

2005 DRAFTING REQUEST

Bill

Received: 02/08/2006

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Michael Huebsch (608) 266-2401

By/Representing: Jodi Jensen

This file may be shown to any legislator: NO

Drafter: jkuesel

May Contact:

Addl. Drafters:

Subject: Elections - campaign finance
Elections - miscellaneous

Extra Copies: Rick Champagne

Submit via email: YES

Requester's email: Rep.Huebsch@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Political activities by public employees

Instructions:

Per attached #1.

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>
/?	jkuesel 03/22/2006	kfollett 03/24/2006 lkunkel 03/27/2006		_____			
/1			rschluet 03/27/2006	_____	sbasford 03/27/2006		
/2	jkuesel 03/28/2006	kfollett 03/28/2006	pgreensl 03/28/2006	_____	sbasford 03/28/2006		State

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/3	jkuesel 04/21/2006	csicilia 04/21/2006	jfrantze 04/24/2006	_____	sbasford 04/24/2006	mbarman 04/24/2006	

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↳ @ Intro

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Handwritten signatures and dates:
4/21 4/21

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Elections - miscellaneous**

Extra Copies:

*LPS:
please
add
this to
request
sheet*

RAC

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13 jkuesel 3/21/06 13 cjs 4/21/06

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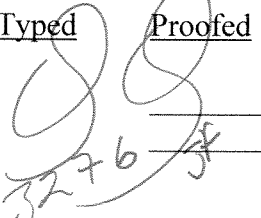
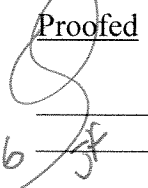
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/?	jkuesel	1/kf 3/24	 3276				

FE Sent For:

<END>

Kuesel, Jeffery

From: Kuesel, Jeffery
Sent: Tuesday, February 07, 2006 7:34 PM
To: Jensen, Jodi
Subject: RE: Drafting Requests

Jodi,
I will enter these requests. The first request is the most involved. There is some existing law on the subject, but it's different than the Hatch Act. The second request is one that I have drafted at least 50 times in various iterations. There is an existing statute - s.11.24 (4), stats. that is very similar. That statute is currently unenforceable under the *Wis. Realtors v. Ponto* decision. The third request I have never attempted but it is much more straightforward than the first.

I will relay that your elections drafter is buckling under the weight of a heavy workload right now, so I might not be able to be as prompt with these requests as I would like to be. If it's OK, I'll tackle the easiest first and the most difficult last.

Jeffery Kuesel

*Managing Attorney
Wisconsin Legislative Reference Bureau
P.O.Box 2037
Madison WI 53701-2037
(608) 266-6778
jeffery.kuesel@legis.state.wi.us*

From: Jensen, Jodi
Sent: Tuesday, February 07, 2006 3:38 PM
To: Kuesel, Jeffery
Subject: Drafting Request

Hi Jeff – Rep. Huebsch would like three bills drafted related to the state's ethics and campaign laws.

1. A bill that mirrors many respects of the Hatch Act and limits the campaign-related activities of employees of the executive branch or independent agencies – included in this should be the staffs of constitutional officers. The thought is to extend many of the current restrictions on legislative employees to all state government employees. I'm taking much of this from information I have read about the Hatch Act, so some of it may be duplicative or otherwise problematic – just let me know if you have questions.

Employees of the state of Wisconsin may not:

- Solicit, accept or receive political contributions on behalf of a candidate for state or national office. In addition, an employee who is a secretary, deputy secretary, executive assistant, division administrator or commissioner in an executive branch agency, may not host, endorse or sponsor a fund-raising event on behalf of a candidate for state or national office.
- Knowingly solicit or discourage the political activity of any person who has business before a state agency.
- Be a candidate for public office in partisan elections.
- Engage in political activity while on duty.

- Engage in political activity in any government office.
- Engage in political activity while using a government vehicle.

Regarding the last three bullets – are the current prohibitions applicable to legislative employees in statute or where they adopted by JCLO? If they are not currently in statute, please include them in the bill draft. Political activity should be defined by ethics board rules.

An employee who violates these provisions can be suspended or terminated. The employee is also subject to a class B forfeiture. Would they be subject to prosecution under the misconduct statute or any other criminal statutes as well?

The bill should also require all state employees to complete ethics training provided by the ethics board within 6 months of start date and every 2 years thereafter.

2. Prohibit candidates for or incumbents of partisan elected state office from soliciting or accepting PAC contributions from January 1 of the odd-numbered year until the state budget is enacted.

