



**1995 WISCONSIN ACTS RELATED TO ELEMENTARY
AND SECONDARY EDUCATION**

Information Memorandum 96-24

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INTRODUCTION

This Information Memorandum summarizes selected legislation related to elementary and secondary education enacted during the 1995-96 Session of the Wisconsin Legislature.

Copies of all acts referred to in this Information Memorandum may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

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I. SELECTED LEGISLATION

A. LEVEL OF STATE AID AND STATE AID FORMULA

1995 Wisconsin Act 27 provides that, beginning in the 1996-97 school year, state aid for elementary and secondary education (general equalization aid and all other general categorical aid programs) plus the school levy tax credit will equal 66.7% of partial school revenues (defined as the sum of state school aids and the school district's property tax levy).

In addition, Act 27 replaces the two-tier formula used to distribute general equalization aids with a three-tier formula, effective with the 1996-97 aid distribution.

B. REVENUE LIMITS

The 1993-94 Legislature established limits (commonly called "revenue limits" or "revenue caps") on the amount of revenue a school district may derive from its general state aid (equalization aid, minimum state aid and special adjustment aid) and property taxes for the 1993-94 through 1997-98 school years. *1995 Wisconsin Act 27* made the revenue limits permanent and adjusted them upwards.

C. MILWAUKEE PARENTAL CHOICE PROGRAM

1995 Wisconsin Act 27 made numerous changes in the Milwaukee Parental Choice Program. Under that program, low-income elementary or secondary pupils in the City of Milwaukee may attend, at no charge, a participating private school located in the city. The changes made by Act 27 include the following:

1. Expanding the program to include sectarian schools and providing that no pupil may be required to participate in any religious activity if the pupil's parent files a written request that the pupil be exempted from such activities.
2. Increasing the limit on the number of pupils who may participate from 1.5% of the Milwaukee Public Schools' enrollment in 1994-95 (approximately 1,450 pupils) to 7% in 1995-96 (approximately 7,000 pupils) and 15% thereafter (approximately 15,000 pupils).
3. Repealing the current 65% limitation on the percentage of a participating private school's enrollment that may consist of Milwaukee Parental Choice Program pupils.
4. Allowing pupils who, in the previous school year, were enrolled in grades kindergarten through three in private schools in the City of Milwaukee to participate in the program. Prior law excluded such pupils unless they were enrolled in a private school under the Milwaukee Parental Choice Program.
5. Providing that siblings of pupils accepted to the program through random selection need not also be accepted on a random basis.

6. Changing the method of payment so that, rather than making the payment directly to the private school, the check would be made out to the pupil's parent or guardian who must then restrictively endorse the check for the use of the private school.

The expansion of the Milwaukee Parental Choice Program to *sectarian* schools was challenged in court. On March 29, 1996, the Wisconsin Supreme Court issued a per curiam decision stating that it was evenly divided on the issue. Three justices believe that the expansion to sectarian schools violates art. I, s. 18, and art. X, s. 3, Wis. Const.; three justices believe that the respondents had not met the burden to prove beyond a reasonable doubt that the expansion of the program violates the Establishment Clause of the First Amendment to the U.S. Constitution, art. I, s. 18, Wis. Const., art. X, s. 3, Wis. Const., or Wisconsin's public purpose doctrine; and one justice did not participate in the decision. As a result, the matter was returned to Dane County Circuit Court and the preliminary injunction issued by that court was continued until further order of the circuit court. The original action pending in the Wisconsin Supreme Court was dismissed without prejudice [*Thompson, et al. v. Jackson, et al.*, 199 Wis. 2d 715, 546 N.W.2d 140 (1996)].

1995 Wisconsin Act 216 amended the Milwaukee Parental Choice Program to provide that if, in any school year, there are more spaces available at participating private schools than the maximum number of pupils allowed to participate, the Department of Public Instruction (DPI) shall prorate the number of spaces available at each participating private school.

D. SCHOOL BOARD DUTIES AND POWERS

1995 Wisconsin Act 27 provides that “[t]he statutory duties and powers of school boards shall be broadly construed to authorize any school board action that is within the comprehensive meaning of the terms of the duties and powers, if the action is not prohibited by the laws of the federal government or of the state.” In addition, Act 27 provides that school boards may “do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs, functions and activities for the benefit of pupils....”

