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RMR

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

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ^{*DON'T GEN. CAT.*} 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 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 whistle-blower 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 Division of Equal Rights in DWD.

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1 **SECTION 1.** 15.06 (1) (d) of the statutes is repealed.

2 **SECTION 2.** 15.80 of the statutes is repealed.

3 **SECTION 3.** 16.009 (5) (c) of the statutes is repealed.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. (e) 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 **SECTION 5.** 16.009 (5) (e) of the statutes is amended to read:

10 16.009 (5) (e) Any person not described in par. (e) 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 **SECTION 6.** 20.425 (1) (title) of the statutes is amended to read:

14 20.425 (1) (title) ~~PROMOTION OF PEACE IN LABOR~~ LABOR RELATIONS.

15 **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 **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
24 general, appointed by the governor on the recommendation of the adjutant general
25 for the purpose of prosecuting complaints under this subdivision who shall file a

1 complaint for appropriate relief with the department of workforce development ~~or,~~
2 ~~if the person is an employee of a state agency, as defined in s. 111.32 (6) (a), the~~
3 ~~personnel commission.~~

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

5 21.80 (7) (b) 2. Subdivision 1. does not preclude a person who has chosen not
6 to file a complaint with the adjutant general under par. (a), whose complaint the
7 adjutant general has refused to endeavor to resolve under par. (a), or who has chosen
8 not to request the adjutant general to refer his or her complaint to counsel under
9 subd. 1. from filing a complaint for appropriate relief with the department of
10 workforce development ~~or, if the person is an employee of a state agency, with the~~
11 ~~personnel commission.~~

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

13 21.80 (7) (b) 3. The department of workforce development ~~or the personnel~~
14 ~~commission~~ shall process a complaint filed under subd. 1. or 2. in the same manner
15 that employment discrimination complaints are processed under s. 111.39.

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

17 21.80 (7) (d) *Remedies.* (intro.) If the department of workforce development
18 ~~or the personnel commission~~ finds that an employer has failed or refused, or is about
19 to fail or refuse, to provide any reemployment right or benefit to which a person is
20 entitled under this section or has discharged or otherwise discriminated against any
21 person in violation of par. (c), the department of workforce development ~~or the~~
22 ~~personnel commission~~ may order the employer to do any one or more of the following:

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

24 21.80 (7) (d) 3. Pay the person, as liquidated damages, an amount that is equal
25 to the amount ordered under subd. 2. if the department of workforce development ~~or~~

1 ~~the personnel commission~~ finds that the failure or refusal to provide reemployment
2 rights or benefits under this section or the discharge or other discrimination was
3 willful.

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

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

6 46.90 (4) (b) 2. b. Any employee ~~of an employer not described in subd. 2. a.~~ who
7 is discharged or otherwise discriminated against may file a complaint with the
8 department of workforce development under s. 106.54 (5).

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

10 46.90 (4) (b) 2. c. Any person not described in ~~this~~ subd. 2. a. ~~or~~ b. who is
11 retaliated or discriminated against in violation of subd. 1. may commence an action
12 in circuit court for damages incurred as a result of the violation.

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

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

15 50.07 (3) (b) Any employee ~~of an employer not described in par. (a)~~ who is
16 discharged or otherwise retaliated or discriminated against in violation of sub. (1)
17 (e) or (em) may file a complaint with the department of workforce development under
18 s. 106.54 (5).

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

20 50.07 (3) (c) Any person not described in par. ~~(a)~~ ~~or~~ (b) who is retaliated or
21 discriminated against in violation of sub. (1) (e) or (em) may commence an action in
22 circuit court for damages incurred as a result of the violation.

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

24 101.055 (8) (b) ~~A state employee who believes that he or she has been~~
25 ~~discharged or otherwise discriminated against by a public employer in violation of~~

1 ~~par. (ar) may file a complaint with the personnel commission alleging discrimination~~
2 ~~or discharge, within 30 days after the employee received knowledge of the~~
3 ~~discrimination or discharge. A public employee other than a state employee who~~
4 believes that he or she has been discharged or otherwise discriminated against by
5 a public employer in violation of par. (ar) may file a complaint with the division of
6 equal rights alleging discrimination or discharge, within 30 days after the employee
7 received knowledge of the discrimination or discharge.

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

9 101.055 (8) (c) Upon receipt of a complaint, the ~~personnel commission or the~~
10 division of equal rights, ~~whichever is applicable,~~ shall, except as provided in s. 230.45
11 (1m), investigate the complaint and determine whether there is probable cause to
12 believe that a violation of par. (ar) has occurred. If the ~~personnel commission or the~~
13 division of equal rights finds probable cause it shall attempt to resolve the complaint
14 by conference, conciliation or persuasion. If the complaint is not resolved, the
15 ~~personnel commission or the~~ division of equal rights shall hold a hearing on the
16 complaint within 60 days after receipt of the complaint unless both parties to the
17 proceeding agree otherwise. Within 30 days after the close of the hearing, the
18 ~~personnel commission or the~~ division of equal rights shall issue its decision. If the
19 ~~personnel commission or the~~ division of equal rights determines that a violation of
20 par. (ar) has occurred, it shall order appropriate relief for the employee, including
21 restoration of the employee to his or her former position with back pay, and shall
22 order any action necessary to ensure that no further discrimination occurs. If the
23 ~~personnel commission or the~~ division of equal rights determines that there has been
24 no violation of par. (ar), it shall issue an order dismissing the complaint.

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

1 101.055 (8) (d) Orders of the ~~personnel commission and the~~ division of equal
2 rights under this subsection are subject to judicial review under ch. 227.

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

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

5 111.375 (1) ~~Except as provided under sub. (2), this~~ This subchapter shall be
6 administered by the department. The department may make, amend and rescind
7 such rules as are necessary to carry out this subchapter. The department or the
8 commission may, by such agents or agencies as it designates, conduct in any part of
9 this state any proceeding, hearing, investigation or inquiry necessary to the
10 performance of its functions. The department shall preserve the anonymity of any
11 employee who is the aggrieved party in a complaint of discrimination in promotion,
12 compensation or terms and conditions of employment, of unfair honesty testing or
13 of unfair genetic testing against his or her present employer until a determination
14 as to probable cause has been made, unless the department determines that the
15 anonymity will substantially impede the investigation.