An intentional violation may subject the violator to a fine of not more than \$1,000 or imprisonment of not more than six months, or both. In addition, violators may also be subject to a civil forfeiture of treble the amount or value of any unlawful contribution.

3. Add two more continuing reports to the campaign finance reporting requirements in the odd-numbered year for candidates for partisan elected state office. With this change, the April continuing would cover January 1-March 31, the July continuing would cover April 1 – June 30, the October continuing would cover July 1-September 30 and the January continuing would cover October 1-December 31. Add one more continuing report in the even-numbered year for candidates for partisan elected state office – an April continuing. The pre-primary and pre-election reporting requirements would remain.

2005

Date (time) needed

(DNOTE)
FEB 13/24

LRB - 4600 / 1

BILL

JTK : *lgf* :

MONDAY

Use the appropriate components and routines developed for bills.

GON

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to:

Solicitation or receipt of political contributions or services by state employees, campaign activities by state employees, solicitation or discouragement of political activity by state officials and employees, training programs for state employees, and political fundraising by certain executive state officials, granting rule-making authority, and providing penalties.

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

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

SECTION #.

(CS) Sub Solicitation or Receipt of Political Contributions or Services

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.

This bill extends the current prohibition against solicitation or receipt of a political contribution or service for political purposes by a state officer or employee to prohibit, in addition, a state officer or employee from soliciting or receiving a political contribution or service. The bill applies both prohibitions regardless of whether the bill also specifically prohibits an appointing authority of a covered employee from assigning or authorizing campaign activity to be performed by any state ^{appointive} holding an appointive position.

And this

(CS) Sub CAMPAIGN ACTIVITY BY STATE EMPLOYEES

A current law specifically restricts political activities 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.

or performing any activity for a political purpose

of whether an officer or employee is engaged in official duties, except with respect to an individual who is acting in support of his or her own campaign for office.

on state time, or with the use of state resources, or on any property owned or leased by the state. The bill specifically prohibits a covered 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 covered employee may engage in campaign activity: 1) during reported hours of employment; 2) while on any form of leave, except vacation and paid holidays and then only after obtaining the certification of the employee's appointing authority that use of leave time for campaign activity will not be contrary to the efficient provision of public services by the state agency for which the employee performs services; or 3) during the established hours of employment for the employee, unless the employee first obtains a similar certification from his or her appointing authority. In addition, the bill prohibits any decision affecting the continued employment of a covered employee, or affecting the salary, benefits, hours, or other conditions of employment, from being based on the failure of the employee to participate in any campaign activity or the failure to make a political contribution.

Finally, the bill expands certain current law restrictions on the political activities of classified employees to apply to covered employees. Specifically, the bill provides that:

1. No covered employee may directly or indirectly solicit or receive subscriptions or contributions for any partisan political party or any political purpose while on state time or engaged in official duties as an employee.

2. No covered employee may orally solicit or by letter transmit any solicitation to a state office or be in any manner concerned in soliciting any assistance, subscription, or support for any partisan political party or purpose from any covered employee or person holding any position in the classified civil service while on state time or engaged in official duties as an employee.

3. No covered employee may, during the hours when on duty, engage in any form of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold partisan political office, nor engage in any political activity when not on duty to such an extent that the person's efficiency during working hours will be impaired or that he or she will be tardy or absent from work.

4. If a covered employee declares an intention to run for partisan political office the person 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 also provides that any violation of the prohibitions created by the bill 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.

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In addition,

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2005 SENATE BILL 553

February 3, 2006 - Introduced by Senators BROWN, ELLIS and CARPENTER, cosponsored by Representatives BLACK and FREESE. Referred to Committee on Campaign Finance Reform and Ethics.

1 AN ACT *to create* 19.45 (14) of the statutes; **relating to:** political fund raising
2 by certain executive state officials.

CS

Sub

POLITICAL FUND RAISING BY CERTAIN EXECUTIVE STATE OFFICIALS
Analysis by the Legislative Reference Bureau

individual

This bill prohibits any individual who holds the position of secretary, deputy, executive assistant, division administrator, or commissioner in any executive branch state agency from soliciting a political contribution on behalf of a candidate for state or national office or the personal campaign committee or authorized support committee of such a candidate. The bill also prohibits any such individual from hosting, endorsing, or sponsoring a fund-raising event on behalf of a candidate for state or national office or the personal campaign committee or authorized support committee of such a candidate. The bill does not apply to an elective state official acting in support of his or her own campaign for state or national office.

