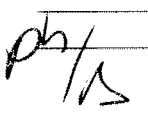
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FE Sent For:

<END>

Kuczenski, Tracy

From: Delaporte, Bob
Sent: Wednesday, December 12, 2012 1:06 PM
To: Kuczenski, Tracy
Subject: authorizing the City of Milwaukee to sell city owned property for school purposes

Tracy,

Last session, you drafted SB 20 authorizing the City of Milwaukee to sell city-owned property used for school purposes. Unfortunately, that law hasn't fixed the situation. Senator Darling would like the attachments drafted into a new bill for 2013 which will hopefully address this problem.

2/15/13

Thank you in advance

contact person is Nick, not Bob

-Bob Delaporte
State Senator Alberta Darling's office



2012121113420... 2012121213190...

Surplus Facilities

Eligible Buildings:

1. Any building that appeared on ANY MPS School Board resolution that designated that property as surplus/vacant/underutilized
2. Any building that is unused or underutilized (defined below) for classroom instruction for a period of 12 months prior to sale.
3. Underutilized is defined as: (we need to pick one of these options)
 - A) Less than 20% of the classroom space is being used for classroom instruction
 - B) Break even usage? *What does this mean?*

Eligible Buyers:

1. Education operators shall have the first opportunity to purchase MPS surplus property. *→ who gets second opportunity?*
2. Education operators is defined as:
 - a. Independent charter schools (operating under the 2r law or engaged in the process of seeking a charter from an authorizer under the 2r law)
 - b. Private schools as defined in statute
 - c. MPS non-instrumentalities (This was discussed as a way to further weaken MPS' hand. Require that this process be used to sell buildings to the non-instrumentality MPS charters as well.)
 - d. 3rd Party Organizations only if they are securing a building for a specific school end-user and have entered into a contract with that school for this service

(Note: I am inclined to leave the language silent on non-profit vs. for profit so that for-profit entities would be allowed, and we don't have to raise the issue. However, if someone raises that issue it will be important we protect the ability of for profit organizations to secure buildings, particularly if the school they are securing the facility for is a non-profit.)

District Reporting of Available Schools:

1. MPS shall report to the President of the Common Council, the Joint Committee on Finance and the DPI a full inventory of all school buildings in its portfolio no later than 30 days after effective date of the bill. The inventory shall include all buildings in the district with a full accounting of:
 - a. Total classroom and student capacity of each building
 - b. % of classroom and student capacity currently being used for direct classroom instruction in each building, including a total number of students served in each building
 - c. If a building is not used for classroom instruction, MPS must indicate what it is being used for (admin, storage, professional development, etc)
 - d. Length of time the current utilization pattern of a building has been in place going back at least three years
 - e. MPS will indicate if the building was ever deemed surplus by the Board, whether or not it is deemed surplus at the time of the initial report.

*What is the diff
bet classroom + student
capacity?
Do you mean # of
classrooms?*

going back how far?

is this a defined concept under current law/practice?
f. Facility Condition Index information including the estimated short and long term maintenance costs of the building

2. MPS shall annually notify the same parties of all changes in building utilization.

(NOTE: Do we want to include a provision that allows for one of those bodies to challenge MPS determination. For example, if they report 60% usage in a building, but we have a school that knows usage is far lower, should there be a mechanism to ask someone to review usage in that building? Also, if MPS misrepresents building usage should there be a sanction?)

Process:

1. Any building that was on any surplus list of the board of directors OR that has been vacant for more than 12 months at the effective date of the bill shall be immediately eligible for sale.
2. Any building that is underutilized at the effective date of the bill, or that becomes vacant or underutilized after the effective date of the bill shall be eligible for sale 12 months after it becomes underutilized or vacant.
3. Building shall be made available to education operators ONLY for a period of four years after they become eligible for sale. After four years, the City may sell or lease the property to any purchaser.
4. Sale process is initiated by the interested buyer. Once an education operator notifies the city(DCD) it is interested in purchasing a building, the city shall:
 - a. Make the property information available and show the property as necessary
 - b. Evaluate the eligibility and financial capability of the buyer
 - c. Negotiate reasonable sale price and terms with eligible buyer

(City has 90 days to negotiate a reasonable sale price with eligible buyer – if a deal can not be reached in that timeframe the process should be handed over to an independent body to facilitate the deal or specific sale terms should take over)

5. If there are multiple education operators interested in the same property at the same time, the city must select a buyer using an RFP process – the criteria that can be included in the evaluation of RFP's includes:
 - a. Amount of proposed investment
 - b. Design quality
 - c. Financial capability of the buyer

(NOTE: School type and non-profit status may NOT be considered in the RFP selection process. Also, this is where we might want to include school performance as an indicator.)

