



122 W. WASHINGTON AVENUE, MADISON, WI 53703  
PHONE: 608-257-2622 • TOLL-FREE: 877-705-4422  
FAX: 608-257-8386 • WEBSITE: WWW.WASB.ORG

JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Members, Senate Committee on Government Operations, Legal Review and Consumer Protection  
FROM: Dan Rossmiller, WASB Government Relations Director  
DATE: February 4, 2021  
RE: SUPPORT for Senate Bill 55, relating to: the publication of proceedings of meetings held by certain governmental bodies, including school boards

Mr. Chairman and members of the committee thank you for the opportunity to submit written testimony in support of Senate Bill 55. The Wisconsin Association of School Boards (WASB) is a voluntary membership association representing all 421 of Wisconsin's locally elected public school boards.

Our members recognize the interest of the public in open and transparent public school governance but also seek to provide the public with information about such governance in an economical and efficient manner. We believe this bill strikes a good balance between these dual goals and deserves your support.

Back in January 2016, school board member delegates to the WASB Delegate Assembly adopted a permanent resolution (WASB Resolution 1.60) placing the WASB in support of allowing school districts to publish statutorily-required notices electronically on the school district website and other social media maintained by the school district in lieu of publishing these notices in newspapers. It was understood by our members that this resolution also applied to the publication of school board proceedings (minutes).

In addition to this policy directive to support legislation such as Senate Bill 55, there are a number of practical reasons why the WASB and its members support this bill. Here are some of the most important:

- 1) The strong direction or trend of recent legislation has been to provide increasing flexibility to school districts and other local governmental units with respect to publication requirements.

Shortly before WASB Resolution 1.60 was adopted, [2015 Wisconsin Act 79](#), which took effect in November 2015, gave school boards and other local governmental bodies a good reason to reassess their procedures for issuing legal notices under Chapter 985 of the state statutes. (More recently, the enactment of [2019 Wisconsin Act 140](#) gave these same governmental units reason for reassessing their procedures for giving notice of school board meetings and meetings of other governmental bodies, such as committees, under Wisconsin's Open Meetings Law.)

For certain legal notices under Chapter 985, in lieu of paying for a newspaper to publish certain legal notices, 2015 Act 79 amended the statutes to expressly permit school boards to direct the school administration to post a physical (paper) copy of certain legal notices in one public location, provided that an electronic copy of any such legal notice is also placed on a website maintained by the school district. This discretionary authority to direct posting in lieu of newspaper publication applies to some, but not all, Chapter 985 legal notices. If a specific legal notice is subject to an exception that disqualifies it from an alternative posting process, paid publication in a newspaper is still required.

At least with respect to the publication of proceedings of school board meetings, our attorneys determined that even with the enactment of 2015 Act 79 the relevant statutes were ambiguous as to whether a school board may use an alternative method of publication or posting. We sought to clarify this ambiguity, leading the WASB to support similar but slightly different legislation (e.g., [2017 Senate Bill 42](#) and [2017 Assembly Bill 70](#)) providing flexibility with regard to the publication of proceedings.

- 2) Current law regarding publication of school board meeting proceedings is confusing and inconsistent because it imposes a mandate on some, but not all, districts to publish a Class 1 legal notice (or pay for a district-wide distribution of the proceedings). Whether a school district is subject to the Class 1 legal notice requirement for its meetings currently depends upon whether a newspaper is published in the district. If no newspaper is published in the district, then the proceedings of school board meetings may be publicized as the school board directs.

In terms of assessing the potential effects of Senate Bill 55, it is important to note that many school districts with no newspaper published in the district **already do not** publish proceedings in newspapers, and there is no known issue with any complaints that those districts are not doing a sufficient job of providing public access to proceedings information. In addition to the legislative judgment regarding permissible methods of notification already embodied in s. [985.02](#), Stats., those districts provide proof that a less-costly and more accessible option (such as website posting) can readily serve as a sufficient substitute for traditional newspaper publication.

- 3) Nothing in this bill would require school districts or other local units of government to discontinue their current practice of paying to publish copies of their proceedings in their local newspaper. Whether those districts or local units would continue to do so may be debatable; however, they **could** continue to do so (voluntarily) under Senate Bill 55 if they believe this is in the public interest.
- 4) Under Senate Bill 55, all meeting minutes would remain public records and under Wisconsin's Public Records Law, and an individual or organization requesting such records must receive a copy of these records or be allowed to examine the records unless there is a basis for denying the request (e.g., if the request is with regard to certain closed session matters).
- 5) Furthermore, under Senate Bill 55, school districts and other local units of governments would continue to provide electronic copies of their meeting minutes (proceedings) documents to newspapers. The newspapers would be free to do what they wish with this information.
- 6) Many school districts and other local units of government already provide convenient and free access to their governing body minutes (or proceedings) on their websites.

All this being said, we believe the bill could be improved by clarifying what is meant by the terms “electronic notification service” and “interested individuals and organizations” in the portions of the bill that require school districts and other local units of government to “establish an electronic notification service to notify interested individuals and organizations (in the school district or local governmental unit) each time the proceedings are posted, electronically placed, and transmitted.”

Clarifying the language of this requirement could make a good bill better. Consider the following questions:

Does the phrase “electronic notification service” imply, for example, that school and local government clerks must actively push out emails or some other communication to interested individuals or organizations or could they post a notice on their website alerting interested individuals or organizations whenever meeting minutes are posted?

If the authors' intent is to employ the first approach suggested in the preceding paragraph, we would also suggest further clarification regarding to whom do those emails or communications must be sent. For example, must "interested individuals and organizations" have signed up or communicated their interest to the school district or other governmental unit in advance in order to receive notification or is the school district or other governmental unit required to make assumptions about who *might* be interested?

Another area where we think statutory clarification may be in order concerns whether or not the proceedings of a closed session may (or must) be published. Legislation addressing publication of proceedings does not often arise and this might be an opportunity to address some long standing issues.

School boards, for example, have long grappled with issue that section 120.11(4), Stats., does not apply to the proceedings of a closed session when there is an ongoing need to maintain the confidentiality of such proceedings that extends beyond the date of the meeting.

There may be a number of ongoing reasons to deny a request (in the context of a school board) for closed session records dealing with such things as: a) a motion to expel a student from school that must remain as confidential pupil records under s. 118.125; or b) a closed session motion to establish bargaining authority for a significant purchase or sale of property. In both these examples, there is an ongoing policy reason why a closed session motion must remain confidential.

For decades, school boards have relied on a cobbled-together "harmonization" of s. 120.11(4) and the Open Meetings Law, supported by AG opinions. (Please see the attached Legal Comment submitted along with this testimony.)

The simplest approach, for school districts at least, would be to say that the section 120.11(4), Stats. does not apply to the proceedings of closed sessions; however, there may be a more nuanced way to draw the line in this area. We would be happy to work with the bill's authors to address this issue as well as the other questions and concerns noted in our testimony. It is our understanding that groups representing other local units of government face similar issues with regard to the proceedings of closed sessions. We would be happy to collaborate with those groups as well.

Thank you for the opportunity to share our support for this legislation. For the reasons cited above, the WASB supports Senate Bill 55.