

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/03/2003**

Received By: **rchampag**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Kranz**

This file may be shown to any legislator: **NO**

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Employ Pub - civil service**  
**Employ Pub - miscellaneous**

Extra Copies: **GMM**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

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**Pre Topic:**

DOA:.....Kranz -

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**Topic:**

Elimination of Personnel Commission

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**Instructions:**

See Attached.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	rchampag 01/04/2003	kgilfoy 01/08/2003	rschluet 01/08/2003	_____	sbasford 01/08/2003		State
/2	rchampag 01/31/2003	kgilfoy 01/31/2003	rschluet 01/31/2003	_____	lemery 01/31/2003		

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

<END>

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/?							State
/1	rchampag 01/04/2003	kgilfoy 01/08/2003	rschluet 01/08/2003		sbasford 01/08/2003		

FE Sent For:

Handwritten signatures and dates: 12-1/31 King, 1-31-3

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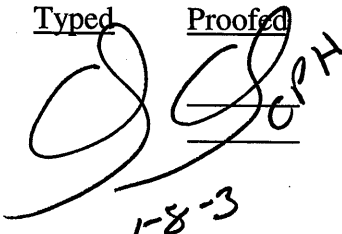
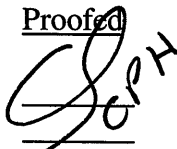
Instructions:

See Attached.

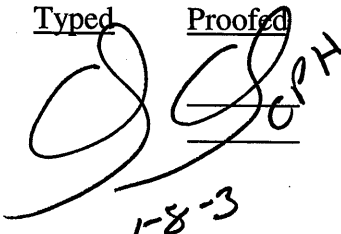
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1?	rchampag	1-17/03 Kranz					
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1-17/03  
Kranz

  
1-8-3

FE Sent For:

<END>

## Champagne, Rick

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**From:** Kranz, Jonathan  
**Sent:** Monday, December 30, 2002 2:16 PM  
**To:** Champagne, Rick  
**Cc:** Caucutt, Dan  
**Subject:** FW: LRB Draft: 03-0576/1 Department of Employment Relations merger into the Department of Administration

Rick,

We are requesting the following changes to the below draft:

- 1) DER employees should be transferred to DOA as part of the consolidation
- 2) The Secretary, Deputy Secretary, Exec assistant, and the two unclassified division administrators should be eliminated (it appears that the first draft has already eliminated the Merit Recruitment and Selection administrator position)

3) Eliminate the personnel commission

- Statutes should be revised to shift responsibility for items under 230.45 (complaints against the State as an employer) to the equal rights division in the Department of Workforce Development
- Statutes should be revised to shift responsibility for items under 230.44 (appeals of certain kinds of personnel transactions related to examinations, classification of positions, disciplinary actions against non-reps, and appointment decisions) and 230.45 (1) (c-e) (appeals of non-contractual grievances as the final step, hazardous employment benefit decisions, and appeals under the county merit system) to the Wisconsin Employment Relations Commission.
- The commission should be dissolved including the elimination of the commissioners.
- No transfer of staff to other agencies

Please let me know if you discover any items that are not covered above.

Thanks for your assistance. Please contact me if you have any questions.

Jon Kranz  
State Budget Office  
6-8777

-----Original Message-----

**From:** Caucutt, Dan  
**Sent:** Monday, December 30, 2002 11:18 AM  
**To:** Kranz, Jonathan  
**Subject:** FW: LRB Draft: 03-0576/1 Department of Employment Relations merger into the Department of Administration

-----Original Message-----

**From:** Schlueter, Ron  
**Sent:** Thursday, November 07, 2002 12:46 PM  
**To:** Caucutt, Dan  
**Cc:** Uecker, Deborah; Hanaman, Cathlene; Haugen, Caroline  
**Subject:** LRB Draft: 03-0576/1 Department of Employment Relations merger into the Department of Administration

Following is the PDF version of draft 03-0576/1.



03-0576/1



03-0576/1dn



Joan

DOA:.....Kranz - Elimination of Personnel Commission

FOR 2003-05 BUDGET - NOT READY FOR INTRODUCTION

- do not  
zen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**STATE GOVERNMENT**

**STATE EMPLOYMENT**

Under current law, the personnel commission hears appeals of state employee position classification decisions, examination scores, appointment decisions, and disciplinary actions taken against ~~the~~ employees by their employer (appeals functions). In addition, the personnel commission investigates complaints by state employees for discriminatory or retaliatory actions taken by their employers relating to the Fair Employment Act, public employee safety and health protections, the state's whistleblower law, the Family and Medical Leave Act, elder abuse reporting contact protections, and health care worker reporting protections (complaints functions). This bill abolishes the personnel commission and transfers its appeals functions to the employment relations commission and its complaints functions to the equal rights ~~division~~ in the department of workforce development. → DWD

Division of

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. 15.06 (1) (d) of the statutes is repealed.

2 SECTION 2. 15.80 of the statutes is repealed.

3 SECTION 3. 16.009 (5) (c) of the statutes is repealed.

4 SECTION 4. 16.009 (5) (d) of the statutes is amended to read:

5 16.009 (5) (d) Any employee of an employer not described in par. (c) and who  
6 is discharged or otherwise retaliated or discriminated against in violation of par. (a)  
7 may file a complaint with the department of workforce development under s. 106.54  
8 (5).

