

2001 ASSEMBLY BILL 883

March 4, 2002 – Introduced by Representative UNDERHEIM. Referred to Committee on Colleges and Universities.

1 **AN ACT** *to renumber and amend* 233.20 (1m); *to amend* 13.094 (1), 13.94 (1)
2 (o), 15.96 (8), 233.02 (1) (h) and 233.02 (8); and *to create* 15.96 (9), 49.45 (6n),
3 233.02 (1) (i), 233.06 and 233.20 (1m) (b) of the statutes; **relating to:** the
4 University of Wisconsin Hospital and Clinics Authority and providing a
5 penalty.

Analysis by the Legislative Reference Bureau

Under current law, the board of directors of the University of Wisconsin Hospitals and Clinics Authority (authority) must contract with the University of Wisconsin Hospitals and Clinics Board (UWHC Board) for all nonprofessional services performed at the authority and must enter into lease and affiliation agreements with the board of regents of the University of Wisconsin (UW) System for the lease of UW–Madison facilities to the authority and for the promotion of medical education and research at UW–Madison.

This bill adds to the membership of the board of directors and the UWHC Board two members appointed by the senate majority leader, and two members appointed by the speaker of the assembly. The bill also removes the current representatives of labor who serve on the boards at the pleasure of the governor and appoints their replacements for three–year terms.

Under current law, the authority may issue bonds for any corporate purpose if a majority of the authority’s board of directors determines that the bonds are structured to accommodate the possibility of early termination of the lease or

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affiliation agreements. This bill requires, as well, that the authority submit a report to the joint committee on finance (JFC) demonstrating that the authority will have adequate staff for patient care at any facility whose construction or remodeling is funded by the bonds, and that JFC approve the issuance of the bonds.

Current law requires JFC to conduct a review of the lease and affiliation agreements every five years, beginning with an initial review that was completed by June 29, 2001. In addition, current law directs the legislative audit bureau (LAB) to conduct a performance evaluation audit of the authority before JFC's initial review of the agreements. This bill requires JFC to conduct a review of the performance of the authority every five years and requires LAB to conduct a performance evaluation before each five-year review.

This bill also prohibits the authority from using any medical assistance funds to influence the decision of any individual to support or oppose a labor organization that represents or seeks to represent the individual or to become a member of a labor organization. (This bill, however, does not prohibit a person from negotiating or administering a collective bargaining agreement or performing any action that is required by law or the terms of a collective bargaining agreement.)

Under the bill, the department of health and family services (DHFS) must accept complaints from any individual who alleges that the authority has tried to influence the decision of any individual to support or oppose a labor organization that represents or seeks to represent the individual or to become a member of a labor organization; must notify the authority of the complaint; and must direct the authority to provide to DHFS records showing that the authority did not try to influence such a decision. In addition, the bill authorizes the attorney general to bring an action to enforce the prohibition. If the court determines that the authority has tried to influence the decision of any individual to support or oppose a labor organization that represents or seeks to represent the individual or to become a member of a labor organization, the court must order the authority to repay to the state an amount equal to the amount that the authority received from the state and spent in connection with the authority's violation. The authority must also forfeit an amount equal to twice the total amount that the authority spent in connection with the authority's violation. The court may also order injunctive relief and any other equitable relief that is appropriate.

An individual may also bring an action to enforce the prohibition. If the individual prevails, the court must order the authority to repay to the state an amount equal to the amount that the authority received from the state and spent in connection with the authority's violation. The authority must also forfeit an amount equal to twice the total amount that the authority spent in connection with the authority's violation. The court may also order injunctive relief and any other equitable relief that is appropriate.

If the authority discharges, demotes, threatens, or otherwise discriminates against an individual regarding compensation or terms, conditions, or privileges of employment because the individual or anyone acting at the request of the individual provided or attempted to provide information to DHFS or the attorney general regarding possible violations, the individual may bring a civil action for any damages

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resulting from that discharge, demotion, threat, or discrimination. If the plaintiff proves by a preponderance of the evidence that the discharge, demotion, threat, or discrimination occurred, the court may grant any appropriate relief, including reinstatement of the individual to his or her former position, compensatory damages, costs, and reasonable attorney fees.

Finally, the bill prohibits the authority or certain appointed members of its board of directors from contracting with any person whom the authority employs or is affiliated with or in which the member has an ownership interest. In addition, the bill prohibits a person from contracting with the authority if the person employs or is affiliated with one of those members of the board of directors.