RFP's shall be evaluated by a selection committee. We should specify who serves on the selection committee.

Miscellaneous:

- ✓ 1. Allow the City to include a reversionary clause that permits the City to recapture the building if it is not occupied within a three year period after sale.
- ✓ 2. The City may not put a deed restriction on the property that requires school use only.
- 3. PILOT Payments/Tax Issue - buildings purchased by a non-profit education operator shall be non-taxable and no PILOT payment shall be required
- ✓ 4. Sale proceeds shall be deposited in to the school operations fund. Not sure what PILOT means

ADD:

Failsafe for city road blocks
to arbitrator for of sales terms.

26.025 exemption law thing

17 What is default? Nonprofits may be exempt automatically unless
statute explicitly authorize a municipality to collect a
payment in lieu of taxes
may request but may not mandate

city would not be able to force a nonprofit to pay PILOT (no authority)
to require

Ch. 66 does give city authority (housing/academic utilities)

119.12 Existing language

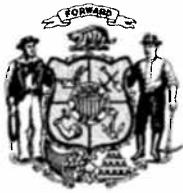
(6) The city attorney of the city shall be the legal adviser of and attorney for the board, except that the board may retain an attorney to represent the board in any matter if the board determines that it requires specialized legal expertise not possessed by the city attorney, the city attorney does not have sufficient staff to adequately represent the interests of the board or a conflict of interest exists. The board shall provide the city attorney with reasonable notice of any board meeting at which the board will consider retention of an attorney.

Suggested change:

att
The city shall provide the board with reasonable notice of any meeting at which the board will consider retention of an attorney if the city attorney determines that he or she cannot represent the board.

(6) The city attorney of the city shall be the legal adviser of and attorney for the board, except that the board shall retain an attorney to represent the board in any matter if the Mayor, Common Council, (the board) or the City Attorney determines that the board requires specialized legal expertise not possessed by the city attorney, the city attorney does not have sufficient staff to adequately represent the interests of the board or a conflict of interest exists. If the board is required to retain an attorney, the city attorney shall provide the board with reasonable notice of their inability to represent the board. The board shall provide the city attorney with reasonable notice of any meeting at which the board will consider retention of an attorney.

119.14 (3) Buildings and other



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-09289-PI
TKK:.....

WJ — RMR UN

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 2/13/13

Wanted 2/19 (end of day)

Gen Cat

1 AN ACT ~~relating to~~ **relating to:** authorizing the city of Milwaukee to sell eligible school
2 facilities to eligible purchasers.

Analysis by the Legislative Reference Bureau

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

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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

3 SECTION 1. 119.12 (6) of the statutes is renumbered 119.12 (6) (a) (intro.) and
4 amended to read:

5 119.12 (6) (a) (intro.) The city attorney of the city shall be the legal adviser of
6 and attorney for the board, except that the board may shall retain an attorney to
7 represent the board in any matter if any of the following applies apply.

1 1. The mayor, the common council, the city attorney, or the board determines
 2 that ~~it~~ the board requires specialized legal expertise not possessed by the city
 3 attorney, ~~the~~.

4 2. The city attorney determines that he or she does not have sufficient staff to
 5 adequately represent the interests of the board or.

6 3. The city attorney determines that a conflict of interest exists. [✓] The

7 (b) ^{Plain} The city attorney shall notify the board as soon as a determination is made
 8 under par. (a) that the city attorney is unable to represent the board. The board shall
 9 provide the city attorney with reasonable notice of any board meeting at which the
 10 board will consider retention of an attorney. ✓

****NOTE: I substantially modified s. 119.12 (6). Please review to ensure that it is
 consistent with your intent.

History: 1977 c. 318, 403, 445, 447; 1983 a. 27; 1985 a. 158; 1991 a. 39.

11 **SECTION 2.** 119.46 of the statutes is amended to read:

12 **119.46 Taxes for school operations fund.** (1) As part of the budget
 13 transmitted annually to the common council under s. 119.16 (8) (b), the board shall
 14 report the amount of money required for the ensuing school year to operate all public
 15 schools in the city under this chapter, to repair and keep in order school buildings and
 16 equipment, to make material improvements to school property, and to purchase
 17 necessary additions to school sites. The report shall specify the amount of net
 18 proceeds from the sale or lease of city-owned property used for school purposes
 19 deposited in the immediately preceding school year into the school operations fund
 20 as specified under s. 119.60 (2m) (c) or (5) and the net proceeds from the sale of an
 21 eligible school building deposited in the immediately preceding school year into the
 22 school operations fund as specified under s. 119.61 (4). ✓ The amount included in the
 23 report for the purpose of supporting the Milwaukee Parental Choice Program under

