

State of Wisconsin
2013 - 2014 LEGISLATURE

RMNR



LRB-0437/M P 2

JTK&MED:eev:ph

stage

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *Regen* **to renumber** 19.365; **to amend** 19.32 (intro.), 19.32 (1), 19.32 (1m), 19.32
 2 (2), 19.33 (1) to (3) and (8), 19.34 (title), 19.35 (1) (am) (intro.), 19.35 (1) (b), 19.35
 3 (1) (c), 19.35 (1) (d), 19.35 (6), 19.36 (7) (a) and 19.36 (13); and **to create** 19.32
 4 (3m) of the statutes; **relating to:** access to public records.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. The proposed changes are explained in the NOTES following each section.

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

5 **SECTION 1.** 19.32 (intro.) of the statutes is amended to read:

6 **19.32 Definitions.** (intro.) As used in ss. ~~19.33~~ 19.32 to 19.39:

NOTE: Expands the application of s. 19.32, stats. (definitions), to apply to itself so that the definition proposed in SECTION 5 (special purpose district) will apply to s. 19.32 (1), stats. (definition of "authority").

7 **SECTION 2.** 19.32 (1) of the statutes is amended to read:

8 19.32 (1) "Authority" means any of the following having custody of a record: a

9 state or local office, elected elective official, agency, board, commission, committee,

Create A.R. A

(CS)

1 council, department or public body corporate and politic created by the constitution;
 2 or by any law, ordinance, rule or order; a governmental or quasi-governmental
 3 corporation except for the Bradley center sports and entertainment corporation; a
 4 ~~local exposition district under subch. II of ch. 229; a long-term care district under s.~~
 5 ~~46.2895~~ special purpose district; any court of law; the assembly or senate; a nonprofit
 6 corporation which receives more than 50% of its funds from a county or a
 7 municipality, as defined in s. 59.001 (3), and which provides services related to public
 8 health or safety to the county or municipality; or a formally constituted subunit of
 9 any of the foregoing.

NOTE: 1. Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

2. Clarifies that all special purpose districts are covered entities, not just local exposition and long-term care districts. Examples of special purpose districts include school districts, technical college districts, metropolitan sewerage districts, town sanitary districts, and public inland lake protection and rehabilitation districts. It has long been accepted that these entities are covered under the public records access law. The current reference to two specific special purpose districts implies that other special purpose districts are not covered. Special purpose districts are generally governed by boards and commissions that are currently covered, and the entities themselves are probably currently covered as "agencies." See also SECTION 5 below.

10 SECTION 3. 19.32 (1m) of the statutes is amended to read:

11 19.32 (1m) "Person authorized by the individual" means the parent, guardian,
 12 as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of ~~a~~ an
 13 individual who is a child, as defined in s. 48.02 (2); the guardian of an individual
 14 adjudicated incompetent in this state; the personal representative or spouse of an
 15 individual who is deceased; or any person authorized, in writing, by ~~the~~ an
 16 individual to ~~exercise the rights granted under this section~~ act on his or her behalf.

****NOTE: Amends this definition to standardize word usage. Clarifies that a "person authorized by the individual" is not limited to acting in situations involving a *stated "right." Also removes erroneous reference to "this section" (the definition section), and replaces it with a more general reference to an individual acting on behalf of another individual.

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2-9

INS 2-16

17 SECTION 4. 19.32 (2) of the statutes is amended to read:

SECTION 4

or stored

1 19.32 (2) "Record" means any material on which written, drawn, printed,
 2 spoken, visual, or electromagnetic information or electronically generated data is
 3 recorded or preserved, regardless of physical form or characteristics, which has been
 4 created or is being kept by an authority. "Record" includes, but is not limited to,
 5 handwritten, typed or printed pages, maps, charts, photographs, films, recordings,
 6 tapes (~~including computer tapes~~), ~~computer printouts and~~ optical disks, and any
 7 other medium on which electronically generated ^{*or stored*} data is recorded or preserved.

8 "Record" does not include drafts, notes, preliminary computations and like materials
 9 prepared for the originator's personal use or prepared by the originator in the name
 10 of a person for whom the originator is working; materials which are purely the
 11 personal property of the custodian and have no relation to his or her office; materials
 12 to which access is limited by copyright, patent or bequest; and published materials
 13 in the possession of an authority other than a public library which are available for
 14 sale, or which are available for inspection at a public library.

NOTE: Deletes a reference in the definition of "record" to computer tapes and
 * printouts and substitutes a more general reference to "electronically generated data" in
 order to explicitly capture other current and possible future formats.

or stored

15 **SECTION 5.** 19.32 (3m) of the statutes is created to read:

16 19.32 (3m) "Special purpose district" means a district, other than a state
 17 governmental unit or a county, city, village, or town, that is created to perform a
 18 particular function and whose geographic jurisdiction is limited to some portion of
 19 this state.

NOTE: Creates a definition of "special purpose district," which is used in SECTION
 2. The definition is designed to capture all nonstate governmental districts, except
 counties, cities, villages, and towns, that are created to perform a particular function and
 whose geographic jurisdiction is limited to some portion of this state.

