

2005 ASSEMBLY BILL 1189

April 24, 2006 – Introduced by Representatives FRISKE, LOEFFELHOLZ, VAN ROY, J. FITZGERALD, DAVIS, KRAWCZYK, MEYER, MURSAU, PETTIS, MOULTON, NISCHKE, HAHN, WOOD, TOWNS, KREIBICH, KESTELL, STRACHOTA, HONADEL, VAN AKKEREN and LEHMAN, cosponsored by Senator BROWN. Referred to Committee on State Affairs.

1 **AN ACT** *to renumber* 19.579; *to amend* 19.48 (9), 19.53 (6), 19.579 (title), 19.58
2 (1) (a), 230.03 (4) and (6) and 230.40 (1), (2), (4) and (5); and *to create* 19.42 (7t)
3 and (11e), 19.45 (5m), 19.45 (15), 19.579 (2), 230.40 (7) and 230.405 of the
4 statutes; **relating to:** campaign activity by state employees, solicitation or
5 discouragement of political activity by state officials and employees, training
6 programs for state employees, granting rule-making authority, and providing
7 penalties.

Analysis by the Legislative Reference Bureau

CAMPAIGN ACTIVITY BY STATE EMPLOYEES

Currently, no state employee is authorized to engage in, and no state appointing authority is authorized to permit or require an employee to engage in, any activity on state time or with the use of state resources other than activity that is a part of the official functions of the state agency in which an employee works, as prescribed by law. In addition, with one limited exception, no person may solicit or receive from any state officer or employee any contribution or service for a political purpose while the officer or employee is engaged in his or her official duties. Under the Code of Ethics for State Public Officials and Employees, no state public official may use or attempt to use the public position held by the official to influence or gain unlawful benefits, advantages, or privileges personally or for others. Current law also

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specifically restricts political activity by employees who hold positions in the state classified service, and permits or in some cases requires those employees to take leaves of absence to participate in political activity.

This bill specifically prohibits an appointing authority of any state employee holding an appointive position from assigning or authorizing campaign activity, as defined in the bill, to be performed on state time, or with the use of state resources, or on any property owned or leased by the state. The bill specifically prohibits any state employee from using, or making available for use by another, state resources or property owned or leased by the state in connection with campaign activity except to the extent that the resources or property are available to be used by any person under similar circumstances. The bill provides that no state employee holding an appointive position may engage in campaign activity: 1) while engaged in his or her employment; 2) while on any form of paid leave, except vacation and paid holidays, and then only after obtaining the approval of the employee's appointing authority to use the leave for that purpose; or 3) during the established hours of employment for the employee, unless the employee first obtains a similar approval from his or her appointing authority. In addition, the bill prohibits any decision affecting the continued employment of a state employee holding an appointive position, or affecting the salary, benefits, hours, or other conditions of employment of such an employee, from being based on the failure of the employee to participate in any campaign activity or the failure to make a political contribution.

In addition, the bill extends a current restriction in the civil service law relating to the political activities of classified employees to apply to all state employees in appointive positions.

Under the bill, if a state employee who holds an appointive position becomes a candidate for partisan political office, the employee must be placed on a leave of absence for the duration of the election campaign and if elected must separate from his or her former position on assuming the duties and responsibilities of the partisan political office.

The bill provides that any violation of these prohibitions is a violation of the Code of Ethics for State Public Officials and Employees. Violators are subject to a forfeiture (civil penalty) of not more than \$1,000 for each violation.

SOLICITATION OR DISCOURAGEMENT OF POLITICAL ACTIVITY

The bill prohibits any state public official or state employee from knowingly soliciting or discouraging any political activity by a person who has business with the unit of government served by the official or employee. Currently, political solicitation is addressed in the campaign finance and civil service laws (see above). Discouragement of political activity is not specifically addressed in the statutes.

Violators are subject to a forfeiture of not more than \$1,000 for each violation.

TRAINING PROGRAMS FOR STATE EMPLOYEES

Currently, the Ethics Board conducts training programs designed to explain and interpret the code of ethics for state public officials and the lobbying regulation law for state public officials and certain other persons. The board may prescribe a fee to be paid by attendees at these programs. This bill extends the coverage of these programs to include those portions of the campaign finance and civil service laws

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that pertain to political activity, including the portions created by the bill. The bill also directs the board to require attendance of state employees at these programs for a minimum number of hours specified by rule of the board within each biennial period, and to require each new state employee to attend such a program within six months after beginning employment. Under the bill, each state agency must pay any fees incurred by state employees in attending the programs.

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.** 19.42 (7t) and (11e) of the statutes are created to read:

2 19.42 (7t) “Knowingly” means acting with the belief that a specified fact is true.

3 **(11e)** “Political activity” means activity that is engaged in for political
4 purposes, as defined in s. 11.01 (16).

5 **SECTION 2.** 19.45 (5m) of the statutes is created to read:

6 19.45 (5m) No state public official or state employee may engage in any activity
7 that is prohibited under s. 230.40 or 230.405.