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

17 111.375 (2) This subchapter applies to each agency of the state ~~except that~~
18 ~~complaints of discrimination, unfair honesty testing or unfair genetic testing against~~
19 ~~the agency as an employer shall be filed with and processed by the personnel~~
20 ~~commission under s. 230.45 (1) (b). Decisions of the personnel commission are~~
21 ~~subject to review under ch. 227.~~

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

23 146.997 (4) (a) ~~Subject to par. (b), any~~ Any employee of a health care facility
24 or health care provider who is subjected to disciplinary action, or who is threatened
25 with disciplinary action, in violation of sub. (3) may file a complaint with the

1 department under s. 106.54 (6). If the department finds that a violation of sub. (3)
2 has been committed, the department may take such action under s. 111.39 as will
3 effectuate the purpose of this section.

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

5 **SECTION 29.** 146.997 (4) (c) of the statutes is amended to read:

6 146.997 (4) (c) Section 111.322 (2m) applies to a disciplinary action arising in
7 connection with any proceeding under par. (a) ~~or (b)~~.

8 **SECTION 30.** 227.03 (7) of the statutes is amended to read:

9 227.03 (7) Except as provided in s. 230.44 (4) (bm), this chapter does not apply
10 to proceedings before the personnel employment relations commission in matters
11 that are arbitrated in accordance with s. 230.44 (4) (bm).

12 **SECTION 31.** 227.44 (2s) of the statutes is repealed.

13 **SECTION 32.** 227.47 (2) of the statutes is amended to read:

14 227.47 (2) Except as otherwise provided in this subsection, a proposed or final
15 decision of the personnel employment relations commission, hearing examiner or
16 arbitrator concerning an appeal of the decision of the secretary of employment
17 relations made under s. 230.09 (2) (a) or (d) shall not be accompanied by findings of
18 fact or conclusions of law. If within 30 days after the commission issues a decision
19 in such an appeal either party files a petition for judicial review of the decision under
20 s. 227.53 and files a written notice with the commission that the party has filed such
21 a petition, the commission shall issue written findings of fact and conclusions of law
22 within 90 days after receipt of the notice. The court shall stay the proceedings
23 pending receipt of the findings and conclusions.

24 **SECTION 33.** 230.03 (8) of the statutes is amended to read:

1 230.03 (8) “Commission” means the personnel employment relations
2 commission.

3 **SECTION 34.** 230.03 (10e) of the statutes is created to read:

4 230.03 (10e) “Division of equal rights” means the division of equal rights in the
5 department of workforce development.

6 **SECTION 35.** 230.04 (1) of the statutes is amended to read:

7 230.04 (1) The secretary is charged with the effective administration of this
8 chapter. All powers and duties, necessary to that end, which are not exclusively
9 vested by statute in the commission, the division of equal rights, the administrator
10 or appointing authorities, are reserved to the secretary.

11 **SECTION 36.** 230.04 (1m) of the statutes is amended to read:

12 230.04 (1m) The secretary may delegate, in writing, any of his or her functions
13 set forth in this chapter to an appointing authority, within prescribed standards if
14 the secretary finds that the agency has personnel management capabilities to
15 perform such functions effectively and has indicated its approval and willingness to
16 accept such responsibility by written agreement. If the secretary determines that
17 any agency is not performing such delegated function within prescribed standards,
18 the secretary shall forthwith withdraw such delegated function. Subject to the
19 approval of the joint committee on finance, the secretary may order transferred to
20 the department from the agency to which delegation was made such agency staff and
21 other resources as necessary to perform such functions if increased staff was
22 authorized to that agency as a consequence of such delegation or if the department
23 reduced staff or shifted staff to new responsibilities as a result of such delegation.
24 Any delegatory action taken under s. 230.09 (2) (a) or (d) or 230.13 (1) by an

1 appointing authority may be appealed to the ~~personnel~~ commission under s. 230.44

2 (1) (b). The secretary shall be a party in such an appeal.

3 **SECTION 37.** 230.05 (2) (a) of the statutes is amended to read:

4 230.05 (2) (a) Except as provided under par. (b), the administrator may
5 delegate, in writing, any of his or her functions set forth in this subchapter to an
6 appointing authority, within prescribed standards if the administrator finds that the
7 agency has personnel management capabilities to perform such functions effectively
8 and has indicated its approval and willingness to accept such responsibility by
9 written agreement. If the administrator determines that any agency is not
10 performing such delegated function within prescribed standards, the administrator
11 shall withdraw such delegated function. The administrator may order transfer to
12 the division from the agency to which delegation was made such agency staff and
13 other resources as necessary to perform such functions if increased staff was
14 authorized to that agency as a consequence of such delegation or if the division
15 reduced staff or shifted staff to new responsibilities as a result of such delegation
16 subject to the approval of the joint committee on finance. Any delegatory action
17 taken under this subsection by any appointing authority may be appealed to the
18 ~~personnel~~ commission under s. 230.44 (1) (a). The administrator shall be a party in
19 such appeal.

20 **SECTION 38.** 230.45 (title) of the statutes is amended to read:

21 **230.45 (title) Powers and duties of ~~personnel~~ commission and division**
22 **of equal rights.**

23 **SECTION 39.** 230.45 (1) (b) of the statutes is repealed.

24 **SECTION 40.** 230.45 (1) (g) of the statutes is repealed.

25 **SECTION 41.** 230.45 (1) (gm) of the statutes is repealed.

1 **SECTION 42.** 230.45 (1) (j) of the statutes is repealed.

2 **SECTION 43.** 230.45 (1) (k) of the statutes is repealed.

3 **SECTION 44.** 230.45 (1) (L) of the statutes is repealed.

4 **SECTION 45.** 230.45 (1) (m) of the statutes is repealed.

5 **SECTION 46.** 230.45 (1e) of the statutes is created to read:

6 **230.45 (1e)** The division of equal rights shall:

7 (a) Receive and process complaints of discrimination of state employees under
8 s. 111.375. In the course of investigating or otherwise processing such a complaint,
9 the division of equal rights may require that an interview with any state employee,
10 except a management or supervisory employee who is a party to or immediately
11 involved in the subject matter of the complaint, be conducted outside the presence
12 of the appointing authority or any representative or agent thereof unless the
13 employee voluntarily requests that presence. An appointing authority shall permit
14 an employee to be interviewed without loss of pay and to have an employee
15 representative present at the interview. An appointing authority of an employee to
16 be interviewed may require the division of equal rights to give the appointing
17 authority reasonable notice prior to the interview.

18 (b) Receive and process complaints of retaliatory disciplinary action under s.
19 230.85.

