



## 2005 SENATE BILL 588

February 10, 2006 – Introduced by Senators STEPP, A. LASEE and ZIEN, cosponsored by Representatives FRISKE, PETROWSKI, BIES, VOS, McCORMICK, MUSSER, JESKEWITZ, ALBERS, WOOD and MURSAU. Referred to Select Committee on DNR Regulatory Reform.

1     **AN ACT to amend** 19.45 (title); and **to create** 19.42 (11s), 19.45 (6m), 19.459,  
2           19.59 (1) (bt), 23.46 and 66.0404 of the statutes; **relating to:** retaliatory  
3           conduct by public officers and employees, administration and enforcement of  
4           codes of ethics, information for applicants for approvals issued by the  
5           Department of Natural Resources, and information for applicants for permits  
6           issued by a city, village, town, or county.

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### *Analysis by the Legislative Reference Bureau*

This bill prohibits any state or local government officer or employee from using his or her office or position to retaliate against any individual who requests approval of a permit, or who requests any other governmental action or service, for seeking approval of a governmental permit, requesting any other governmental action or service, or exercising free speech in connection with the individual's request or application. Violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$5,000, or imprisonment in the county jail for not more than one year, or both. Currently, there is no similar provision, but officers and employees who take inappropriate actions in their official capacities may be subject to current prohibitions in existing codes of ethics or may be subject to disciplinary actions in certain cases.

The bill requires each agency or unit of state and local government in this state to establish and maintain procedures for the administration and enforcement of

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codes of ethics applicable to its officers and employees. The procedures must specifically address how the prohibition created by the bill will be applied. The procedures must also address an educational program for officers and employees of the agency or unit and members of the public who may interact with those officers and employees, investigation of complaints, review of potential violations by appropriate authorities, and appropriate disciplinary action against violators when required. Currently, the State Ethics Board and district attorneys administer and enforce the statutory code of ethics. Local governments may establish local ethics boards to administer and enforce local codes of ethics.

This bill requires the Department of Natural Resources (DNR) to post a sign at each of its offices at which a person may apply for a permit, license, or other approval issued by DNR, other than a hunting or fishing license, explaining the rights of applicants for those approvals. The bill also requires DNR to provide an information sheet to applicants containing the same information.

The bill also requires every political subdivision (city, village, town, or county) to post a sign explaining the rights of applicants for a permit. The bill defines “permit” as a permit, license, or other approval issued by a political subdivision that relates to construction, zoning, sewerage systems, or occupancy of a building. Under the bill, a political subdivision is also required to provide an applicant with an information sheet containing the same information.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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

1           **SECTION 1.** 19.42 (11s) of the statutes is created to read:

2           19.42 (11s) “Retaliate” means to engage in conduct that is designed to cause  
3 harm to an individual or his or her interests in response to an act or statement of the  
4 individual.

5           **SECTION 2.** 19.45 (title) of the statutes is amended to read:

6           **19.45 (title) Standards of conduct; state public officials and employees.**

7           **SECTION 3.** 19.45 (6m) of the statutes is created to read:

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1           19.45 **(6m)** No state public official and no officer or employee of a department  
2           may use his or her public office or position to retaliate against any individual who  
3           requests approval of a permit, or who requests any other governmental action or  
4           service, for seeking approval of a governmental permit, requesting any other  
5           governmental action or service, or exercising free speech in connection with the  
6           individual's request or application. A violation of this subsection, when accompanied  
7           by an intent to retaliate under this subsection, includes an unreasonable or  
8           unjustifiable delay in the processing of a governmental permit application or any  
9           other appeal, plea, petition, or request for a governmental action or service; an  
10          exercise of discretionary authority by an officer or employee with respect to a request  
11          for a governmental permit, action, or service that does not conform to the code of  
12          ethics governing the officer's or employee's office or position; the initiation of an  
13          investigation or inquiry of an individual in response to a request for a governmental  
14          permit, action, or service; or the libel, slander, or engagement in any other pattern  
15          of conduct that demonstrates an intentional disregard of or disrespect for an  
16          individual who requests a governmental permit, action, or service or the individual's  
17          interests.

18           **SECTION 4.** 19.459 of the statutes is created to read:

19           **19.459 Administration and application by state and local**  
20           **governments. (1)** Each department shall establish and maintain procedures for  
21           the administration and enforcement of s. 19.45.

22           **(2)** Each local governmental unit shall establish and maintain procedures for  
23           the administration and enforcement of s. 19.59 (1).

24           **(3)** All procedures under sub. (1) or (2) shall address the specific means by  
25           which s. 19.45 (6m) or 19.59 (1) (bt) will be applied. The procedures shall also address

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1 an educational program for all officers and employees of each department or local  
2 governmental unit and members of the public who may interact with these officers  
3 and employees, investigation of complaints, review of potential violations by  
4 appropriate authorities, and appropriate disciplinary action against violators when  
5 required.

6 (4) The department of administration shall prescribe a uniform, written ethics  
7 policy statement consistent with the requirements of this section and shall require  
8 all officers and employees of each department to read and acknowledge in writing  
9 that they have read and understand the statement.