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A.R. B*

20 **SECTION 6.** 19.33 (1) to (3) and (8) of the statutes are amended to read:

1 19.33 (1) An ~~elected~~ elective official is the legal custodian of his or her records
2 and the records of his or her office, but the official may designate an employee of his
3 or her staff to act as the legal custodian.

4 (2) The chairperson of a committee of ~~elected~~ elective officials, or the designee
5 of the chairperson, is the legal custodian of the records of the committee.

6 (3) The cochairpersons of a joint committee of ~~elected~~ elective officials, or the
7 designee of the cochairpersons, are the legal custodians of the records of the joint
8 committee.

9 (8) No ~~elected~~ elective official of a legislative body has a duty to act as or
10 designate a legal custodian under sub. (4) for the records of any committee of the body
11 unless the official is the highest ranking officer or chief administrative officer of the
12 committee or is designated the legal custodian of the committee's records by rule or
13 by law.

NOTE: Covers under the law a person who holds an elective office even if the person
was appointed to fill a vacancy in that office.

14 **SECTION 7.** 19.34 (title) of the statutes is amended to read:

15 **19.34 (title) Procedural information; access times and locations.**

△

NOTE: Expands title to reflect the complete content of s. 19.34, stats.

16 **SECTION 8.** 19.35 (1) (am) (intro.) of the statutes is amended to read:

17 19.35 (1) (am) (intro.) In addition to any right under par. (a), any requester who
18 is an individual or person authorized by the individual, has a right to inspect any
19 personally identifiable information pertaining to the individual in a record
20 containing personally identifiable information ~~pertaining to the individual~~ that is
21 maintained by an authority and to make or receive a copy of any such information.
22 The right to inspect or copy information in a record under this paragraph does not
23 apply to any of the following:

NOTE: Clarifies that if a record contains personally identifiable information relating to more than one individual, an individual has a right to inspect or copy only the portion of the record containing personally identifiable information relating to himself or herself.

1 **SECTION 9.** 19.35 (1) (b) of the statutes is amended to read:

2 19.35 (1) (b) Except as otherwise provided by law, any requester has a right to
3 inspect a record and to make or receive a copy of a record. If a requester appears
4 personally to request a copy of a record that permits ~~photocopying~~ copying, the
5 authority having custody of the record may, at its option, permit the requester to
6 ~~photocopy~~ copy the record or provide the requester with a copy substantially as
7 readable as the original.

NOTE: Broadens application of the right to photocopy or receive a photocopy of a record to apply to other forms of copying.

8 **SECTION 10.** 19.35 (1) (c) of the statutes is amended to read:

9 19.35 (1) (c) Except as otherwise provided by law, any requester has a right to
10 receive from an authority having custody of a record which is in the form of a
11 comprehensible audio ~~tape~~ recording a copy of the ~~tape~~ recording substantially as
12 audible as the original. The authority may instead provide a transcript of the
13 recording to the requester if he or she requests.

NOTE: Removes reference to "tape" to apply this paragraph to records in digital and other recording formats.

14 **SECTION 11.** 19.35 (1) (d) of the statutes is amended to read:

15 19.35 (1) (d) Except as otherwise provided by law, any requester has a right to
16 receive from an authority having custody of a record which is in the form of a video
17 ~~tape~~ recording a copy of the ~~tape~~ recording substantially as good as the original.

NOTE: Removes reference to "tape" to apply this paragraph to records in digital and other formats.

18 **SECTION 12.** 19.35 (6) of the statutes is amended to read:

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A.R.C.
(18)

1 19.35 (6) ~~ELECTED~~ ELECTIVE OFFICIAL RESPONSIBILITIES. No ~~elected~~ elective
2 official is responsible for the record of any other ~~elected~~ elective official unless he or
3 she has possession of the record of that other official.

NOTE: Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

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4 **SECTION 13.** 19.36 (7) (a) of the statutes is amended to read:

5 19.36 (7) (a) In this section subsection, "final candidate" means each applicant
6 for a position who is seriously considered for appointment or whose name is certified
7 for appointment and whose name is submitted for final consideration to an authority
8 for appointment to any state position, except a position in the classified service, ~~or;~~
9 to any local public office; or to any appointive office or position of a local governmental
10 unit in which an individual serves as the head of a department, agency, or division
11 of the local governmental unit. "Final candidate" includes, whenever there are at
12 least 5 ~~candidates~~ applicants for an office or position, each of the 5 ~~candidates~~
13 applicants who are considered the most qualified for the office or position by an
14 authority, and whenever there are less fewer than 5 ~~candidates~~ applicants for an
15 office or position, each such ~~candidate~~ applicant. Whenever an appointment is to be
16 made from a group of more than 5 ~~candidates~~ applicants, "final candidate" also
17 includes each ~~candidate~~ applicant in the group.

NOTE: 1. Resolves an anomaly by extending the law governing access to records of the identities of final candidates to apply to appointive offices or positions in which an individual serves as the head of a department, agency, or division of a local governmental unit, subject to exceptions specified in current law. Currently, a requester is not entitled to access to the identities of final candidates for these offices or positions if the incumbent serves for an indefinite term, but does not serve at the pleasure of the appointing authority.