20 (c) Keep minutes of its own proceedings and other official actions relating to
21 this chapter. All such records shall, subject to reasonable rules, be open to public
22 inspection. Records of the secretary or the administrator which are confidential shall
23 be kept confidential by the division of equal rights.

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

4 **SECTION 47.** 230.81 (1) (b) of the statutes is amended to read:

5 230.81 (1) (b) After asking the ~~commission~~ division of equal rights which
6 governmental unit is appropriate to receive the information, disclose the information
7 in writing only to the governmental unit that the ~~commission~~ division of equal rights
8 determines is appropriate. The ~~commission~~ division of equal rights may not
9 designate the department of justice, the courts, the legislature or a service agency
10 under subch. IV of ch. 13 as an appropriate governmental unit to receive information.
11 Each appropriate governmental unit shall designate an employee to receive
12 information under this section.

13 **SECTION 48.** 230.85 (1) of the statutes is amended to read:

14 230.85 (1) An employee who believes that a supervisor or appointing authority
15 has initiated or administered, or threatened to initiate or administer, a retaliatory
16 action against that employee in violation of s. 230.83 may file a written complaint
17 with the ~~commission~~ division of equal rights, specifying the nature of the retaliatory
18 action or threat thereof and requesting relief, within 60 days after the retaliatory
19 action allegedly occurred or was threatened or after the employee learned of the
20 retaliatory action or threat thereof, whichever occurs last.

21 **SECTION 49.** 230.85 (2) of the statutes is amended to read:

22 230.85 (2) The ~~commission~~ division of equal rights shall receive and, except as
23 provided in s. 230.45 (1m), investigate any complaint under sub. (1). In the course
24 of investigating or otherwise processing such a complaint, the ~~commission~~ division
25 of equal rights may require that an interview with any employee described in s.

1 230.80 (3), except a management or supervisory employee who is a party to or is
2 immediately involved in the subject matter of the complaint, be conducted outside
3 the presence of the appointing authority or any representative or agent thereof
4 unless the employee voluntarily requests that presence. An appointing authority
5 shall permit an employee to be interviewed without loss of pay and to have an
6 employee representative present at the interview. An appointing authority of an
7 employee to be interviewed may require the ~~commission~~ division of equal rights to
8 give the appointing authority reasonable notice prior to the interview. If the
9 ~~commission~~ division of equal rights finds probable cause to believe that a retaliatory
10 action has occurred or was threatened, it may endeavor to remedy the problem
11 through conference, conciliation or persuasion. If that endeavor is not successful, the
12 ~~commission~~ division of equal rights shall issue and serve a written notice of hearing,
13 specifying the nature of the retaliatory action which has occurred or was threatened,
14 and requiring the person named, in this section called the “respondent”, to answer
15 the complaint at a hearing. The notice shall specify the place of hearing and a time
16 of hearing not less than 30 days after service of the complaint upon the respondent
17 nor less than 10 days after service of the notice of hearing. If, however, the
18 ~~commission~~ division of equal rights determines that an emergency exists with
19 respect to a complaint, the notice of hearing may specify a time of hearing within 30
20 days after service of the complaint upon the respondent, but not less than 10 days
21 after service of the notice of hearing. The testimony at the hearing shall be recorded
22 or taken down by a reporter appointed by the ~~commission~~ division of equal rights.

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

24 230.85 (3) (a) (intro.) After hearing, the ~~commission~~ division of equal rights
25 shall make written findings and orders. If the ~~commission~~ division of equal rights

1 finds that the respondent engaged in or threatened a retaliatory action, it shall order
2 the employee's appointing authority to insert a copy of the findings and orders into
3 the 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. In addition, the ~~commission~~ division of equal rights may take any
6 other appropriate action, including but not limited to the following:

7 **SECTION 51.** 230.85 (3) (a) 4. of the statutes is amended to read:

8 230.85 (3) (a) 4. Order payment of the employee's reasonable attorney fees by
9 a governmental unit respondent, or by a governmental unit employing a respondent
10 who is a natural person if that governmental unit received notice and an opportunity
11 to participate in proceedings before the ~~commission~~ division of equal rights.

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

13 230.85 (3) (b) If, after hearing, the ~~commission~~ division of equal rights finds
14 that the respondent did not engage in or threaten a retaliatory action it shall order
15 the complaint dismissed. The ~~commission~~ division of equal rights shall order the
16 employee's appointing authority to insert a copy of the findings and orders into the
17 employee's personnel file and, if the respondent is a natural person, order the
18 respondent's appointing authority to insert such a copy into the respondent's
19 personnel file. If the ~~commission~~ division of equal rights finds by unanimous vote
20 that the employee filed a frivolous complaint it may order payment of the
21 respondent's reasonable actual attorney fees and actual costs. Payment may be
22 assessed against either the employee or the employee's attorney, or assessed so that
23 the employee and the employee's attorney each pay a portion. To find a complaint
24 frivolous the ~~commission~~ division of equal rights must find that either s. 814.025 (3)
25 (a) or (b) applies or that both s. 814.025 (3) (a) and (b) apply.

1 **SECTION 53.** 230.85 (3) (c) of the statutes is amended to read:

2 230.85 (3) (c) Pending final determination by the ~~commission~~ division of equal
3 rights of any complaint under this section, the ~~commission~~ division of equal rights
4 may make interlocutory orders.

5 **SECTION 54.** 230.85 (4) of the statutes is amended to read:

6 230.85 (4) The ~~commission~~ division of equal rights shall serve a certified copy
7 of the findings and order on the respondent and, if the respondent is a natural person,
8 upon the respondent's appointing authority.

9 **SECTION 55.** 230.85 (5) (a) of the statutes is amended to read:

10 230.85 (5) (a) If a respondent does not comply with any lawful order by the
11 ~~commission~~ division of equal rights, for each such failure the respondent shall forfeit
12 a sum of not less than \$10 nor more than \$100. Every day during which a respondent
13 fails to comply with any order of the ~~commission~~ division of equal rights constitutes
14 a separate violation of that order.

15 **SECTION 56.** 230.85 (5) (b) of the statutes is amended to read:

16 230.85 (5) (b) As an alternative to par. (a), the ~~commission~~ division of equal
17 rights may enforce an order by a suit in equity.