10 **SECTION 5.** 19.59 (1) (bt) of the statutes is created to read:

11 19.59 (1) (bt) No local public official and no officer or employee of a local  
12 governmental unit may use his or her public office or position to retaliate against any  
13 individual who requests approval of a permit, or who requests any other  
14 governmental action or service, for seeking approval of a governmental permit,  
15 requesting any other governmental action or service, or exercising free speech in  
16 connection with the individual's request or application. A violation of this paragraph  
17 includes an unreasonable or unjustifiable delay in the processing of a governmental  
18 permit application or any other appeal, plea, petition, or request for a governmental  
19 action, or service; an exercise of discretionary authority by an officer or employee  
20 with respect to a request for a governmental permit, action, or service that does not  
21 conform to the code of ethics governing the officer's or employee's office or position;  
22 the initiation of an investigation or inquiry of an individual in response to a request  
23 for a governmental permit, action, or service; and the libel, slander or engagement  
24 in any other pattern of conduct that demonstrates an intentional disregard of or

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1       disrespect for an individual who requests a governmental permit, action, or service  
2       or the individual's interests.

3               **SECTION 6.** 23.46 of the statutes is created to read:

4               **23.46 Information about applicants' rights. (1)** In this section, "approval"  
5       means a permit, license, or other approval issued by the department under subch.  
6       VI of ch. 29, subch. II of ch. 30, ch. 169, or chs. 280 to 299.

7               **(2)** In each office of the department at which a person may apply for or pick up  
8       an approval, the department shall post a sign explaining the rights of applicants for  
9       approvals. The department shall post the sign in a conspicuous place and print the  
10      sign on fluorescent colored paper in a type size of at least 16 point. The department  
11      shall include at least the following information on the sign:

12              (a) The name of a person to whom an applicant may complain if the applicant  
13      believes that the department is not following the law in processing the application  
14      or issuing the approval or is making unreasonable demands of the applicant.

15              (b) Any deadlines before which the department is required to act on an  
16      application.

17              **(3)** When a person applies for an approval at an office of the department, the  
18      department shall provide the applicant with an information sheet containing the  
19      information on the sign required under sub. (2).

20              **SECTION 7.** 66.0404 of the statutes is created to read:

21              **66.0404 Information about applicants' rights. (1) DEFINITIONS.** In this  
22      section:

23              (a) "Permit" means a permit, license, or other approval issued by a political  
24      subdivision that relates to construction, zoning, sewerage systems, or occupancy of  
25      a building.

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1 (b) "Political subdivision" means a city, village, town, or county.

2 (2) CONTENTS OF INFORMATIONAL SIGNS. In every political subdivision in which  
3 a person may apply for or pick up a permit, the political subdivision shall post a sign  
4 explaining the rights of permit applicants. The political subdivision shall post the  
5 sign in a conspicuous place and print the sign on fluorescent colored paper in a type  
6 size of at least 16 point. The political subdivision shall include at least the following  
7 information on the sign:

8 (a) The name of a person to whom an applicant may complain if the applicant  
9 believes that the political subdivision is not following the law in processing the  
10 application or issuing the permit or is making unreasonable demands of the  
11 applicant.

12 (b) Any deadlines before which the political subdivision is required to act on an  
13 application.

14 (3) INFORMATION SHEET. When a person applies for a permit in a political  
15 subdivision, the political subdivision shall provide the applicant with an information  
16 sheet containing the information on the sign required under sub. (2).

**SECTION 8. Nonstatutory provisions.**

18 (1) LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that one of the  
19 fundamental rights of a free society is the right of individuals to express themselves  
20 without intimidation or fear that they will be the target of retribution by a public  
21 officer or employee who disagrees with that expression. The legislature further finds  
22 that the citizens of this state are entitled to the assurance that each application for  
23 a permit or request for a governmental action or service will be treated fairly,  
24 reviewed without undue hostility, and processed expeditiously. The legislature  
25 further finds that all citizens of this state benefit from an ethical and just

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1 government, not only those individuals who submit applications for permits or who  
2 request governmental actions or permits, and that it is the function of government  
3 to justly and efficiently review these applications, take these actions, and administer  
4 these services. The legislature further finds that, consistent with good public policy,  
5 laws should encourage ethical administration of government, free of intimidation,  
6 corruption, and retribution. The legislature further finds that, to preserve  
7 Wisconsin's tradition of clean and open government, prevent corruption, bolster  
8 public trust in government, and improve public service to citizens, it is necessary to  
9 ensure that public officers and employees do not use their official authority to  
10 retaliate against citizens who, in the exercise of constitutionally protected speech,  
11 are critical of public officers or employees. Therefore, the legislature deems it in the  
12 best interests of the state to enact specific legislation prohibiting public officers and  
13 employees from retaliating against citizens who, in the exercise of constitutionally  
14 protected free speech, are critical of public officials or employees, public agencies, or  
15 legislative bodies.

16 **SECTION 9. Effective dates.** This act takes effect on the day after publication,  
17 except as follows:

18 (1) The treatment of sections 19.459 and 23.46 of the statutes takes effect on  
19 the first day of the 3rd month beginning after publication.

20 (END)