1 s. 119.23 shall be reduced by the amount of aid received by the board under s. 121.136
2 and by the amount specified in the notice received by the board under s. 121.137 (2).
3 The common council shall levy and collect a tax upon all the property subject to
4 taxation in the city, which shall be equal to the amount of money required by the
5 board for the purposes set forth in this subsection, at the same time and in the same
6 manner as other taxes are levied and collected. Such taxes shall be in addition to all
7 other taxes which the city is authorized to levy. The taxes so levied and collected, any
8 other funds provided by law and placed at the disposal of the city for the same
9 purposes, and the moneys deposited in the school operations fund under ~~s. 119.60~~^{SSe} (1),
10 (2m) (c), and (5), and s. 119.61 (4) shall constitute the school operations fund.

11 (2) If moneys specified in s. 119.60 (1), (2m) (c), or (5) or s. 119.61 (4) are
12 deposited in the school operations fund, the moneys shall be used to pay the principal
13 due on any bonds issued under s. 66.1333 (5r) (b), to make sinking fund payments
14 with respect to such bonds, to purchase or redeem such bonds, to pay any redemption
15 premium required to be paid when such bonds are redeemed prior to maturity, or to
16 establish a defeasance escrow account for such bonds in an amount sufficient to
17 provide for the payment of principal, any redemption premium and interest on such
18 bonds when due, whether at maturity or upon prior redemption, and to pay any fees
19 or expenses associated with the establishment of the defeasance escrow account.

20 **History:** 1975 c. 353; 1993 a. 437; 1995 a. 27; 2005 a. 453; 2007 a. 20; 2009 a. 28; 2011 a. 17.

20 **SECTION 3.** 119.60 (1) of the statutes is amended to read:

21 119.60 (1) Except as provided in sub. (2m) (c) and s. 119.61, if any real property
22 within the city which is used for school purposes is sold, the board shall determine

1 whether the proceeds of the sale are deposited in the school operations fund under
2 s. 119.46 or are deposited in the school construction fund under s. 119.48.

3 History: 1983 a. 224; 2005 a. 453; 2011 a. 17.

3 **SECTION 4.** 119.60 (2) of the statutes is amended to read:

4 119.60 (2) Except as provided in sub. (2m) and s. 119.61, city-owned property
5 used for school purposes shall be sold by the city upon written request of the board
6 if the common council adopts a resolution approving the sale. If, within 12 months
7 after a written request by the board, the city has not disposed of the property, has
8 failed to obtain a written agreement to dispose of the property, or has not provided
9 the board with a written report giving specific reasons, which are not identified by
10 the city attorney as constituting a conflict of interest, for its failure to dispose of the
11 property or to obtain an agreement to dispose of the property, the board may retain
12 a real estate agent to represent the board in its real estate transactions.

13 History: 1983 a. 224; 2005 a. 453; 2011 a. 17.

13 **SECTION 5.** 119.61 of the statutes is created to read:

14 **119.61 Surplus property.** (1) In this section:

15 (a) "Education operator" means any of the following:

- 16 1. The operator of a charter school established under s. 118.40 (2r).[✓]
- 17 2. The operator of a private school.
- 18 3. The operator of a charter school that is not an instrumentality of the school
19 district, as determined under s. 118.40 (7).[✓]
- 20 4. A ^{3rd} ~~third~~-party organization securing a building to be used by any of the
21 operators identified in subs. 1. to 3.[✓]

3rd-party ^{3rd} ~~third~~ party organization" is not clear. Also, I wasn't sure whether "securing a building" is a term of art or if it simply means purchasing or leasing a building? Finally, what is the nature of the contract identified in the drafting instructions for this provision ("a contract with that school for this service")? Is the ~~third~~-party organization on the order of a real estate broker? Any clarification you can provide would be appreciated.

3rd

1 (b) "Eligible school building" means a school building in the school district
2 operating under this chapter that satisfies any of the following:

3 1. The school building has been designated as surplus, underutilized, or vacant
4 on any resolution adopted by the board.

****NOTE: The drafting instructions specified that the designation could appear on ANY resolution of the board. Is it your intent that an eligible buyer would be able to purchase a school building designated as surplus or vacant or underutilized on a resolution made 5 or 10 or 20 years ago even if there has been a change in the status of the building such that the building is no longer surplus or vacant or underutilized?