9 History: 1981 c. 20; 1983 a. 524; 1985 a. 29; 1987 a. 27; 1989 a. 31, 294; 1991 a. 39, 232; 1993 a. 16, 205; 1995 a. 27 s. 9126 (19); 1997 a. 131; 1999 a. 9, 82, 86, 186.

SECTION 5. 16.009 (5) (e) of the statutes is amended to read:

10 16.009 (5) (e) Any person not described in par. (c) or (d) who is retaliated or  
11 discriminated against in violation of par. (a) may commence an action in circuit court  
12 for damages incurred as a result of the violation.

13 History: 1981 c. 20; 1983 a. 524; 1985 a. 29; 1987 a. 27; 1989 a. 31, 294; 1991 a. 39, 232; 1993 a. 16, 205; 1995 a. 27 s. 9126 (19); 1997 a. 131; 1999 a. 9, 82, 86, 186.

SECTION 6. 20.425 (1) (title) of the statutes is amended to read:

14 20.425 (1) (title) ~~PROMOTION OF PEACE IN LABOR~~ <sup>LABOR</sup> RELATIONS.

15 History: 1981 c. 20; 1983 a. 27; 1985 a. 29, 318; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1999 a. 9; 2001 a. 16.

SECTION 7. 20.425 (1) (a) of the statutes is amended to read:

16 20.425 (1) (a) *General program operations.* The amounts in the schedule for  
17 the purposes provided in subchs. I, IV and V of ch. 111 and s. 230.45 (1).

18 History: 1981 c. 20; 1983 a. 27; 1985 a. 29, 318; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1999 a. 9; 2001 a. 16.

SECTION 8. 20.547 of the statutes is repealed.

19 SECTION 9. 20.923 (4) (d) 7m. of the statutes is repealed.

20 SECTION 10. 21.80 (7) (b) 1. of the statutes is amended to read:

21 21.80 (7) (b) 1. A person who receives notification under par. (a) that the  
22 adjutant general was unable to resolve the person's complaint may request the  
23 adjutant general to refer the complaint to counsel, which may include the attorney

1 general, appointed by the governor on the recommendation of the adjutant general  
2 for the purpose of prosecuting complaints under this subdivision who shall file a  
3 complaint for appropriate relief with the department of workforce development ~~or,~~  
4 ~~if the person is an employee of a state agency, as defined in s. 111.32 (6) (a), the~~  
5 ~~personnel commission.~~

6 History: 2001 a. 26, 109.

**SECTION 11.** 21.80 (7) (b) 2. of the statutes is amended to read:

7 21.80 (7) (b) 2. Subdivision 1. does not preclude a person who has chosen not  
8 to file a complaint with the adjutant general under par. (a), whose complaint the  
9 adjutant general has refused to endeavor to resolve under par. (a), or who has chosen  
10 not to request the adjutant general to refer his or her complaint to counsel under  
11 subd. 1. from filing a complaint for appropriate relief with the department of  
12 workforce development ~~or, if the person is an employee of a state agency, with the~~  
13 ~~personnel commission.~~

14 History: 2001 a. 26, 109.

**SECTION 12.** 21.80 (7) (b) 3. of the statutes is amended to read:

15 21.80 (7) (b) 3. The department of workforce development ~~or the personnel~~  
16 ~~commission~~ shall process a complaint filed under subd. 1. or 2. in the same manner  
17 that employment discrimination complaints are processed under s. 111.39.

18 History: 2001 a. 26, 109.

**SECTION 13.** 21.80 (7) (d) (intro.) of the statutes is amended to read:

19 21.80 (7) (d) *Remedies.* (intro.) If the department of workforce development  
20 ~~or the personnel commission~~ finds that an employer has failed or refused, or is about  
21 to fail or refuse, to provide any reemployment right or benefit to which a person is  
22 entitled under this section or has discharged or otherwise discriminated against any



1 person in violation of par. (c), the department of workforce development ~~or the~~  
2 ~~personnel commission~~ may order the employer to do any one or more of the following:

3 History: 2001 a. 26, 109.

**SECTION 14.** 21.80 (7) (d) 3. of the statutes is amended to read:

4 21.80 (7) (d) 3. Pay the person, as liquidated damages, an amount that is equal  
5 to the amount ordered under subd. 2. if the department of workforce development ~~or~~  
6 ~~the personnel commission~~ finds that the failure or refusal to provide reemployment  
7 rights or benefits under this section or the discharge or other discrimination was  
8 willful.

9 History: 2001 a. 26, 109.

**SECTION 15.** 46.90 (4) (b) 2. a. of the statutes is repealed.

10 **SECTION 16.** 46.90 (4) (b) 2. b. of the statutes is amended to read:

11 46.90 (4) (b) 2. b. Any employee ~~of an employer not described in subd. 2. a.~~ who  
12 is discharged or otherwise discriminated against may file a complaint with the  
13 department of workforce development under s. 106.54 (5).

14 History: 1983 a. 398, 1985 a. 176; 1989 a. 31; 1991 a. 39, 235; 1993 a. 27; 1995 a. 27 ss. 2334, 9130 (4); 1995 a. 225; 1997 a. 3, 131; 1999 a. 82.

**SECTION 17.** 46.90 (4) (b) 2. c. of the statutes is amended to read:

15 46.90 (4) (b) 2. c. Any person not described in ~~this~~ subd. 2. a. ~~or~~ b. who is  
16 retaliated or discriminated against in violation of subd. 1. may commence an action  
17 in circuit court for damages incurred as a result of the violation.