E. WAIVERS

1995 Wisconsin Act 27 allows a school board to request the DPI to waive any school board or school district requirement under the School Code [chs. 115 to 121, Stats.] or related administrative rules, with specified exceptions. Waivers are effective for four years and may be renewed for additional four-year periods, unless the DPI determines that the school district is not making progress toward improving pupil academic performance. A school board must hold a public hearing in the school district before requesting a waiver.

F. CHARTER SCHOOL LAW

Wisconsin's charter school law authorizes a school board to create a charter school either upon the school board's initiative or upon receipt of a written petition from teachers employed by

the school district. *1995 Wisconsin Act 27* made a number of changes in the charter school law including:

1. Deletion of the requirement that the State Superintendent approve the establishment of a charter school. Instead, a school board must notify the DPI if it intends to establish a charter school.

2. Repeal of a provision which: (a) limited to 10 the number of school districts that could establish charter schools; and (b) limited to two the number of charter schools any school district could establish.

3. Creation of exemptions for the Milwaukee Public Schools from the statement that a charter school is an “instrumentality” of the school district and from the requirement that the school district employ all personnel for the charter school.

4. Creation of a new provision which allows a person seeking to establish a charter school in the City of Milwaukee to appeal a denial of a petition to create the school to the DPI.

5. Deletion of a prohibition against a school board spending, on average, more per pupil enrolled in a charter school than it spends, on average, per pupil enrolled in the public schools of the district, excluding charter schools.

6. Removal of the Milwaukee Public Schools from the prohibition against a school board entering into a contract that would result in the conversion of a private school to a charter school.

7. Creation of an exemption to a prohibition against a school board establishing a charter school outside of the school district to allow two or more school districts to jointly establish a charter school.

8. Providing, for the Milwaukee Public Schools only, that the reassignment of school employes with or without regard to seniority as a result of a decision to contract for the operation of a charter school or to convert a school to a charter school, or the impact of a reassignment on wages, hours and conditions of employment, is a prohibited subject of bargaining.

Wisconsin’s charter school law and the changes made to it by Act 27 are described in detail in the Wisconsin Legislative Council Staff memorandum to Interested Legislators, *Wisconsin’s Charter School Law*, dated March 21, 1996.

G. MILWAUKEE PUBLIC SCHOOLS CONTRACTING AND SCHOOL CLOSING AUTHORITY

1995 Wisconsin Act 27 authorizes the Milwaukee Public Schools to:

1. Contract with any nonsectarian private school or agency located in the City of Milwaukee to provide education programs to pupils enrolled in the district.

2. Close any school that it determines is low in performance by adopting a resolution to that effect. The Superintendent of the Milwaukee Public Schools may reassign the school's staff members without regard to seniority.

Any reassignment of staff resulting from these actions, as well as any reassignment of staff resulting from a decision of the Board of Directors of the Milwaukee Public Schools to contract with an individual or group to operate a school as a charter school, is a prohibited subject of bargaining.

H. MILWAUKEE PUBLIC SCHOOLS' SUPERINTENDENT AND BUSINESS MANAGER

1995 Wisconsin Act 27 repealed the July 1, 1999 sunset date on the authorization for the Board of Directors of the Milwaukee Public Schools to elect a superintendent of schools who is not licensed by the DPI. In addition, Act 27 allows the Board to employ a business manager who is not licensed by the DPI.

I. SCHOOL PRINCIPAL LICENSURE

1995 Wisconsin Act 27 provides that a school principal license issued or renewed by the DPI shall authorize the license holder to serve as principal for any K-12 grade level. Under prior DPI administrative rules, there were separate licenses for elementary/middle school principals (grades 1-9) and middle/secondary school principals (grades 6-12).