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:

1 **SECTION 1.** 13.094 (1) of the statutes is amended to read:

2 13.094 (1) FIVE-YEAR REVIEW. ~~By June 29, 2001, and every~~ No later than June
3 29 every 5 years thereafter by June 29, the joint committee on finance shall review
4 the lease agreement under s. 233.04 (7) or (7g) ~~and~~, the affiliation agreement under
5 s. 233.04 (7m) or (7p), and the performance of the University of Wisconsin Hospitals
6 and Clinics Authority, including the performance evaluation audit of the authority
7 under s. 13.94 (1) (o). If the joint committee on finance determines that either the
8 lease agreement or the affiliation agreement, or both, should be terminated, the
9 committee shall submit its recommendations regarding the agreements to the
10 legislature under s. 13.172 (2). The committee's recommendations shall include any
11 suggested legislation necessary to adequately provide for the protection of the
12 bondholders and those entering into contracts with the authority or to modify the
13 powers and duties of the University of Wisconsin Hospitals and Clinics Authority to
14 reflect termination of the lease agreement or affiliation agreement, or both.

15 **SECTION 2.** 13.94 (1) (o) of the statutes is amended to read:

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1 13.94 **(1)** (o) ~~Prior to the initial~~ Before each 5-year review by the joint
2 committee on finance under s. 13.094, perform a performance evaluation audit and
3 distribute a report of its findings to the distributees specified in par. (b).

4 **SECTION 3.** 15.96 (8) of the statutes is amended to read:

5 15.96 **(8)** Two nonvoting members appointed by the governor, one of whom shall
6 be an employee or a representative of a labor organization recognized or certified to
7 represent employees in one of the collective bargaining units specified in s. 111.05 (5)
8 (a) and one of whom shall be an employee or a representative of a labor organization
9 recognized or certified to represent employees in one of the collective bargaining
10 units specified in s. 111.825 (1m), for 3-year terms.

11 **SECTION 4.** 15.96 (9) of the statutes is created to read:

12 15.96 **(9)** Two members appointed by the speaker of the assembly and 2
13 members appointed by the senate majority leader for 3-year terms.

14 **SECTION 5.** 49.45 (6n) of the statutes is created to read:

15 49.45 **(6n)** USE OF FUNDS BY THE UNIVERSITY OF WISCONSIN HOSPITALS AND
16 CLINICS AUTHORITY IN CONNECTION WITH UNION ORGANIZING. (a) In this subsection:

17 1. “Authority” means the University of Wisconsin Hospitals and Clinics
18 Authority.

19 2. “Labor organization” means any employee organization in which employees
20 participate and that exists primarily for the purpose of engaging in collective
21 bargaining with any employer concerning grievances, labor disputes, wages, hours,
22 or conditions of employment, or the promotion and advancement of the professional
23 or occupational standards and the welfare of its members and families and any
24 organization established for the same purposes composed of individuals or affiliates
25 of any such employee organization.

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1 (b) The authority shall keep a separate account of money that it has received
2 and that is appropriated under s. 20.435 (4) (b), (o), or (w) and may not use any of this
3 money to influence the decision of any individual to support or oppose a labor
4 organization that represents or seeks to represent the individual or to become a
5 member of a labor organization. This paragraph does not prohibit a person, if
6 otherwise permitted by law, from negotiating or administering a collective
7 bargaining agreement or from performing any action that is required by law or the
8 terms of a collective bargaining agreement. This paragraph does not apply to any
9 money received before January 1, 2002.

10 (c) 1. The department shall accept complaints from any individual who alleges
11 that the authority is violating par. (b). The department shall notify the authority
12 within 7 days after receiving the complaint and shall direct the authority to provide
13 the department, within 10 days after the department notifies the authority of the
14 complaint, records showing that the authority did not violate par. (b).

15 2. Notwithstanding subd. 1., the department may not require the authority to
16 maintain records relating to this subsection in any particular form.

17 (d) The attorney general may bring an action to enforce par. (b). If the court
18 determines that the authority has violated par. (b), the court shall order the
19 authority to repay to the state an amount equal to the amount that the authority
20 received under s. 20.435 (4) (b), (o), or (w) and spent in connection with the authority's
21 violation. The authority shall also forfeit an amount equal to twice the total amount
22 that the authority spent in connection with the authority's violation. The court may
23 also order injunctive relief and any other equitable relief that is appropriate.

24 (e) 1. Any person other than the attorney general may bring an action to enforce
25 par. (b), but only if all of the following apply:

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1 a. The person filed with the department a written complaint under par. (c)
2 alleging a violation of par. (b).

3 b. No earlier than 20 days after filing the complaint under par. (c), the person
4 filed with the attorney general a copy of that complaint, a written description of the
5 disposition of the complaint, and a written notice that the person intends to bring an
6 enforcement action under this paragraph.