2. Standardizes word usage.

18 **SECTION 14.** 19.36 (13) of the statutes is amended to read:

19 19.36 (13) FINANCIAL IDENTIFYING INFORMATION. An authority shall not provide
20 access to personally identifiable ~~data~~ information that contains an individual's

1 account or customer number with a financial institution, as defined in s. 134.97 (1)
2 (b), including credit card numbers, debit card numbers, checking account numbers,
3 or draft account numbers, unless specifically required by law.

NOTE: Substitutes a term defined in s. 19.62 (5), stats., for a variant of that term.
The definition applies to s. 19.36 (13), stats., under s. 19.32 (1r), stats.

4 **SECTION 15.** 19.365 of the statutes is renumbered 19.70.

NOTE: Relocates a provision that does not relate to public records access, but rather
to personal information, to the subchapter that relates to personal information practices.

5 (END)

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(1bd)

SECTION 1. 19.32 (1) (bd) of the statutes is created to read:

(1bd)

19.32 (1) (bd) "Elective official" means an individual who holds an office that is regularly filled by vote of the people.

**

12.

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NOTE: Creates a definition of "elective official", which is used in SECTIONS 2, 6, and

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LEGISLATIVE REFERENCE BUREAU

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***NOTE: 1. Standardizes word usage in this definition.

2. Clarifies that a "person authorized by the individual" is not limited to persons acting in situations involving a "right," but can include any person authorized in writing to act on behalf of another.

3. Removes erroneous reference to "this section" (the definition section).

Ins 6-3

1 SECTION 1. 19.36 (7) (a) of the statutes is renumbered 19.36 (7) (a) 1. (intro.)

2 and amended to read:

3 19.36 (7) (a) 1. (intro.) In this ~~section~~ subsection, "final candidate" means each
4 applicant ~~for a position~~ who is seriously considered for appointment or whose name
5 is certified for appointment and whose name is submitted for final consideration to
6 an authority for appointment to any of the following:

7 a. A state position, except a position in the classified service, ~~or to any~~

8 b. A local public office.

9 2. "Final candidate" includes, ~~whenever~~ all of the following:

10 a. Whenever there are at least 5 ~~candidates~~ applicants for an office or position,
11 each of the 5 ~~candidates~~ applicants who are considered the most qualified for the
12 office or position by an authority, ~~and whenever~~.

13 b. Whenever there are ~~less fewer~~ than 5 ~~candidates~~ applicants for an office or
14 position, each ~~such candidate~~ applicant ^{plain}

15 c. Whenever an appointment is to be made from a group of more than 5
16 candidates, "final candidate" also includes applicants considered the most qualified
17 for an office or position by an authority, each candidate applicant in the that group.

NOTE: 1. Breaks out organizational structure for definition of "final candidate" in
s. 19.36 (7) to improve readability.

2. Standardizes and clarifies word usage and eliminates excess verbiage.

1 **SECTION 2.** 19.36 (7) (a) 1. c. of the statutes is created to read:
2 19.36 (7) (a) 1. c. An appointive office or position of a local governmental unit
3 in which an individual serves as the head of a department, agency, or division of the
4 local governmental unit.

NOTE: Resolves an anomaly by extending the law governing access to records of the identities of final candidates to apply to appointive offices or positions in which an individual serves as the head of a department, agency, or division of a local governmental unit, subject to exceptions specified in current law. Currently, a requester is not entitled to access to the identities of final candidates for these offices or positions if the incumbent serves for an indefinite term, but does not serve at the pleasure of the appointing authority.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0437/P2dn

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date

(1bd)

In this version, we made the following changes based upon the suggestions from Mary Burke:

1. Added a definition for "elective official," which mirrors the definition for "elective office" in ~~s. 19.42 (5m)~~ ^{in proposed s. 19.32(1) (1bd)} ^{↑ stats}.
2. Added "or stored" to "electronically generated data" in ~~19.32(2m)~~ ^{So ✓ (2), stats}.
3. Further amended ^{So} 19.36 (7) (a) ^{to put it into a more readable, outline format} to put it into a more readable, outline format. We also made some additional, minor changes to eliminate excess verbiage, striking "for a position" in the first sentence (which appears to be unnecessary in light of the more specific language below) and "such" in the second sentence (which would suggest a previously indicated limitation).

Jeffery T. Kuesel
Managing Attorney
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Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0437/P2dn
JTK&MED:eev:rs

January 4, 2013

In this version, we made the following changes based upon the suggestions from Mary Burke:

1. Added a definition in proposed s. 19.32 (1bd) for “elective official,” which mirrors the definition for “elective office” in s. 19.42 (5m), stats.
2. Added “or stored” to “electronically generated data” in s. 19.32 (2), stats.
3. Further amended s. 19.36 (7) (a), stats., to put it into a more readable, outline format. We also made some additional, minor changes to eliminate excess verbiage, striking “for a position” in the first sentence (which appears to be unnecessary in light of the more specific language below) and “such” in the second sentence (which would suggest a previously indicated limitation).