18 **SECTION 57.** 230.87 (1) of the statutes is amended to read:

19 230.87 (1) Findings and orders of the ~~commission~~ division of equal rights under
20 this subchapter are subject to judicial review under ch. 227. Upon that review, or in
21 any enforcement action, the department of justice shall represent the ~~commission~~
22 division of equal rights unless a conflict of interest results from that representation.
23 A court may order payment of a prevailing appellant employee's reasonable attorney
24 fees by a governmental unit respondent, or by a governmental unit employing a

1 respondent who is a natural person if that governmental unit received notice and an
2 opportunity to appear before the court.

3 SECTION 58. 230.88 (2) of the statutes is amended to read:

4 230.88 (2) EFFECT. (a) A final order issued under s. 230.85 or 230.87 which has
5 not been appealed and for which the time of appeal has passed binds all parties who
6 were subjected to the jurisdiction of the ~~commission~~ division of equal rights or the
7 court and who received an opportunity to be heard. With respect to these parties, the
8 decree is conclusive as to all issues of law and fact decided.

9 (b) No collective bargaining agreement supersedes the rights of an employee
10 under this subchapter. However, nothing in this subchapter affects any right of an
11 employee to pursue a grievance procedure under a collective bargaining agreement
12 under subch. V of ch. 111, and if the ~~commission~~ division of equal rights determines
13 that a grievance arising under such a collective bargaining agreement involves the
14 same parties and matters as a complaint under s. 230.85, it shall order the
15 arbitrator's final award on the merits conclusive as to the rights of the parties to the
16 complaint, on those matters determined in the arbitration which were at issue and
17 upon which the determination necessarily depended.

18 (c) No later than 10 days before the specified time of hearing under s. 230.85
19 (2), an employee shall notify the ~~commission~~ division of equal rights orally or in
20 writing if he or she has commenced or will commence an action in a court of record
21 alleging matters prohibited under s. 230.83 (1). If the employee does not
22 substantially comply with this requirement, the ~~commission~~ division of equal rights
23 may assess against the employee any costs attributable to the failure to notify.
24 Failure to notify the ~~commission~~ division of equal rights does not affect a court's
25 jurisdiction to proceed with the action. Upon commencement of such an action in a

1 court of record, the ~~commission~~ division of equal rights has no jurisdiction to process
2 a complaint filed under s. 230.85 except to dismiss the complaint and, if appropriate,
3 to assess costs under this paragraph.

4 **SECTION 59.** 230.89 of the statutes is amended to read:

5 **230.89 Rule making and reporting.** (1) The ~~commission~~ division of equal
6 rights shall promulgate rules to carry out its responsibilities under this subchapter.

7 (2) Every 2 years, the ~~commission~~ division of equal rights shall submit a report
8 to the chief clerk of each house of the legislature, for distribution to the appropriate
9 standing committees under s. 13.172 (3), regarding complaints filed, hearings held
10 and actions taken under this subchapter, including the dollar amount of any
11 monetary settlement or final monetary award which has become binding on the
12 parties.

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

14 (1) ABOLITION OF PERSONNEL COMMISSION.

15 (a) *Assets and liabilities.*

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

20 2. On the effective date of this subdivision, all assets and liabilities of the
21 personnel commission relating to the performance of its duties under section 230.45
22 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 stats., as determined by the secretary of
23 administration, shall become the assets and liabilities of the department of
24 workforce development.

25 (b) *Tangible personal property.*

1 1. On the effective date of this subdivision, all tangible personal property,
2 including records, of the personnel commission relating to the performance of its
3 duties under section 230.45 (1) (a), (c), (d), and (e), 2001 stats., as determined by the
4 secretary of administration, are transferred to the employment relations
5 commission.

6 2. On the effective date of this subdivision, all tangible personal property,
7 including records, of the personnel commission relating to the performance of its
8 duties under section 230.45 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 stats., as
9 determined by the secretary of administration, are transferred to the department of
10 workforce development.

11 (c) *Contracts.*

12 1. 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) (a), (c), (d), and (e), 2001 stats., as determined by the secretary of administration,
15 which are in effect on the effective date of this subdivision remain in effect and are
16 transferred to the employment relations commission. The employment relations
17 commission shall carry out any such contractual obligations until modified or
18 rescinded by the employment relations commission to the extent allowed under the
19 contract.

20 2. On the effective date of this subdivision, all contracts entered into by the
21 personnel commission relating to the performance of its duties under section 230.45
22 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 stats., as determined by the secretary of
23 administration, which are in effect on the effective date of this subdivision remain
24 in effect and are transferred to the department of workforce development. The
25 department of workforce development shall carry out any such contractual

1 obligations until modified or rescinded by the department of workforce development
2 to the extent allowed under the contract.

3 (d) *Pending matters.*

4 1. On the effective date of this subdivision, any matter pending with the
5 personnel commission relating to the performance of its duties under section 230.45
6 (1) (a), (c), (d), and (e), 2001 stats., is transferred to the employment relations
7 commission, and all materials submitted to or actions taken by the personnel
8 commission with respect to the pending matter are considered as having been
9 submitted to or taken by the employment relations commission.

10 2. On the effective date of this subdivision, any matter pending with 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., is transferred to the department of
13 workforce development, and all materials submitted to or actions taken by the
14 personnel commission with respect to the pending matter are considered as having
15 been submitted to or taken by the department of workforce development.

16 (e) *Rules and orders.*

17 1. All rules promulgated, and all orders issued, by the personnel commission
18 that are in effect on the effective date of this subdivision and that relate to the
19 performance of its duties under section 230.45 (1) (a), (c), (d), and (e), 2001 stats.,
20 remain in effect until their specified expiration date or until amended or repealed or
21 modified or rescinded, whichever is appropriate, by the employment relations
22 commission.

23 2. All rules promulgated, and all orders issued, by the personnel commission
24 that are in effect on the effective date of this subdivision and that relate to the
25 performance of its duties under section 230.45 (1) (b), (g), (gm), (j), (k), (L), and (m),

1 2001 stats., remain in effect until their specified expiration date or until amended
2 or repealed or modified or rescinded, whichever is appropriate, by the department
3 of workforce development.