18 History: 1983 a. 398, 1985 a. 176; 1989 a. 31; 1991 a. 39, 235; 1993 a. 27; 1995 a. 27 ss. 2334, 9130 (4); 1995 a. 225; 1997 a. 3, 131; 1999 a. 82.

**SECTION 18.** 50.07 (3) (a) of the statutes is repealed.

19 **SECTION 19.** 50.07 (3) (b) of the statutes is amended to read:

20 50.07 (3) (b) Any employee ~~of an employer not described in par. (a)~~ who is  
21 discharged or otherwise retaliated or discriminated against in violation of sub. (1)  
22 (e) or (em) may file a complaint with the department of workforce development under  
23 s. 106.54 (5).

History: 1977 c. 170; 1997 a. 131; 1999 a. 82.

1           **SECTION 20.** 50.07 (3) (c) of the statutes is amended to read:

2           50.07 (3) (c) Any person not described in par. (a) or (b) who is retaliated or  
3 discriminated against in violation of sub. (1) (e) or (em) may commence an action in  
4 circuit court for damages incurred as a result of the violation.

History: 1977 c. 170; 1997 a. 131; 1999 a. 82.

5           **SECTION 21.** 101.055 (8) (b) of the statutes is amended to read:

6           101.055 (8) (b) <sup>strike space</sup> ~~A state employee who believes that he or she has been~~  
7 ~~discharged or otherwise discriminated against by a public employer in violation of~~  
8 ~~par. (ar) may file a complaint with the personnel commission alleging discrimination~~  
9 ~~or discharge, within 30 days after the employee received knowledge of the~~  
10 ~~discrimination or discharge. A public employee other than a state employee who~~  
11 ~~believes that he or she has been discharged or otherwise discriminated against by~~  
12 ~~a public employer in violation of par. (ar) may file a complaint with the division of~~  
13 ~~equal rights alleging discrimination or discharge, within 30 days after the employee~~  
14 ~~received knowledge of the discrimination or discharge.~~

History: 1981 c. 360, 391; 1985 a. 182 s. 57; 1991 a. 39; 1995 a. 27 ss. 3652 to 3659, 9130 (4); 1995 a. 342; 1997 a. 3; 1999 a. 82; 1999 a. 150 s. 672.

15           **SECTION 22.** 101.055 (8) (c) of the statutes is amended to read:

16           101.055 (8) (c) Upon receipt of a complaint, the ~~personnel commission or the~~  
17 ~~division of equal rights, whichever is applicable,~~ shall, except as provided in s. 230.45  
18 (1m), investigate the complaint and determine whether there is probable cause to  
19 believe that a violation of par. (ar) has occurred. If the ~~personnel commission or the~~  
20 ~~division of equal rights finds probable cause~~ it shall attempt to resolve the complaint  
21 by conference, conciliation or persuasion. If the complaint is not resolved, the  
22 ~~personnel commission or the~~ division of equal rights shall hold a hearing on the  
23 complaint within 60 days after receipt of the complaint unless both parties to the  
24 proceeding agree otherwise. Within 30 days after the close of the hearing, the

1 ~~personnel commission or the~~ division of equal rights shall issue its decision. If the  
2 ~~personnel commission or the~~ division of equal rights determines that a violation of  
3 par. (ar) has occurred, it shall order appropriate relief for the employee, including  
4 restoration of the employee to his or her former position with back pay, and shall  
5 order any action necessary to ensure that no further discrimination occurs. If the  
6 ~~personnel commission or the~~ division of equal rights determines that there has been  
7 no violation of par. (ar), it shall issue an order dismissing the complaint.

8 History: 1981 c. 360, 391; 1985 a. 182 s. 57; 1991 a. 39; 1995 a. 27 ss. 3652 to 3659, 9130 (4); 1995 a. 342; 1997 a. 3; 1999 a. 82; 1999 a. 150 s. 672.

8 **SECTION 23.** 101.055 (8) (d) of the statutes is amended to read:

9 101.055 (8) (d) Orders of the ~~personnel commission and the~~ division of equal  
10 rights under this subsection are subject to judicial review under ch. 227.

11 History: 1981 c. 360, 391; 1985 a. 182 s. 57; 1991 a. 39; 1995 a. 27 ss. 3652 to 3659, 9130 (4); 1995 a. 342; 1997 a. 3; 1999 a. 82; 1999 a. 150 s. 672.

11 **SECTION 24.** 103.10 (12) (a) of the statutes is repealed.

12 **SECTION 25.** 111.375 (1) of the statutes is amended to read:

13 111.375 (1) ~~Except as provided under sub. (2), this~~ This subchapter shall be  
14 administered by the department. The department may make, amend and rescind  
15 such rules as are necessary to carry out this subchapter. The department or the  
16 ~~commission~~ may, by such agents or agencies as it designates, conduct in any part of  
17 this state any proceeding, hearing, investigation or inquiry necessary to the  
18 performance of its functions. The department shall preserve the anonymity of any  
19 employee who is the aggrieved party in a complaint of discrimination in promotion,  
20 compensation or terms and conditions of employment, of unfair honesty testing or  
21 of unfair genetic testing against his or her present employer until a determination  
22 as to probable cause has been made, unless the department determines that the  
23 anonymity will substantially impede the investigation.