5 2. The school building has been unused or satisfies any condition qualifying the
6 building as an underutilized school building for a period of 12 consecutive months,
7 including the 12 months preceding the effective date of this subdivision [LRB
8 inserts date].

****NOTE: The drafting instructions for this provision directed me to incorporate the phrase "prior to sale" after "period of 12 months." I don't believe adding this phrase is workable because it requires a retroactive determination of eligibility (made after the sale) from an unknowable date (the date of sale) before the building is actually eligible (before 12 months have passed). In this draft, the phrase is left out. Please review the proposed language to determine if it accomplishes your intent.

9 (c) "Underutilized school building" means a school building that satisfies any
10 of the following:

11 (a) Less than 20 percent of the classroom space in the building is used for
12 classroom instruction.

13 (b) The building has break even usage.

****NOTE: The drafting instructions defined underutilized using this phrase, "break even usage". However, I'm not sure I understand what this means. Can you please clarify?

14 (2) (a) No later than 30 days after the effective date of this subsection [LRB
15 inserts date] and annually thereafter, the board shall prepare an inventory of all
16 school buildings in the school district operating under this chapter that includes all
17 of the following for each school building in the district:

1 1. The number of classrooms in the school building and the number of pupils
2 the school building can accommodate.

3 2. The portion of classroom space being utilized ^{used} for direct pupil instruction and
4 the number of pupils receiving instruction in the school building.

5 3. For any school building not being used for direct pupil instruction, the
6 manner in which the school building is being used, including whether the building
7 is vacant or is being used for administration, storage, or professional development.

8 4. The duration over the past 36 months that the school building has been used
9 in the manner identified under subd. 2. or 3.↓

10 5. Whether the board has ever designated the school building as surplus.

11 6. Facility condition index information, including estimated short-^{term} and
12 long-term maintenance costs of the school building.

***NOTE: I'm not familiar with the term, "facility condition index." Is this a term of art? Or is there a clearer way to identify what information you are seeking under this subdivision?

13 (b) The board shall submit a copy of the inventory required under par. (a) to the
14 president of the common council, the department, and the joint committee on
15 finance.

16 (c) In addition to the report required under par. (a), the board shall annually
17 notify the president of the common council, the department, and the joint committee
18 on finance any time a change is made to the use of a school building.

19 (3) (a) An education operator may notify the common council of its interest in
20 purchasing any eligible school building and, except as provided in par. (c), only

21 education operators may purchase an eligible school building. Upon receipt of a
22 notice ^{of} interest under this ~~subsection~~ ^{paragraph}, the common council shall do all of the

23 following:

paragraph
paragraph
Keep comma

~~(A)(1)~~

***NOTE: How do education operators learn about school buildings that qualify as eligible school buildings?

***NOTE: For lack of a better phrase, in this paragraph I refer to a notice of “interest in purchasing an eligible property.” Is there a better way of describing this notice that can be used in this paragraph and in par. (b), below?

- 1 1. Make information about the property available and show the property to the
2 education operator.

***NOTE: Do you want to specify what information the common council must provide to a prospective buyer?

- 3 2. Evaluate the eligibility and financial capability of the education operator.
4 3. Negotiate a reasonable sale price and terms with an education operator that
5 is an eligible buyer. The common council may include as a term under this
6 subdivision a reversionary clause permitting the common council to recapture a
7 building that remains unoccupied 36 months after the date of sale, but may not
8 require as a condition of sale that the eligible school building be used as a school.

***NOTE: This subd. 3. assumes that there is a distinction between an education operator and an eligible buyer. Is that consistent with your intent? If so, do you want to establish parameters for what constitutes an eligible buyer?

***NOTE: The drafting instructions proposed that a school building could be “recaptured” under a reversionary clause. Does this concept need to be fleshed out? That is, would the city have to pay back the purchase price or could the city take title through eminent domain, or is there some other process that would take place? Please advise.

***NOTE: Do you want to establish any parameters for a “reasonable sale price”?

- 9 (b) If more than one education operator has submitted a notice of interest as
10 described in par. (a), the common council shall initiate a competitive,
11 request-for-proposal process and shall identify members of a committee to select the
12 most suitable buyer of the eligible school building. Once the most suitable buyer is
13 selected, the common council shall proceed as required under par. (a) 1. to 3. In
14 evaluating proposals submitted under this paragraph, the committee selected by the
15 common council may not consider the organizational status of the education operator

1 nor the type of school proposed to be located in the eligible school building, but may
2 consider any of the following:

***NOTE: Do you want to specify who should be on the selection committee?

3 1. The amount of proposed investment.

