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Details: Informational Hearing: Employment Practices, University of Wisconsin System

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee on Audit...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

**Asbjornson, Karen**

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**From:** Matthews, Pam  
**Sent:** Thursday, September 08, 2005 10:51 AM  
**To:** Asbjornson, Karen; Chrisman, James; Shannon, Pam  
**Subject:** FW: UW Employment memo  
**Attachments:** MADI\_583828\_1.DOC\$

FYI...As Sue mentioned she was suppose to meet with Regent President Walsh and others on Tuesday, but that never occurred due to the length of the Colleges and Universities hearing. I asked for the stutes we were to discuss at that meeting and this was what we received...

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

**From:** Laskis, Kathleen A. [mailto:klaskis@foley.com]  
**Sent:** Wednesday, September 07, 2005 5:30 PM  
**To:** Matthews, Pam; Rep.Jeskewitz  
**Subject:**

I am forwarding a copy of the memo prepared by one of our labor lawyers explaining the difficulty of terminating an employee based upon a criminal charge (involving an arrest) and likewise the need to establish a relationship between the charge and the job. Recent interpretations of the statute by the LIRC have resulted in even greater restrictions on employers attempting to promptly address these issues which I believe the Legislature did not intend. As to the University of Wisconsin System, it also is restricted by internal rules and statutory provisions related to tenure and academic staff.

I look forward to further discussing these matters with you.

David G. Walsh

<<MADI\_583828\_1.DOC☐>>

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9/8/2005



FOLEY & LARDNER LLP  
ATTORNEYS AT LAW

## MEMORANDUM

CLIENT-MATTER NUMBER  
999999-9999

**TO:** David Walsh  
**FROM:** Michael H. Auen  
**DATE:** September 1, 2005  
**RE:** Arrest and Conviction Discrimination Statute

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You asked that I provide you with some information on the provisions of the Wisconsin Fair Employment Act that prohibit arrest and conviction record discrimination.

1. The Statutory Provisions.

The Wisconsin Fair Employment Act, Wis. Stats § 111.31 *et seq.* prohibits discrimination on various grounds—race, sex, creed, color, disability, marital status, national origin,<sup>1</sup> *arrest record, conviction record*, membership in the national guard or state defense forces, or the use or nonuse of lawful products off the employer's premises during non working hours.<sup>2</sup>

The statute defines arrest and conviction record discrimination as:

(1) (a) Employment discrimination because of arrest record includes, but is not limited to, requesting an applicant, employee, member, licensee or any other

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<sup>1</sup> From a budget and economics perspective, it makes little sense for the State to duplicate the federal laws on employment discrimination. While the EEOC and the Equal Rights Division of the Department of Workforce Development have a work sharing agreement which is designed to avoid duplication of effort, the State is still employing people to deal with discrimination claims that the federal government has an agency to deal with. A change that said the State would not exercise jurisdiction over any employer covered by federal law as to any alleged discrimination covered by Title VII, the ADEA, or the ADA should save money and resources.

<sup>2</sup> This lawful products provision may be opaque to you. It was designed to prohibit the discharge of those who smoke cigarettes after hours, but, of course, has a much broader sweep.

individual, on an application form or otherwise, to supply information regarding any arrest record of the individual except a record of a pending charge, except that it is not employment discrimination to request such information when employment depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, administrative regulation or established business practice of the employer and the individual may not be bondable due to an arrest record.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of an arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity.

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or

2. [Relating to bonding]

(cg.) [Relating to private detectives]

(cm) [Relating to installers of burglar alarms]

(cs) [Relating to alcohol licenses of vending machines]

(cv) [Relating to civil service and draft registration]

Wis. Stats. § 111.335. (Emphasis added)

There is also a definition of arrest record:

*“Arrest record”* includes, but is not limited to, information indicating that an individual has been questioned, apprehended, taken into custody or

detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

Wis. Stat. § 111.32(1).

There is a similar definition for “conviction record.”

An employer may *suspend* an employee who is arrested for a crime which involves circumstances substantially related to the circumstances of the particular job. An employee cannot be discharged based on an arrest record, even if the circumstances of the charge are substantially related to his or her job.

## 2. Labor and Industry Review Commission.

The principal interpreter of the WFEA is the Labor and Industry Review Commission (LIRC). While there is judicial review of LIRC decisions, the courts are required to act with deference to almost all LIRC decisions. Only when LIRC does not have experience with a particular statute and is writing on a clean slate or LIRC's interpretation conflicts with other statutes, do the courts have the ability to use a review standard that does not involve substantial deference to LIRC.