24 History: 1975 c. 94; 1977 c. 29, 196; 1979 c. 221, 319, 355; 1981 c. 334 s. 13; Stats. 1981 s. 111.375; 1991 a. 117.

24 **SECTION 26.** 111.375 (2) of the statutes is amended to read:

1           111.375 (2) This subchapter applies to each agency of the state ~~except that~~  
2 ~~complaints of discrimination, unfair honesty testing or unfair genetic testing against~~  
3 ~~the agency as an employer shall be filed with and processed by the personnel~~  
4 ~~commission under s. 230.45 (1) (b).~~ Decisions of the personnel commission are  
5 subject to review under ch. 227.

6 History: 1975 c. 94; 1977 c. 29, 196; 1979 c. 221, 319, 355; 1981 c. 334 s. 13; Stats. 1981 s. 111.375; 1991 a. 117.

6           **SECTION 27.** 146.997 (4) (a) of the statutes is amended to read:

7           146.997 (4) (a) Subject to par. (b), any Any employee of a health care facility  
8 or health care provider who is subjected to disciplinary action, or who is threatened  
9 with disciplinary action, in violation of sub. (3) may file a complaint with the  
10 department under s. 106.54 (6). If the department finds that a violation of sub. (3)  
11 has been committed, the department may take such action under s. 111.39 as will  
12 effectuate the purpose of this section.

13 History: 1999 a. 176, 186; 2001 a. 38, 70, 74, 89, 105.

13           **SECTION 28.** 146.997 (4) (b) of the statutes is repealed.

14           **SECTION 29.** 227.03 (7) of the statutes is amended to read:

15           227.03 (7) Except as provided in s. 230.44 (4) (bm), this chapter does not apply  
16 to proceedings before the ~~personnel commission~~ employment relations commission  
17 in matters that are arbitrated in accordance with s. 230.44 (4) (bm).

18 History: 1985 a. 182; 1989 a. 31; 1991 a. 32, 295; 1993 a. 16, 263, 377; 1995 a. 27 ss. 6224 to 6226m, 9130 (4); 1995 a. 77, 227, 351; 1997 a. 3, 191, 237, 283; 1999 a. 82.

18           **SECTION 30.** 227.44 (2s) of the statutes is repealed.

19           **SECTION 31.** 227.47 (2) of the statutes is amended to read:

20           227.47 (2) Except as otherwise provided in this subsection, a proposed or final  
21 decision of the ~~personnel~~ employment relations commission, hearing examiner ~~or~~  
22 arbitrator concerning an appeal of the decision of the secretary of employment  
23 relations made under s. 230.09 (2) (a) or (d) shall not be accompanied by findings of  
24 fact or conclusions of law. If within 30 days after the commission issues a decision

Subject  
7-14

1 in such an appeal either party files a petition for judicial review of the decision under  
 2 s. 227.53 and files a written notice with the commission that the party has filed such  
 3 a petition, the commission shall issue written findings of fact and conclusions of law  
 4 within 90 days after receipt of the notice. The court shall stay the proceedings  
 5 pending receipt of the findings and conclusions.

History: 1975 c. 414 s. 15; 1977 c. 418; 1979 c. 208; 1985 a. 182 ss. 33r, 57; Stats. 1985 s. 227.47; 1993 a. 16, 491.

6 SECTION 32. 230.03 (8) of the statutes is amended to read:

7 230.03 (8) "Commission" means the personnel employment relations  
 8 commission.

History: 1971 c. 270; 1973 c. 333; 1977 c. 196 ss. 24, 100; 1977 c. 418; 1981 c. 20, 26; 1983 a. 27 ss. 1604, 2200 (15); 1983 a. 409, 453, 538; 1987 a. 32; 1989 a. 31; 1991 a. 101, 147; 1993 a. 16, 254; 1995 a. 27, 255; 1997 a. 27; 1999 a. 65, 81; 2001 a. 16, 103.

9 SECTION 33. 230.03 (10e) of the statutes is created to read:

10 230.03 (10e) <sup>division of</sup> ~~Equal rights division~~ <sup>Division of equal</sup> means the equal rights ~~division~~ <sup>division</sup> in the  
 11 department of workforce development.

12 SECTION 34. 230.04 (1) of the statutes is amended to read:

13 230.04 (1) The secretary is charged with the effective administration of this  
 14 chapter. All powers and duties, necessary to that end, which are not exclusively  
 15 vested by statute in the commission, <sup>division of</sup> ~~the equal rights division~~ <sup>division of</sup> the administrator, or  
 16 appointing authorities, are reserved to the secretary.

History: 1977 c. 196 ss. 48, 63, 101, 130 (11); 1977 c. 418, 447; 1981 c. 20; 1983 a. 27, 409; 1987 a. 27, 32, 140, 403; 1989 a. 31, 124; 1991 a. 101, 269, 288, 315; 1995 a. 289; 1997 a. 27; 1999 a. 87.