8 **SECTION 3.** 19.45 (15) of the statutes is created to read:

9 19.45 (15) No state public official or state employee may knowingly solicit or
10 discourage any political activity by a person who has business before the department
11 served by the official or employee.

12 **SECTION 4.** 19.48 (9) of the statutes is amended to read:

13 19.48 (9) Administer programs to explain and interpret ss. 11.36, 230.40, and
14 230.405, this subchapter, and subch. III of ch. 13 for state ~~public officials, and for~~
15 ~~elective state officials~~ employees, candidates for state public office, legislative
16 officials, agency officials, lobbyists, as defined in s. 13.62, local public officials,
17 corporation counsels and attorneys for local governmental units. The programs shall

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1 provide advice regarding appropriate ethical and lobbying practices, with special
2 emphasis on public interest lobbying. The board may delegate creation and
3 implementation of any such program to a group representing the public interest. The
4 board may charge a fee to participants in any such program. The board shall require
5 attendance of all state employees at programs conducted under this subsection for
6 a minimum number of hours specified by rule of the board during each biennial
7 period. The board shall require each new state employee to attend a program
8 conducted under this subsection within 6 months of beginning his or her
9 employment. Each department shall pay any fees incurred by its employees for
10 attendance at programs for which attendance is required under this subsection.

11 **SECTION 5.** 19.53 (6) of the statutes is amended to read:

12 19.53 **(6)** An order requiring the accused to forfeit not more than \$500 for each
13 violation of s. 19.43, 19.44, or 19.56 (2), not more than \$1,000 for each violation of s.
14 19.45 (5m), (14), or (15), or not more than \$5,000 for each violation of any other
15 provision of this subchapter, or not more than the applicable amount specified in s.
16 13.69 for each violation of subch. III of ch. 13. If the board determines that the
17 accused has realized economic gain as a result of the violation, the board may, in
18 addition, order the accused to forfeit the amount gained as a result of the violation.
19 In addition, if the board determines that a state public official has violated s. 19.45
20 (13), the board may order the official to forfeit an amount equal to the amount or
21 value of any political contribution, service, or other thing of value that was
22 wrongfully obtained. If the board determines that a state public official has violated
23 s. 19.45 (13) and no political contribution, service or other thing of value was
24 obtained, the board may order the official to forfeit an amount equal to the maximum
25 contribution authorized under s. 11.26 (1) for the office held or sought by the official,

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1 whichever amount is greater. The attorney general, when so requested by the board,
2 shall institute proceedings to recover any forfeiture incurred under this section or s.
3 19.545 which is not paid by the person against whom it is assessed.

4 **SECTION 6.** 19.579 (title) of the statutes is amended to read:

5 **19.579 (title) Civil penalty penalties.**

6 **SECTION 7.** 19.579 of the statutes is renumbered 19.579 (1).

7 **SECTION 8.** 19.579 (2) of the statutes is created to read:

8 19.579 **(2)** Any person who violates s. 19.45 (5m), (14), or (15) may be required
9 to forfeit not more than \$1,000.

10 **SECTION 9.** 19.58 (1) (a) of the statutes is amended to read:

11 19.58 **(1)** (a) Any person who intentionally violates any provision of this
12 subchapter except s. 19.45 (5m) or (13) to (15) or 19.59 (1) (br), or a code of ethics
13 adopted or established under s. 19.45 (11) (a) or (b), shall be fined not less than \$100
14 nor more than \$5,000 or imprisoned not more than one year in the county jail or both.

15 **SECTION 10.** 230.03 (4) and (6) of the statutes are amended to read:

16 230.03 **(4)** Except as provided in s. ss. 230.40 (4), 230.405 (1), and 230.80 (1m),
17 “appointing authority” means the chief administrative officer of an agency unless
18 another person is authorized to appoint subordinate staff in the agency by the
19 constitution or statutes.

20 **(6)** “Civil service” means all offices and positions of trust or employment in the
21 service of the state, but except for purposes of ss. 230.40 and 230.405, excludes all
22 offices and positions in the organized militia.

23 **SECTION 11.** 230.40 (1), (2), (4) and (5) of the statutes are amended to read:

24 230.40 **(1)** No person holding a position in the classified civil service may
25 directly or indirectly solicit or receive subscriptions or contributions for any partisan

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1 political party or any political purpose while on state time or engaged in official
2 duties as an employee. No person may orally solicit or by letter transmit any
3 solicitation to a state office or be in any manner concerned in soliciting any
4 assistance, subscription, or support for any partisan political party or purpose from
5 any person holding any position in the classified civil service while on state time or
6 engaged in official duties as an employee. No person holding any position in the
7 classified civil service may during the hours when on duty engage in any form of
8 political activity calculated to favor or improve the chances of any political party or
9 any person seeking or attempting to hold partisan political office, nor engage in any
10 political activity when not on duty to such an extent that the person's efficiency
11 during working hours will be impaired or that he or she will be tardy or absent from
12 work. ~~Any violation of this section is adequate grounds for dismissal.~~

13 (2) If a person who holds an appointive position in the ~~classified~~ civil service
14 ~~declares an intention to run for~~ becomes a candidate for a partisan political office the
15 person shall be placed on a leave of absence for the duration of the election campaign
16 and if elected shall separate from the ~~classified~~ civil service on assuming the duties
17 and responsibilities of such office. In this subsection, "candidate" has the meaning
18 given in s. 230.405 (1) (c).