LIRC has interpreted the WFEA's provisions on arrest and conviction record discrimination to prohibit an employer from acting on information obtained by law enforcement authorities in connection with their arrest of an individual. If an employer is going to act on the conduct underlying the arrest, it must do so based on an independent investigation.

Consider *Bettors v. Kimberly Area Schools*, ERD Case No. 200300554 (LIRC 7-30-04). The school discharged Bettors from his maintenance job after discovering his drug use, his lies about sick leave and his arrests for drug possession and sale. He sued claiming that his discharge was based on his arrest record. The school defended saying that the discharge was based on its own investigation of the facts.<sup>3</sup> This defense was recognized

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<sup>3</sup> Bettors also protested his discharge under the union contract and his case was taken to an arbitrator, who ruled the discharge was proper. Based on this award the ALJ, without a hearing, dismissed the arrest record complaint. LIRC reversed and declined to give the arbitrator's award preclusive effect on two different grounds. First, it decided that labor arbitration awards should not be given preclusive effect as to discrimination claims. That part of the decision, though perhaps contrary to first impressions, is not inconsistent with the preclusive effect given labor arbitration decisions in some private sector settings. Second, LIRC decided that the arbitrator considered information provided by arresting authorities and that was inconsistent with the WFEA.

in *Onalaska v. LIRC*, 120 Wis. 2d 363, 354 N.W. 2d 223 (Ct. App. 1984) and is called the *Onalaska* defense.

In the *Besters* case LIRC describes what constitutes an independent investigation. Prior LIRC decisions had said that an admission by the employee, a good faith belief that the employee engaged in the misconduct that arises from something other than the fact of arrest, statements by witnesses, or observing the same conduct the police see are independent sources of information and do not indicate the employer was relying on the arrest in making a decision. *Besters* says:

... the commission chooses not to be guided by *Ponto* and *Springer*. As the *Onalaska* decision notes, under the WFEA the term "arrest record" includes, but is not limited to "information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony .... Things such as police reports from the arresting authority, the criminal complaint and statements made by or other information provided by the arresting or prosecuting authority, are all part and parcel of the "arrest record" itself. The approach described in [two prior LIRC cases] pursuant to which the question to be resolved is whether the employer's conclusion that the employee engaged in unacceptable behavior was based on "information of the arrest and of the arresting authorities", is in the commission's view the proper approach.

*Besters* at p 8.

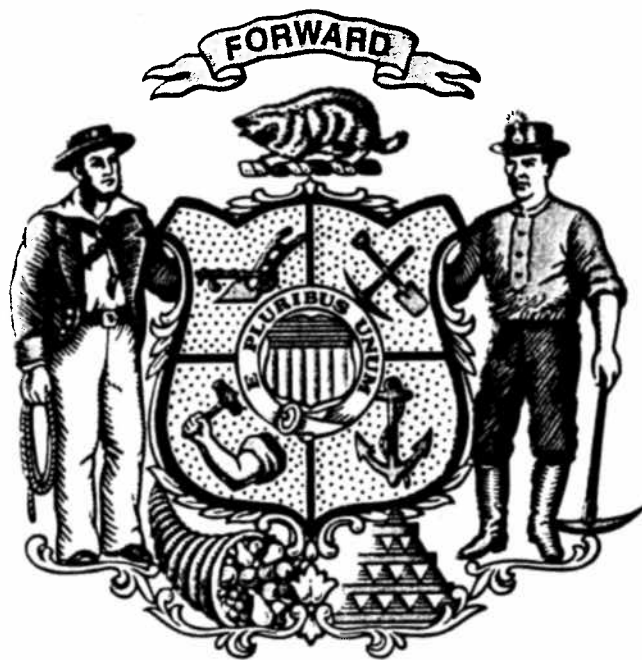
The *Besters* case was remanded for a full hearing to determine if the school's decision (its subjective motivation) to terminate the employee was based on the information from the arresting authorities or independent sources. One problem with this approach, of course, is that almost all employees who are arrested and have their arrest publicized or disclosed can now get a full hearing by simply alleging that the fact or arrest or information about the arrest was considered by the employer.

In my opinion, this makes for an easy way for an employee to avoid or delay discharge. Raising the claim of arrest record discrimination forces the employer to continue the employee is a suspension status if it wants to avoid a full hearing over its motivation before the LIRC. The practical and economically motivated employer will wait for the conviction and discharge then. If there is no conviction, there will be other problems. The failure to act

promptly on the misconduct and waiting for the conviction status will likely be cited by LIRC as evidence that the discharge is really motivated by the arrest and not the misconduct.