***NOTE: What do you mean by "proposed investment"? Does this refer to the purchase price offered or the amount the purchaser intends to spend to upgrade a building? Or do you have something else in mind?

4 2. The design quality.

***NOTE: What do you mean by design quality? Is this related to the creative use of space in the building?

5 3. The fiscal capability of the education operator.

6 (c) Any person may submit a notice of interest to purchase a school building

7 that has qualified as an eligible school building for more than 48 months. Upon

8 receipt of a notice ^{of} interest under this ^{paragraph} ~~subsection~~, the common council shall proceed

9 as required under par. (a) 1. to 3.

^c ***NOTE: Are there any school buildings that would meet the requirements in this para. (b) at the time the bill would be enacted as law? If so, do you want to tie the "any person" provision to 48 months after the effective date of the bill?

10 (4) If any eligible school building is sold as provided in this section, the net
11 proceeds of the sale shall be deposited in the school operations fund under s. 119.46. ✓

^f ***NOTE: The drafting instructions specified that buildings purchased by a non-profit education operator should be nontaxable and no PILOT payment should be required. What do you mean by non-profit? What does PILOT mean?

12

(END)

From: Kitzman, Nick
Sent: Tuesday, February 26, 2013 2:36 PM
To: Kuczenski, Tracy
Subject: Definitions

Tracey:

Thanks and let me know if you have any questions.

A school is considered underutilized if either of the below conditions are met:

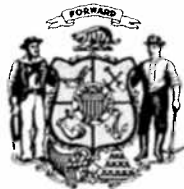
- 1) School does not have a staff, including a principal and structural staff, that are exclusively assigned to the building on a full-time basis; OR
- 2) Less than 40% of the classrooms in the building are currently used for student instruction on a full-time basis (daily for multiple periods per day)

Reasonable sale price: *define*

Sale price shall be based on a comparative sales for former MPS District buildings that have been sold within the previous five years with adjustments made for building size (actual usable building square footage), age, condition, location, and other customary adjustments made in a sales comparison approach to building appraisals. A traditional building appraisal may also be used to support the proposed price provided that it includes actual District building sales and any other comparative building sales are appropriate based on the size (based on actual usable square footage), previous use, age, condition, area demographics and location, and other factors customarily evaluated.

Nick Kitzman
Office of Senator Alberta Darling
 (608) 266-5830
nick.kitzman@legis.wisconsin.gov

- p. 2, lns. 4, 6 - add mayor, common council, etc.
 - p. 4 ln 17-18 - a broker, dealer, national center org that will buy or lease the property and enter into a specific agreement / have a specific agreement in place w/ a school in order for the school to operate within the city.
 - p. 5 Note - resolution in part 5 says unless board can demonstrate that it (relat) no longer qualifies as an eligible school building
2nd note p. 5 - decay as drafted
 - p. 5, ln 9 - delete line
 - p. 6 ln 7 key reference to facility condition index
 - p. 6 last note "letter of interest"
 - p. 7 note - NO
 - p. 7 ln. 4-5 no need to specify eligible buyer
 - p. 7 3rd note - (come in about receipt)
last note - NO
 - p. 8 note 1: over & above purchase price¹
 - p. 8 3rd note: 4 p more after effective date.
- * Talk w/ Mark Shavers about PILOT payment
* education greater, if nonprofit (IRS 501(c)(3)) should be non-taxable



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0928/PT P2

TKK:wlj:jf

Stays → MNR
insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

3/4/13
room

Regen

1 AN ACT *to renumber and amend* 119.12 (6); *to amend* 119.46, 119.60 (1) and
2 119.60 (2); and *to create* 119.61 of the statutes; **relating to:** authorizing the
3 city of Milwaukee to sell eligible school facilities to eligible purchasers.

Analysis by the Legislative Reference Bureau

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

* For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

4 SECTION 1. 119.12 (6) of the statutes is renumbered 119.12 (6) (a) (intro.) and
5 amended to read:

6 119.12 (6) (a) (intro.) The city attorney of the city shall be the legal adviser of
7 and attorney for the board, except that the board may shall retain an attorney to
8 represent the board in any matter if any of the following applies:

1 1. The mayor, the common council, the city attorney, or the board determines
2 that it the board requires specialized legal expertise not possessed by the city
3 attorney, ~~the~~.

4 2. The ^{mayor or the common council or the} city attorney ^{or the city attorney} determines that he or she does not have sufficient staff to
5 adequately represent the interests of the board or ^{of the board}.

6 3. The ^{mayor or the common council or the} city attorney ^{or the board} determines that a conflict of interest exists.