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

5 (1) ABOLITION OF PERSONNEL COMMISSION. The treatment of sections 15.06 (1) (d),
6 15.80, 16.009 (5) (c), (d), and (e), 20.425 (1) (title) and (a), 20.547, 20.923 (4) (d) 7m.,
7 21.80 (7) (b) 1., 2., and 3. and (d) (intro.) and 3., 46.90 (4) (b) 2. a., b., and c., 50.07 (3)
8 (a), (b), and (c), 101.055 (8) (b), (c), and (d), 103.10 (12) (a), 111.375 (1) and (2), 146.997
9 (4) (a) and (b), 227.03 (7), 227.44 (2s), 227.47 (2), 230.03 (8) and (10e), 230.04 (1) and
10 (1m), 230.05 (2) (a), 230.45 (title), (1) (b), (g), (gm), (j), (k), (l), and (m), and (1e),
11 230.81 (1) (b), 230.85 (1), (2), (3) (a) (intro.) and 4., (b), and (c), (4), and (5) (a) and (b),
12 230.87 (1), 230.88 (2), and 230.89 of the statutes and SECTION 9139 (1) of this act take
13 effect on the first day of the 4th month beginning after publication.

14

(END)

D- Note
Jon Kranz:
This draft eliminates the
delayed effective date.
RAC

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

LRB-1295/2dn
RAC:kmg:rs

January 31, 2003

Jon Kranz:

This draft eliminates the delayed effective date.

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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1295/2
RAC:kmg:rs

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

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

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 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 whistle-blower 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 Division of Equal Rights in DWD.

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

10 16.009 (5) (e) Any person not described in par. ~~(e)~~ 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 **SECTION 6.** 20.425 (1) (title) of the statutes is amended to read:

14 20.425 (1) (title) ~~PROMOTION OF PEACE IN LABOR~~ LABOR RELATIONS.

15 **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 **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
24 general, appointed by the governor on the recommendation of the adjutant general
25 for the purpose of prosecuting complaints under this subdivision who shall file a

1 complaint for appropriate relief with the department of workforce development ~~or,~~
2 ~~if the person is an employee of a state agency, as defined in s. 111.32 (6) (a), the~~
3 ~~personnel commission.~~

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

5 21.80 (7) (b) 2. Subdivision 1. does not preclude a person who has chosen not
6 to file a complaint with the adjutant general under par. (a), whose complaint the
7 adjutant general has refused to endeavor to resolve under par. (a), or who has chosen
8 not to request the adjutant general to refer his or her complaint to counsel under
9 subd. 1. from filing a complaint for appropriate relief with the department of
10 workforce development ~~or, if the person is an employee of a state agency, with the~~
11 ~~personnel commission.~~

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

13 21.80 (7) (b) 3. The department of workforce development ~~or the personnel~~
14 ~~commission~~ shall process a complaint filed under subd. 1. or 2. in the same manner
15 that employment discrimination complaints are processed under s. 111.39.

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

17 21.80 (7) (d) *Remedies.* (intro.) If the department of workforce development
18 ~~or the personnel commission~~ finds that an employer has failed or refused, or is about
19 to fail or refuse, to provide any reemployment right or benefit to which a person is
20 entitled under this section or has discharged or otherwise discriminated against any
21 person in violation of par. (c), the department of workforce development ~~or the~~
22 ~~personnel commission~~ may order the employer to do any one or more of the following:

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

24 21.80 (7) (d) 3. Pay the person, as liquidated damages, an amount that is equal
25 to the amount ordered under subd. 2. if the department of workforce development ~~or~~

1 ~~the personnel commission~~ finds that the failure or refusal to provide reemployment
2 rights or benefits under this section or the discharge or other discrimination was
3 willful.

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

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

6 46.90 (4) (b) 2. b. Any employee ~~of an employer not described in subd. 2. a.~~ who
7 is discharged or otherwise discriminated against may file a complaint with the
8 department of workforce development under s. 106.54 (5).

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

10 46.90 (4) (b) 2. c. Any person not described in ~~this~~ subd. 2. a. ~~or~~ b. who is
11 retaliated or discriminated against in violation of subd. 1. may commence an action
12 in circuit court for damages incurred as a result of the violation.

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

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

15 50.07 (3) (b) Any employee ~~of an employer not described in par. (a)~~ who is
16 discharged or otherwise retaliated or discriminated against in violation of sub. (1)
17 (e) or (em) may file a complaint with the department of workforce development under
18 s. 106.54 (5).

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

20 50.07 (3) (c) Any person not described in par. ~~(a)~~ ~~or~~ (b) who is retaliated or
21 discriminated against in violation of sub. (1) (e) or (em) may commence an action in
22 circuit court for damages incurred as a result of the violation.

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

24 101.055 (8) (b) ~~A state employee who believes that he or she has been~~
25 ~~discharged or otherwise discriminated against by a public employer in violation of~~

1 ~~par. (ar) may file a complaint with the personnel commission alleging discrimination~~
2 ~~or discharge, within 30 days after the employee received knowledge of the~~
3 ~~discrimination or discharge. A public employee other than a state employee who~~
4 believes that he or she has been discharged or otherwise discriminated against by
5 a public employer in violation of par. (ar) may file a complaint with the division of
6 equal rights alleging discrimination or discharge, within 30 days after the employee
7 received knowledge of the discrimination or discharge.

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

9 101.055 (8) (c) Upon receipt of a complaint, the ~~personnel commission or the~~
10 division of equal rights, ~~whichever is applicable,~~ shall, except as provided in s. 230.45
11 (1m), investigate the complaint and determine whether there is probable cause to
12 believe that a violation of par. (ar) has occurred. If the ~~personnel commission or the~~
13 division of equal rights finds probable cause it shall attempt to resolve the complaint
14 by conference, conciliation or persuasion. If the complaint is not resolved, the
15 ~~personnel commission or the~~ division of equal rights shall hold a hearing on the
16 complaint within 60 days after receipt of the complaint unless both parties to the
17 proceeding agree otherwise. Within 30 days after the close of the hearing, the
18 ~~personnel commission or the~~ division of equal rights shall issue its decision. If the
19 ~~personnel commission or the~~ division of equal rights determines that a violation of
20 par. (ar) has occurred, it shall order appropriate relief for the employee, including
21 restoration of the employee to his or her former position with back pay, and shall
22 order any action necessary to ensure that no further discrimination occurs. If the
23 ~~personnel commission or the~~ division of equal rights determines that there has been
24 no violation of par. (ar), it shall issue an order dismissing the complaint.

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

1 101.055 (8) (d) Orders of the ~~personnel commission and the division of equal~~
2 rights under this subsection are subject to judicial review under ch. 227.