Jeffery T. Kuesel
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Michael Duchek
Legislative Attorney
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E-mail: michael.duchek@legis.wisconsin.gov

Duchek, Michael

From: Kuesel, Jeffery
Sent: Thursday, February 07, 2013 8:17 AM
To: Duchek, Michael
Subject: FW: Public records access - remedial changes

From: Rinehart, Mark W. [mailto:RinehartMW@DOJ.STATE.WI.US]
Sent: Wednesday, February 06, 2013 7:04 PM
To: Kuesel, Jeffery
Subject: RE: Public records access - remedial changes

Hi Jeff,

Below are some follow-up comments from Mary Burke on your public records draft:

My only suggestion is further clarification of the language now numbered 19.36(7)(a)1.(intro.) on /P2 page 6, lines 11-14. That language now provides:

In this ~~section~~ subsection, "final candidate" means each applicant ~~for a position~~ who is seriously considered for appointment or whose name is certified for appointment and whose name is submitted for final consideration to an authority for appointment to any of the following:

What the phrase "whose name is submitted for final consideration to an authority" is intended to modify is confusing.

- (Option 1) Does it modify both "each applicant who is seriously considered for appointment" and "whose name is certified for appointment"?

or

- (Option 2) Or, does it modify only "whose name is certified for appointment"?

Clarification could be accomplished by adding a comma or two. Depending on what "whose name is submitted for final consideration to an authority" is intended to modify, this could be done by adding the commas highlighted in yellow below:

- (Option 1) In this ~~section~~ subsection, "final candidate" means each applicant ~~for a position~~ who is seriously considered for appointment, or whose name is certified for appointment, and whose name is submitted for final consideration to an authority for appointment to any of the following:

or

- (Option 2) In this ~~section~~ subsection, "final candidate" means each applicant ~~for a position~~ who is seriously considered for appointment, or whose name is certified for appointment and whose name is submitted for final consideration to an authority for appointment, to any of the following:

From: Kuesel, Jeffery [mailto:Jeffery.Kuesel@legis.wisconsin.gov]
Sent: Friday, December 07, 2012 1:51 PM

To: Rinehart, Mark W.
Subject: RE: Public records access - remedial changes

Mark,

Thank you for your comments. They are helpful. We will review. I killed your previous E mails and have retained only this one.

Jeff

From: Rinehart, Mark W. [<mailto:RinehartMW@DOJ.STATE.WI.US>]
Sent: Friday, December 07, 2012 10:48 AM
To: Kuesel, Jeffery
Subject: FW: Public records access - remedial changes

Hello Jeff,

Here is the correct memo. Sorry for any confusion.

From: Rinehart, Mark W.
Sent: Friday, December 07, 2012 10:29 AM
To: Kuesel, Jeffery
Subject: RE: Public records access - remedial changes

Hello Jeff,

I just attempted to recall a message I sent to you earlier this morning. My first email to you contained a memo from Mary Burke to me. I will be sending you an updated version of that memo shortly. If my first email was not recalled, please disregard the memo in that email and use the memo that will accompany my forthcoming email. Thank you.

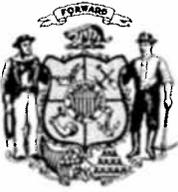
From: Kuesel, Jeffery [<mailto:Jeffery.Kuesel@legis.wisconsin.gov>]
Sent: Tuesday, October 30, 2012 10:20 AM
To: Rinehart, Mark W.
Cc: Burke, Mary E. - DOJ; Duchek, Michael
Subject: Public records access - remedial changes

Mr. Reinhart:

Attached find a preliminary draft of possible remedial changes to the public records access law. I should note that we considered other items and some might merit discussion but if the draft is sent to the law revision committee we felt that we would need to limit the scope to relatively straightforward, noncontroversial changes.

We invite your comments or suggested additions.

Jeffery T. Kuesel
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266-6778
Jeffery.Kuesel@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0437/ P3

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Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Changes P. 6

D-note

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1 AN ACT *to renumber* 19.365; *to renumber and amend* 19.36 (7) (a); *to amend*
2 19.32 (intro.), 19.32 (1), 19.32 (1m), 19.32 (2), 19.33 (1) to (3) and (8), 19.34
3 (title), 19.35 (1) (am) (intro.), 19.35 (1) (b), 19.35 (1) (c), 19.35 (1) (d), 19.35 (6)
4 and 19.36 (13); and *to create* 19.32 (1bd), 19.32 (3m) and 19.36 (7) (a) 1. c. of
5 the statutes; **relating to:** access to public records.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. The proposed changes are explained in the NOTES following each section.

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

6 SECTION 1. 19.32 (intro.) of the statutes is amended to read:

7 **19.32 Definitions.** (intro.) As used in ss. ~~19.33~~ 19.32 to 19.39:

NOTE: Expands the application of s. 19.32, stats. (definitions), to apply to itself so that the definition proposed in SECTION 6 (special purpose district) will apply to s. 19.32 (1), stats. (definition of "authority").

8 SECTION 2. 19.32 (1) of the statutes is amended to read:

SECTION 2

1 19.32 (1) “Authority” means any of the following having custody of a record: a
2 state or local office, ~~elected~~ elective official, agency, board, commission, committee,
3 council, department or public body corporate and politic created by the constitution,
4 or by any law, ordinance, rule or order; a governmental or quasi-governmental
5 corporation except for the Bradley center sports and entertainment corporation; a
6 ~~local exposition district under subch. II of ch. 229; a long-term care district under s.~~
7 ~~46.2895~~ special purpose district; any court of law; the assembly or senate; a nonprofit
8 corporation which receives more than 50% of its funds from a county or a
9 municipality, as defined in s. 59.001 (3), and which provides services related to public
10 health or safety to the county or municipality; or a formally constituted subunit of
11 any of the foregoing.