3. Another Oddity.

There is one other oddity of this statute that you should know about. The definition of "arrest record" is so broad that being arrested for driving while intoxicated under Wis. Stat. § 346.63 is covered as an "arrest record," but is not considered a "criminal charge" under the statute for purposes of being able to lawfully suspend an employee. The results are predictable. An employee arrested for OMVWI is considered to have an arrest record, but the employer cannot suspend him from his driving job because the 'affirmative defense' allowing suspension only applies to a criminal charge and first offense OMVWI is a civil offense. Amazing logic for a statute and a state purportedly interested in dealing seriously with drunk driving. See *Gustafson v. C.J.W. Inc.* ERD Case No. 865041 (LIRC 1989)





## Asbjornson, Karen

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**From:** Matthews, Pam  
**Sent:** Friday, September 09, 2005 9:04 AM  
**To:** Asbjornson, Karen; Chrisman, James; Shannon, Pam  
**Subject:** FW: From WisPolitics main website

FYI...

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

**From:** Handrick, Diane  
**Sent:** Thursday, September 08, 2005 4:57 PM  
**Cc:** SueHome; Matthews, Pam  
**Subject:** From WisPolitics main website

*For the past month, newspaper, radio and television reports have blasted the University of Wisconsin-Madison for the way in which it has addressed the following legal cases. The majority of the coverage has been inaccurate and incomplete. Tonight, the Fox News Channel program "The O'Reilly Factor" will take another shot at the university. UW-Madison officials believe the public is entitled to an accurate report that outlines the status of these cases.*

*The following statement has been shared Wednesday with Fox News.*

September 7, 2005

Status report on UW-Madison employees convicted of felonies

UW-Madison has been working diligently in recent months to investigate and take action on three cases involving university employees who were convicted of serious felonies. In each case, there were repeated calls from state legislators and the media that the employees be immediately fired.

State law prohibits the university from immediately firing any employee based on a court conviction alone, and requires the university to investigate and demonstrate that the offense is related to their employment. The Wisconsin Department of Workforce Development (DWD) states that employment discrimination on certain bases, including conviction records, is prohibited.

- The [law can be accessed here](#)
- See also, [DWD's publication on arrest and conviction discrimination](#)

In all three of these cases, the university has responded by appointing an investigator to determine whether there are legal grounds for dismissal. An update on each case, as of Sept. 7, follows:

- **Steven Clark:** The human oncology professor is serving a one-year jail term for felony stalking. He was not granted work release privileges. He has been incarcerated in the Dane County Jail since June 23. Clark is on leave without pay pending the completion of the internal investigation, which will be concluded within a week. After consultation, the UW-Madison provost will then decide whether to recommend firing Clark.

At no time was Clark on "paid leave" after his conviction. He was required to exhaust previously earned vacation time that was legally available to him, regardless of status, up to and including an employee's death. Under present law, there is absolutely no circumstance in which the university can take away previously earned vacation. Clark's vacation time was exhausted on Sept. 6.

- Roberto Coronado: On March 28, 2005, physiology professor Roberto Coronado pled no contest and was found guilty in Dane County Circuit Court of three felony counts of repeated sexual contact with a child. The UW-Madison investigation into Coronado was completed in June and Provost Peter Spear recommended that Coronado be fired. Again, at no time was he on "paid leave" after his conviction. He is being required to exhaust previously earned vacation -- which will expire on Sept. 12 -- and begin unpaid leave while the case goes through the appeals process and is ultimately voted on by the UW System Board of Regents.
- Lewis Keith Cohen: The comparative literature professor was sentenced to 30 days in jail and two years probation on a felony conviction of exposing a child to harmful material. His sentence began Aug. 26. The Milwaukee County judicial system also granted Cohen work release privileges during his 30-day sentence. Cohen is not teaching any courses in the Fall 2005 semester at UW-Madison. The university investigation into Cohen's conduct will be completed within the next week, and will be the basis for Provost Spear's decision on whether to recommend Cohen's firing.

## **Local menu**

*Diane Handrick*

*Office of Rep. Sue Jeskewitz  
608-266-3796*

*1-888-529-0024 toll free in Wisconsin only*

*314N, State Capitol  
Madison WI 53708*

*Have you looked for unclaimed property in your name? [www.missingmoney.com](http://www.missingmoney.com)*

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Development

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## Fair Employment Law

Sections 111.31-111.395 of the Wisconsin Statutes provides that it is unlawful for employers, employment agencies, labor unions and licensing agencies to discriminate against employees and job applicants because of any of the following:

(Follow the links to additional information on that subject.)