17 SECTION 35. 230.04 (1m) of the statutes is amended to read:

18 230.04 (1m) The secretary may delegate, in writing, any of his or her functions  
 19 set forth in this chapter to an appointing authority, within prescribed standards if  
 20 the secretary finds that the agency has personnel management capabilities to  
 21 perform such functions effectively and has indicated its approval and willingness to  
 22 accept such responsibility by written agreement. If the secretary determines that  
 23 any agency is not performing such delegated function within prescribed standards,

1 the secretary shall forthwith withdraw such delegated function. Subject to the  
2 approval of the joint committee on finance, the secretary may order transferred to  
3 the department from the agency to which delegation was made such agency staff and  
4 other resources as necessary to perform such functions if increased staff was  
5 authorized to that agency as a consequence of such delegation or if the department  
6 reduced staff or shifted staff to new responsibilities as a result of such delegation.  
7 Any delegatory action taken under s. 230.09 (2) (a) or (d) or 230.13 (1) by an  
8 appointing authority may be appealed to the personnel commission under s. 230.44  
9 (1) (b). The secretary shall be a party in such an appeal.

History: 1977 c. 196 ss. 48, 63, 101, 130 (11); 1977 c. 418, 447; 1981 c. 20; 1983 a. 27, 409; 1987 a. 27, 32, 140, 403; 1989 a. 31, 124; 1991 a. 101, 269, 288, 315; 1995 a. 289; 1997 a. 27; 1999 a. 87.

10 **SECTION 36.** 230.05 (2) (a) of the statutes is amended to read:

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

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

History: 1971 c. 125, 270; 1977 c. 196 ss. 26, 105, 130 (5); 1977 c. 273; 1981 c. 20; 1983 a. 27; 1989 a. 31; 1997 a. 216, 237.

3 SECTION 37. 230.45 (title) of the statutes is amended to read:

4 230.45 (title) Powers and duties of personnel commission and equal  
5 rights division.

*division of*

X

History: 1977 c. 196; 1979 c. 221; 1981 c. 334 s. 25 (2); 1981 c. 360; 1983 a. 27, 398, 409; 1987 a. 140, 331; 1987 a. 403 s. 256; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 131, 216; 1999 a. 176; 2001 a. 26, 38.

6 SECTION 38. 230.45 (1) (b) of the statutes is repealed.

7 SECTION 39. 230.45 (1) (g) of the statutes is repealed.

8 SECTION 40. 230.45 (1) (gm) of the statutes is repealed.

9 SECTION 41. 230.45 (1) (j) of the statutes is repealed.

10 SECTION 42. 230.45 (1) (k) of the statutes is repealed.

11 SECTION 43. 230.45 (1) (L) of the statutes is repealed.

12 SECTION 44. 230.45 (1) (m) of the statutes is repealed.

13 SECTION 45. 230.45 (1e) of the statutes is created to read:

14 230.45 (1e) The <sup>division of</sup> equal rights ~~division~~ shall:

15 (a) Receive and process complaints of discrimination of state employees under  
16 s. 111.375. In the course of investigating or otherwise processing such a complaint,  
17 the <sup>division of</sup> equal rights ~~division~~ may require that an interview with any state employee,  
18 except a management or supervisory employee who is a party to or immediately  
19 involved in the subject matter of the complaint, be conducted outside the presence  
20 of the appointing authority or any representative or agent thereof unless the  
21 employee voluntarily requests that presence. An appointing authority shall permit  
22 an employee to be interviewed without loss of pay and to have an employee  
23 representative present at the interview. An appointing authority of an employee to

17

1 be interviewed may require the <sup>division of</sup> equal rights ~~division~~ to give the appointing authority  
2 reasonable notice prior to the interview.

3 (b) Receive and process complaints of retaliatory disciplinary action under s.  
4 230.85.

5 (c) Keep minutes of its own proceedings and other official actions relating to  
6 this chapter. All such records shall, subject to reasonable rules, be open to public  
7 inspection. Records of the secretary or the administrator which are confidential shall  
8 be kept confidential by the <sup>division of</sup> equal rights <sup>division</sup>.

9 (d) Adopt rules necessary to carry out this section. Notice of the contents of such  
10 rules and amendments thereto shall be given promptly to the secretary, the  
11 administrator, and appointing authorities affected thereby.

12 SECTION 46. 230.81 (1) (b) of the statutes is amended to read:

13 230.81 (1) (b) After asking the ~~commission~~ <sup>division of</sup> equal rights ~~division~~ which  
14 governmental unit is appropriate to receive the information, disclose the information  
15 in writing only to the governmental unit <sup>that</sup> the ~~commission~~ <sup>division of</sup> equal rights ~~division~~  
16 determines is appropriate. The ~~commission~~ <sup>division of</sup> equal rights ~~division~~ may not designate  
17 the department of justice, the courts, the legislature, or a service agency under  
18 subch. IV of ch. 13 as an appropriate governmental unit to receive information. Each  
19 appropriate governmental unit shall designate an employee to receive information  
20 under this section.

History: 1983 a. 409.

21 SECTION 47. 230.85 (1) of the statutes is amended to read:

22 230.85 (1) An employee who believes that a supervisor or appointing authority  
23 has initiated or administered, or threatened to initiate or administer, a retaliatory  
24 action against that employee in violation of s. 230.83 may file a written complaint



*division of*

1 with the ~~commission~~ equal rights division, specifying the nature of the retaliatory  
2 action or threat thereof and requesting relief, within 60 days after the retaliatory  
3 action allegedly occurred or was threatened or after the employee learned of the  
4 retaliatory action or threat thereof, whichever occurs last.

History: 1983 a. 409; 1991 a. 39.