7 (b) The city attorney shall notify the board as soon as a determination is made
8 under par. (a) that the city attorney is unable to represent the board. The board shall
9 provide the city attorney with reasonable notice of any board meeting at which the
10 board will consider retention of an attorney.

****NOTE: I substantially modified s. 119.12 (6). Please review to ensure that it is consistent with your intent.

SECTION 2. 119.46 of the statutes is amended to read:

119.46 Taxes for school operations fund. (1) As part of the budget transmitted annually to the common council under s. 119.16 (8) (b), the board shall report the amount of money required for the ensuing school year to operate all public schools in the city under this chapter, to repair and keep in order school buildings and equipment, to make material improvements to school property, and to purchase necessary additions to school sites. The report shall specify the amount of net proceeds from the sale or lease of city-owned property used for school purposes deposited in the immediately preceding school year into the school operations fund as specified under s. 119.60 (2m) (c) or (5) and the net proceeds from the sale of an eligible school building deposited in the immediately preceding school year into the school operations fund as specified under s. 119.61 (4). The amount included in the report for the purpose of supporting the Milwaukee Parental Choice Program under

1 s. 119.23 shall be reduced by the amount of aid received by the board under s. 121.136
2 and by the amount specified in the notice received by the board under s. 121.137 (2).
3 The common council shall levy and collect a tax upon all the property subject to
4 taxation in the city, which shall be equal to the amount of money required by the
5 board for the purposes set forth in this subsection, at the same time and in the same
6 manner as other taxes are levied and collected. Such taxes shall be in addition to all
7 other taxes which the city is authorized to levy. The taxes so levied and collected, any
8 other funds provided by law and placed at the disposal of the city for the same
9 purposes, and the moneys deposited in the school operations fund under ~~s. ss.~~ 119.60
10 (1), (2m) (c), and (5), and 119.61 (4) shall constitute the school operations fund.

11 (2) If moneys specified in s. 119.60 (1), (2m) (c), or (5) or 119.61 (4) are deposited
12 in the school operations fund, the moneys shall be used to pay the principal due on
13 any bonds issued under s. 66.1333 (5r) (b), to make sinking fund payments with
14 respect to such bonds, to purchase or redeem such bonds, to pay any redemption
15 premium required to be paid when such bonds are redeemed prior to maturity, or to
16 establish a defeasance escrow account for such bonds in an amount sufficient to
17 provide for the payment of principal, any redemption premium and interest on such
18 bonds when due, whether at maturity or upon prior redemption, and to pay any fees
19 or expenses associated with the establishment of the defeasance escrow account.

20 **SECTION 3.** 119.60 (1) of the statutes is amended to read:

21 119.60 (1) Except as provided in sub. (2m) (c) and s. 119.61, if any real property
22 within the city which is used for school purposes is sold, the board shall determine
23 whether the proceeds of the sale are deposited in the school operations fund under
24 s. 119.46 or are deposited in the school construction fund under s. 119.48.

25 **SECTION 4.** 119.60 (2) of the statutes is amended to read:

1 119.60 (2) Except as provided in sub. (2m) and s. 119.61, city-owned property
2 used for school purposes shall be sold by the city upon written request of the board
3 if the common council adopts a resolution approving the sale. If, within 12 months
4 after a written request by the board, the city has not disposed of the property, has
5 failed to obtain a written agreement to dispose of the property, or has not provided
6 the board with a written report giving specific reasons, which are not identified by
7 the city attorney as constituting a conflict of interest, for its failure to dispose of the
8 property or to obtain an agreement to dispose of the property, the board may retain
9 a real estate agent to represent the board in its real estate transactions.

10 SECTION 5. 119.61 of the statutes is created to read:

11 119.61 Surplus property. (1) In this section:

12 (a) "Education operator" means any of the following:

- 13 1. The operator of a charter school established under s. 118.40 (2r).
- 14 2. The operator of a private school.
- 15 3. The operator of a charter school that is not an instrumentality of the school
16 district, as determined under s. 118.40 (7).

17 4. ^{An entity or} A 3rd-party organization ^{within which} securing a building to be used by any of the
18 operators identified in subds. 1. to 3. ^{will operate a school}

***NOTE: I believe this last subdivision needs some clarification. The phrase "3rd-party organization" is not clear. Also, I wasn't sure whether "securing a building" is a term of art or if it simply means purchasing or leasing a building? Finally, what is the nature of the contract identified in the drafting instructions for this provision ("a contract with that school for this service")? Is the 3rd-party organization on the order of a real estate broker? Any clarification you can provide would be appreciated.