19 (4) A person who holds an appointive position in the ~~classified~~ civil service may
20 be granted upon concurrence by the person's appointing authority a leave of absence
21 to participate in partisan political campaigning. In this subsection, "appointing
22 authority" means the individual who has the authority to make appointments to a
23 position.

24 (5) Persons on leave from the ~~classified~~ civil service under subs. (2) and (4) shall
25 not be subject to the restrictions of sub. (1), except as they apply to the solicitation

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1 of assistance, subscription or support from any person holding any position in the
2 classified civil service.

3 **SECTION 12.** 230.40 (7) of the statutes is created to read:

4 230.40 (7) Any violation of this section by a person who holds an appointive
5 position in the civil service is adequate grounds for discipline, including dismissal.

6 **SECTION 13.** 230.405 of the statutes is created to read:

7 **230.405 Campaign activity. (1)** In this section:

8 (a) “Appointing authority” means the chief administrative officer of a state
9 agency unless another person is authorized by law to appoint subordinate staff in the
10 state agency.

11 (b) “Campaign activity” means:

12 1. Organizing or assisting in the organization of an event on behalf of a
13 candidate, political party, or political committee, but not including recording the date
14 of an event.

15 2. Soliciting or receiving a contribution on behalf of a candidate, political party,
16 or political committee.

17 3. Designing or distributing an advertisement paid for by a candidate, political
18 party, or political committee.

19 4. Designing or distributing brochures, literature, nomination papers, or other
20 promotional materials, whether in electronic or nonelectronic form, that are paid for
21 by a candidate, political party, or political committee.

22 5. Organizing or directing individuals for the purpose of securing voluntary
23 services on behalf of a candidate, political party, or political committee.

24 6. Preparing a budget for a candidate, political party, or political committee.

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1 7. Preparing or participating in the conduct of polling relating to political
2 issues, other than polling conducted by a state legislator to seek input from
3 constituents.

4 8. Creating or maintaining a list or database of individuals who have made a
5 contribution or provided voluntary services to a candidate, political party, or political
6 committee.

7 9. Directing or participating in the recruitment of a candidate for national,
8 state, or local office.

9 10. Organizing or assisting in the organization of individuals to vote for a
10 particular candidate or the candidates of a particular political party.

11 11. Transporting individuals to a polling place on behalf of a candidate, political
12 party, or political committee, or to a rally organized for the purpose of supporting a
13 candidate or political party.

14 (c) “Candidate” means every person for whom it is contemplated or desired that
15 votes be cast at any election held within this state, whether or not the person is
16 elected or nominated, and who either tacitly or expressly consents to be so
17 considered. A person does not cease to be a candidate by virtue of the passing of the
18 date of an election.

19 (d) “Contribution” has the meaning given in s. 11.01 (6) and 2 USC 431 (8).

20 (e) “Disbursement” has the meaning given in s. 11.01 (7) and the meaning given
21 for the term “expenditure” in 2 USC 431 (9).

22 (f) “Legislative campaign committee” has the meaning given in s. 11.01 (12s).

23 (g) “Local office” has the meaning given in s. 5.02 (9).

24 (h) “National office” has the meaning given in s. 5.02 (12).

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1 (i) “Personal campaign committee” has the meaning given in s. 11.01 (15) and
2 includes a federal candidate committee, as defined in s. 11.06 (3m) (a).

3 (j) “Political committee” means any person other than an individual and any
4 combination of 2 or more persons, permanent or temporary, that makes or accepts
5 contributions or makes disbursements, whether or not engaged in activities that are
6 exclusively political, and includes a legislative campaign committee, a personal
7 campaign committee, and a political committee, as defined in 2 USC 431 (4).

8 (k) “Political party” has the meaning given in s. 5.02 (13) and 2 USC 431 (13).

9 (L) “State agency” has the meaning given in s. 20.001 (1).

10 (m) “State office” has the meaning given in s. 5.02 (23).

11 **(2)** No appointing authority of a person holding an appointive position in the
12 civil service may assign or authorize campaign activity to be performed on state time,
13 or with the use of state resources, or on any property owned or leased by the state.

14 **(3)** No person holding a position in the civil service may use, or make available
15 for use by another, state resources or property owned or leased by the state in
16 connection with campaign activity except to the extent that the resources or property
17 are available to be used by any person under similar circumstances.

18 **(4)** No person holding an appointive position in the civil service may engage in
19 campaign activity:

20 (a) While the person is engaged in his or her employment.

21 (b) While on any form of paid leave, including compensatory time granted for
22 time worked in excess of normal hours, other than annual leave or paid holiday leave
23 and then only after having received approval from his or her appointing authority
24 to use the leave for that purpose.