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

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

5 111.375 (1) ~~Except as provided under sub. (2), this~~ This subchapter shall be
6 administered by the department. The department may make, amend and rescind
7 such rules as are necessary to carry out this subchapter. The department or the
8 commission may, by such agents or agencies as it designates, conduct in any part of
9 this state any proceeding, hearing, investigation or inquiry necessary to the
10 performance of its functions. The department shall preserve the anonymity of any
11 employee who is the aggrieved party in a complaint of discrimination in promotion,
12 compensation or terms and conditions of employment, of unfair honesty testing or
13 of unfair genetic testing against his or her present employer until a determination
14 as to probable cause has been made, unless the department determines that the
15 anonymity will substantially impede the investigation.

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

17 111.375 (2) This subchapter applies to each agency of the state ~~except that~~
18 ~~complaints of discrimination, unfair honesty testing or unfair genetic testing against~~
19 ~~the agency as an employer shall be filed with and processed by the personnel~~
20 ~~commission under s. 230.45 (1) (b). Decisions of the personnel commission are~~
21 ~~subject to review under ch. 227.~~

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

23 146.997 (4) (a) ~~Subject to par. (b), any~~ Any employee of a health care facility
24 or health care provider who is subjected to disciplinary action, or who is threatened
25 with disciplinary action, in violation of sub. (3) may file a complaint with the

1 department under s. 106.54 (6). If the department finds that a violation of sub. (3)
2 has been committed, the department may take such action under s. 111.39 as will
3 effectuate the purpose of this section.

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

5 **SECTION 29.** 146.997 (4) (c) of the statutes is amended to read:

6 146.997 (4) (c) Section 111.322 (2m) applies to a disciplinary action arising in
7 connection with any proceeding under par. (a) ~~or (b)~~.

8 **SECTION 30.** 227.03 (7) of the statutes is amended to read:

9 227.03 (7) Except as provided in s. 230.44 (4) (bm), this chapter does not apply
10 to proceedings before the ~~personnel~~ employment relations commission in matters
11 that are arbitrated in accordance with s. 230.44 (4) (bm).

12 **SECTION 31.** 227.44 (2s) of the statutes is repealed.

13 **SECTION 32.** 227.47 (2) of the statutes is amended to read:

14 227.47 (2) Except as otherwise provided in this subsection, a proposed or final
15 decision of the ~~personnel~~ employment relations commission, hearing examiner or
16 arbitrator concerning an appeal of the decision of the secretary of employment
17 relations made under s. 230.09 (2) (a) or (d) shall not be accompanied by findings of
18 fact or conclusions of law. If within 30 days after the commission issues a decision
19 in such an appeal either party files a petition for judicial review of the decision under
20 s. 227.53 and files a written notice with the commission that the party has filed such
21 a petition, the commission shall issue written findings of fact and conclusions of law
22 within 90 days after receipt of the notice. The court shall stay the proceedings
23 pending receipt of the findings and conclusions.

24 **SECTION 33.** 230.03 (8) of the statutes is amended to read:

1 230.03 (8) “Commission” means the personnel employment relations
2 commission.

3 **SECTION 34.** 230.03 (10e) of the statutes is created to read:

4 230.03 (10e) “Division of equal rights” means the division of equal rights in the
5 department of workforce development.

6 **SECTION 35.** 230.04 (1) of the statutes is amended to read:

7 230.04 (1) The secretary is charged with the effective administration of this
8 chapter. All powers and duties, necessary to that end, which are not exclusively
9 vested by statute in the commission, the division of equal rights, the administrator
10 or appointing authorities, are reserved to the secretary.

11 **SECTION 36.** 230.04 (1m) of the statutes is amended to read:

12 230.04 (1m) The secretary may delegate, in writing, any of his or her functions
13 set forth in this chapter to an appointing authority, within prescribed standards if
14 the secretary finds that the agency has personnel management capabilities to
15 perform such functions effectively and has indicated its approval and willingness to
16 accept such responsibility by written agreement. If the secretary determines that
17 any agency is not performing such delegated function within prescribed standards,
18 the secretary shall forthwith withdraw such delegated function. Subject to the
19 approval of the joint committee on finance, the secretary may order transferred to
20 the department from the agency to which delegation was made such agency staff and
21 other resources as necessary to perform such functions if increased staff was
22 authorized to that agency as a consequence of such delegation or if the department
23 reduced staff or shifted staff to new responsibilities as a result of such delegation.
24 Any delegatory action taken under s. 230.09 (2) (a) or (d) or 230.13 (1) by an

1 appointing authority may be appealed to the ~~personnel~~ commission under s. 230.44

2 (1) (b). The secretary shall be a party in such an appeal.

3 **SECTION 37.** 230.05 (2) (a) of the statutes is amended to read:

4 230.05 (2) (a) Except as provided under par. (b), the administrator may
5 delegate, in writing, any of his or her functions set forth in this subchapter to an
6 appointing authority, within prescribed standards if the administrator finds that the
7 agency has personnel management capabilities to perform such functions effectively
8 and has indicated its approval and willingness to accept such responsibility by
9 written agreement. If the administrator determines that any agency is not
10 performing such delegated function within prescribed standards, the administrator
11 shall withdraw such delegated function. The administrator may order transfer to
12 the division from the agency to which delegation was made such agency staff and
13 other resources as necessary to perform such functions if increased staff was
14 authorized to that agency as a consequence of such delegation or if the division
15 reduced staff or shifted staff to new responsibilities as a result of such delegation
16 subject to the approval of the joint committee on finance. Any delegatory action
17 taken under this subsection by any appointing authority may be appealed to the
18 ~~personnel~~ commission under s. 230.44 (1) (a). The administrator shall be a party in
19 such appeal.

20 **SECTION 38.** 230.45 (title) of the statutes is amended to read:

21 **230.45 (title) Powers and duties of personnel commission and division**
22 **of equal rights.**

23 **SECTION 39.** 230.45 (1) (b) of the statutes is repealed.

24 **SECTION 40.** 230.45 (1) (g) of the statutes is repealed.

25 **SECTION 41.** 230.45 (1) (gm) of the statutes is repealed.

1 **SECTION 42.** 230.45 (1) (j) of the statutes is repealed.

2 **SECTION 43.** 230.45 (1) (k) of the statutes is repealed.

3 **SECTION 44.** 230.45 (1) (L) of the statutes is repealed.

4 **SECTION 45.** 230.45 (1) (m) of the statutes is repealed.