Age, Ancestry, Arrest Record, Color, Conviction Record, Creed, Disability, Genetic Testing, Honesty Testing, Marital Status, Membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state, National Origin, Pregnancy or Childbirth, Race, Sex, Sexual orientation, Use or nonuse of lawful products off the employer's premises during nonworking hours. Employees may not be harassed in the workplace based on their protected status nor retaliated against for filing a complaint, for assisting with a complaint, or for opposing discrimination in the workplace.

**There is a 300-day time limit for filing a discrimination complaint.**

- [How to file a Fair Employment Law Complaint](#)
- [Additional Fair Employment Law References](#)

Updated May 03, 2005 by the [Equal Rights Division](#)  
For additional information contact the Division at [ER Information](#).

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## Arrest and Conviction Records under the Law

### Equal Rights Publication ERD-7609-P

[For Spanish Version](#)

**PDF versions of this publication.** [To obtain the PDF Reader Click Here.](#)

- [In English](#)
- [In Spanish](#)

### **How does the law (Wisconsin Fair Employment Law, Wisconsin Statutes. 111.31-111.395) define Arrest record?**

Arrest record is defined as information that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense by any law enforcement or military authority.

### **How does the law define conviction record?**

Conviction record is defined as information indicating that a person has been convicted of any felony, misdemeanor or other offense, has been judged delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned or paroled by any law enforcement or military authority.

### **Can an employer discharge a current employee because of a pending criminal charge?**

No. An employer may, however, suspend an employee, if the offense-giving rise to the pending criminal charge is substantially related to the circumstances of the particular job or licensed activity.

### **Can an employer refuse to hire a person because of a record of arrests that did not lead to conviction?**

No. An employer is not allowed to ask about arrests, other than pending charges.

### **What can an employer ask regarding arrest and conviction records?**

An employer may ask whether an applicant has any pending charges or convictions, as long as the employer makes it clear that these will only be given consideration if the offenses are substantially related to the particular job. An employer cannot, legally, make a rule that no persons with conviction records will be employed. Each job and record must be considered individually.

**Can an employer refuse to hire an applicant because of a lengthy record of convictions or conviction for a crime the employer finds upsetting?**

An employer may only refuse to hire a qualified applicant because of a conviction record for an offense that is substantially related to the circumstances of a particular job. Whether the crime is an upsetting one may have nothing to do with whether it is substantially related to a particular job.

**What is meant by substantially related?**

The law does not specifically define it. The "substantially related" test looks at the circumstances of an offense, where it happened, when, etc. - compared to the circumstances of a job - where is this job typically done, when, etc. The more similar the circumstances, the more likely it is that a substantial relationship will be found. The legislature has determined that certain convictions are substantially related to employment in child and adult care giving programs regulated by the Department of Health and Family Services.

**What if an employer believes a pending charge or conviction is substantially related but the employee or applicant believes it is not?**

In this situation, the employee or applicant may file a complaint and the Equal Rights Division will make a determination as to whether there is a substantial relationship, with either party having the right to appeal the decision.

**Can an employer refuse to hire or discharge a person with a pending charge or conviction because other workers or customers don't want the person with a conviction there?**

No. The law makes no provision for this type of problem. The employer must show that the conviction record is substantially related to the particular job. Co-worker or customer preference is not a consideration.

**Is it a violation of the law if the applicant's conviction record is a part of the reason for not being hired, but not the whole reason?**

Yes. A conviction record that is not substantially related to the particular job should be given no consideration in the hiring process.

**How should an applicant answer questions on an application regarding conviction record?**

It is best to answer all questions on an application as honestly and fully as possible, and to offer to explain the circumstances of the conviction to the employer.

**Should an employer ask about the circumstances of a conviction during an interview?**

Yes. An employer must obtain enough information to determine if the conviction record is substantially related to the job. If the employer decides there is a substantial relationship, employment may be refused but the employer must be prepared to defend the decision if the applicant believes there is not a substantial relationship and files a complaint.