5 SECTION 48. 230.85 (2) of the statutes is amended to read:

*division of*

6 230.85 (2) The ~~commission~~ equal rights division shall receive and, except as  
7 provided in s. 230.45 (1m), investigate any complaint under sub. (1). In the course  
8 of investigating or otherwise processing such a complaint, the ~~commission~~ equal  
9 rights division may require that an interview with any employee described in s.  
10 230.80 (3), except a management or supervisory employee who is a party to or is  
11 immediately involved in the subject matter of the complaint, be conducted outside  
12 the presence of the appointing authority or any representative or agent thereof  
13 unless the employee voluntarily requests that presence. An appointing authority  
14 shall permit an employee to be interviewed without loss of pay and to have an  
15 employee representative present at the interview. An appointing authority of an  
16 employee to be interviewed may require the ~~commission~~ division of equal rights division to give  
17 the appointing authority reasonable notice prior to the interview. If the ~~commission~~  
18 division of equal rights division finds probable cause to believe that a retaliatory action has  
19 occurred or was threatened, it may endeavor to remedy the problem through  
20 conference, conciliation or persuasion. If that endeavor is not successful, the  
21 ~~commission~~ division of equal rights division shall issue and serve a written notice of hearing,  
22 specifying the nature of the retaliatory action which has occurred or was threatened,  
23 and requiring the person named, in this section called the "respondent", to answer  
24 the complaint at a hearing. The notice shall specify the place of hearing and a time

1 of hearing not less than 30 days after service of the complaint upon the respondent  
 2 nor less than 10 days after service of the notice of hearing. If, however, the  
 3 ~~commission~~<sup>division of</sup> ~~equal rights division~~ determines that an emergency exists with respect  
 4 to a complaint, the notice of hearing may specify a time of hearing within 30 days  
 5 after service of the complaint upon the respondent, but not less than 10 days after  
 6 service of the notice of hearing. The testimony at the hearing shall be recorded or  
 7 taken down by a reporter appointed by the ~~commission~~<sup>division of</sup> ~~equal rights division~~.

History: 1983 a. 409; 1991 a. 39.

8 **SECTION 49.** 230.85 (3) (a) (intro.) of the statutes is amended to read:

9 230.85 (3) (a) (intro.) After hearing, the ~~commission~~<sup>division of</sup> ~~equal rights division~~ shall  
 10 make written findings and orders. If the ~~commission~~<sup>division of</sup> ~~equal rights division~~ finds ~~the~~<sup>that</sup>  
 11 respondent engaged in or threatened a retaliatory action, it shall order the  
 12 employee's appointing authority to insert a copy of the findings and orders into the  
 13 employee's personnel file and, if the respondent is a natural person, order the  
 14 respondent's appointing authority to insert such a copy into the respondent's  
 15 personnel file. In addition, the ~~commission~~<sup>division of</sup> ~~equal rights division~~ may take any other  
 16 appropriate action, including but not limited to the following:

History: 1983 a. 409; 1991 a. 39.

17 **SECTION 50.** 230.85 (3) (a) 4. of the statutes is amended to read:

18 230.85 (3) (a) 4. Order payment of the employee's reasonable attorney fees by  
 19 a governmental unit respondent, or by a governmental unit employing a respondent  
 20 who is a natural person if that governmental unit received notice and an opportunity  
 21 to participate in proceedings before the ~~commission~~<sup>division of</sup> ~~equal rights division~~.

History: 1983 a. 409; 1991 a. 39.

22 **SECTION 51.** 230.85 (3) (b) of the statutes is amended to read:

23 230.85 (3) (b) If, after hearing, the ~~commission~~<sup>division of</sup> ~~equal rights division~~ finds that  
 24 the respondent did not engage in or threaten a retaliatory action it shall order the

*division of*

1 complaint dismissed. The ~~commission~~ <sup>*division of*</sup> equal rights division shall order the  
 2 employee's appointing authority to insert a copy of the findings and orders into the  
 3 employee's personnel file and, if the respondent is a natural person, order the  
 4 respondent's appointing authority to insert such a copy into the respondent's  
 5 personnel file. If the ~~commission~~ <sup>*division of*</sup> equal rights division finds by unanimous vote that  
 6 the employee filed a frivolous complaint it may order payment of the respondent's  
 7 reasonable actual attorney fees and actual costs. Payment may be assessed against  
 8 either the employee or the employee's attorney, or assessed so that the employee and  
 9 the employee's attorney each pay a portion. To find a complaint frivolous the  
 10 ~~commission~~ <sup>*division of*</sup> equal rights division must find that either s. 814.025 (3) (a) or (b) applies  
 11 or that both s. 814.025 (3) (a) and (b) apply.

History: 1983 a. 409; 1991 a. 39.

*division of  
equal rights  
division*

12 SECTION 52. 230.85 (3) (c) of the statutes is amended to read:

13 230.85 (3) (c) Pending final determination by the ~~commission~~ <sup>*division of*</sup> of any complaint  
 14 under this section, the ~~commission~~ <sup>*division of*</sup> equal rights division may make interlocutory  
 15 orders.

History: 1983 a. 409; 1991 a. 39.

16 SECTION 53. 230.85 (4) of the statutes is amended to read:

17 230.85 (4) The ~~commission~~ <sup>*division of*</sup> equal rights division shall serve a certified copy of  
 18 the findings and order on the respondent and, if the respondent is a natural person,  
 19 upon the respondent's appointing authority.