Currently, there is no similar restriction

Violations of the prohibitions created by the bill are punishable by a forfeiture (civil penalty) of not more than \$5,000 for each offense. Intentional violations constitute a misdemeanor and are punishable by a fine of not less than \$100 nor more than \$5,000 or imprisonment for not more than six months, or both.

TWSA

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

3 SECTION 1. 19.45 (14) of the statutes is created to read:

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4600/1ins2
JTK.....

INS A:

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 (~~civil penalty~~) of not more than \$1,000 for each violation.

TRAINING PROGRAMS FOR STATE EMPLOYEES

X 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 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. The provision first applies to require payment of tuition by state employees whose positions are included in a collective bargaining unit for which a representative is recognized or certified to the extent provided in any applicable collective bargaining agreement.

LEGISLATIVE REFERENCE BUREAU

⑨ Sec.#. RA 11.36(1); 11.36(1)(b)
⑨ 11.36

SECTION 1. 11.36 (title) and (1) of the statutes are amended to read:

11.36(title) **Political solicitation involving public state officials and employees restricted.** (1) (b) No person may solicit or receive from any state officer or employee or from any officer or employee of the University of Wisconsin Hospitals and Clinics Authority any contribution or service for any political purpose while the officer or employee is engaged in his or her official duties, except that an elective as authorized in par. (e).

(e) An elective state official may solicit and receive services not constituting a contribution from a state officer or employee or an officer or employee of the University of Wisconsin Hospitals and Clinics Authority with respect to a referendum only. Agreement to perform services authorized under this subsection paragraph may not be a condition of employment for any such officer or employee.

: 1973 c. 334; 1979 c. 328, 355; 1985 a. 303; 1987 a. 370; 1995 a. 27.

SECTION 2. 11.36 (1) (a), (c) and (d) of the statutes are created to read:

11.36 (1) (a) No state officer or employee and no officer or employee of the University of Wisconsin Hospitals and Clinics Authority may solicit or receive any contribution or service for any political purpose, except as authorized in par. (d).

(c) No state officer or employee or officer or employee of the University of Wisconsin Hospitals and Clinics Authority may perform any activity for political purposes, except as authorized in par. (d).

(d) Paragraphs (a) and (b) do not apply to an individual who is a candidate acting in support of his or her own campaign for national, state, or local office.

SECTION 3. 11.36 (2) of the statutes is renumbered 11.361 (2).

: 1973 c. 334; 1979 c. 328, 355; 1985 a. 303; 1987 a. 370; 1995 a. 27.

SECTION 4. 11.36 (3) and (4) of the statutes are amended to read:

11.36 (3) Every person who has charge or control in a building, office or room occupied for any purpose by this state, ~~by any political subdivision thereof~~, or by the University of Wisconsin Hospitals and Clinics Authority shall prohibit the entry of any person into that building, office or room for the purpose of making or receiving a contribution.

(4) No person may enter or remain in any building, office or room occupied for any purpose by the state, ~~by any political subdivision thereof~~ or by the University of Wisconsin Hospitals and Clinics Authority or send or direct a letter or other notice thereto for the purpose of requesting or collecting a contribution.

: 1973 c. 334; 1979 c. 328, 355; 1985 a. 303; 1987 a. 370; 1995 a. 27. ✓

SECTION 5. 11.361 of the statutes is created to read:

X
11.361 Political solicitation involving officials and employees of political subdivisions restricted. (1) (a) No person may solicit or receive from any officer or employee of a political subdivision of this state any contribution or service for any political purpose during established hours of employment or while the officer or employee is engaged in his or her official duties.

X
X
(3) Every person who has charge or control in a building, office, or room occupied for any purpose by a political subdivision of this state shall prohibit the entry of any person into that building, office, or room for the purpose of making or receiving a contribution.

X
X : 1973 c. 334; 1979 c. 328, 355; 1985 a. 303; 1987 a. 370; 1995 a. 27.

X
X (4) No person may enter or remain in any building, office, or room occupied for any purpose by any political subdivision of this state or send or direct a letter or other notice thereto for the purpose of requesting or collecting a contribution.

(5) In this section, "political purpose" includes an act done for the purpose of influencing the election or nomination for election of a person to national office, and "contribution" includes an act done for that purpose.

(6) This section does not apply to response by a legal custodian or subordinate of the custodian to a request to locate, reproduce, or inspect a record under s. 19.35, if the request is processed in the same manner as the custodian or subordinate responds to other requests to locate, reproduce, or inspect a record under s. 19.35.

SECTION 6. 11.60 (3t) of the statutes is created to read:

11.60 (3t) Notwithstanding sub. (1), any state employee who violates s. 11.36 may be required to forfeit not more than \$1,000.

