



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-5167/1
RAC:all:jf

1997 ASSEMBLY BILL 958

March 26, 1998 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Government Operations.

1 **AN ACT** *to repeal* 20.923 (6) (n), 230.16 (8) and 230.20 (3); *to amend* 230.05 (2)
2 (a), 230.12 (1) (c) 2., 230.13 (1) (intro.), 230.33 (1), 230.33 (2), 230.34 (1) (a),
3 230.34 (1) (ar), 230.40 (2) and 230.44 (1) (c); and *to create* 230.33 (1m) of the
4 statutes; **relating to:** restoration and reinstatement rights of classified
5 employees appointed to unclassified positions; leaves of absence from state
6 employment to seek partisan political office; compensation and employment
7 rights of assistant district attorneys; the salary of the position of Wisconsin
8 veterans museum superintendent; authority of the administrator of the
9 division of merit recruitment and selection in the department of employment
10 relations to appoint local examiners; solicitation of recommendations for
11 positions in the classified service of the state; the appeal of certain decisions of
12 the administrator of the division of merit recruitment and selection in the
13 department of employment relations to the personnel commission; and closed

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- 1 records relating to state employment (suggested as remedial legislation by the
2 department of employment relations).
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Analysis by the Legislative Reference Bureau

This bill does all of the following:

1. Under current law, “a person appointed by the governor, elected officer, judicial body or by a legislative body or committee, or by any other appointing authority when both the classified and unclassified positions are within his or her department,” must be granted a leave of absence without pay for the duration of the unclassified appointment and for 3 months following the end of the appointment. During this period, the person has restoration rights to the state agency from which he or she last held an appointment in the classified service. According to the department of employment relations (DER), there is some ambiguity as to whether the classified and unclassified positions must be within the same department when the person is appointed by the governor, elected officer, judicial body or by a legislative body or committee for the person to be granted a leave of absence and have the restoration rights.

This bill clearly provides that a person employed in the classified service of this state and who is appointed to any unclassified position by the governor, an elected officer, a judicial body or by a legislative body or committee must be granted a leave of absence without pay for the duration of the unclassified appointment and for 3 months following the end of the appointment. During this period, the person has restoration rights to the state agency from which he or she last held an appointment in the classified service.

2. Under current law, if a person in the classified service of the state declares an intention to run for partisan political office the person shall be *given* a leave of absence for the duration of the election campaign and if elected shall separate from the classified service on assuming the duties and responsibilities of such office. According to DER, this provision may be interpreted in such a manner that the employer may regard the granting of the leave of absence as discretionary. This bill provides that if a person in the classified service declares an intention to run for partisan political office the person shall be *placed on* a leave of absence for the duration of the election campaign and if elected shall separate from the classified service on assuming the duties and responsibilities of such office. According to DER, this change in the law will now make this provision mandatory on the employer.

3. Under current law, assistant district attorneys are state employees. Other than assistant district attorneys who are supervisors, assistant district attorneys have their compensation established in collective bargaining agreements under the state employment labor relations act (SELRA). Before 1990, however, assistant district attorneys were not state employees and did not have their compensation established in a collective bargaining agreement under SELRA. Current law provides for extra compensation for assistant district attorneys in the compensation plan. This bill eliminates this provision, with the result that those assistant district

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attorneys whose compensation is established in the compensation plan are governed by the general extra compensation provisions of the compensation plan.

In addition, current law refers to certain employment rights of assistant district attorneys who first became state employees in 1990 and had accumulated at least 12 months of continuous service as county and state employees. These rights pertain to demotion, layoff, suspension and discharge. This bill eliminates the references to these assistant district attorneys who became state employees in 1990 and who had accumulated at least 12 months of continuous service as county and state employees.

4. This bill eliminates a provision in current law that the salary of the superintendent of the Wisconsin veterans museum is established by the secretary of veterans affairs. Currently, there is no such position in state government; instead, the department of veterans affairs operates the Wisconsin veterans museum.

5. Under current law, the administrator of the division of merit recruitment and selection in DER is authorized to designate any person in or out of state government or any person employed by a municipal or county government to act as a local examiner for filling positions in state government. This bill eliminates this authority.

6. Under current law, an applicant for a promotion to a position in the classified service of this state may not solicit recommendations. This bill eliminates this prohibition.

7. Under current law, the administrator of the division of merit recruitment and selection in DER may delegate any of his or her functions relating to filling positions in the classified service of this state to the appointing authority of any state agency. Current law provides that any delegatory action taken by an appointing authority is appealable to the personnel commission under the personnel commission's authority to hear appeals of any decision or delegated decision of the secretary of employment relations. This bill provides that any delegatory action taken by an appointing authority is appealable to the personnel commission under the personnel commission's authority to hear appeals of any decision or delegated decision of the administrator of the division of merit recruitment and selection in DER.

