

2013 DRAFTING REQUEST

Assembly Amendment (AA-AB(LRBx4112/1))

Received: 2/13/2014 Received By: chanaman
Wanted: As time permits Same as LRB:
For: Dale Kooyenga (608) 266-9180 By/Representing: Rachel Geary
May Contact: Drafter: chanaman
Subject: Criminal Law - law enforcement Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Kooyenga@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Minor changes to Marquette University police department bill

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>
/1	chanaman 2/13/2014	scalvin 2/13/2014	rschluet 2/13/2014	_____	lparisi 2/13/2014	lparisi 2/13/2014	

FE Sent For:

02-13-2014
(1/1")

<END>

per Joint Rule
48(2)

see attached

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/1	chanaman	/1 SAC 02/13/2013	/1 SAC 02/13/2013	_____	_____	_____	_____

FE Sent For:

<END>

2/13/14

-Hanaman, Cathlene

From: Geary, Rachel
Sent: Thursday, February 13, 2014 11:05 AM
To: Hanaman, Cathlene
Subject: Amendment to LRB 4112
Attachments: Technical changes to LRB 4112 1 - Marquette University Feb 13 2014.pdf

Hi Cathlene

Attached is information regarding an amendment that we would like drafted to LRB 4112. Once drafted, could you please send a companion amendment to the Senate version of LRB 4112 to Gary Bennett in Senator Darling's office?

Thank you!

Rachel Geary
Legislative Assistant
State Representative Dale Kooyenga
14th Assembly District
608.266.9181
Rachel.Geary@legis.wi.gov



MARQUETTE
UNIVERSITY

To: Rana Altenburg
Vice President for Public Affairs

Mary Czech-Mrochinski
Director of Governmental and Community Affairs

From: Douglas O. Smith
Associate General Counsel

Subject: **Commissioning Legislation**

Date: February 13, 2014

I have reviewed the draft legislation that you provided earlier today. I have identified four changes to the legislation that would be appropriate and would allow the legislation to facilitate the establishment of a university police department at Marquette.

Parties to Agreement Establishing University Police Department

There are two related changes in this regard. First, in the "Analysis by the Legislative Reference Bureau," the first two lines should read: **"This bill authorizes Marquette University to enter into an agreement with the attorney general or designee or the Milwaukee Police Department to establish a university police department and"**. Second, in section 2, with respect to s.175.42(2)(a), the first two lines should read (page 2, lines 20 and 21): **"The university may enter into an agreement with the attorney general or with the Milwaukee Police Department to establish a university police department and employ"**.

ANALYSIS: Marquette University's Department of Public Safety has worked effectively with the Milwaukee Police Department for many years, and MPD is in a unique position to understand the required protocols for interaction and coordination with a university police department. The issues related to the establishment of a university police department are primarily operational in nature, and MPD has the necessary expertise with respect to the operation of a university police department. Consequently, it is appropriate that any such agreement be the product of discussions directly between the university and the Milwaukee Police Department.

Oversight of University Police Department


In section 2, with respect to s.175.42(2)(a), the sentence reading as follows should be deleted (page 3, lines 3 through 6): "The agreement entered into with the city of Milwaukee shall provide methods for ensuring the accountability of the university police department and the university police officers." In its place, the following may be substituted: "**The agreement establishing the university police force shall be subject to review by the City of Milwaukee Fire and Police Commission as part of its policy review under s.62.50(1m).**"

ANALYSIS: The legislation separately provides three key mechanisms for oversight. First, the involvement of the Wisconsin Attorney General in the drafting of the legislation and potentially in the conclusion of the agreement establishing the university police department can address any issues of public concern that might arise. Second, the university police department will be subject to Open Records Act requests, and the general public will be able to obtain copies of relevant records with respect to the operations of the university police department and seek whatever civil redress or oversight that might be required. Third, the university will remain financially responsible for the actions of university police officers and so will have every incentive to establish appropriate policies and procedures to assure accountability for the activities of its officers.

If some additional measure of accountability is required, the City of Milwaukee Police and Fire Commission, which already provides annual reviews and oversight concerning the operations of the Milwaukee Police Department, is the appropriate governmental entity to review any agreement establishing a university police department that will operate within the City of Milwaukee and will necessarily coordinate its operations with those of the Milwaukee Police Department.