SECTION 7. 11.61 (1) (c) of the statutes is amended to read:

11.61 (1) (c) ~~Whoever~~ Except as provided in par. (d), whoever intentionally violates any provision of this chapter other than those provided in par. (a) and whoever intentionally violates any provision under par. (b) where the intentional violation concerns a specific figure which does not exceed \$100 in amount or value may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

: 1973 c. 334; 1975 c. 93 ss. 117, 119 (1); 1977 c. 449; 1979 c. 328; 1983 a. 484; 1985 a. 303; 1997 a. 283; 2001 a. 109.

SECTION 8. 11.61 (1) (d) of the statutes is created to read:

11.61 (1) (d) A state employee who violates s. 11.36 is subject only to the penalty prescribed in s. 11.60 (3t).

SECTION 9. 19.42 (7t) of the statutes is created to read:

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

SECTION 10. 19.45 (5m) of the statutes is created to read:

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

INS
4A

SECTION 11. 19.45 (15) of the statutes is created to read:

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

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

19.48 (9) Administer programs to explain and interpret this subchapter and ss. 11.36, 230.40, and 230.405 and subch. III of ch. 13 for state public officials, and for elective state officials employees, candidates for state public office, legislative officials, agency officials, lobbyists, as defined in s. 13.62, local public officials, corporation counsels and attorneys for local governmental units. The programs shall provide advice regarding appropriate ethical and lobbying practices, with special emphasis on public interest lobbying. The board may delegate creation and implementation of any such program to a group representing the public interest. The board may charge a fee to participants in any such program. The board shall require attendance of all state employees at programs conducted under this subsection for a minimum number of hours specified by rule of the board during each biennial period. The board shall require each new state employee to attend a program conducted under this subsection within 6 months of beginning his or her employment.

: 1973 c. 90; Stats. 1973 s. 11.08; 1973 c. 333; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.48; 1975 c. 41; 1977 c. 223, 277; 1977 c. 447 ss. 37, 209; 1983 a. 166 ss. 10, 16; 1985 a. 164; 1989 a. 338, 359; 1991 a. 39, 269; 1995 a. 27; 1997 a. 186.

SECTION 13. 19.53 (6) of the statutes is amended to read:

19.53 (6) An order requiring the accused to forfeit not more than \$500 for each violation of s. 19.43, 19.44, or 19.56 (2), not more than \$1,000 for each violation of s. 19.45 (5m), (14), or (15), or not more than \$5,000 for each violation of any other provision of this subchapter, or not more than the applicable amount specified in s.

13.69 for each violation of subch. III of ch. 13. If the board determines that the accused has realized economic gain as a result of the violation, the board may, in addition, order the accused to forfeit the amount gained as a result of the violation. In addition, if the board determines that a state public official has violated s. 19.45 (13), the board may order the official to forfeit an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully obtained. If the board determines that a state public official has violated s. 19.45 (13) and no political contribution, service or other thing of value was obtained, the board may order the official to forfeit an amount equal to the maximum contribution authorized under s. 11.26 (1) for the office held or sought by the official, whichever amount is greater. The attorney general, when so requested by the board, shall institute proceedings to recover any forfeiture incurred under this section or s. 19.545 which is not paid by the person against whom it is assessed.

: 1977 c. 277; 1983 a. 166; 1987 a. 365; 1989 a. 338; 1995 a. 27; 2001 a. 109; 2003 a. 39.

SECTION 14. 19.579 (title) of the statutes is amended to read:

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

: 2003 a. 39.

SECTION 15. 19.579 of the statutes is renumbered 19.579 (1).

SECTION 16. 19.579 (2) of the statutes is created to read:

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

SECTION 17. 19.58 (1) (a) of the statutes is amended to read:

19.58 (1) (a) Any person who intentionally violates any provision of this subchapter except s. 19.45 (13) to (15) or 19.59 (1) (br), or a code of ethics adopted or

established under s. 19.45 (5m) ^{✓ g or} (11) (a) or (b), shall be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year in the county jail or both.

: 1973 c. 90; Stats. 1973 s. 11.10; 1973 c. 334 ss. 33, 57, 58; Stats. 1973 s. 19.50; 1975 c. 200; 1977 c. 277 ss. 34, 37; Stats. 1977 s. 19.58; 2003 a. 39.