8. Under current law, with certain exceptions, the secretary of employment relations and the administrator of the division of merit recruitment and selection in DER are authorized to keep closed to the public certain personnel records relating to examination scores and ranks and other evaluations of applicants for state employe positions, dismissals, demotions and other disciplinary actions affecting state employes and pay survey data obtained from private employers and the names of these private employers.

This bill requires, rather than authorizes, the secretary and the administrator to keep these records closed to the public.

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

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of employment relations and introduced by the law revision committee under s. 13.83 (1) (c) 4., 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.

1 **SECTION 1.** 20.923 (6) (n) of the statutes is repealed.

NOTE: Under current law, the salary of the superintendent of the Wisconsin veterans museum is established by the secretary of veterans affairs. However, there is no such position. Therefore, this section is repealed.

2 **SECTION 2.** 230.05 (2) (a) of the statutes is amended to read:

3 230.05 (2) (a) Except as provided under par. (b), the administrator may
4 delegate, in writing, any of his or her functions set forth in this subchapter to an
5 appointing authority, within prescribed standards if the administrator finds that the
6 agency has personnel management capabilities to perform such functions effectively
7 and has indicated its approval and willingness to accept such responsibility by
8 written agreement. If the administrator determines that any agency is not
9 performing such delegated function within prescribed standards, the administrator
10 shall withdraw such delegated function. The administrator may order transfer to
11 the division from the agency to which delegation was made such agency staff and
12 other resources as necessary to perform such functions if increased staff was
13 authorized to that agency as a consequence of such delegation or if the division
14 reduced staff or shifted staff to new responsibilities as a result of such delegation
15 subject to the approval of the joint committee on finance. Any delegatory action
16 taken under this subsection by any appointing authority may be appealed to the

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1 personnel commission under s. 230.44 (1) ~~(b)~~ (a). The administrator shall be a party
2 in such appeal.

NOTE: Currently, the administrator of the division of merit recruitment and selection in the department of employment relations is authorized to delegate any of his or her functions relating to filling positions in the classified service to the appointing authority of any state agency. Also, any action taken by an appointing authority under this delegation is appealable to the personnel commission. This section corrects a cross-reference to refer to appeals to the personnel commission under its authority to hear appeals of decisions or delegated decisions of the administrator of the division of merit, recruitment and selection.

3 **SECTION 3.** 230.12 (1) (c) 2. of the statutes is amended to read:

4 230.12 **(1)** (c) 2. The secretary may establish a plan of extra compensation for
5 work performed during selected hours at an hourly rate or rates subject to approval
6 of the joint committee on employment relations. ~~The secretary may establish a plan~~
7 ~~of extra compensation for assistant district attorneys, which may include extra~~
8 ~~compensation for work performed during selected hours or for special duty such as~~
9 ~~on-call duty, at hourly rates subject to the approval of the joint committee on~~
10 ~~employment relations.~~ Eligibility for such extra compensation shall be as provided
11 in the compensation plan.

NOTE: This provision is amended to eliminate the authority of the secretary of employment relations to establish a plan of extra compensation for assistant district attorneys. The effect of this change is that the assistant district attorneys whose compensation is established in the compensation plan will be governed by the general extra compensation provisions of that plan.

12 **SECTION 4.** 230.13 (1) (intro.) of the statutes is amended to read:

13 230.13 **(1)** (intro.) Except as provided in s. 103.13, the secretary and the
14 administrator ~~may~~ shall keep records of the following personnel matters closed to the
15 public:

NOTE: Currently, under s. 230.13 (1), stats., the secretary of employment relations and the administrator of the division of merit recruitment and selection may keep certain personnel records closed to the public. These records relate to examination scores and ranks and other evaluations of applicants, dismissals, demotions and other disciplinary actions, pay survey data obtained from private employers and the names of those private employers. This provision requires, rather than permits, the secretary and the administrator to keep these personnel records closed to the public.

ASSEMBLY BILL 958**SECTION 5**

1 **SECTION 5.** 230.16 (8) of the statutes is repealed.

NOTE: Currently, the administrator of the division of merit recruitment and selection in the department of employment relations is authorized to designate a person in or out of state government or any person employed by a municipal or county government to act as a local examiner for filling positions in state government. The provision is not used. Therefore, it is repealed.

2 **SECTION 6.** 230.20 (3) of the statutes is repealed.

NOTE: Currently, applicants for a promotion to a position in the classified service in Wisconsin may not solicit "recommendations". This bill eliminates the prohibition.

3 **SECTION 7.** 230.33 (1) of the statutes is amended to read:

4 230.33 (1) A person appointed to an unclassified position by the governor,
5 elected officer, judicial body or by a legislative body or committee, ~~or by any other~~
6 ~~appointing authority when both the classified and unclassified positions are within~~
7 ~~his or her department~~, shall be granted a leave of absence without pay for the
8 duration of the appointment and for 3 months thereafter, during which time the
9 person has restoration rights to the former position or equivalent position in the
10 department in which last employed in a classified position without loss of seniority.
11 The person shall also have reinstatement privileges for 3 years following
12 appointment to the unclassified service or for one year after termination of the
13 unclassified appointment whichever is longer. Restoration rights and reinstatement
14 privileges shall be forfeited if the reason for termination of the unclassified
15 appointment would also be reason for discharge from the former position in the
16 classified service.