Indemnification of State and Political Subdivisions

In section 2, with respect to s.175.42(4)(b), the sentence reading as follows should be deleted (page 4, lines 17-21): "If, notwithstanding par. (a), a court finds the state or a political subdivision of the state liable for any acts or omissions of a university police officer acting under the section, the university shall indemnify the state or political subdivision against that liability and against all reasonable attorney fees and expenses incurred in defending that action." In its place, the following may be substituted: "**Marquette University shall pay in full any judgment in which Marquette University and a state or any political subdivision of the state is found jointly and severally liable for any action of a university police officer taken under authority of this section and shall reimburse the state or such political subdivision of the state for all reasonable attorney's fees and expenses incurred in defending against such action.**"



ANALYSIS: Previous sections specify that "the university is liable for all acts and omissions of a university police officer while acting under this section." Consequently, to the extent that the university directs a university police officer to act or to refrain from acting, or a university police officer decides on his own or her own to act or to refrain from acting, in violation of law or in violation of a duty of care, the university will be civilly and perhaps criminally liable and will be required to pay any judgments, fines, or settlements that result.

To the extent that university police officers, acting in coordination with MPD, may follow instructions of MPD commanders as contemplated by the agreement establishing the university police department, the university will not be able to assert a defense of sovereign immunity. A state or political subdivision of the state will have the ability to assert a defense of sovereign immunity, however. If the university is obligated to indemnify the state or a political subdivision of the state under those circumstances, the defense of sovereign immunity will have been forfeited. The statutory requirements for the assertion for such a claim against the state or a political subdivision of the state will also have been waived. Consequently, the university will become civilly liable not only for the actions of its own university police officers but also for the actions of MPD commanders who may in certain situations be directing their activities. Such a shift of liability would require the university to implement protocols to prevent such liability, even when acceding to such direction by MPD commanders is in the public interest.

In addition, although the university would be obligated to indemnify the state or a political subdivision of the state, it will be deprived of the ability to control the defense of such suits and to propose a settlement without the approval of the state or the political subdivision of the state. Such restrictions are not consistent with commercial insurance policies and so will deprive the university of the ability to insure against such risks.

If, however, both the university and the state or a political subdivision of the state are, notwithstanding the language of s.172.45(4)(a) in the bill that prevents the state or a political subdivision of the state from being held liable for the actions of a university police officer, held jointly and severally liable for actions taken by a university police officer, it would be appropriate for the university to assume responsibility for the payment of such a judgment. The state and the political subdivisions of the state would retain control over their respective defenses of such claims; the language proposed above would be fully consistent with commercial insurance policy language; and the state and political subdivisions of the state, but not the university, would be able to assert the sovereign immunity defense wherever it is appropriate for them to do so.

Please let me know if you have any questions or concerns or require additional information concerning this matter.

Thanks.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBa1795/1

CMH:/:....

Sac

today please

**ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL (LRB-4112/1)**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 21: delete “and the city of Milwaukee” and substitute “or with
3 the city of Milwaukee police department”.

4 **2.** Page 3, line 4: delete lines 4 to 6 and substitute “agreement establishing the
5 university police department is subject to review under s. 62.50 (1m) by the board of
6 fire and police commissioners.”.

7 **3.** Page 4, line 17: delete lines 17 to 21 and substitute:

8 “(b) The university shall pay in full any judgment in which the university and
9 ^{of the} state or ^a political subdivision of the state ^{is are} found jointly and severally liable for any
10 act of a university police officer taken under this section and shall reimburse the
11 state or political subdivision for all reasonable attorneys fees and expenses incurred
12 in defending the action.”.

13

(END)

Barman, Mike

From: Hanaman, Cathlene
Sent: Thursday, February 13, 2014 2:21 PM
To: Barman, Mike
Subject: RE: Fiscal Estimate

-4266

From: Barman, Mike
Sent: Thursday, February 13, 2014 2:20 PM
To: Hanaman, Cathlene
Subject: RE: Fiscal Estimate

What is the LRB # of the companion?

From: Hanaman, Cathlene
Sent: Thursday, February 13, 2014 2:17 PM
To: Barman, Mike
Subject: FW: Fiscal Estimate

Mike:

Can you rush the fiscals?

From: Geary, Rachel
Sent: Thursday, February 13, 2014 1:58 PM
To: Hanaman, Cathlene
Subject: Fiscal Estimate

Hi

Could we have a fiscal estimate drafted up on LRB 4112 and for the Senate companion as well? Could this also include the amendment that was drafted up today LRB 1795?

Thank you



Rachel Geary
Legislative Assistant
State Representative Dale Kooyenga
14th Assembly District
608.266.9181
Rachel.Geary@legis.wi.gov