19 (b) "Eligible school building" means a school building in the school district
20 operating under this chapter that satisfies any of the following:

21 1. The school building has been designated as surplus, underutilized, or vacant
22 on any resolution adopted by the board ^{within the previous 5 years}

^{And the board is unable to demonstrate that the school building is no longer surplus, underutilized, or vacant}
^{that has entered into a written agreement with any of the operators identified in subds. 1. to 3. to purchase or lease}

6 *6* *****NOTE:** The drafting instructions specified that the designation could appear on ANY resolution of the board. Is it your intent that an eligible buyer would be able to purchase a school building designated as surplus or vacant or underutilized on a resolution made 5 or 10 or 20 years ago even if there has been a change in the status of the building such that the building is no longer surplus or vacant or underutilized?

1 2. The school building has been unused or satisfies any condition qualifying the
2 building as an underutilized school building for a period of 12 consecutive months,
3 including the 12 months preceding the effective date of this subdivision [LRB
4 inserts date].

6 *****NOTE:** The drafting instructions for this provision directed me to incorporate the phrase "prior to sale" after "period of 12 months." I don't believe adding this phrase is workable because it requires a retroactive determination of eligibility (made after the sale) from an unknowable date (the date of sale) before the building is actually eligible (before 12 months have passed). In this draft, the phrase is left out. Please review the proposed language to determine if it accomplishes your intent.

5 (c) "Underutilized school building" means a school building that satisfies any
6 of the following:

7 *10%* (a) Less than *20*^{*40*} percent of the classroom space in the building is used for
8 *classroom* instruction. *of pupils on a daily, school days basis*

9 *20%* (b) The building has break even usage.

*****NOTE:** The drafting instructions defined underutilized using this phrase, "break even usage." However, I'm not sure I understand what this means. Can you please clarify?

10 (2) (a) No later than 30 days after the effective date of this paragraph [LRB
11 inserts date], and annually thereafter, the board shall prepare an inventory of all
12 school buildings in the school district operating under this chapter that includes all
13 of the following for each school building in the district:

14 1. The number of classrooms in the school building and the number of pupils
15 the school building can accommodate.

16 2. The portion of classroom space being used for direct pupil instruction and the
17 number of pupils receiving instruction in the school building.

The school is not staffed on a full-time basis by a principal and instructional staff assigned exclusively to the school.

1 3. For any school building not being used for direct pupil instruction, the
2 manner in which the school building is being used, including whether the building
3 is vacant or is being used for administration, storage, or professional development.

4 4. The duration over the past 36 months that the school building has been used
5 in the manner identified under subd. 2. or 3.

6 5. Whether the board has ever designated the school building as surplus.

7 6. Facility condition index information, including estimated short-term and
8 long-term maintenance costs of the school building.

e ***NOTE: I'm not familiar with the term, "facility condition index." Is this a term
of art? Or is there a clearer way to identify what information you are seeking under this
subdivision?

9 (b) The board shall submit a copy of the inventory required under par. (a) to the
10 president of the common council, the department, and the joint committee on
11 finance.

12 (c) In addition to the report required under par. (a), the board shall annually
13 notify the president of the common council, the department, and the joint committee
14 on finance any time a change is made to the use of a school building.

15 (3) (a) ^{submit a letter to} An education operator may notify the common council of its interest in
16 purchasing an eligible school building ^{and} except as provided in par. (c), only
17 education operators may purchase an eligible school building. Upon receipt of a
18 ^{letter} notice of interest under this paragraph, the common council shall do all of the
19 following:

***NOTE: How do education operators learn about school buildings that qualify as
eligible school buildings?

***NOTE: For lack of a better phrase, in this paragraph I refer to a notice of "interest
in purchasing an eligible property." Is there a better way of describing this notice that
can be used in this paragraph and in par. (b), below?

1 1. Make information about the property available and show the property to the
2 education operator.

le ****NOTE: Do you want to specify what information the common council must provide to a prospective buyer?

3 2. Evaluate the eligibility and financial capability of the education operator.

4 3. Negotiate a reasonable ^{purchase} ~~sale~~ price and terms with an education operator ~~that~~

5 is an eligible buyer. The common council may include as a term under this
6 subdivision a reversionary clause permitting the common council to recapture a

Insert
7-8

7 building that remains unoccupied 36 months after the date of sale, but may not

8 require as a condition of sale that the eligible school building be used as a school.

le ****NOTE: This subd. 3. assumes that there is a distinction between an education operator and an eligible buyer. Is that consistent with your intent? If so, do you want to establish parameters for what constitutes an eligible buyer?