5 **SECTION 46.** 230.45 (1e) of the statutes is created to read:

6 230.45 (1e) The division of equal rights shall:

7 (a) Receive and process complaints of discrimination of state employees under
8 s. 111.375. In the course of investigating or otherwise processing such a complaint,
9 the division of equal rights may require that an interview with any state employee,
10 except a management or supervisory employee who is a party to or immediately
11 involved in the subject matter of the complaint, be conducted outside the presence
12 of the appointing authority or any representative or agent thereof unless the
13 employee voluntarily requests that presence. An appointing authority shall permit
14 an employee to be interviewed without loss of pay and to have an employee
15 representative present at the interview. An appointing authority of an employee to
16 be interviewed may require the division of equal rights to give the appointing
17 authority reasonable notice prior to the interview.

18 (b) Receive and process complaints of retaliatory disciplinary action under s.
19 230.85.

20 (c) Keep minutes of its own proceedings and other official actions relating to
21 this chapter. All such records shall, subject to reasonable rules, be open to public
22 inspection. Records of the secretary or the administrator which are confidential shall
23 be kept confidential by the division of equal rights.

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

4 **SECTION 47.** 230.81 (1) (b) of the statutes is amended to read:

5 230.81 (1) (b) After asking the ~~commission~~ division of equal rights which
6 governmental unit is appropriate to receive the information, disclose the information
7 in writing only to the governmental unit that the commission division of equal rights
8 determines is appropriate. The ~~commission~~ division of equal rights may not
9 designate the department of justice, the courts, the legislature or a service agency
10 under subch. IV of ch. 13 as an appropriate governmental unit to receive information.
11 Each appropriate governmental unit shall designate an employee to receive
12 information under this section.

13 **SECTION 48.** 230.85 (1) of the statutes is amended to read:

14 230.85 (1) An employee who believes that a supervisor or appointing authority
15 has initiated or administered, or threatened to initiate or administer, a retaliatory
16 action against that employee in violation of s. 230.83 may file a written complaint
17 with the ~~commission~~ division of equal rights, specifying the nature of the retaliatory
18 action or threat thereof and requesting relief, within 60 days after the retaliatory
19 action allegedly occurred or was threatened or after the employee learned of the
20 retaliatory action or threat thereof, whichever occurs last.

21 **SECTION 49.** 230.85 (2) of the statutes is amended to read:

22 230.85 (2) The ~~commission~~ division of equal rights shall receive and, except as
23 provided in s. 230.45 (1m), investigate any complaint under sub. (1). In the course
24 of investigating or otherwise processing such a complaint, the ~~commission~~ division
25 of equal rights may require that an interview with any employee described in s.

1 230.80 (3), except a management or supervisory employee who is a party to or is
2 immediately involved in the subject matter of the complaint, be conducted outside
3 the presence of the appointing authority or any representative or agent thereof
4 unless the employee voluntarily requests that presence. An appointing authority
5 shall permit an employee to be interviewed without loss of pay and to have an
6 employee representative present at the interview. An appointing authority of an
7 employee to be interviewed may require the ~~commission~~ division of equal rights to
8 give the appointing authority reasonable notice prior to the interview. If the
9 ~~commission~~ division of equal rights finds probable cause to believe that a retaliatory
10 action has occurred or was threatened, it may endeavor to remedy the problem
11 through conference, conciliation or persuasion. If that endeavor is not successful, the
12 ~~commission~~ division of equal rights shall issue and serve a written notice of hearing,
13 specifying the nature of the retaliatory action which has occurred or was threatened,
14 and requiring the person named, in this section called the “respondent”, to answer
15 the complaint at a hearing. The notice shall specify the place of hearing and a time
16 of hearing not less than 30 days after service of the complaint upon the respondent
17 nor less than 10 days after service of the notice of hearing. If, however, the
18 ~~commission~~ division of equal rights determines that an emergency exists with
19 respect to a complaint, the notice of hearing may specify a time of hearing within 30
20 days after service of the complaint upon the respondent, but not less than 10 days
21 after service of the notice of hearing. The testimony at the hearing shall be recorded
22 or taken down by a reporter appointed by the ~~commission~~ division of equal rights.

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

24 230.85 (3) (a) (intro.) After hearing, the ~~commission~~ division of equal rights
25 shall make written findings and orders. If the ~~commission~~ division of equal rights

1 finds that the respondent engaged in or threatened a retaliatory action, it shall order
2 the employee's appointing authority to insert a copy of the findings and orders into
3 the 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. In addition, the ~~commission~~ division of equal rights may take any
6 other appropriate action, including but not limited to the following:

7 **SECTION 51.** 230.85 (3) (a) 4. of the statutes is amended to read:

8 230.85 (3) (a) 4. Order payment of the employee's reasonable attorney fees by
9 a governmental unit respondent, or by a governmental unit employing a respondent
10 who is a natural person if that governmental unit received notice and an opportunity
11 to participate in proceedings before the ~~commission~~ division of equal rights.

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

13 230.85 (3) (b) If, after hearing, the ~~commission~~ division of equal rights finds
14 that the respondent did not engage in or threaten a retaliatory action it shall order
15 the complaint dismissed. The ~~commission~~ division of equal rights shall order the
16 employee's appointing authority to insert a copy of the findings and orders into the
17 employee's personnel file and, if the respondent is a natural person, order the
18 respondent's appointing authority to insert such a copy into the respondent's
19 personnel file. If the ~~commission~~ division of equal rights finds by unanimous vote
20 that the employee filed a frivolous complaint it may order payment of the
21 respondent's reasonable actual attorney fees and actual costs. Payment may be
22 assessed against either the employee or the employee's attorney, or assessed so that
23 the employee and the employee's attorney each pay a portion. To find a complaint
24 frivolous the ~~commission~~ division of equal rights must find that either s. 814.025 (3)
25 (a) or (b) applies or that both s. 814.025 (3) (a) and (b) apply.

1 **SECTION 53.** 230.85 (3) (c) of the statutes is amended to read:

2 230.85 (3) (c) Pending final determination by the ~~commission~~ division of equal
3 rights of any complaint under this section, the ~~commission~~ division of equal rights
4 may make interlocutory orders.

5 **SECTION 54.** 230.85 (4) of the statutes is amended to read:

6 230.85 (4) The ~~commission~~ division of equal rights shall serve a certified copy
7 of the findings and order on the respondent and, if the respondent is a natural person,
8 upon the respondent's appointing authority.

9 **SECTION 55.** 230.85 (5) (a) of the statutes is amended to read:

10 230.85 (5) (a) If a respondent does not comply with any lawful order by the
11 ~~commission~~ division of equal rights, for each such failure the respondent shall forfeit
12 a sum of not less than \$10 nor more than \$100. Every day during which a respondent
13 fails to comply with any order of the ~~commission~~ division of equal rights constitutes
14 a separate violation of that order.