History: 1983 a. 409; 1991 a. 39.

20 SECTION 54. 230.85 (5) (a) of the statutes is amended to read:

21 230.85 (5) (a) If a respondent does not comply with any lawful order by the  
 22 ~~commission~~ <sup>*division of*</sup> equal rights division, for each such failure the respondent shall forfeit  
 23 a sum of not less than \$10 nor more than \$100. Every day during which a respondent

1 fails to comply with any order of the ~~commission~~ <sup>division of</sup> ~~equal rights division~~ constitutes a  
2 separate violation of that order.

3 History: 1983 a. 409; 1991 a. 39.

**SECTION 55.** 230.85 (5) (b) of the statutes is amended to read: <sup>division of</sup>

4 230.85 (5) (b) As an alternative to par. (a), the ~~commission~~ <sup>division of</sup> ~~equal rights division~~  
5 may enforce an order by a suit in equity.

6 History: 1983 a. 409; 1991 a. 39.

**SECTION 56.** 230.87 (1) of the statutes is amended to read: <sup>division of</sup>

7 230.87 (1) Findings and orders of the ~~commission~~ <sup>division of</sup> ~~equal rights division~~ under  
8 this subchapter are subject to judicial review under ch. 227. Upon that review, or in  
9 any enforcement action, the department of justice shall represent the ~~commission~~  
10 <sup>division of</sup> ~~equal rights division~~ unless a conflict of interest results from that representation.  
11 A court may order payment of a prevailing appellant employee's reasonable attorney  
12 fees by a governmental unit respondent, or by a governmental unit employing a  
13 respondent who is a natural person if that governmental unit received notice and an  
14 opportunity to appear before the court.

15 History: 1983 a. 409; 1985 a. 135.

**SECTION 57.** 230.88 (2) of the statutes is amended to read:

16 230.88 (2) EFFECT. (a) A final order issued under s. 230.85 or 230.87 which has  
17 not been appealed and for which the time of appeal has passed binds all parties who  
18 were subjected to the jurisdiction of the ~~commission~~ <sup>division of</sup> ~~equal rights division~~ or the court  
19 and who received an opportunity to be heard. With respect to these parties, the  
20 decree is conclusive as to all issues of law and fact decided.

21 (b) No collective bargaining agreement supersedes the rights of an employee  
22 under this subchapter. However, nothing in this subchapter affects any right of an  
23 employee to pursue a grievance procedure under a collective bargaining agreement  
24 under subch. V of ch. 111, and if the ~~commission~~ <sup>division of</sup> ~~equal rights division~~ determines that

1 a grievance arising under such a collective bargaining agreement involves the same  
 2 parties and matters as a complaint under s. 230.85, it shall order the arbitrator's  
 3 final award on the merits conclusive as to the rights of the parties to the complaint,  
 4 on those matters determined in the arbitration which were at issue and upon which  
 5 the determination necessarily depended.

6 (c) No later than 10 days before the specified time of hearing under s. 230.85  
 7 (2), an employee shall notify the ~~commission~~ <sup>division of</sup> equal rights division orally or in writing  
 8 if he or she has commenced or will commence an action in a court of record alleging  
 9 matters prohibited under s. 230.83 (1). If the employee does not substantially comply  
 10 with this requirement, the ~~commission~~ <sup>division of</sup> equal rights division may assess against the  
 11 employee any costs attributable to the failure to notify. Failure to notify the  
 12 ~~commission~~ <sup>division of</sup> equal rights division does not affect a court's jurisdiction to proceed with the action. Upon  
 13 commencement of such an action in a court of record, the ~~commission~~ <sup>division of</sup> equal rights division has no  
 14 jurisdiction to process a complaint filed under s. 230.85 except to dismiss the  
 15 complaint and, if appropriate, to assess costs under this paragraph.

History: 1983 a. 409.

SECTION 58. 230.89 of the statutes is amended to read:

230.89 Rule making and reporting. (1) The ~~commission~~ <sup>division of</sup> equal rights  
~~division~~ shall promulgate rules to carry out its responsibilities under this  
 subchapter.

(2) Every 2 years, the ~~commission~~ <sup>division of</sup> equal rights division shall submit a report  
 to the chief clerk of each house of the legislature, for distribution to the appropriate  
 standing committees under s. 13.172 (3), regarding complaints filed, hearings held  
 and actions taken under this subchapter, including the dollar amount of any

1 monetary settlement or final monetary award which has become binding on the  
2 parties.

3 History: 1983 a. 409; 1987 a. 186.

3 **SECTION 9139. Nonstatutory provisions; personnel commission.**

4 *auto ref. "KA"*  
(1) ABOLITION OF PERSONNEL COMMISSION.

5 (a) *Assets and liabilities.*

6 1. On the effective date of this subdivision, all assets and liabilities of the  
7 personnel commission relating to the performance of its duties under section 230.45  
8 (1) (a), (c), (d), and (e), 2001 Stats., as determined by the secretary of administration,  
9 shall become the assets and liabilities of the employment relations commission.

10 2. On the effective date of this subdivision, all assets and liabilities of the  
11 personnel commission relating to the performance of its duties under section 230.45  
12 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 Stats., as determined by the secretary of  
13 administration, shall become the assets and liabilities of the department of  
14 workforce development.