****NOTE: The drafting instructions proposed that a school building could be "recaptured" under a reversionary clause. Does this concept need to be fleshed out? That is, would the city have to pay back the purchase price or could the city take title through eminent domain, or is there some other process that would take place? Please advise.

le ****NOTE: Do you want to establish any parameters for a "reasonable sale price"?

9 (b) If more than one education operator has submitted a ^{letter} notice of interest ~~as~~

10 described in ^{under} par. (a), the common council shall initiate a competitive,
11 request-for-proposal process and shall identify members of a committee to select the
12 most suitable buyer of the eligible school building. Once the most suitable buyer is
13 selected, the common council shall proceed as required under par. (a) 1. to 3. In
14 evaluating proposals submitted under this paragraph, the committee selected by the
15 common council may not consider the organizational status of the education operator
16 nor the type of school proposed to be located in the eligible school building, but may
17 consider any of the following:

le ****NOTE: Do you want to specify who should be on the selection committee?

18 1. The amount of proposed investment ^{proposed for}
^{nature of any improvements and the amount of any investment in}
^{the school building}

le ****NOTE: What do you mean by "proposed investment"? Does this refer to the purchase price offered or the amount the purchaser intends to spend to upgrade a building? Or do you have something else in mind?

1 2. The design quality.

le ****NOTE: What do you mean by design quality? Is this related to the creative use of space in the building?

2 3. The fiscal capability of the education operator.

3 (c) Any person may submit a ^{letter} notice of interest to purchase a school building
4 that has qualified as an eligible school building for more than 48 months. Upon
5 receipt of a ^{letter} notice of interest under this paragraph, the common council shall proceed
6 as required under par. (a) 1. to 3.

le ****NOTE: Are there any school buildings that would meet the requirements in this par. (c) at the time the bill would be enacted as law? If so, do you want to tie the "any person" provision to 48 months after the effective date of the bill?

7 (4) If any eligible school building is sold as provided in this section, the net
8 proceeds of the sale shall be deposited ^{to} in the school operations fund under s. 119.46.

le ****NOTE: The drafting instructions specified that buildings purchased by a nonprofit education operator should be nontaxable and no PILOT payment should be required. What do you mean by nonprofit? What does PILOT mean?

9 (END)

Beginning on the effective date of this paragraph... [LRB inserts date] ^

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0928/P1ins
TKK:wlj:jf

INSERT 7-8

NOTE

- 1 The purchase price shall be based upon either of the following:
- 2 a. The purchase price paid for other comparable school buildings sold by the
- 3 city within the previous 5 years, with adjustments to the purchase price made by
- 4 taking into consideration the useable square footage, age, condition, and location of
- 5 the eligible school building and any other pertinent information about the eligible
- 6 school building and the school building or buildings used for purposes of comparison.
- 7 b. An appraisal prepared for the eligible school building that includes the
- 8 purchase price paid for comparable buildings, provided at least one of the
- 9 comparable buildings is a school building sold by the city and provided the appraisal
- 10 includes the information about the eligible school building and comparable buildings
- 11 identified in subd. 3. a.

***NOTE: Please review these new subdivision paragraphs 3. a. and b. to ensure they are consistent with your intent. Do you want to specify who must prepare the appraisal? See, for example, the language governing an independent appraiser selected jointly by the identified parties under s. 38.20 (2) (b).

3/8/13

LRB-0928/P2

Tkk

T. conf. w/ Nick (S. Darling)

p. 6, ln. 16 - clarify/modify - only determine whether the buyer is an education operator.

p. 7 take at Notes

p. 8 clarify - the building has to be an eligible s.b. for 48 months beginning of the month that begins on the effective date of the bill (so no buildings that are currently eligible s.b. or ^{even} have been eligible s.b. for

several years can be made available to any person other than an education operator until 48 months after the bill is enacted).

* Prepare analysis

* Keep as P-draft

3/14/13

T. conf w/ NICK re: additional changes to LRB-0928/PZ

1. p. 4 definition of "education operator" - add schools that are in the application process to operate as charter schools
2. p. 5 definition of "underutilized school building" -
 - * modify subd. 1: less than 40% of the square footage of the school is being used for the instruction of pupils
 - * create subd. 3: only 80% of the normal instructional hours are used for pupil instruction
3. Require MPS to include in annual inventory the name of the principal and the # of instructional staff full time in each school building
4. Letter of intent process: require Common Council to respond to a letter of intent on the next business day following the 28th day after the C.C. received the letter.
 - * if, before the 28th day, a second letter of intent is submitted, initiate PFP process
5. Permit/require C.C. to consider financial capacity of ~~any~~ every prospective buyer.