

State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4600/1

JTK:kjf:ps

DNOTE
Wanted 2/23/28

2005 BILL

Regen

1 AN ACT *to renumber* 11.36 (2) and 19.579; *to renumber and amend* 11.36 (1);
 2 *to amend* 11.36 (title), 11.36 (3) and (4), 11.61 (1) (c), 19.48 (9), 19.53 (6), 19.579
 3 (title), 19.58 (1) (a), 230.03 (4) and (6) and 230.40 (1), (2), (4) and (5); and *to*
 4 *create* 11.36 (1) (a), (c) and (d), 11.361, 11.60 (3t), 11.61 (1) (d), 19.42 (7t), 19.45
 5 (5m), 19.45 (14), 19.45 (15), 19.579 (2) and 230.405 of the statutes; **relating to:**
 6 ~~solicitation or receipt of political contributions or services by state employees,~~
 7 campaign activity by state employees, solicitation or discouragement of
 8 political activity by state officials and employees, training programs for state
 9 employees, ~~political fund raising by certain executive state officials,~~ granting
 10 rule-making authority, and providing penalties

Analysis by the Legislative Reference Bureau
~~CAMPAIGN ACTIVITY BY STATE EMPLOYEES~~
~~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

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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 or performing any activity for a political purpose. The bill applies both prohibitions regardless 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.~~

~~CAMPAIGN ACTIVITY BY STATE EMPLOYEES~~

¹⁵⁰ ^{activity} 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.

This bill specifically prohibits an appointive authority of any state employee holding an appointive position from assigning or authorizing 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. The bill specifically prohibits a 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 leave, except vacation and paid holidays and then only after obtaining the certification of the employee's appointive 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 appointive authority. In addition, the bill prohibits any decision affecting the continued employment of a state 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.

In addition, the bill expands certain current restrictions in the civil service law on the political activities of classified employees to apply to all state employees. Specifically, the bill provides that:

1. No state 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 state employee may orally solicit or by letter transmit any solicitation to a state office or be in any manner concerned in soliciting any assistance,

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subscription, or support for any partisan political party or purpose from any state employee while on state time or engaged in official duties as an employee.

3. No state 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 state employee who holds an appointive position becomes a candidate 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 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.

POLITICAL FUND RAISING BY CERTAIN EXECUTIVE STATE OFFICIALS

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 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 individual acting in support of his or her own campaign for state or national office. Currently, there is no similar restriction.

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 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

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unit for which a representative is recognized or certified to the extent provided in any applicable collective bargaining agreement.

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

1 **SECTION 1.** 11.36 (title) of the statutes is amended to read:

2 **11.36 (title) Political solicitation involving public state officials and**
3 **employees restricted.**

4 **SECTION 2.** 11.36 (1) of the statutes is renumbered 11.36 (1) (b) and amended
5 to read:

6 **11.36 (1) (b)** No person may solicit or receive from any state officer or employee
7 or from any officer or employee of the University of Wisconsin Hospitals and Clinics
8 Authority any contribution or service for any political purpose while the officer or
9 employee is engaged in his or her official duties, except that an elective as authorized
10 in par. (e).

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

16 **SECTION 3.** 11.36 (1) (a), (c) and (d) of the statutes are created to read:

17 **11.36 (1) (a)** No state officer or employee and no officer or employee of the
18 University of Wisconsin Hospitals and Clinics Authority may solicit or receive any
19 contribution or service for any political purpose, except as authorized in par. (d).

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

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

6 **SECTION 4.** 11.36 (2) of the statutes is renumbered 11.361 (2).

7 **SECTION 5.** 11.36 (3) and (4) of the statutes are amended to read:

8 11.36 (3) Every person who has charge or control in a building, office or room
9 occupied for any purpose by this state, ~~by any political subdivision thereof~~, or by the
10 University of Wisconsin Hospitals and Clinics Authority shall prohibit the entry of
11 any person into that building, office or room for the purpose of making or receiving
12 a contribution.

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

17 **SECTION 6.** 11.361 of the statutes is created to read:

18 **11.361 Political solicitation involving officials and employees of**
19 **political subdivisions restricted.** (1) No person may solicit or receive from any
20 officer or employee of a political subdivision of this state any contribution or service
21 for any political purpose during established hours of employment or while the officer
22 or employee is engaged in his or her official duties.