J. GRANTS FOR EDUCATIONAL TECHNOLOGY

1995 Wisconsin Act 27 created the Pioneering Partners Grants and Loans under which school districts, county libraries and municipal libraries, individually or in conjunction with one another, may apply for a grant and/or a loan to fund all or a portion of a distance education or educational technology project. The following amounts were appropriated or allocated for the program:

1. *Act 27* appropriated \$10 million general purpose revenue (GPR) for the grants for fiscal year 1996-97. *1995 Wisconsin Act 351* increased that appropriation by \$5 million GPR (to \$15 million) and expressed the Legislature's intention to appropriate an additional \$5 million for the grants in the 1997-99 fiscal biennium.

2. *Act 27* allocated \$15 million from the State Trust Fund annually for the loans for fiscal years 1996-97 through 1999-2000.

This program is described in detail in MEMO NO. 8, *Distance Education and Educational Technology Items Contained in the 1995-97 Biennial Budget Act*, dated March 11, 1996.

Schools also have priority for grants from the Wisconsin Advanced Telecommunications Foundation, funded primarily by telecommunications providers, for projects related to the effective use of telecommunications infrastructure. These grants are being coordinated with the Pioneering Partners Grants and Loans.

K. STUDENT ACHIEVEMENT GUARANTEE IN EDUCATION (SAGE) INITIATIVE

1995 Wisconsin Act 27 appropriated \$4.6 million in 1996-97 for a new five-year program called the Student Achievement Guarantee in Education (SAGE) Initiative. Up to \$2,000 per pupil will be provided to schools with high percentages of low-income pupils. Only one school per district may participate, except that 10 schools in Milwaukee may participate. Participating schools must sign a five-year student achievement guarantee contract with the DPI. The school must reduce each class size; keep the school open from early in the morning to late in the day; collaborate with community organizations to make educational, recreational, community and social opportunities and services available in the school to all school district residents; provide a rigorous academic curriculum; provide intensive staff development and evaluation; and comply with accountability measures related to the academic achievement of pupils.

L. SCHOOL DISTRICT STANDARDS AUDITS

1995 Wisconsin Act 27 eliminated the requirement that the DPI conduct an audit of each school district for compliance with the state's educational standards at least once every 10 years. Instead, the DPI must conduct an inquiry into compliance upon receipt of a complaint and may conduct an audit on its own initiative.

M. PUPIL EXPULSIONS

1995 Wisconsin Acts 29, 32, 33, 75 and 235 amended Wisconsin's pupil expulsion law to:

1. Replace the requirement that the pupil expulsion statute be printed in full on the face or back of the notice of an expulsion hearing with a requirement that the notice include specified information relating to the grounds and particulars of the pupil's alleged conduct upon which the expulsion hearing is based, the hearing procedures and the pupil's rights [Act 235].

2. Provide that no public school district is required to enroll a pupil during the term of his or her expulsion from another public school district. If an expelled pupil seeks to enroll in another public school district, upon the request of that school board, the pupil's former school district must provide it with a copy of the expulsion order, a written explanation of the reasons why the pupil was expelled and the length of the term of the expulsion [Act 29].

3. Expand the reasons for which a pupil 16 years of age or older may be expelled to include repeated conduct, while under the supervision of a school authority, that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity sponsored by a school authority. As under the other expulsion provisions, the school board must also find that the interest of the school demands the pupil's expulsion [Act 32].

4. Extend the time that a pupil may be suspended from school, if notice of an expulsion hearing has not been sent to the pupil or the pupil's parent, from three to five days [Act 33].

5. Provide that a pupil must be suspended and proceedings to expel the pupil commenced if it is determined that the pupil, while at school or under the supervision of a school authority, possessed a firearm. The school board may modify this requirement on a case-by-case basis [Act 75].

N. FEES FOR THE TEMPORARY USE OF SCHOOL GROUNDS OR FACILITIES

1995 Wisconsin Act 65 eliminated the requirement that a school board charge a religious organization a reasonable fee for the temporary use of school grounds or facilities. However, art. I, s. 24, Wis. Const., continues to state:

Nothing in this constitution shall prohibit the legislature from authorizing, by law, the use of public school buildings by civic, religious or charitable organizations during nonschool hours upon payment by the organization to the school district of reasonable compensation for such use.