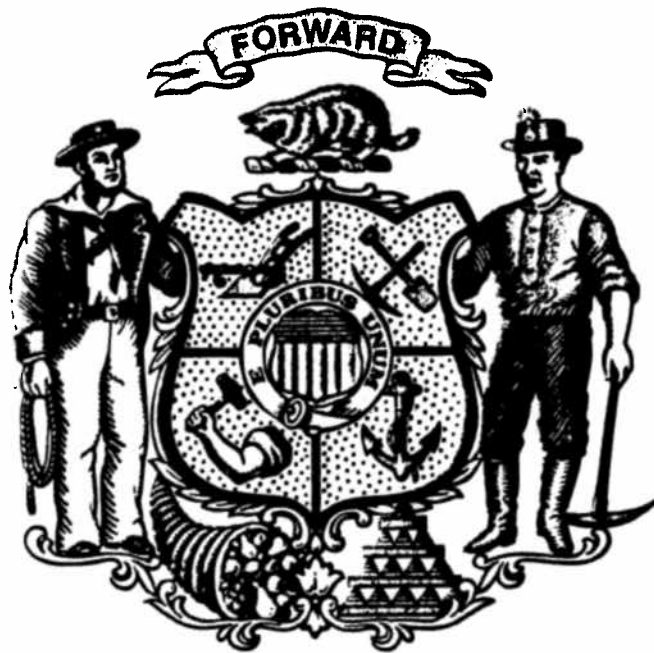
**What should a person do if refused employment or discharged because of an arrest or conviction record (that is not substantially related)?**

Complaints about violations of the law protecting persons from discrimination because of arrest and/or conviction may be filed with:

<b>STATE OF WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT EQUAL RIGHTS DIVISION CIVIL RIGHTS BUREAU</b>	
201 E WASHINGTON AVE ROOM A300 PO BOX 8928 MADISON WI 53708	819 N 6th ST ROOM 255 MILWAUKEE WI 53203
Telephone Number: (608) 266-6860 TTY Number: (608) 264-8752	Telephone Number: (414) 227-4384 TTY Number: (414) 227-4081
<a href="#">Equal Rights Division Web Site</a>	
<b>The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format, please contact us.</b>	

This is one of a series of pamphlets highlighting programs of the Wisconsin Department of Workforce Development. It is intended to provide only a general description, not a legal interpretation.

Updated August 23, 2005 by the [Equal Rights Division](#)  
For additional information contact the Division at [ER Information](#).





# WISCONSIN LEGISLATURE

P.O. Box 7882 • Madison, WI 53707-7882

September 13, 2005

Rep. Suzanne Jeskewitz, Co-Chair  
Joint Legislative Audit Committee  
Room 314 North  
State Capitol

Sen. Carol Roessler, Co-Chair  
Joint Legislative Audit Committee  
Room 8 South  
State Capitol

Dear Co-Chairs Jeskewitz and Roessler:

We are writing to you about the pending legislative audit of the UW you are considering after a summer of embarrassing examples where tax dollars have been wasted on convicted felons, AWOL administrators, and indefensible employment practices that have angered our constituents. We applaud your interest in reforming these abuses, and not accepting the UW's defense that "we need to do this to stay competitive" or "we didn't know about this."

While your Committee contemplates the scope of the audit, we hope you will specifically focus on two areas, rather than do a broad-based look at all aspects of the UW's employment procedures. It is our belief that you should authorize an audit that examines two underreported areas we believe have been exploited by the UW over the years. The first deals with the so-called consulting positions that could potentially be costing taxpayers millions of dollars for little or no work in return.

Consider this – an August 13<sup>th</sup> Milwaukee Journal Sentinel column reported that there are at least 160 people employed by the UW who claim consultant as their job title. A retiring UW-Madison Provost moving to Arizona was poised to earn a six figure salary as a "consultant" before the UW pulled the plug on his golden parachute. In addition, remember that upon embattled UW-Madison administrator Paul Barrows' return after a seven-month hiatus, he was awarded the title "consultant" to the Chancellor, with no clear job description. That, in a nutshell, is the problem with these consulting positions. There is no scrutiny or accountability. Another example is the UW's use of consultants to attempt to salvage the APBS payroll software program that has already cost taxpayers \$25 million. Taxpayers deserve better.

- How many consulting positions are there in the UW system?
- The growth in the number of consultants in the past decade?
- How many of the consulting positions are held by former UW employees?
- Who authorizes the hiring of the consultants?
- Can the UW produce documentation to show what taxpayers receive for the consulting services?



The second issue that we would like your Committee to address is the issue of the workload of those UW employees who are in back-up jobs. The UW recently reported that there are 1,092 employees who have been afforded back-up positions. It is unclear how many of those 1,092 are actually in their back-up positions, and how many simply have them at their disposal when needed. For those in back-up jobs, since in most cases they are receiving 82% of their administrative salaries, it is important to make sure that they're earning those hefty salaries in their non-administrative positions. We have concerns that there is a lack of accountability (that they're actually reporting to work, have regular work schedules, have assigned duties, etc.) Our fear is that they're earning administrative salaries for doing little or no work in the back-up jobs.