~~SECTION 18. 230.03 (5) of the statutes is created to read:~~

~~230.03 (5) "Candidate" has the meaning given in s. 11.01 (1).~~

~~SECTION 19. 230.03 (6) of the statutes is amended to read:~~

Move
~~230.03 (6) "Civil service" means all offices and positions of trust or employment in the service of the state, but except for purposes of ss. 230.40 and 230.405, excludes all offices and positions in the organized militia.~~

: 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, 87; 2001 a. 16, 103; 2003 a. 33 ss. 2385 to 2387s, 9160; 2005 a. 22, 74.

: 1973 c. 334; 1979 c. 328, 355; 1985 a. 303; 1987 a. 370; 1995 a. 27.

~~SECTION 20. 230.03 (4) and (6) of the statutes are amended to read:~~

X
~~230.03 (4) Except as provided in s. s. 230.40 (4), 230.405 (1), and 230.80 (1m), "appointing authority" means the chief administrative officer of an agency unless another person is authorized to appoint subordinate staff in the agency by the constitution or statutes.~~

: 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, 87; 2001 a. 16, 103; 2003 a. 33 ss. 2385 to 2387s, 9160; 2005 a. 22, 74.

X
~~SECTION 21. 230.40 (1), (2), (4) and (5) of the statutes are amended to read:~~

~~230.40 (1) (a) No person holding a position in the classified civil service may directly or indirectly solicit or receive subscriptions or contributions for any partisan political party or any political purpose while on state time or engaged in official duties as an employee.~~

~~(b) No person may orally solicit or by letter transmit any solicitation to a state office or be in any manner concerned in soliciting any assistance, subscription, or support for any partisan political party or purpose from any person holding any position in the classified civil service while on state time or engaged in official duties as an employee.~~

(c) No person holding any position in the classified civil service may during the hours when on duty engage in any form of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold partisan political office, nor engage in any political activity when not on duty to such an extent that the person's efficiency during working hours will be impaired or that he or she will be tardy or absent from work.

(d) Any violation of this section by a person who holds an appointive position is adequate grounds for discipline, including dismissal.

: 1971 c. 270 s. 82; Stats. 1971 s. 16.35; 1973 c. 334; 1977 c. 196 s. 61; 1977 c. 273; Stats. 1977 s. 230.40; 1979 c. 221; 1997 a. 307; 1999 a. 102.

(2) If a person who holds an appointive position in the classified civil service ~~declares an intention to run for~~ becomes a candidate for a partisan political office the person shall be placed on a leave of absence for the duration of the election campaign and if elected shall separate from the classified civil service on assuming the duties and responsibilities of such office.

In this subsection, "candidate" has the meaning given in s. 11.01(1).

: 1971 c. 270 s. 82; Stats. 1971 s. 16.35; 1973 c. 334; 1977 c. 196 s. 61; 1977 c. 273; Stats. 1977 s. 230.40; 1979 c. 221; 1997 a. 307; 1999 a. 102.

X

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

: 1971 c. 270 s. 82; Stats. 1971 s. 16.35; 1973 c. 334; 1977 c. 196 s. 61; 1977 c. 273; Stats. 1977 s. 230.40; 1979 c. 221; 1997 a. 307; 1999 a. 102.

X

(5) Persons on leave from the classified civil service under subs. (2) and (4) shall not be subject to the restrictions of sub. (1), except as they apply to the solicitation of assistance, subscription or support from any person holding any position in the classified civil service.

: 1971 c. 270 s. 82; Stats. 1971 s. 16.35; 1973 c. 334; 1977 c. 196 s. 61; 1977 c. 273; Stats. 1977 s. 230.40; 1979 c. 221; 1997 a. 307; 1999 a. 102.

SECTION 22. 230.405 of the statutes is created to read:

230.405 Campaign activity. (1) In this section:

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

(b) "Campaign activity" means activity that does not reasonably and primarily fulfill and arise from official functions, and that contributes to, enhances, or furthers an individual's ability to become a candidate or to be elected or reelected to a national, state, or local office.

(c) "Candidate" has the meaning given in s. 11.01 (1).

(d) "Contribution" has the meaning given in s. 11.01 (6).

(e) "Local office" has the meaning given in s. 5.02 (9).

(f) "National office" has the meaning given in s. 5.02 (12).

(g) "State agency" has the meaning given in s. 20.001 (1).

(h) "State office" has the meaning given in s. 5.02 (23).

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

(3) No person holding a position in the civil service may use, or make 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.

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

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

1 (b) While on any form of paid leave, including compensatory time granted for
 2 time worked in excess of normal hours, other than annual leave or paid holiday leave
 3 and then only after having submitted to his or her appointing authority a request to
 4 use that time and obtaining from the appointing authority a written finding that the
 5 use of the leave time for campaign activity will not be contrary to the efficient
 6 provision of public services by the state agency for which the ~~employee~~ ^{person} performs
 7 services.