NOTE: This provision is amended to limit its applicability to persons appointed to an unclassified position by the governor, elected official judicial body or by a legislative body or committee.

17 **SECTION 8.** 230.33 (1m) of the statutes is created to read:

18 230.33 (1m) A person appointed to an unclassified position by an appointing
19 authority other than an appointing authority described under sub. (1), when both the

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1 classified and unclassified positions are within the appointing authority's
2 department, shall be granted a leave of absence without pay for the duration of the
3 appointment and for 3 months thereafter, during which time the person has
4 restoration rights to the former position or equivalent position in the department in
5 which last employed in a classified position without loss of seniority. The person
6 shall also have reinstatement privileges for 3 years following appointment to the
7 unclassified service or for one year after termination of the unclassified appointment
8 whichever is longer. Restoration rights and reinstatement privileges shall be
9 forfeited if the reason for termination of the unclassified appointment would also be
10 reason for discharge from the former position in the classified service.

NOTE: This provision provides that a person who is appointed in an unclassified position by an appointing authority other than those listed in s. 230.33 (1), stats., when both the classified and unclassified positions are within the appointing authority's department, shall be granted a leave of absence without pay for the duration of the appointment and for 3 months thereafter. The person will have restoration and reinstatement rights that are the same as a person appointed to an unclassified position by those authorities listed in s. 230.33 (1), stats.

11 **SECTION 9.** 230.33 (2) of the statutes is amended to read:

12 230.33 (2) A person appointed to an unclassified position by an appointing
13 authority other than an elected officer, judicial body, legislative body or committee
14 appointing authority described under sub. (1), to a department other than the one
15 in which the person was a classified employe may be granted a leave of absence
16 without pay at the option of the person's former appointing authority in accordance
17 with the leave of absence provisions in the rules of the secretary. An employe granted
18 a leave of absence shall have the same restoration rights and reinstatement
19 privileges as under sub. (1) (1m). If not granted a leave of absence, the employe shall
20 be entitled only to the reinstatement privileges under sub. (1) (1m).

21 **SECTION 10.** 230.34 (1) (a) of the statutes is amended to read:

ASSEMBLY BILL 958**SECTION 10**

1 230.34 (1) (a) An employe with permanent status in class or an employe who
2 has served with the state ~~or a county, or both~~, as an assistant district attorney for a
3 continuous period of 12 months or more may be removed, suspended without pay,
4 discharged, reduced in base pay or demoted only for just cause.

NOTE: This provision removes references to employes who have served with the state or county or both, as an assistant district attorney for a continuous period of 12 months. All assistant district attorneys are state, rather than county, employes, effective January 1, 1990.

5 **SECTION 11.** 230.34 (1) (ar) of the statutes is amended to read:

6 230.34 (1) (ar) Paragraphs (a) and (am) apply to all employes with permanent
7 status in class in the classified service and all employes who have served with the
8 state ~~or a county, or both~~, as an assistant district attorney for a continuous period of
9 12 months or more, except that for employes specified in s. 111.81 (7) (a) in a collective
10 bargaining unit for which a representative is recognized or certified, or for employes
11 specified in s. 111.81 (7) (b) or (c) in a collective bargaining unit for which a
12 representative is certified, if a collective bargaining agreement is in effect covering
13 employes in the collective bargaining unit, the determination of just cause and all
14 aspects of the appeal procedure shall be governed by the provisions of the collective
15 bargaining agreement.

NOTE: This section deletes the reference to counties in this provision to be consistent with the change made by SECTION 10.

16 **SECTION 12.** 230.40 (2) of the statutes is amended to read:

17 230.40 (2) If a person in the classified service declares an intention to run for
18 partisan political office the person shall be ~~given~~ placed on a leave of absence for the
19 duration of the election campaign and if elected shall separate from the classified
20 service on assuming the duties and responsibilities of such office.

NOTE: This provision removes a perceived ambiguity in whether a leave of absence is discretionary if a person in the classified service declares an intention to run for partisan political office. It provides that a person shall be placed on a leave of absence

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rather than "given" a leave of absence. This clarifies that the provision is not discretionary. The person must be placed on a leave of absence regardless of the wishes of the person or agency.

1 **SECTION 13.** 230.44 (1) (c) of the statutes is amended to read:

2 230.44 (1) (c) *Demotion, layoff, suspension or discharge.* If an employe has
3 permanent status in class, or an employe has served with the state ~~or a county, or~~
4 ~~both,~~ as an assistant district attorney for a continuous period of 12 months or more,
5 the employe may appeal a demotion, layoff, suspension, discharge or reduction in
6 base pay to the commission, if the appeal alleges that the decision was not based on
7 just cause.

NOTE: This section deletes the reference to counties to be consistent with the change
made by SECTION 10.

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(END)