23 (3) Every person who has charge or control in a building, office, or room
24 occupied for any purpose by a political subdivision of this state shall prohibit the

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1 entry of any person into that building, office, or room for the purpose of making or
2 receiving a contribution.

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

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

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

13 **SECTION 7.** 11.60 (3t) of the statutes is created to read:

14 11.60 (3t) Notwithstanding sub. (1), any state employee who violates s. 11.36
15 may be required to forfeit not more than \$1,000.

16 **SECTION 8.** 11.61 (1) (c) of the statutes is amended to read:

17 11.61 (1) (c) ~~Whoever~~ Except as provided in par. (d), whoever intentionally
18 violates any provision of this chapter other than those provided in par. (a) and
19 whoever intentionally violates any provision under par. (b) where the intentional
20 violation concerns a specific figure which does not exceed \$100 in amount or value
21 may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

22 **SECTION 9.** 11.61 (1) (d) of the statutes is created to read:

23 11.61 (1) (d) A state employee who violates s. 11.36 is subject only to the penalty
24 prescribed in s. 11.60 (3t).

25 **SECTION 10.** 19.42 (7t) [#] ~~of the statutes~~ ^{and (11e)} ~~is~~ ^{are} created to read:

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1 → 19.42 (7t) "Knowingly" means acting with the belief that a specified fact is true.

2 (b) (11e) "political activity" means activity that is engaged in for political purposes, as defined in s. 11.01(16).

3 SECTION 11. 19.45 (5m) of the statutes is created to read:

4 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.

5 SECTION 12. 19.45 (14) of the statutes is created to read:

6 19.45 (14) (a) In this subsection:

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

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

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

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

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

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

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

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

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

24 (c) No individual who holds the position of secretary, deputy, executive
25 assistant, division administrator, or commissioner in any executive branch agency

BILL**SECTION 12**

1 may host, endorse, or sponsor a fund-raising event on behalf of a candidate for state
2 or national office or the personal campaign committee or authorized support
3 committee of such a candidate.

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

6 **SECTION 13.** 19.45 (15) of the statutes is created to read:

7 19.45 (15) No state public official or state employee may knowingly solicit or
8 discourage any political activity by a person who has business before the department
9 served by the official or employee.

10 **SECTION 14.** 19.48 (9) of the statutes is amended to read:

11 19.48 (9) Administer programs to explain and interpret ss. 11.36, 230.40, and
12 230.405, this subchapter, and subch. III of ch. 13 for state ~~public officials, and for~~
13 ~~elective state officials~~ employees, candidates for state public office, legislative
14 officials, agency officials, lobbyists, as defined in s. 13.62, local public officials,
15 corporation counsels and attorneys for local governmental units. The programs shall
16 provide advice regarding appropriate ethical and lobbying practices, with special
17 emphasis on public interest lobbying. The board may delegate creation and
18 implementation of any such program to a group representing the public interest. The
19 board may charge a fee to participants in any such program. The board shall require
20 attendance of all state employees at programs conducted under this subsection for
21 a minimum number of hours specified by rule of the board during each biennial
22 period. The board shall require each new state employee to attend a program
23 conducted under this subsection within 6 months of beginning his or her
24 employment.

25 **SECTION 15.** 19.53 (6) of the statutes is amended to read:

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1 19.53 (6) An order requiring the accused to forfeit not more than \$500 for each
2 violation of s. 19.43, 19.44, or 19.56 (2), not more than \$1,000 for each violation of s.
3 19.45 (5m), (14), or (15), or not more than \$5,000 for each violation of any other
4 provision of this subchapter, or not more than the applicable amount specified in s.
5 13.69 for each violation of subch. III of ch. 13. If the board determines that the
6 accused has realized economic gain as a result of the violation, the board may, in
7 addition, order the accused to forfeit the amount gained as a result of the violation.
8 In addition, if the board determines that a state public official has violated s. 19.45
9 (13), the board may order the official to forfeit an amount equal to the amount or
10 value of any political contribution, service, or other thing of value that was
11 wrongfully obtained. If the board determines that a state public official has violated
12 s. 19.45 (13) and no political contribution, service or other thing of value was
13 obtained, the board may order the official to forfeit an amount equal to the maximum
14 contribution authorized under s. 11.26 (1) for the office held or sought by the official,
15 whichever amount is greater. The attorney general, when so requested by the board,
16 shall institute proceedings to recover any forfeiture incurred under this section or s.
17 19.545 which is not paid by the person against whom it is assessed.