7 c. At least 60 days have elapsed since the person complied with subd. 1. b.

8 d. The attorney general did not bring an action to enforce par. (b) against the
9 authority before the expiration of the time period specified in subd. 1. c.

10 e. The complaint that the person files in his or her action is substantially based
11 on the complaint that the person filed under subd. 1. a.

12 2. If in an action brought under this paragraph the court determines that the
13 authority violated par. (b), the court shall impose any penalty that would have been
14 required and may order any relief that would have been permitted if the action had
15 been brought under par. (d). Any forfeiture ordered under this subdivision shall be
16 paid to the state.

17 (f) Notwithstanding s. 803.09 (1), any person may intervene in an action
18 brought under par. (d) or (e).

19 (g) If the court determines that the authority violated par. (b) in a case brought
20 under par. (d) or (e), the court shall order the authority to pay the plaintiff's
21 reasonable litigation costs, including a reasonable attorney fee, notwithstanding s.
22 814.04 (1). If a person has intervened in a case under par. (f), the court shall order
23 the authority to pay the intervenor's reasonable litigation costs, including a
24 reasonable attorney fee, notwithstanding s. 814.04 (1), if the court determines that

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1 the intervenor made a substantial contribution to the plaintiffs in prosecuting the
2 action.

3 (h) 1. If the authority discharges, demotes, threatens, or otherwise
4 discriminates against an individual regarding compensation or terms, conditions, or
5 privileges of employment because the individual or anyone acting at the request of
6 the individual provided or attempted to provide information to the department or the
7 attorney general regarding possible violations of par. (b), the individual may bring
8 a civil action for any damages resulting from that discharge, demotion, threat, or
9 discrimination. The action shall be commenced within 3 years after the discharge,
10 demotion, threat, or discrimination or be barred. If the plaintiff proves by a
11 preponderance of the evidence that the discharge, demotion, threat, or
12 discrimination occurred, the court may grant any appropriate relief, including the
13 following:

- 14 a. Reinstatement of the individual to his or her former position.
- 15 b. Compensatory damages.
- 16 c. Costs, and notwithstanding s. 814.04 (1), reasonable attorney fees.
- 17 d. Other relief to remedy past discrimination.

18 2. An individual may not bring an action under subd. 1. if he or she did any of
19 the following:

- 20 a. Deliberately caused or participated in the violation of par. (b).
- 21 b. Knowingly or recklessly provided substantially false information to the
22 department regarding a violation of par. (b).

23 (i) Any individual who knowingly authorizes the use of money received under
24 s. 20.435 (4) (b), (o), or (w) in conjunction with a violation of par. (b) shall forfeit all
25 of the following:

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1 1. For each violation, \$1,000.

2 2. The amount of money that the person authorized to be used under par. (i)
3 (intro.).

4 **SECTION 6.** 233.02 (1) (h) of the statutes is amended to read:

5 233.02 (1) (h) Two nonvoting members appointed by the governor, one of whom
6 shall be an employee or a representative of a labor organization recognized or
7 certified to represent employees in one of the collective bargaining units specified in
8 s. 111.05 (5) (a) and one of whom shall be an employee or a representative of a labor
9 organization recognized or certified to represent employees in one of the collective
10 bargaining units specified in s. 111.825 (1m), for 3-year terms.

11 **SECTION 7.** 233.02 (1) (i) of the statutes is created to read:

12 233.02 (1) (i) Two members appointed by the speaker of the assembly and 2
13 members appointed by the senate majority leader for 3-year terms.

14 **SECTION 8.** 233.02 (8) of the statutes is amended to read:

15 233.02 (8) The members of the board of directors shall annually elect a
16 chairperson and may elect other officers as they consider appropriate. ~~Six~~ Eight
17 voting members of the board of directors constitute a quorum for the purpose of
18 conducting the business and exercising the powers of the authority, notwithstanding
19 the existence of any vacancy. The members of the board of directors specified under
20 sub. (1) (c) and (g) may not be the chairperson of the board of directors for purposes
21 of 1995 Wisconsin Act 27, section 9159 (2). The board of directors may take action
22 upon a vote of a majority of the members present, unless the bylaws of the authority
23 require a larger number.

24 **SECTION 9.** 233.06 of the statutes is created to read:

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1 **233.06 Conflicts of interest prohibited. (1)** The authority may not contract
2 with any person who employs or is affiliated with a member of the board of directors
3 appointed under s. 233.02 (1) (a) or (i) or in which the member has an ownership
4 interest. No person may contract with the authority if the person employs or is
5 affiliated with a member of the board of directors appointed under s. 233.02 (1) (a)
6 or (i). The prohibitions in this subsection also apply to a former board member
7 appointed under s. 233.02 (1) (a) or (i) for one year following the expiration of his or
8 her term or following resignation from the board of directors.