NOTE: 1. Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

2. Clarifies that all special purpose districts are covered entities, not just local exposition and long-term care districts. Examples of special purpose districts include school districts, technical college districts, metropolitan sewerage districts, town sanitary districts, and public inland lake protection and rehabilitation districts. It has long been accepted that these entities are covered under the public records access law. The current reference to two specific special purpose districts implies that other special purpose districts are not covered. Special purpose districts are generally governed by boards and commissions that are currently covered, and the entities themselves are probably currently covered as “agencies.” See also SECTION 6 below.

12 **SECTION 3.** 19.32 (1bd) of the statutes is created to read:

13 19.32 (1bd) “Elective official” means an individual who holds an office that is
14 regularly filled by vote of the people.

NOTE: Creates a definition of “elective official,” which is used in SECTIONS 2, 7, and
13.

15 **SECTION 4.** 19.32 (1m) of the statutes is amended to read:

16 19.32 (1m) “Person authorized by the individual” means the parent, guardian,
17 as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of ~~a~~ an
18 individual who is a child, as defined in s. 48.02 (2); the guardian of an individual

1 adjudicated incompetent in this state; the personal representative or spouse of an
2 individual who is deceased; or any person authorized, in writing, by ~~the~~ an
3 individual to ~~exercise the rights granted under this section~~ act on his or her behalf.

NOTE: 1. Standardizes word usage in this definition.

2. Clarifies that a “person authorized by the individual” is not limited to persons acting in situations involving a “right,” but can include any person authorized in writing to act on behalf of another.

3. Removes erroneous reference to “this section” (the definition section).

4 **SECTION 5.** 19.32 (2) of the statutes is amended to read:

5 19.32 (2) “Record” means any material on which written, drawn, printed,
6 spoken, visual, or electromagnetic information or electronically generated or stored
7 data is recorded or preserved, regardless of physical form or characteristics, which
8 has been created or is being kept by an authority. “Record” includes, but is not limited
9 to, handwritten, typed or printed pages, maps, charts, photographs, films,
10 recordings, tapes (~~including computer tapes~~), ~~computer printouts~~ and, optical disks,
11 and any other medium on which electronically generated or stored data is recorded
12 or preserved. “Record” does not include drafts, notes, preliminary computations and
13 like materials prepared for the originator’s personal use or prepared by the
14 originator in the name of a person for whom the originator is working; materials
15 which are purely the personal property of the custodian and have no relation to his
16 or her office; materials to which access is limited by copyright, patent or bequest; and
17 published materials in the possession of an authority other than a public library
18 which are available for sale, or which are available for inspection at a public library.

NOTE: Deletes a reference in the definition of “record” to computer tapes and printouts and substitutes a more general reference to “electronically generated or stored data” in order to explicitly capture other current and possible future formats.

19 **SECTION 6.** 19.32 (3m) of the statutes is created to read:

SECTION 6

1 19.32 **(3m)** “Special purpose district” means a district, other than a state
2 governmental unit or a county, city, village, or town, that is created to perform a
3 particular function and whose geographic jurisdiction is limited to some portion of
4 this state.

NOTE: Creates a definition of “special purpose district,” which is used in SECTION
2. The definition is designed to capture all nonstate governmental districts, except
counties, cities, villages, and towns, that are created to perform a particular function and
whose geographic jurisdiction is limited to some portion of this state.

5 **SECTION 7.** 19.33 (1) to (3) and (8) of the statutes are amended to read:

6 19.33 **(1)** An ~~elected~~ elective official is the legal custodian of his or her records
7 and the records of his or her office, but the official may designate an employee of his
8 or her staff to act as the legal custodian.

9 **(2)** The chairperson of a committee of ~~elected~~ elective officials, or the designee
10 of the chairperson, is the legal custodian of the records of the committee.

11 **(3)** The cochairpersons of a joint committee of ~~elected~~ elective officials, or the
12 designee of the cochairpersons, are the legal custodians of the records of the joint
13 committee.

14 **(8)** No ~~elected~~ elective official of a legislative body has a duty to act as or
15 designate a legal custodian under sub. (4) for the records of any committee of the body
16 unless the official is the highest ranking officer or chief administrative officer of the
17 committee or is designated the legal custodian of the committee’s records by rule or
18 by law.

NOTE: Covers under the law a person who holds an elective office even if the person
was appointed to fill a vacancy in that office.

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NOTE: Expands title to reflect the complete content of s. 19.34, stats.

21 **SECTION 9.** 19.35 (1) (am) (intro.) of the statutes is amended to read:

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3 personally identifiable information pertaining to the individual in a record
4 containing personally identifiable information ~~pertaining to the individual~~ that is
5 maintained by an authority and to make or receive a copy of any such information.
6 The right to inspect or copy information in a record under this paragraph does not
7 apply to any of the following:

NOTE: Clarifies that if a record contains personally identifiable information relating to more than one individual, an individual has a right to inspect or copy only the portion of the record containing personally identifiable information relating to himself or herself.