18 **SECTION 16.** 19.579 (title) of the statutes is amended to read:

19 **19.579 (title) Civil penalty penalties.**

20 **SECTION 17.** 19.579 of the statutes is renumbered 19.579 (1).

21 **SECTION 18.** 19.579 (2) of the statutes is created to read:

22 19.579 (2) Any person who violates s. 19.45 (5m), (14), or (15) may be required
23 to forfeit not more than \$1,000.

24 **SECTION 19.** 19.58 (1) (a) of the statutes is amended to read:

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SECTION 19

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

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

6 230.03 (4) Except as provided in ~~s.~~ ss. 230.40 (4), 230.405 (1), and 230.80 (1m),
 7 “appointing authority” means the chief administrative officer of an agency unless
 8 another person is authorized to appoint subordinate staff in the agency by the
 9 constitution or statutes.

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

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

14 230.40 (1) ~~(a)~~ No person holding a position in the classified civil service may
 15 directly or indirectly solicit or receive subscriptions or contributions for any partisan
 16 political party or any political purpose while on state time or engaged in official
 17 duties as an employee. res b/c

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

23 ~~no #~~ ~~(c)~~ No person holding any position in the classified civil service may during the
 24 hours when on duty engage in any form of political activity calculated to favor or
 25 improve the chances of any political party or any person seeking or attempting to

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1 hold partisan political office, nor engage in any political activity when not on duty
2 to such an extent that the person's efficiency during working hours will be impaired
3 or that he or she will be tardy or absent from work.

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

6 (2) If a person who holds an appointive position in the classified civil service
7 declares an intention to run for becomes a candidate for a partisan political office the
8 person shall be placed on a leave of absence for the duration of the election campaign
9 and if elected shall separate from the classified civil service on assuming the duties
10 and responsibilities of such office. In this subsection, "candidate" has the meaning
11 given in s. 11.01 (1).

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

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

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

22 **230.405 Campaign activity.** (1) In this section:

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

Handwritten notes:
- A large bracket on the left side of lines 21-25.
- A checkmark above line 25.
- A line from line 25 pointing to line 4 with the note "in the civil service".
- At the bottom: "SECTION 21 CR) 230.40(7) 230.40(7) Any violation of this section by a person who holds an appointive position is adequate grounds for discipline, including dismissal."

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

5 (c) “Candidate” has the meaning given in s. 11.01 (1).

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

7 (e) “Local office” has the meaning given in s. 5.02 (9).

8 (f) “National office” has the meaning given in s. 5.02 (12).

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

10 (h) “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
19 in 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 submitted to his or her appointing authority a request to
24 use that time and obtaining from the appointing authority a written finding that the
25 use of the leave time for campaign activity will not be contrary to the efficient

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1 provision of public services by the state agency for which the person performs
2 services.

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

12 (5) No decision affecting the continued employment of a person holding a
13 position in the civil service, or affecting the salary, benefits, hours, terms, or other
14 conditions of employment, may be based in any manner or to any degree on the
15 failure of the person to participate in campaign activity or the failure to make a
16 contribution.

17 (b)(6) Any violation of this section by a person who holds an
appointive position in the ~~(END)~~ civil service is adequate
grounds for discipline, including dismissal.

(End)

D-Note

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

LRB-4600/2dn

JTK...*kgf*

Date

Representative Huebsch:

1. This redraft removes proposed changes that address the solicitation or receipt of political contributions or services and political fund raising by executive state officials.

X
2. In reviewing this draft, I thought that we could use a definition of "political activity" in subch. III of ch. 19, stats. because the term is used in proposed s. 19.45 (15). I have therefore inserted a definition. See proposed s. 19.42 (11e). Please let me know if this is not in accord with your intent.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4600/2dn
JTK:kjf:pg

March 28, 2006

Representative Huebsch:

1. This redraft removes proposed changes that address the solicitation or receipt of political contributions or services and political fund raising by executive state officials.
2. In reviewing this draft, I thought that we could use a definition of "political activity" in subch. III of ch. 19, stats., because the term is used in proposed s. 19.45 (15). I have therefore inserted a definition. See proposed s. 19.42 (11e). Please let me know if this is not in accord with your intent.