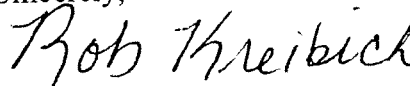
Among the questions a legislative audit should shed light upon are:

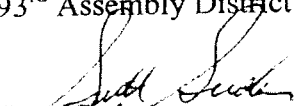
- How many UW employees have actually utilized their back-up positions?
- What is the workload of those that have taken their back-up positions?
- Does activating the back-up positions lead to other layoffs, or does it simply add to the bureaucracy and the overall number of UW employees?

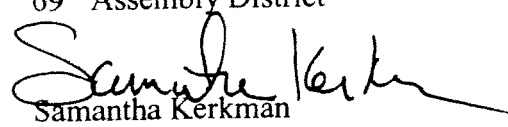
We welcome the UW's call for an audit and hope the agency is serious about better managing tax and tuition dollars after some of the negative national attention these abuses have brought. But it's important that your audit focus on these areas that will shed new light on UW employment practices, and not simply reaffirm what we already know.

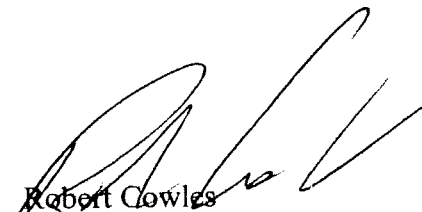
Thank you for your consideration.

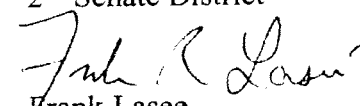
Sincerely,

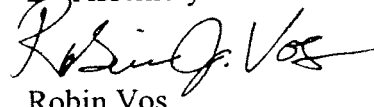
  
Rob Kreibich  
State Representative  
93<sup>rd</sup> Assembly District

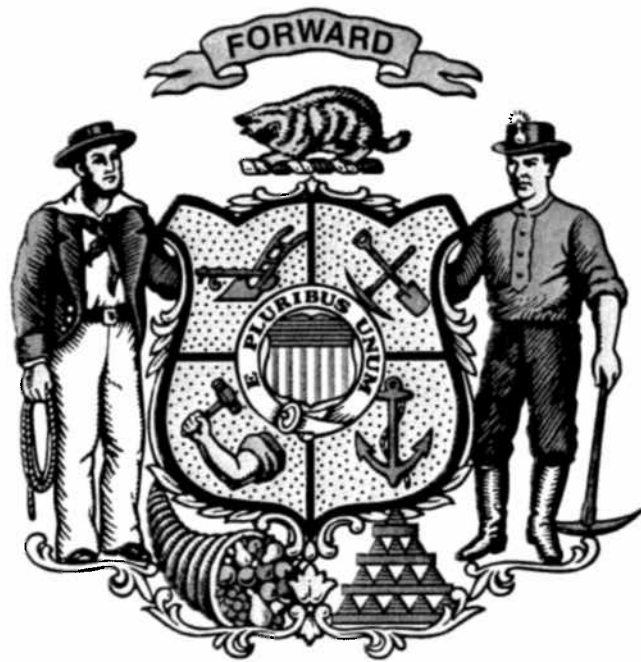
  
Scott Suder  
State Representative  
69<sup>th</sup> Assembly District

  
Samantha Kerkman  
State Representative  
66<sup>th</sup> Assembly District

  
Robert Cowles  
State Senator  
2<sup>nd</sup> Senate District

  
Frank Lasee  
State Representative  
2<sup>nd</sup> Assembly District

  
Robin Vos  
State Representative  
63<sup>rd</sup> Assembly District



**Testimony**  
**Joint Legislative Audit Committee**  
**UW System President Kevin P. Reilly**  
**Tuesday, September 13, 2005**

Thank you, \_\_\_\_\_. Good morning. I want to thank the Committee Co-Chairs, Senator Roessler and Representative Jeskewitz, and all members of the Joint Legislative Audit Committee, for the opportunity to continue the dialogue on the important issues before us.

When I took office a year ago, I pledged that the University of Wisconsin System would be transparent in all that it does, and be diligent and accountable to our stakeholders. I remain committed to those goals and take our role and responsibilities very seriously. That's why I asked you to approve an audit of our compliance with state and university employment policies and practices. We will work with you and the Legislative Audit Bureau and will provide access and as much assistance as we can. I will say more about this audit request later.