8 **SECTION 10.** 19.35 (1) (b) of the statutes is amended to read:

9 19.35 (1) (b) Except as otherwise provided by law, any requester has a right to
10 inspect a record and to make or receive a copy of a record. If a requester appears
11 personally to request a copy of a record that permits ~~photocopying~~ copying, the
12 authority having custody of the record may, at its option, permit the requester to
13 ~~photocopy~~ copy the record or provide the requester with a copy substantially as
14 readable as the original.

NOTE: Broadens application of the right to photocopy or receive a photocopy of a record to apply to other forms of copying.

15 **SECTION 11.** 19.35 (1) (c) of the statutes is amended to read:

16 19.35 (1) (c) Except as otherwise provided by law, any requester has a right to
17 receive from an authority having custody of a record which is in the form of a
18 comprehensible audio ~~tape~~ recording a copy of the ~~tape~~ recording substantially as
19 audible as the original. The authority may instead provide a transcript of the
20 recording to the requester if he or she requests.

NOTE: Removes reference to “tape” to apply this paragraph to records in digital and other recording formats.

1 **SECTION 12.** 19.35 (1) (d) of the statutes is amended to read:

2 19.35 (1) (d) Except as otherwise provided by law, any requester has a right to
3 receive from an authority having custody of a record which is in the form of a video
4 ~~tape~~ recording a copy of the ~~tape~~ recording substantially as good as the original.

NOTE: Removes reference to “tape” to apply this paragraph to records in digital and other formats.

5 **SECTION 13.** 19.35 (6) of the statutes is amended to read:

6 19.35 (6) ~~ELECTED~~ ELECTIVE OFFICIAL RESPONSIBILITIES. No ~~elected~~ elective
7 official is responsible for the record of any other ~~elected~~ elective official unless he or
8 she has possession of the record of that other official.

NOTE: Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

9 **SECTION 14.** 19.36 (7) (a) of the statutes is renumbered 19.36 (7) (a) 1. (intro.)
10 and amended to read:

11 19.36 (7) (a) 1. (intro.) In this ~~section~~ subsection, “final candidate” means each
12 applicant ~~for a position~~ who is seriously considered for appointment or whose name
13 is certified for appointment and whose name is submitted for final consideration to
14 an authority for appointment to any of the following:

15 a. A state position, except a position in the classified service, ~~or to any~~.

16 b. A local public office.

17 2. “Final candidate” includes, ~~whenever~~ all of the following:

18 a. Whenever there are at least 5 ~~candidates~~ applicants for an office or position,
19 each of the 5 ~~candidates~~ applicants who are considered the most qualified for the
20 office or position by an authority, ~~and whenever~~.

21 b. Whenever there are less fewer than 5 ~~candidates~~ applicants for an office or
22 position, each ~~such candidate~~ applicant.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0437/P3dn
JTK&MED:eev:...

Date

stays

In this version, we added commas to s. 19.36^v (7) (a) based upon the suggestions from Mary Burke. We thought that Option 1 in Mary's comments was the more sensible reading, but that the second comma in Option 2 also helped set the final phrase apart.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

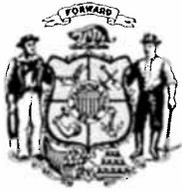
LRB-0437/P3dn
JTK&MED:eev:jf

February 12, 2013

In this version, we added commas to s. 19.36 (7) (a) based upon the suggestions from Mary Burke. We thought that Option 1 in Mary's comments was the more sensible reading, but that the second comma in Option 2 also helped set the final phrase apart.

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-043778 /
JTK&MED:eev:jf

~~Reg~~

SOON

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

regen

1 AN ACT *to renumber* 19.365; *to renumber and amend* 19.36 (7) (a); *to amend*
2 19.32 (intro.), 19.32 (1), 19.32 (1m), 19.32 (2), 19.33 (1) to (3) and (8), 19.34
3 (title), 19.35 (1) (am) (intro.), 19.35 (1) (b), 19.35 (1) (c), 19.35 (1) (d), 19.35 (6)
4 and 19.36 (13); and *to create* 19.32 (1bd), 19.32 (3m) and 19.36 (7) (a) 1. c. of
5 the statutes; **relating to:** access to public records. (Ins Rel)✓

Analysis by the Legislative Reference Bureau

Ins Analysis

This is a preliminary draft. The proposed changes are explained in the NOTES following each section.

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

Insert LRC

6 SECTION 1. 19.32 (intro.) of the statutes is amended to read:

7 **19.32 Definitions.** (intro.) As used in ss. ~~19.33~~ 19.32 to 19.39:

NOTE: Expands the application of s. 19.32, stats. (definitions), to apply to itself so that the definition proposed in SECTION 6 (special purpose district) will apply to s. 19.32 (1), stats. (definition of "authority").

