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JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Members, Assembly Committee on Health
FROM: Dan Rossmiller, WASB Government Relations Director
DATE: January 5, 2021
RE: Testimony on ASSEMBLY BILL 1, relating to: state government actions to address the COVID-19 pandemic, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority.

Mr. Chairman and members of the committee. Thank you for the opportunity to provide testimony on Assembly Bill 1.

The Wisconsin Association of School Boards (WASB) is a voluntary membership association representing all 421 of Wisconsin's locally elected public school boards.

From the outset we wish to point out that because Assembly Bill 1 contains provisions that the WASB supports and well as provisions the WASB opposes, the WASB takes no position on the bill itself. Further, we confine our comments to the provisions in the bill that directly relate to or impact public K-12 education.

The WASB supports the civil liability provisions of Assembly Bill 1. We appreciate that these provisions do not impact the existing limited governmental immunity that public schools already have against tort claims. That existing limited immunity provides some needed relief but still leaves school districts vulnerable to claims, including claims not based on merit but brought for their settlement value. Assembly Bill 1 creates an *additional* type of immunity that a school district could raise as an affirmative defense if, for example, a student contracts COVID-19 and then files a lawsuit against the school.

There are, however, a number of other provisions in Assembly Bill 1 that the WASB finds to be problematic.

For example, the bill would provide that starting next Monday (January 11, 2021), a school board may not provide virtual instruction to pupils instead of in-person instruction unless such virtual instruction is approved by a two-thirds vote of the members of the school board. The bill further provides that each school board approval of virtual instruction is valid for 14 days and a school board may reauthorize the virtual instruction only by subsequent two-thirds votes of the school board members.

Not only does this provision interfere with local control, substituting the prerogatives of lawmakers in Madison for the judgment of local school board members, elected by their communities, but 14 days is an arbitrary time period that may be divorced from sound medical advice and guidance or the school district's ability to adequately staff its school buildings for in-person instruction. The arbitrary requirement for a two-thirds vote of the board could allow a minority of board members to force a district into an instructional model that may not be in the best interest of the district and its staff.

When this particular proposal was first unveiled roughly a month ago, the WASB expressed concern about the effect it would have on pre-empting local school board decision-making and setting unique voting requirements pertaining to educational programming decisions. While the WASB is appreciative that the present bill does not include provisions that would penalize districts for decisions made in the interest of public safety, we remain concerned about attempts by the legislature to micromanage local decision making.

The WASB is also concerned about changes to the full-time open enrollment application process that could allow for wholesale migration of students from one district to another in the middle of a school year. Given the amount and persistence of legislative comments about how challenging the next biennial budget will be for public school funding and the reality that open enrollment students bring with them a substantial amount of funding, we are concerned that this provision may cause certain districts to focus an inordinate amount of attention on the financial implications of accepting full-time open enrollment students and pit school districts against one another.

Finally, the WASB is concerned about provisions in Assembly Bill 1 that would impact interscholastic athletics and extracurricular activities and usurp local school board decision making. The WASB opposed similar provisions last session.

Athletics and other extra-curricular activities offered in public schools are, as the name suggests, intended to supplement the school curriculum. In this regard, sports, music, forensics, and other activities are viewed as an extension of the classroom and of the school day and are specific to each respective school or district.

Public schools provide athletics and other extracurricular activities because they have educational value and create incentives for students to enroll in and remain in public schools and perform well enough to remain eligible to participate in those activities. These opportunities reduce truancy, reduce discipline referrals, boost students' grades (GPA), increase graduation rates, and keep students engaged in school offerings and interested in their education. In this regard, school-based athletic programs are not community or recreational youth sports programs and are not designed to provide the general public with programming like a YMCA or community-based recreation program.

The WASB believes it should be up to the discretion of local school boards to determine who is eligible to participate in athletics and other extra-curricular activities offered by the school district. We do not think it is the Legislature's job to make these decisions for local school boards. We also oppose legislative attempts to regulate private organizations such as the WIAA by restricting school districts' ability to participate in the WIAA or its activities unless they follow such legislative mandates.

Thank you for the opportunity to share our viewpoints with you. Please feel free to contact me if you have questions or would like additional information. I can be reached at drossmiller@wasb.org or (608) 512-1720.