8 (c) During the established hours of ~~employment~~ ^{person} for the ~~covered employee~~ ^{person},
 9 unless the ~~employee~~ ^{person} has submitted to his or her appointing authority a request to
 10 work variant hours or to take unpaid leave and has obtained from the appointing
 11 authority a written finding that the use of variant hours or the taking of unpaid leave
 12 will not be contrary to the efficient provision of public services by the state agency
 13 for which the ~~employee~~ ^{person} performs services. For an employee of the legislature under
 14 s. 13.20, the appointing authority must find that the use of variant hours or the
 15 taking of unpaid leave will not be contrary to the efficient provision of public services
 16 by the house or houses for which the employee performs services.

17 (B) (5) (8) No decision affecting the continued employment of a ~~covered employee~~ ^{person holding a position in the civil service} or
 18 affecting the salary, benefits, hours, terms, or other conditions of employment, may
 19 be based in any manner or to any degree on ~~the failure of the employee~~ ^{person} to participate
 20 in campaign activity or the failure to make a contribution.

21 **SECTION 113.** 234.02 (3m) (c) of the statutes is amended to read:
 22 234.02 (3m) (c) The authority shall, with the advice of the board of ethics board
 23 and elections, adopt and enforce ethics guidelines applicable to its paid consultants
 24 which are similar to subch. III of ch. 19, except that the authority may not require
 25 its paid consultants to file financial disclosure statements.

(End)

ANS 4 A:1
-2-

SENATE BILL 553

→ SEC DRA # CR, 19.45 (14) (a)

1 19.45 (14) (a) In this subsection:

2 1. "Authorized support committee" means the support committee of a candidate
3 under s. 11.18 that has been authorized by the candidate to operate on his or her
4 behalf under s. 11.05 (3) (p).

5 2. "Candidate" has the meaning given under s. 11.01 (1).

6 3. "Contribution" has the meaning given under s. 11.01 (6).

7 4. "Executive branch agency" has the meaning given in s. 16.70 (4).

8 5. "Fund-raising event" means an event at which or in connection with which
9 contributions are solicited or accepted.

10 6. "Personal campaign committee" has the meaning given in s. 11.01 (15) and
11 includes an authorized committee of a candidate for national office designated by the
12 candidate under 2 USC 432 (e).

13 7. "National office" has the meaning given under s. 5.02 (12).

14 8. "State office" has the meaning given under s. 5.02 (23).

15 (b) No individual who holds the position of secretary, deputy, executive
16 assistant, division administrator, or commissioner in any executive branch agency
17 may solicit any contribution on behalf of a candidate for state or national office or the
18 personal campaign committee or authorized support committee of such a candidate.

19 (c) No individual who holds the position of secretary, deputy, executive
20 assistant, division administrator, or commissioner in any executive branch agency
21 may host, endorse, or sponsor a fund-raising event on behalf of a candidate for state
22 or national office or the personal campaign committee or authorized support
23 committee of such a candidate.

JWS 4A:2
- 3 -

SENATE BILL 553

1 (d) This subsection does not apply to an individual who holds a state office
2 acting in support of his or her own campaign for a state or national office.

3

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4600/1dn

JTK...: *gjf*

Date

Representative Huebsch:

lps: check spacing please X

1. Per my telephone conversation with Jodi Jensen on March 15, this draft amends various provisions of the existing campaign finance law, statutory code of ethics, and civil service law that relate to political or campaign activity. Some of the provisions of existing law and some of the provisions of the draft overlap, but they do not conflict. I understand that your intent was to see the broadest sweep possible in this draft, with the understanding that you may wish to consolidate or limit some of the provisions once you have a chance to review the draft.

X

2. The provisions governing campaign activities that are reflected in proposed s. 230.405 are not currently contained in the statutes or in any legislative rules. It is my understanding that the provisions reflect policies of JCLO with the exception that, per your instruction, they exclude time reporting requirements. These provisions define "campaign activity". Under the draft, these provisions are placed in the civil service law because they closely parallel existing provisions governing political activities by state employees, which are also amended by this draft. The draft also broadens current provisions of the campaign finance law. In that law, political activities are effectively defined in s. 11.01 (16), stats., as interpreted by the Elections Board. In addition, the draft amends and creates new provisions in the statutory code of ethics. That portion of the draft uses the term "political activity" without defining it. Under the draft, the Ethics Board will define the term by rule.