15 (b) *Tangible personal property.*

16 1. On the effective date of this subdivision, all tangible personal property,  
17 including records, of the personnel commission relating to the performance of its  
18 duties under section 230.45 (1) (a), (c), (d), and (e), 2001 Stats., as determined by the  
19 secretary of administration, are transferred to the employment relations  
20 commission.

21 2. On the effective date of this subdivision, all tangible personal property,  
22 including records, of the personnel commission relating to the performance of its  
23 duties under section 230.45 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 Stats., as

1 determined by the secretary of administration, are transferred to the department of  
2 workforce development.

3 (c) *Contracts.*

4 1. On the effective date of this subdivision, all contracts entered into by the  
5 personnel commission relating to the performance of its duties under section 230.45  
6 (1) (a), (c), (d), and (e), 2001 Stats., as determined by the secretary of administration,  
7 which are in effect on the effective date of this subdivision remain in effect and are  
8 transferred to the employment relations commission. The employment relations  
9 commission shall carry out any such contractual obligations until modified or  
10 rescinded by the employment relations commission to the extent allowed under the  
11 contract.

12 2. On the effective date of this subdivision, all contracts entered into by the  
13 personnel commission relating to the performance of its duties under section 230.45  
14 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 Stats., as determined by the secretary of  
15 administration, which are in effect on the effective date of this subdivision remain  
16 in effect and are transferred to the department of workforce development. The  
17 department of workforce development shall carry out any such contractual  
18 obligations until modified or rescinded by the department of workforce development  
19 to the extent allowed under the contract.

20 (d) *Pending matters.*

21 1. On the effective date of this subdivision, any matter pending with the  
22 personnel commission relating to the performance of its duties under section 230.45  
23 (1) (a), (c), (d), and (e), 2001 Stats., is transferred to the employment relations  
24 commission, and all materials submitted to or actions taken by the personnel

1 commission with respect to the pending matter are considered as having been  
2 submitted to or taken by the employment relations commission.

3 2. On the effective date of this subdivision, any matter pending with the  
4 personnel commission relating to the performance of its duties under section 230.45  
5 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 Stats., is transferred to the department  
6 of workforce development, and all materials submitted to or actions taken by the  
7 personnel commission with respect to the pending matter are considered as having  
8 been submitted to or taken by the department of workforce development.

9 (e) *Rules and orders.*

10 1. All rules promulgated, and all orders issued, by the personnel commission  
11 that are in effect on the effective date of this subdivision and that relate to the  
12 performance of its duties under section 230.45 (1) (a), (c), (d), and (e), 2001 Stats.,  
13 remain in effect until their specified expiration date or until amended or repealed or  
14 modified or rescinded, whichever is appropriate, by the employment relations  
15 commission.

16 2. All rules promulgated, and all orders issued, by the personnel commission  
17 that are in effect on the effective date of this subdivision and that relate to the  
18 performance of its duties under section 230.45 (1) (b), (g), (gm), (j), (k), (L), and (m),  
19 2001 Stats., remain in effect until their specified expiration date or until amended  
20 or repealed or modified or rescinded, whichever is appropriate, by the department  
21 of workforce development.

20.425 (1)(title) and (a),

22 **SECTION 9439. Effective dates; personnel commission.**

23 (1) ABOLITION OF PERSONNEL COMMISSION. The treatment of sections 15.06 (1) (d),  
24 15.80, 16.009 (5) (c), (d), and (e), 20.547, 20.923 (4) (d) 7m., 21.80 (7) (b) 1., 2., and 3.  
25 and (d) (intro.) and 3., 46.90 (4) (b) 2. a., b., and c., 50.07 (3) (a), (b), and (c), 101.055



1 (8) (b), (c), and (d), 103.10 (12) (a), 111.375 (1) and (2), 146.997 (4) (a) and (b), 227.03  
 2 (7), 227.44 (2s), 227.47 (2), 230.03 (8) and (10e), 230.04 (1) and (1m), 230.05 (2) (a),  
 3 230.45 (title), (1) (b), (g), (gm), (j), (k), (L), and (m), and (1e), 230.81 (1) (b), 230.85 (1),  
 4 (2), (3) (a) (intro.) and 4., (b), and (c), (4), and (5) (a) and (b), 230.87 (1), 230.88 (2), and  
 5 230.89 of the statutes take effect on first day of the 4th month beginning after  
 6 publication.

the

(END)

and SECTION 9(39) (1) of this act  
 auto ref. "KA"

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

LRB-1295/1dn

RAC: :i:...

*img*

Jon Kranz:

At this juncture, for the purpose of review, I decided to draft the abolition of the personnel commission as a separate draft. If this draft and the draft merging the Department of Employment Relations into the Department of Administration are "In" I can certainly merge the drafts.

In terms of appropriations, I expanded the purpose of s. 20.425 (1) (a) to fund the new duties of the employment relations commission and I did not create a new appropriation for the Department of Workforce Development to fund its new duties. I simply assumed that these new duties could be funded from the department's s. 20.445 (1) (a) appropriation. Let me know if this appropriation structure is OK.

Rick A. Champagne  
Senior Legislative Attorney  
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✓ 7-14

Section #. 146.997 (4) (c) of the statutes is amended to read:

146.997 (4) (c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a) ~~or (b)~~.

**History:** 1999 a. 176, 186; 2001 a. 38, 70, 74, 89, 105.

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

LRB-1295/1dn  
RAC:kmg:rs

January 8, 2003

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