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

Kuesel, Jeffery

From: Jensen, Jodi
Sent: Friday, April 21, 2006 11:50 AM
To: Kuesel, Jeffery
Subject: RE: Changes to LRB 4600/2

Jeff - the hearing time was changed. I'll need the bill by 9am Monday morning. Sorry for the rush. Thanks for everything.

Jodi

From: Kuesel, Jeffery
Sent: Thursday, April 20, 2006 6:26 PM
To: Jensen, Jodi
Subject: RE: Changes to LRB 4600/2

Jodi,

There is no problem with the 2nd part.

The first part is unusually detailed for a statutory provision. It seems to consist of examples that may be encompassed within a broader umbrella, but it is structured as a closed-end list, so that if something is not covered, it is excluded. There are also some logistical problems. While we are in ch. 230, some ch. 11 terms are incorporated, which is OK except that the terms in ch. 11 in most cases do not apply to federal campaigns because federal law preempts state regulation. I will also need to find a way to avoid using the term "campaign" as a part of its own definition unless we also define that term. I will call you tomorrow after I have had a chance to review this thoroughly. I have an appointment with a legislator early AM, so it will be later in the morning or early PM.

Jeffery Kuesel

Managing Attorney
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(608) 266-6778
jeffery.kuesel@legis.state.wi.us

From: Jensen, Jodi
Sent: Thursday, April 20, 2006 4:52 PM
To: Kuesel, Jeffery
Subject: Changes to LRB 4600/2

Hi Jeff - to follow up on our phone conversation, following are the requested changes:

Page 7 - Lines 20-23 - eliminate the definition of campaign activity and replace it with the following:

Campaign activity means:

Organizing or assisting in the organization of an event on behalf of a political party, legislative campaign committee or personal campaign committee. (We want to cover candidates for state or federal office, political parties, legislative campaign committees or a group that makes expenditures to influence a campaign)
(This should not prohibit a legislative employee from entering campaign events on a legislator's calendar.)

Soliciting or receiving contributions on behalf of a political party...(same as above)

Designing or distributing campaign advertisements paid for by a political party...(same as above)

Designing or distributing campaign brochures, literature, nomination papers or other promotional materials -

whether written or electronic - paid for a political party...(same as above)

Organizing or directing individuals in order to secure voluntary services for a political party...(same as above)

Preparing a budget for a political party...(same as above)

Preparing or participating in polling other than a questionnaire designed by a state legislator to seek input from constituents. (This should include on-line questionnaires that individuals other than constituents can complete.)

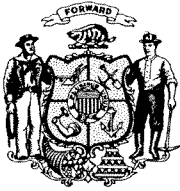
Creating or maintaining a list or database of individuals who have made a financial contribution or provided voluntary services to a political party...

Directing or participating in recruitment of a candidate for elected local, state or federal office.

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

Transporting individuals to a polling place or campaign rally.

Page 8, Lines 17-21 - eliminate the language requiring a finding by the appointing authority and revise line 17 to say something like "and then only after having received approval from his or her appointment authority to use that time."



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4600/23

JTK:kjf:pg

Nov 4/24 8:45AM

\$CS

2005 BILL

SAV
int refer

LPS: Please
fix request
sheet as
shown on request
sheet (under "Extra
copies")

Page cut

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 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 a 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 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 state 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.

In addition, the bill ~~expands certain~~ extends a current restrictions in the civil service law on the political activities of classified employees to apply to all state employees. Specifically, the bill provides that:

1. No state 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 state 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 state employee while on state time or engaged in official duties as an employee.

3. No state 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 state employee who holds an appointive position becomes a candidate 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 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.

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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 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.

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Under the bill, each state agency must pay any fees incurred by state employees in attending these programs.

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:

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1 19.45 (15) No state public official or state employee may knowingly solicit or
2 discourage any political activity by a person who has business before the department
3 served by the official or employee.