During my testimony, I will be addressing the following:

- The report we submitted to the co-Chairs on September 2 concerning so-called "back-up" appointments in the university;
- An update on our internal reviews of issues that have received attention this summer;
- Actions taken by the UW System Board of Regents just this past Friday that are intended to jump start reforms and clarifications of our employment policies and practices;
- Responses to your questions about these and other issues, including our request for an audit.

Let me point out that I am joined today by my colleagues, associate vice president for human resources, Al Crist; director of operations review and audit, Ron Yates; and general counsel, Patricia Brady. They'll be available to help in the question and answer period as needed.

As I know you recognize, the vast majority of our 33,000 university employees are dedicated, hard-working professionals. We value and respect them. I am proud of them and all that they do for the Wisconsin residents you represent.

The personnel system in which they work is a complex one that involves state employment policies and protections, shared governance with elected faculty and staff bodies, and other accepted state government and academic policies and practices. Much of what we do in our personnel system is set down in state statutes.

### **September 2, 2005 Report**

On September 2, we submitted a report in response to three questions the co-chairs posed in a letter dated July 25.

- In response to the first question, we pointed out that 1,092 individuals, representing 3.3 percent of the total 33,063 UW System employees, serve in limited (“at will”) appointments in which they have statutory rights to a “back-up” position as required under Chapter 36 of the Wisconsin Statutes, or in which they have received such a position contractually. Of this group, 64 percent, or 698 individuals, have statutory rights to a “back-up” position.
- In response to the second question, we indicated that 79 UW System employees returned to “back-up” positions during the period July 1, 2002 through June 30, 2005. Of this group, 39 returned to a tenured faculty appointment; 39 returned to either a previous academic staff position or were assigned new duties by the appointing authority, and one individual returned to a classified appointment. Individuals may return to their positions for a variety of reasons, including budgetary reasons, new leadership in a unit, performance issues, or at the employee’s own request. Such actions are intended to deploy and engage the best leadership talent and expertise university leaders have available at the particular time.
- The third question from the co-chairs asked us to identify employees who “were granted paid leave after resigning” between July 1, 2002 and June 30, 2005. Technically, there are no such individuals, since after the effective date of a resignation one is no longer employed, and thus could not be on leave. It is not our practice to pay people after they resign from the university, or are removed from any position, except where contractual obligations require it, or other unique circumstances suggest that it is the most cost effective way to resolve disputes and avoid more costly litigation.

Regarding this point, the Board adopted on Friday a requirement that any employees returning to the faculty and receiving transition time to prepare to teach must provide a documented work product for the period of the transition. In addition, the Board supported my directive that all UW institutions must seek my prior approval for any settlement involving the termination of a limited appointee. I will report these arrangements to the Board of Regents.

### **Internal Reviews**

You also asked me to provide information on any internal reviews we are conducting of the university's employment practices.

- One review underway involves former UW-Madison vice chancellor Paul Barrows. Judge Susan Steingass has completed an investigation of all alleged violations of applicable rules, policies, and procedures on the part of Dr. Barrows related to his employment at UW-Madison, as well as the university's application of leave policies. UW-Madison Provost Peter Spear and I are reviewing her report and will make a decision on an appropriate course of action. Once the review is completed and all required notifications have been made, the report will be publicly available. I expect this process to be completed by September 23.
- We also learned of personnel settlements decisions made at UW-Milwaukee and UW-Green Bay regarding limited appointees at those campuses. I am legally bound to honor confidentiality and non-disparagement provisions in these agreements. I will say, however, that those matters did not come to me and my approval was not sought or required. In the future, as I noted earlier, I will require the institutions to submit these requests to me for my approval.
- Others have questioned the appointment of the housekeeper at Brittingham House, the official required residence of the system president. This position will be appraised in light of the Regents' overall review of employment policies and practices which I will describe in a moment. I fully expect as a result to make changes in the nature of that position.
- The Board of Regents and I share the deep concerns of Wisconsin citizens and legislators over the criminal activity of any state or university employees. I believe that we need to act more expeditiously than we sometimes have in these cases. As you'll hear as I now review with you the

recent actions on employment issues taken by the Regents and the UW System, we will be doing just that.

### **Actions Taken by Board of Regents and UW System**

Just last week, the Board of Regents engaged in an intense and extensive discussion of the employment policies and practices within the University of Wisconsin System. I'd like to walk you through the substance of the resolution they passed, which comprises eight specific actions.

First, the Board of Regents supported my suspension of the practice of granting administrative back-up appointments for new employees, and the granting of further indefinite academic staff back-up appointments, unless I otherwise approve. This suspension will remain in effect until lifted by the Board. With input from appropriate governance groups, we will review position titles designated as limited appointments and consider the practice of negotiating fixed-term contracts for administrators in lieu of limited-term appointments. We will report on that assessment to the Board of Regents no later than November 2005.