X

3. You asked whether political activities by state officers or employees would be subject to prosecution under laws other than the ones amended or created by this draft. The answer is that it is possible that certain activities could be restricted or prohibited under the existing code of ethics or criminal code, including potentially the prohibition on misconduct in public office (s. 946.12, stats.) depending upon the facts involved in a given situation. The laws and the draft overlap somewhat and in some situations a violation of one provision would also potentially encompass another violation.

X

4. The treatment of s. 19.48 (9), stats., by this draft, which requires all state employees to attend periodic ethics training programs is not funded by this draft. Under current law, the Ethics Board may prescribe a fee for attendance at such a program and may use the resulting revenue to finance the cost of the program. For represented employees, the requirement to pay fees is currently subject to collective bargaining and the draft does not change this requirement.

5. Pursuant to our conversation, because state elective officials are state employees, I have excluded them from coverage under some of the provisions of this draft where it did not seem logical to me to cover them. If, however, it was possible to cover them I did so. However, you may wish to review the provisions of the draft that apply to elective officials to ensure that the treatment of these provisions conforms to your intent. *In particular, please review the treatment of s. 230.40(1), stats., by this draft as it applies to elective officials.*
- X
X 6. The treatment of s. 11.36, stats., by this draft that extends current prohibitions against solicitation or receipt of political contributions and services while employees are engaged in official duties to apply generally, regardless of whether employees are engaged in official duties, may raise an issue under the First Amendment because the U.S. Supreme Court has held that the making of a contribution implicates First Amendment rights [*Buckley v. Valeo, et al.*, 424 U.S. 1, 24-29 (1976)]. To ensure enforceability of this draft, you may wish to consider whether your objectives can be achieved through a more limited treatment of s. 11.36, stats.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4600/1dn
JTK:kjfrs

March 27, 2006

Representative Huebsch:

1. Per my telephone conversation with Jodi Jensen on March 15, this draft amends various provisions of the existing campaign finance law, statutory code of ethics, and civil service law that relate to political or campaign activity. Some of the provisions of existing law and some of the provisions of the draft overlap, but they do not conflict. I understand that your intent was to see the broadest sweep possible in this draft, with the understanding that you may wish to consolidate or limit some of the provisions once you have a chance to review the draft.

2. The provisions governing campaign activities that are reflected in proposed s. 230.405 are not currently contained in the statutes or in any legislative rules. It is my understanding that the provisions reflect policies of JCLO with the exception that, per your instruction, they exclude time reporting requirements. These provisions define "campaign activity." Under the draft, these provisions are placed in the civil service law because they closely parallel existing provisions governing political activities by state employees, which are also amended by this draft. The draft also broadens current provisions of the campaign finance law. In that law, political activities are effectively defined in s. 11.01 (16), stats., as interpreted by the Elections Board. In addition, the draft amends and creates new provisions in the statutory code of ethics. That portion of the draft uses the term "political activity" without defining it. Under the draft, the Ethics Board will define the term by rule.

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4. The treatment of s. 19.48 (9), stats., by this draft, which requires all state employees to attend periodic ethics training programs is not funded by this draft. Under current law, the Ethics Board may prescribe a fee for attendance at such a program and may use the resulting revenue to finance the cost of the program. For represented employees, the requirement to pay fees is currently subject to collective bargaining and the draft does not change this requirement.

5. Pursuant to our conversation, because state elective officials are state employees, I have excluded them from coverage under some of the provisions of this draft where it did not seem logical to me to cover them. If, however, it was possible to cover them I did so. However, you may wish to review the provisions of the draft that apply to elective officials to ensure that the treatment of these provisions conforms to your intent. In particular, please review the treatment of s. 230.40 (1), stats., by this draft as it applies to elective officials.

6. The treatment of s. 11.36, stats. by this draft that extends current prohibitions against solicitation or receipt of political contributions and services while employees are engaged in official duties to apply generally, regardless of whether employees are engaged in official duties, may raise an issue under the First Amendment because the U.S. Supreme Court has held that the making of a contribution implicates First Amendment rights [*Buckley v. Valeo, et al.*, 424 U.S. 1, 24-29 (1976)]. To ensure enforceability of this draft, you may wish to consider whether your objectives can be achieved through a more limited treatment of s. 11.36, stats.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

From: Jensen, Jodi
Sent: Monday, March 27, 2006 4:05 PM
To: Kuesel, Jeffery
Subject: RE: LRB-4600/1 (Political activities by public employees)

Yes - delete both parts.