9 **(2)** A person who is a party to a contract violating sub. (1) may be subject to a
10 forfeiture of not more than \$10,000 for each violation. Each day of violation
11 constitutes a separate offense.

12 **SECTION 10.** 233.20 (1m) of the statutes is renumbered 233.20 (1m) (intro.) and
13 amended to read:

14 233.20 **(1m)** (intro.) The authority may issue bonds only if ~~a- all of the following:~~
15 (a) A majority of the board of directors determines that, to the extent possible
16 without having an adverse impact on the ability of the authority to sell bonds at a
17 given interest rate, the terms on which the bonds are to be offered are structured in
18 such a way as to accommodate the possibility of the early termination of the lease or
19 affiliation agreement, or both. The board shall base a determination under this
20 subsection paragraph on the best information available to the board at the time the
21 determination is made.

22 **SECTION 11.** 233.20 (1m) (b) of the statutes is created to read:

23 233.20 **(1m)** (b) If the bonds to be issued will fund capital construction or
24 remodeling, the authority submits a report to the joint committee on finance
25 demonstrating that the authority will have adequate staff for patient care at the

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1 facility whose construction or remodeling is to be funded by the bonds, and the
2 committee approves the issuance of the bonds.

SECTION 12. Nonstatutory provisions.

3
4 (1) Notwithstanding sections 15.96 and 233.02 (1) of the statutes, the member
5 of the University of Wisconsin Hospitals and Clinics Authority board appointed
6 under section 15.96 (1) and (8) of the statutes and the member of the board of
7 directors of the University of Wisconsin Hospitals and Clinics Authority appointed
8 under section 233.02 (1) (a) and (h) of the statutes who are members of the board or
9 board of directors immediately before the effective date of this subsection are
10 removed on May 1, 2002, or on the effective date of this subsection, whichever is later.

11 (2) Notwithstanding section 15.96 (1) and (8) of the statutes, the members of
12 the University of Wisconsin Hospitals and Clinics board who are appointed under
13 section 15.96 (1) and (8) of the statutes on or after the effective date of this subsection
14 are appointed for the following initial terms:

15 (a) One of the members under section 15.96 (1) of the statutes, for a term
16 expiring on May 1, 2003.

17 (b) One of the members under section 15.96 (1) of the statutes and one of the
18 members under section 15.96 (8) of the statutes, as affected by this act, for terms
19 expiring on May 1, 2004.

20 (c) One of the members under section 15.96 (1) of the statutes and one of the
21 members under section 15.96 (8) of the statutes, as affected by this act, for a term
22 expiring on May 1, 2005.

23 (3) Notwithstanding section 233.02 (1) (a) and (h) of the statutes, the members
24 of the board of directors of the University of Wisconsin Hospitals and Clinics
25 Authority who are appointed under section 233.02 (1) (a) and (h) of the statutes on

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1 or after the effective date of this subsection are appointed for the following initial
2 terms:

3 (a) One of the members under section 233.02 (1) (a) of the statutes, for a term
4 expiring on May 1, 2003.

5 (b) One of the members under section 233.02 (1) (a) of the statutes and one of
6 the members under section 233.02 (1) (h) of the statutes, as affected by this act, for
7 a term expiring on May 1, 2004.

8 (c) One of the members under section 233.02 (1) (a) of the statutes and one of
9 the members under section 233.02 (1) (h) of the statutes, as affected by this act, for
10 a term expiring on May 1, 2005.

11 (4) Notwithstanding section 15.96 (9) of the statutes, as created by this act, the
12 members of the University of Wisconsin Hospitals and Clinics board are appointed
13 for the following initial terms:

14 (a) Two of the members appointed under section 15.96 (9) of the statutes, as
15 created by this act, for terms expiring on May 1, 2004.

16 (b) Two of the members appointed under section 15.96 (9) of the statutes, as
17 created by this act, for terms expiring on May 1, 2005.

18 (5) Notwithstanding section 233.02 (1) (i) of the statutes, as created by this act,
19 the members of the board of directors of the University of Wisconsin Hospitals and
20 Clinics Authority are appointed for the following initial terms:

21 (a) Two of the members appointed under section 233.02 (1) (i) of the statutes,
22 as created by this act, for terms expiring on May 1, 2004.

23 (b) Two of the members appointed under section 233.02 (1) (i) of the statutes,
24 as created by this act, for terms expiring on May 1, 2005.