O. DISPOSITIONAL ALTERNATIVES FOR HABITUAL TRUANTS

1995 Wisconsin Act 77, a major enactment relating to juvenile justice, includes a number of changes related to habitual truancy, including expanding the dispositional alternatives available to a court for a juvenile found to be habitually truant and for his or her parent or guardian. New dispositional alternatives include:

1. Revocation of, or refusal to issue, a work permit to the juvenile.
2. Placement in a teen court program.
3. An order for the parent, guardian, legal custodian or person who has a juvenile under his or her control to participate in counseling at his or her own expense.

These and other provisions of Act 77, relating to truancy, are described in Section II, K, of Information Memorandum 96-1, *Juvenile Justice Legislation*, dated January 29, 1996.

P. CONFIDENTIAL EXCHANGE OF INFORMATION BETWEEN LAW ENFORCEMENT AGENCIES, COURTS AND SCHOOL DISTRICTS

1995 Wisconsin Acts 77 and 173 contain provisions that increase the exchange of otherwise confidential information about juveniles between law enforcement agencies, courts and school districts, including the following:

1. If requested by the school district administrator (superintendent) of a public school district, *a law enforcement agency* may disclose to the administrator any information in its records relating to the act for which a juvenile enrolled in the public school district was adjudicated delinquent [Act 77].

2. If requested by the school district administrator of a public school district, *a law enforcement agency* may provide to the administrator any information in its records relating to the illegal possession by a child of a dangerous weapon, as defined under the Criminal Code [Act 173].

3. If a petition is filed alleging that a juvenile has committed a delinquent act that would be a felony if committed by an adult, the *court clerk* shall notify the school board of the school district in which the juvenile is enrolled or the school board's designee of the fact that the petition has been filed and the nature of the delinquent act alleged in the petition [Act 77]. As under prior law, the court clerk must also notify the school board when a juvenile is adjudicated delinquent for any reason.

The Acts include limitations on disclosure of this information to school district employees and others and the purposes for which the information may be used.

These provisions of Acts 77 and 173 were reconciled with other enactments of the 1995 Legislature by *1995 Wisconsin Act 352*. For a detailed description of current Wisconsin law related to school district access to information from law enforcement and court records, including the provisions contained in Acts 77, 173 and 352, see the Wisconsin Legislative Council Staff memorandum to Interested Legislators, *School Access to Information Regarding Pupils and Access to Pupil Records Maintained by a School*, dated July 9, 1996.

Q. TEACHER TENURE IN MILWAUKEE COUNTY

Under prior law, teachers employed by the Milwaukee Public Schools or other school districts in Milwaukee County were permanent employees who could be discharged only for good cause after completing a continuous and successful three-year probation.

1995 Wisconsin Act 111 repealed the teacher tenure laws. Provisions were included in the Act to allow the issue of teacher tenure to be taken to arbitration in the first contract negotiation after the effective date of the Act.

R. CIVIL IMMUNITY FOR DONATING EQUIPMENT TO SCHOOLS

1995 Wisconsin Act 112 provides that any person engaged in the sale or use of commercial equipment or technology who donates (or provides in exchange for reimbursement that does not exceed overhead and transportation costs) any commercial equipment or technology to a public or private elementary or secondary school or institution of higher education is immune from civil liability for the death of or injury to an individual caused by the equipment or technology. The immunity does not apply if the death or injury was caused by a wilful or wanton act or omission of

the person who donated or accepted reimbursement for the equipment or technology. Also, this immunity does not apply to the manufacturer of the donated equipment or technology.

S. SIGNIFICANT DEVELOPMENTAL DELAY

1995 Wisconsin Act 298 directs the DPI to conduct in-service training for early childhood special education teachers and directors and pupil services personnel in identifying children with significant developmental delays to ensure that only children meeting the criteria established by the DPI, by rule, are so identified. The criteria must include significant delays of at least 1.5 standard deviations below the mean in at least two of the developmental areas that correspond to major life activities.

T. TEACHER TRAINING IN PHONICS

1995 Wisconsin Act 299 provides that, beginning on July 1, 1998, the DPI may not issue or renew a license that authorizes the holder to teach reading and language arts to pupils in any pre-kindergarten class or any of the grades kindergarten through six, unless the applicant has successfully completed instruction preparing the applicant to teach reading and language arts using appropriate instructional methods, including phonics.