8 SECTION 2. 19.32 (1) of the statutes is amended to read:

SECTION 2

1 19.32 (1) “Authority” means any of the following having custody of a record: a
 2 state or local office, ~~elected~~ elective official, agency, board, commission, committee,
 3 council, department or public body corporate and politic created by the constitution,
 4 or by any law, ordinance, rule or order; a governmental or quasi-governmental
 5 corporation except for the Bradley center sports and entertainment corporation; a
 6 ~~local exposition district under subch. II of ch. 229; a long-term care district under s.~~
 7 ~~46.2895~~ special purpose district; any court of law; the assembly or senate; a nonprofit
 8 corporation which receives more than 50% of its funds from a county or a
 9 municipality, as defined in s. 59.001 (3), and which provides services related to public
 10 health or safety to the county or municipality; or a formally constituted subunit of
 11 any of the foregoing.

NOTE: 1. Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

2. Clarifies that all special purpose districts are covered entities, not just local exposition and long-term care districts. Examples of special purpose districts include school districts, technical college districts, metropolitan sewerage districts, town sanitary districts, and public inland lake protection and rehabilitation districts. It has long been accepted that these entities are covered under the public records access law. The current reference to two specific special purpose districts implies that other special purpose districts are not covered. Special purpose districts are generally governed by boards and commissions that are currently covered, and the entities themselves are probably currently covered as agencies. See also SECTION 6 below. *politic*

12 **SECTION 3.** 19.32 (1bd) of the statutes is created to read:

13 19.32 (1bd) “Elective official” means an individual who holds an office that is
 14 regularly filled by vote of the people.

NOTE: Creates a definition of “elective official,” which is used in SECTIONS 2, 7, and 13.

15 **SECTION 4.** 19.32 (1m) of the statutes is amended to read:

16 19.32 (1m) “Person authorized by the individual” means the parent, guardian,
 17 as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of ~~a~~ an
 18 individual who is a child, as defined in s. 48.02 (2); the guardian of an individual

1 adjudicated incompetent in this state; the personal representative or spouse of an
2 individual who is deceased; or any person authorized, in writing, by the an
3 individual to ~~exercise the rights granted under this section~~ act on his or her behalf.

NOTE: 1. Standardizes word usage in this definition.

2. Clarifies that a “person authorized by the individual” is not limited to persons acting in situations involving a “right,” but can include any person authorized in writing to act on behalf of another.

3. Removes erroneous reference to “this section” (the definition section).

4 **SECTION 5.** 19.32 (2) of the statutes is amended to read:

5 19.32 (2) “Record” means any material on which written, drawn, printed,
6 spoken, visual, or electromagnetic information or electronically generated or stored
7 data is recorded or preserved, regardless of physical form or characteristics, which
8 has been created or is being kept by an authority. “Record” includes, but is not limited
9 to, handwritten, typed or printed pages, maps, charts, photographs, films,
10 recordings, tapes (~~including computer tapes~~), ~~computer printouts~~ and, optical disks,
11 and any other medium on which electronically generated or stored data is recorded
12 or preserved. “Record” does not include drafts, notes, preliminary computations and
13 like materials prepared for the originator’s personal use or prepared by the
14 originator in the name of a person for whom the originator is working; materials
15 which are purely the personal property of the custodian and have no relation to his
16 or her office; materials to which access is limited by copyright, patent or bequest; and
17 published materials in the possession of an authority other than a public library
18 which are available for sale, or which are available for inspection at a public library.

NOTE: Deletes a reference in the definition of “record” to computer tapes and printouts and substitutes a more general reference to “electronically generated or stored data” in order to explicitly capture other current and possible future formats.

19 **SECTION 6.** 19.32 (3m) of the statutes is created to read:

1 19.32 (3m) “Special purpose district” means a district, other than a state
2 governmental unit or a county, city, village, or town, that is created to perform a
3 particular function and whose geographic jurisdiction is limited to some portion of
4 this state.

NOTE: Creates a definition of “special purpose district,” which is used in SECTION
2. The definition is designed to capture all nonstate governmental districts, except
counties, cities, villages, and towns, that are created to perform a particular function and
whose geographic jurisdiction is limited to some portion of this state.

5 **SECTION 7.** 19.33 (1) to (3) and (8) of the statutes are amended to read:

6 19.33 (1) An ~~elected~~ elective official is the legal custodian of his or her records
7 and the records of his or her office, but the official may designate an employee of his
8 or her staff to act as the legal custodian.

9 (2) The chairperson of a committee of ~~elected~~ elective officials, or the designee
10 of the chairperson, is the legal custodian of the records of the committee.

11 (3) The cochairpersons of a joint committee of ~~elected~~ elective officials, or the
12 designee of the cochairpersons, are the legal custodians of the records of the joint
13 committee.

14 (8) No ~~elected~~ elective official of a legislative body has a duty to act as or
15 designate a legal custodian under sub. (4) for the records of any committee of the body
16 unless the official is the highest ranking officer or chief administrative officer of the
17 committee or is designated the legal custodian of the committee’s records by rule or
18 by law.

NOTE: Covers under the law a person who holds an elective office even if the person
was appointed to fill a vacancy in that office.

19 **SECTION 8.** 19.34 (title) of the statutes is amended to read:

20 **19.34 (title) Procedural information; access times and locations.**

△

NOTE: Expands title to reflect the complete content of s. 19.34, stats.