15 **SECTION 56.** 230.85 (5) (b) of the statutes is amended to read:

16 230.85 (5) (b) As an alternative to par. (a), the ~~commission~~ division of equal
17 rights may enforce an order by a suit in equity.

18 **SECTION 57.** 230.87 (1) of the statutes is amended to read:

19 230.87 (1) Findings and orders of the ~~commission~~ division of equal rights under
20 this subchapter are subject to judicial review under ch. 227. Upon that review, or in
21 any enforcement action, the department of justice shall represent the ~~commission~~
22 division of equal rights unless a conflict of interest results from that representation.
23 A court may order payment of a prevailing appellant employee's reasonable attorney
24 fees by a governmental unit respondent, or by a governmental unit employing a

1 respondent who is a natural person if that governmental unit received notice and an
2 opportunity to appear before the court.

3 **SECTION 58.** 230.88 (2) of the statutes is amended to read:

4 230.88 (2) EFFECT. (a) A final order issued under s. 230.85 or 230.87 which has
5 not been appealed and for which the time of appeal has passed binds all parties who
6 were subjected to the jurisdiction of the ~~commission~~ division of equal rights or the
7 court and who received an opportunity to be heard. With respect to these parties, the
8 decree is conclusive as to all issues of law and fact decided.

9 (b) No collective bargaining agreement supersedes the rights of an employee
10 under this subchapter. However, nothing in this subchapter affects any right of an
11 employee to pursue a grievance procedure under a collective bargaining agreement
12 under subch. V of ch. 111, and if the ~~commission~~ division of equal rights determines
13 that a grievance arising under such a collective bargaining agreement involves the
14 same parties and matters as a complaint under s. 230.85, it shall order the
15 arbitrator's final award on the merits conclusive as to the rights of the parties to the
16 complaint, on those matters determined in the arbitration which were at issue and
17 upon which the determination necessarily depended.

18 (c) No later than 10 days before the specified time of hearing under s. 230.85
19 (2), an employee shall notify the ~~commission~~ division of equal rights orally or in
20 writing if he or she has commenced or will commence an action in a court of record
21 alleging matters prohibited under s. 230.83 (1). If the employee does not
22 substantially comply with this requirement, the ~~commission~~ division of equal rights
23 may assess against the employee any costs attributable to the failure to notify.
24 Failure to notify the ~~commission~~ division of equal rights does not affect a court's
25 jurisdiction to proceed with the action. Upon commencement of such an action in a

1 court of record, the ~~commission~~ division of equal rights has no jurisdiction to process
2 a complaint filed under s. 230.85 except to dismiss the complaint and, if appropriate,
3 to assess costs under this paragraph.

4 **SECTION 59.** 230.89 of the statutes is amended to read:

5 **230.89 Rule making and reporting.** (1) The ~~commission~~ division of equal
6 rights shall promulgate rules to carry out its responsibilities under this subchapter.

7 (2) Every 2 years, the ~~commission~~ division of equal rights shall submit a report
8 to the chief clerk of each house of the legislature, for distribution to the appropriate
9 standing committees under s. 13.172 (3), regarding complaints filed, hearings held
10 and actions taken under this subchapter, including the dollar amount of any
11 monetary settlement or final monetary award which has become binding on the
12 parties.

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

14 (1) ABOLITION OF PERSONNEL COMMISSION.

15 (a) *Assets and liabilities.*

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

20 2. On the effective date of this subdivision, all assets and liabilities of the
21 personnel commission relating to the performance of its duties under section 230.45
22 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 stats., as determined by the secretary of
23 administration, shall become the assets and liabilities of the department of
24 workforce development.

25 (b) *Tangible personal property.*

1 1. On the effective date of this subdivision, all tangible personal property,
2 including records, of the personnel commission relating to the performance of its
3 duties under section 230.45 (1) (a), (c), (d), and (e), 2001 stats., as determined by the
4 secretary of administration, are transferred to the employment relations
5 commission.

6 2. On the effective date of this subdivision, all tangible personal property,
7 including records, of the personnel commission relating to the performance of its
8 duties under section 230.45 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 stats., as
9 determined by the secretary of administration, are transferred to the department of
10 workforce development.

11 (c) *Contracts.*

12 1. 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) (a), (c), (d), and (e), 2001 stats., as determined by the secretary of administration,
15 which are in effect on the effective date of this subdivision remain in effect and are
16 transferred to the employment relations commission. The employment relations
17 commission shall carry out any such contractual obligations until modified or
18 rescinded by the employment relations commission to the extent allowed under the
19 contract.

20 2. On the effective date of this subdivision, all contracts entered into by the
21 personnel commission relating to the performance of its duties under section 230.45
22 (1) (b), (g), (gm), (j), (k), (L), and (m), 2001 stats., as determined by the secretary of
23 administration, which are in effect on the effective date of this subdivision remain
24 in effect and are transferred to the department of workforce development. The
25 department of workforce development shall carry out any such contractual

1 obligations until modified or rescinded by the department of workforce development
2 to the extent allowed under the contract.

3 (d) *Pending matters.*

4 1. On the effective date of this subdivision, any matter pending with the
5 personnel commission relating to the performance of its duties under section 230.45
6 (1) (a), (c), (d), and (e), 2001 stats., is transferred to the employment relations
7 commission, and all materials submitted to or actions taken by the personnel
8 commission with respect to the pending matter are considered as having been
9 submitted to or taken by the employment relations commission.

10 2. On the effective date of this subdivision, any matter pending with 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., is transferred to the department of
13 workforce development, and all materials submitted to or actions taken by the
14 personnel commission with respect to the pending matter are considered as having
15 been submitted to or taken by the department of workforce development.

16 (e) *Rules and orders.*

17 1. All rules promulgated, and all orders issued, by the personnel commission
18 that are in effect on the effective date of this subdivision and that relate to the
19 performance of its duties under section 230.45 (1) (a), (c), (d), and (e), 2001 stats.,
20 remain in effect until their specified expiration date or until amended or repealed or
21 modified or rescinded, whichever is appropriate, by the employment relations
22 commission.

23 2. All rules promulgated, and all orders issued, by the personnel commission
24 that are in effect on the effective date of this subdivision and that relate to the
25 performance of its duties under section 230.45 (1) (b), (g), (gm), (j), (k), (L), and (m),