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

From: Kuesel, Jeffery
Sent: Monday, March 27, 2006 3:55 PM
To: Jensen, Jodi
Subject: RE: LRB-4600/1 (Political activities by public employees)

Jodi,

I don't know exactly when the draft will be submitted but it could be as early as today. It will take only about 24 hours to make the deletion and turn the draft around again.

By the way, the first bullet has 2 parts. One is partly covered by current law and the other is essentially the same as AB-996. I assume you want to delete both parts.

Jeffery Kuesel
Managing Attorney
Wisconsin Legislative Reference Bureau
P.O.Box 2037
Madison WI 53701-2037
(608) 266-6778
jeffery.kuesel@legis.state.wi.us

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

From: Jensen, Jodi
Sent: Monday, March 27, 2006 2:27 PM
To: Kuesel, Jeffery
Subject: Re: LRB-4600/1 (Political activities by public employees)

If u clean it up and take those provisions out will we have it by april. 4?

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

From: Kuesel, Jeffery
To: Jensen, Jodi
Sent: Mon Mar 27 14:24:04 2006
Subject: LRB-4600/1 (Political activities by public employees)

Jodi,

The draft has left my desk. As I mentioned, I think you might want to tweak it somewhat because it is a little complicated to engraft onto the existing law. I would be happy to meet if you would like to discuss it. We can remove item #1 at that time, or if you would like I can do a redraft just after the draft is submitted and clean that item out of the draft so it will be easier to review.

Jeffery Kuesel
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Madison WI 53701-2037
(608) 266-6778
jeffery.kuesel@legis.state.wi.us

From: Jensen, Jodi

Sent: Monday, March 27, 2006 12:21 PM
To: Kuesel, Jeffery
Subject: RE: Drafting Requests

Hi Jeff - I'm following up on our recent conversation about the first item in this request. You can remove the first bullet point regarding the soliciting, accepting or receiving of campaign contributions. These provision do not need to be in the bill.

Also, is it possible to have a draft of the remaining provisions by April 3? Rep. Huebsch was hoping to discuss the bill in caucus that day.

Thanks!

Jodi

From: Jensen, Jodi
Sent: Tuesday, February 07, 2006 3:38 PM
To: Kuesel, Jeffery
Subject: Drafting Request

Hi Jeff - Rep. Huebsch would like three bills drafted related to the state's ethics and campaign laws.

1. A bill that mirrors many respects of the Hatch Act and limits the campaign-related activities of employees of the executive branch or independent agencies - included in this should be the staffs of constitutional officers. The thought is to extend many of the current restrictions on legislative employees to all state government employees. I'm taking much of this from information I have read about the Hatch Act, so some of it may be duplicative or otherwise problematic - just let me know if you have questions.

Employees of the state of Wisconsin may not:

- * Solicit, accept or receive political contributions on behalf of a candidate for state or national office. In addition, an employee who is a secretary, deputy secretary, executive assistant, division administrator or commissioner in an executive branch agency, may not host, endorse or sponsor a fund-raising event on behalf of a candidate for state or national office.
- * Knowingly solicit or discourage the political activity of any person who has business before a state agency.
- * Be a candidate for public office in partisan elections.
- * Engage in political activity while on duty.
- * Engage in political activity in any government office.
- * Engage in political activity while using a government vehicle.

Regarding the last three bullets - are the current prohibitions applicable to legislative employees in statute or where they adopted by JCL0? If they are not currently in statute, please include them in the bill draft. Political activity should be defined by ethics board rules.

An employee who violates these provisions can be suspended or terminated. The employee is also subject to a class B forfeiture. Would they be subject to prosecution under the misconduct statute or any other criminal statutes as well?

The bill should also require all state employees to complete ethics training provided by the ethics board within 6 months of start date and every 2 years thereafter.

2. Prohibit candidates for or incumbents of partisan elected state office from

soliciting or accepting PAC contributions from January 1 of the odd-numbered year until the state budget is enacted.

An intentional violation may subject the violator to a fine of not more than \$1,000 or imprisonment of not more than six months, or both. In addition, violators may also be subject to a civil forfeiture of treble the amount or value of any unlawful contribution.

3. Add two more continuing reports to the campaign finance reporting requirements in the odd-numbered year for candidates for partisan elected state office. With this change, the April continuing would cover January 1- March 31, the July continuing would cover April 1 - June 30, the October continuing would cover July 1-September 30 and the January continuing would cover October 1-December 31. Add one more continuing report in the even-numbered year for candidates for partisan elected state office - an April continuing. The pre-primary and pre-election reporting requirements would remain.