21 **SECTION 9.** 19.35 (1) (am) (intro.) of the statutes is amended to read:

1 19.35 (1) (am) (intro.) In addition to any right under par. (a), any requester who
2 is an individual or person authorized by the individual, has a right to inspect any
3 personally identifiable information pertaining to the individual in a record
4 containing personally identifiable information ~~pertaining to the individual~~ that is
5 maintained by an authority and to make or receive a copy of any such information.
6 The right to inspect or copy information in a record under this paragraph does not
7 apply to any of the following:

NOTE: Clarifies that if a record contains personally identifiable information relating to more than one individual, an individual has a right to inspect or copy only the portion of the record containing personally identifiable information relating to himself or herself.

8 **SECTION 10.** 19.35 (1) (b) of the statutes is amended to read:

9 19.35 (1) (b) Except as otherwise provided by law, any requester has a right to
10 inspect a record and to make or receive a copy of a record. If a requester appears
11 personally to request a copy of a record that permits ~~photocopying~~ copying, the
12 authority having custody of the record may, at its option, permit the requester to
13 ~~photocopy~~ copy the record or provide the requester with a copy substantially as
14 readable as the original.

NOTE: Broadens application of the right to photocopy or receive a photocopy of a record to apply to other forms of copying.

15 **SECTION 11.** 19.35 (1) (c) of the statutes is amended to read:

16 19.35 (1) (c) Except as otherwise provided by law, any requester has a right to
17 receive from an authority having custody of a record which is in the form of a
18 comprehensible audio ~~tape~~ recording a copy of the ~~tape~~ recording substantially as
19 audible as the original. The authority may instead provide a transcript of the
20 recording to the requester if he or she requests.

NOTE: Removes reference to “tape” to apply this paragraph to records in digital and other recording formats.

1 **SECTION 12.** 19.35 (1) (d) of the statutes is amended to read:

2 19.35 (1) (d) Except as otherwise provided by law, any requester has a right to
3 receive from an authority having custody of a record which is in the form of a video
4 tape recording a copy of the ~~tape~~ recording substantially as good as the original.

NOTE: Removes reference to “tape” to apply this paragraph to records in digital and other formats.

5 **SECTION 13.** 19.35 (6) of the statutes is amended to read:

6 19.35 (6) ~~ELECTED~~ ELECTIVE OFFICIAL RESPONSIBILITIES. No ~~elected~~ elective
7 official is responsible for the record of any other ~~elected~~ elective official unless he or
8 she has possession of the record of that other official.

NOTE: Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

9 **SECTION 14.** 19.36 (7) (a) of the statutes is renumbered 19.36 (7) (a) 1. (intro.)
10 and amended to read:

11 19.36 (7) (a) 1. (intro.) In this ~~section~~ subsection, “final candidate” means each
12 applicant ~~for a position~~ who is seriously considered for appointment or whose name
13 is certified for appointment, and whose name is submitted for final consideration to
14 an authority for appointment, to any of the following:

15 a. A state position, except a position in the classified service, ~~or to any,~~

16 b. A local public office.

17 2. “Final candidate” includes, ~~whenever~~ all of the following:

18 a. Whenever there are at least 5 ~~candidates~~ applicants for an office or position,
19 each of the 5 candidates applicants who are considered the most qualified for the
20 office or position by an authority, ~~and whenever.~~

21 b. Whenever there are less ~~fewer~~ than 5 candidates applicants for an office or
22 position, each such ~~candidate~~ applicant.

INSERT REL

(suggested as remedial legislation by the Legislative Reference Bureau)

INSERT ANALYSIS

S
This bill make various changes to the public records access law. The bill:

1. Defines and specifically covers all special purpose districts under the law. Currently, the law specifically enumerates only local exposition and long-term care districts but other language specifically applies the law to cover every state or local "agency" and also to every "public body corporate and politic" which likely covers special purpose districts.

2. Modifies the definition of "record" which includes electronically stored records, to substitute general language for current language referencing specific formats and to eliminate references that are obsolete and already covered by other language in the definition.

3. Applies the law to every elective officer who is a custodian of records regardless of whether the officer was elected to an office or appointed to fill a vacancy in an office.

4. Modifies the law that permits an individual to have access to a record containing certain personally identifiable information that pertains to more than one individual so that an individual only has access under the law to personally identifiable information pertaining to himself or herself.

5. Modifies the term "person authorized by the individual," which is used to allow an individual to act on another's behalf in accessing and petitioning for correction of certain personally identifiable information related to the individual, so that it applies to any person who is authorized in writing to act on behalf of an individual and is not limited to a person exercising rights. The revised language more clearly covers a person exercising a durable power of attorney.

6. Substitutes the term "copying" for "photocopying" to allow for other forms of copying in a provision that addresses photocopying of records, and removes references to "tapes" in provisions that address copying audio and video recordings, in order to recognize other modes of copying audio and video material.

7. Reorganizes and makes other changes to a provision addressing access to the names of final candidates for positions to improve clarity and readability.

The bill also standardizes certain word usage to conform to defined terminology, renumbers a provision to a better location near related provisions, and corrects a title for accuracy.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0437/linsMD
.....

INSERT LRC

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Legislative Reference Bureau and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.