U. ALCOHOL TESTING OF PUBLIC SCHOOL STUDENTS

1995 Wisconsin Act 327 authorizes school boards to require a public school pupil to provide breath samples for the purpose of determining the presence of alcohol in the pupil's breath. The employe, agent or officer authorized to administer these tests must have reasonable suspicion to believe that the pupil is under the influence of alcohol while on school premises, in a motor vehicle or participating in a school-sponsored activity. School boards must adopt written policies regarding the disciplines or treatments that will result from being under the influence of alcohol before requiring a pupil to provide a breath sample.

V. DEBT ISSUED TO PAY RETIREMENT SYSTEM LIABILITY FOR UNFUNDED PRIOR SERVICE

Whenever a school board adopts an initial resolution to issue a promissory note in excess of \$5,000, it must provide school district electors with an opportunity for a referendum on the borrowing if the borrowing will cause the district's outstanding indebtedness to exceed specified limits.

1995 Wisconsin Act 358 exempts from these referendum requirements the issuance of a promissory note for the purpose of paying unfunded prior service liability contributions under the Wisconsin Retirement System, if all of the proceeds of the note will be used for the purpose of paying such contributions.

W. CHILD CARE AND TRANSPORTATION BETWEEN SCHOOL AND CHILD CARE

1995 Wisconsin Act 439 authorizes school boards to enter into agreements with licensed public or private nonsectarian child care centers for the following purposes: (1) to lease space for prekindergarten or kindergarten programs offered by the school district; or (2) to place school district employees in a child care center to provide instruction in prekindergarten or kindergarten programs offered by the school district.

Act 439 also provides that, in lieu of transporting a pupil between his or her residence and school, a school district may provide transportation for the pupil between school and a child care program or other child care provider. A school district shall be paid state transportation aid for providing such transportation, but the amount of transportation aid may not exceed the amount the school district would receive for transporting the pupil between school and his or her residence.

X. SEXUAL ASSAULT OF A STUDENT BY "SCHOOL STAFF"

1995 Wisconsin Act 456 creates an enhanced penalty for sexual assault of a student by a "school staff" person. Under the Act, whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class D felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed five years, or both) if both of the following apply:

1. The child is enrolled as a student in a public elementary or secondary school or school district.

2. The defendant is a member of the "school staff" of the school or school district in which the child is enrolled. "School staff" is defined to mean any person who provides services to a school or a school board including: (a) an employe of a school or school board; and (b) a person who provides services to a school board or school board under a contract.

II. LEGISLATION DECLARED VOID BY THE WISCONSIN SUPREME COURT: STATE-LEVEL GOVERNANCE STRUCTURE

1995 Wisconsin Act 27 contains provisions that would have significantly restructured the state-level governance of elementary and secondary education in Wisconsin. Currently, the DPI is headed by an elected State Superintendent of Public Instruction. Act 27 would have made the following changes, effective January 1, 1996:

- a. The name of the DPI would have been changed to the Department of Education.
- b. The 11-member Education Commission would have been created to function as the policy-making unit for the Department of Education.
- c. The administrative powers and duties of the Department of Education would have been vested in a new Secretary of Education, appointed by the Governor with Senate confirmation.
- d. The statutory powers and duties of the State Superintendent of Public Instruction would have been reassigned to either the Secretary of Education or the Department of Education.
- e. A separate office of the State Superintendent of Public Instruction would have been created and 6.0 positions (including the State Superintendent) authorized for the office. The State Superintendent would have been assigned certain limited statutory responsibilities and served as the chairperson of the Education Commission.

These provisions of Act 27 were challenged as violating art. X, s. 1, Wis. Const., which provides, in part: “The supervision of the public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct; and their qualifications, powers, duties and compensation shall be prescribed by law.” On March 29, 1996, the Wisconsin Supreme Court held these provisions of Act 27 void. The Court concluded that the provisions unconstitutionally give powers of the elected State Superintendent to other “appointed officers” at the state level who are not subordinate to the State Superintendent [*Thompson et al. v. Craney, et al.*, 199 Wis. 2d 674, 546 N.W.2d 123 (1996)].

JRH:rjl;jt