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

5 19.48 (9) Administer programs to explain and interpret ss. 11.36, 230.40, and
6 230.405, this subchapter, and subch. III of ch. 13 for state ~~public officials, and for~~
7 ~~elective state officials~~ employees, candidates for state public office, legislative
8 officials, agency officials, lobbyists, as defined in s. 13.62, local public officials,
9 corporation counsels and attorneys for local governmental units. The programs shall
10 provide advice regarding appropriate ethical and lobbying practices, with special
11 emphasis on public interest lobbying. The board may delegate creation and
12 implementation of any such program to a group representing the public interest. The
13 board may charge a fee to participants in any such program. The board shall require
14 attendance of all state employees at programs conducted under this subsection for
15 a minimum number of hours specified by rule of the board during each biennial
16 period. The board shall require each new state employee to attend a program
17 conducted under this subsection within 6 months of beginning his or her

18 employment. Each department shall pay any fees incurred by its employees
19 for attendance at programs for which attendance is required under this
subsection.

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

21 19.53 (6) An order requiring the accused to forfeit not more than \$500 for each
22 violation of s. 19.43, 19.44, or 19.56 (2), not more than \$1,000 for each violation of s.
23 19.45 (5m), (14), or (15), or not more than \$5,000 for each violation of any other
24 provision of this subchapter, or not more than the applicable amount specified in s.
25 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

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1 addition, order the accused to forfeit the amount gained as a result of the violation.
2 In addition, if the board determines that a state public official has violated s. 19.45
3 (13), the board may order the official to forfeit an amount equal to the amount or
4 value of any political contribution, service, or other thing of value that was
5 wrongfully obtained. If the board determines that a state public official has violated
6 s. 19.45 (13) and no political contribution, service or other thing of value was
7 obtained, the board may order the official to forfeit an amount equal to the maximum
8 contribution authorized under s. 11.26 (1) for the office held or sought by the official,
9 whichever amount is greater. The attorney general, when so requested by the board,
10 shall institute proceedings to recover any forfeiture incurred under this section or s.
11 19.545 which is not paid by the person against whom it is assessed.

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

13 **19.579 (title) Civil penalty penalties.**

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

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

16 19.579 (2) Any person who violates s. 19.45 (5m), (14), or (15) may be required
17 to forfeit not more than \$1,000.

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

19 19.58 (1) (a) Any person who intentionally violates any provision of this
20 subchapter except s. 19.45 (5m) or (13) to (15) or 19.59 (1) (br), or a code of ethics
21 adopted or established under s. 19.45 (11) (a) or (b), shall be fined not less than \$100
22 nor more than \$5,000 or imprisoned not more than one year in the county jail or both.

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

24 230.03 (4) Except as provided in s. ss. 230.40 (4), 230.405 (1), and 230.80 (1m),
25 “appointing authority” means the chief administrative officer of an agency unless

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1 another person is authorized to appoint subordinate staff in the agency by the
2 constitution or statutes.

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

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

7 230.40 (1) No person holding a position in the classified civil service may
8 directly or indirectly solicit or receive subscriptions or contributions for any partisan
9 political party or any political purpose while on state time or engaged in official
10 duties as an employee. No person may orally solicit or by letter transmit any
11 solicitation to a state office or be in any manner concerned in soliciting any
12 assistance, subscription, or support for any partisan political party or purpose from
13 any person holding any position in the classified civil service while on state time or
14 engaged in official duties as an employee. No person holding any position in the
15 classified civil service may during the hours when on duty engage in any form of
16 political activity calculated to favor or improve the chances of any political party or
17 any person seeking or attempting to hold partisan political office, nor engage in any
18 political activity when not on duty to such an extent that the person’s efficiency
19 during working hours will be impaired or that he or she will be tardy or absent from
20 work. ~~Any violation of this section is adequate grounds for dismissal.~~

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

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1 and responsibilities of such office. In this subsection, "candidate" has the meaning
2 given in s. ~~11.01(1)~~. ^{230.405(1)(c)}

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

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

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

13 230.40 (7) Any violation of this section by a person who holds an appointive
14 position in the civil service is adequate grounds for discipline, including dismissal.

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

16 **230.405 Campaign activity.** (1) In this section:

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

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

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

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

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1 (e) “Local office” has the meaning given in s. 5.02 (9).

2 (f) “National office” has the meaning given in s. 5.02 (12).

3 (g) “State agency” has the meaning given in s. 20.001 (1).

4 (h) “State office” has the meaning given in s. 5.02 (23).

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

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

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

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

15 (b) While on any form of paid leave, including compensatory time granted for
16 time worked in excess of normal hours, other than annual leave or paid holiday leave
17 and then only after having ^{received approval from his or her appointing} ~~submitted to his or her appointing authority a request to~~
18 ~~use that time and obtaining from the appointing authority a written finding that the~~
19 ~~use of the leave time for campaign activity will not be contrary to the efficient~~
20 ~~provision of public services by the state agency for which the person performs~~
21 ~~services.~~ ^{authority to use the leave for that purpose.}

22 (c) During the established hours of employment for the person, unless the
23 person has submitted to his or her appointing authority a request to work variant
24 hours or to take unpaid leave and has obtained from the appointing authority a
25 written finding that the use of variant hours or the taking of unpaid leave will not

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1 be contrary to the efficient provision of public services by the state agency for which
2 the person performs services. For an employee of the legislature under s. 13.20, the
3 appointing authority must find that the use of variant hours or the taking of unpaid
4 leave will not be contrary to the efficient provision of public services by the house or
5 houses for which the employee performs services.

6 (5) No decision affecting the continued employment of a person holding a
7 *an appointive* position in the civil service, or affecting the salary, benefits, hours, terms, or other
8 conditions of employment, *of such a person* may be based in any manner or to any degree on the
9 failure of the person to participate in campaign activity or the failure to make a
10 contribution.

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

13 (END)

INS 7-20:

(b) "Campaign activity" means:

1. Organizing or assisting in the organization of an event on behalf of a candidate, political party, or political committee, but not including recording the date of an event.
2. Soliciting or receiving a contribution on behalf of a candidate, political party, or political committee.
3. Designing or distributing an advertisement paid for by a candidate, political party, or political committee.
4. Designing or distributing brochures, literature, nomination papers, or other promotional materials, whether in electronic or nonelectronic form, that are paid for by a candidate, political party, or political committee.
5. Organizing or directing individuals for the purpose of securing voluntary services on behalf of a candidate, political party, or political committee.
6. Preparing a budget for a candidate, political party, or political committee.
7. Preparing or participating in the conduct of polling relating to political issues, other than polling conducted by a state legislator to seek input from constituents.
8. Creating or maintaining a list or database of individuals who have made a contribution or provided voluntary services to a candidate, political party, or political committee.
9. Directing or participating in the recruitment of a candidate for national, state, or local office.

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

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

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

(d) "Contribution" has the meaning given in s. 11.01 (1) ^{e6} and 2 USC 431 (8).

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

(f) "Legislative campaign committee" has the meaning given in s. 11.01 (12s). ✓

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

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

(i) "Personal campaign committee" has the meaning given in s. 11.01 (15) and includes a federal candidate committee as defined in s. 11.06 (3m) (a). ✓

(j) "Political committee" means any person other than an individual and any combination of 2 or more persons, permanent or temporary, that makes or accepts contributions or makes disbursements, whether or not engaged in activities that are exclusively political, and includes a legislative campaign committee, a ^{personal campaign} ~~political party~~ committee, and a political committee as defined in 2 USC 431 (4). ✓

(k) "Political party" has the meaning given in s. 5.02 (13) and 2 USC 431 (13). ✓

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

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

Barman, Mike

From: Moore, Kevin
Sent: Monday, April 24, 2006 8:52 AM
To: LRB.Legal
Subject: Draft Review: LRB 05-4600/3 Topic: Political activities by public employees

ASAP.

Please Jacket LRB 05-4600/3 for the ASSEMBLY.

ccc to

Heith

LRB correction

2005 AB-1189

#. Page 5, line 8: delete ", (14), "

Note: ^{These} ^s ~~this~~ provision^s referenced a subsection that does not exist in the ~~draft~~ bill or in current law.

#. Page 4, line 14: delete ", (14), "

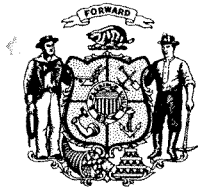
JFK

#. Page 5, line 12: delete "to" and substitute "and".

LRB-4600/3ccc-1

KJF





State of Wisconsin
2005-2006 LEGISLATURE

CORRECTIONS IN:

2005 ASSEMBLY BILL 1189

Prepared by the Legislative Reference Bureau
(April 25, 2006)

1. Page 4, line 14: delete “, (14),”.
2. Page 5, line 8: delete “, (14),”.

NOTE: These provisions reference a subsection that does not exist in the bill or in current law.

(END)