Second, as I mentioned earlier, the Board of Regents and I share the deep concerns of citizens of the state and legislators over the criminal activity of any of our employees. The Board has directed that the System Administration establish policies and procedures to assure the public and the Legislature that any employee charged with a felony will be immediately investigated and that disciplinary action, if warranted, will be determined in a timely manner. If such policies and procedures are precluded by state law, the Board of Regents and I will work with the Legislature to enact appropriate changes.

Third, all UW institutions shall be required to seek my approval for any settlement involving the termination of a limited appointee. I will report such settlements to the Board of Regents.

Fourth, UW System Administration shall revise its policy to ensure that when administrators return to their faculty position, they will be compensated at a salary rate consistent with other faculty members of the same rank in the department, considering factors normally used when setting faculty salaries. The UW System Office of Human Resources shall approve all such salaries and justifications before they are finalized.

Fifth, all UW institutions shall require that employees who return to the faculty from an administrative position, and are offered transition time to prepare

to teach, provide the equivalent of a sabbatical proposal and subsequent report of work accomplished during the transition. The transition period should be no longer than one academic semester. If the individual has served in a limited position for five or more years, we may allow up to two academic semesters.

Sixth, UW System Administration will consult with UW institutions to develop a revised sick-leave policy by October 1. This policy will specify the time period after which we will require a health professional's certification for use of sick leave.

Seventh, the Board of Regents will review and approve as appropriate the total compensation package for the President and each Chancellor.

Lastly, following Sarbanes-Oxley regulations, I will review and prepare for the Board a recommendation on whether the internal audit function is sufficient. I will also consider whether the System Auditor shall report directly to the President and the Board.

Some of the actions approved by the Board will result in immediate, permanent changes in our current employment policies and practices. Others will require additional work before we implement permanent changes. Still others, such as the policy on reviewing the conduct of any of our employees charged with criminal activity, may require appropriate changes to current law.

Yet as I told the Regents at the beginning of their conversation on this subject last week, I believe we need to take actions that will restore the public's confidence that their university system is open, accountable, and a wise steward of public resources.

We need to "fix" those aspects of our policies and practices that we determine need fixing.

We need to employ "best practices" that safeguard the interests of our citizens, students, employees, and stakeholders.

And we need to do everything we can to ensure that our great university system remains competitive with its peers throughout the nation, and the world.

The Board of Regents and I are making substantial progress in tightening up our employment practices. These reforms will strengthen how we attract top-quality employees, address personnel problems, and respect the rights of those who

work in public university service. We believe the public and legislature will benefit from an independent verification that we are complying with statutory requirements, and state and university employment rules and regulations.

Therefore, we look forward to the Legislative Audit Bureau audit I requested to help us provide the public with this assurance.

I want us to have a thorough, open, and honest assessment of these issues. And to emphasize what's at stake in these deliberations, I want you to know that we are addressing all of the above while we welcome more than 160,000 students to our campuses, conduct internationally-recognized research, boost the Wisconsin economy, and step up to do as much as we can to assist the victims of Hurricane Katrina.

In closing, I am optimistic that we will get this done, and done right. Thank you for your time and attention. I welcome your questions and advice.





Board of Regents

Review of Employment Policies and Practices

BUSINESS AND FINANCE COMMITTEE

Resolution I.2.c.

The Board of Regents recognizes the need to review and reform the employment policies and procedures within the University of Wisconsin System. Given that recognition, no new concurrent or "back-up" appointments will be granted until the Regents are satisfied that processes are in place to ensure two principles are being followed: 1) No one will be paid for not working; and 2) People will be paid at a rate commensurate with their current job, not any prior one.

Therefore, upon the recommendation of the President of the UW System and the Business and Finance Committee,

(1) The Board of Regents supports the President's suspension of the practice of granting administrative back-up appointments for new employees and the granting of further indefinite academic staff back-up appointments unless approved by the UW System President. This suspension will remain in effect until lifted by the Board of Regents. With input from appropriate governance groups, position titles designated as limited appointments shall be reviewed, and the practice of negotiating fixed-term contracts for administrators in lieu of limited term appointments shall be considered. A report on that assessment will be presented to the Board of Regents no later than its November, 2005 meeting;

(2) Because the Board of Regents shares the deep concerns of citizens of the state and legislators over the criminal activity of any of our employees, the Board of Regents directs and requires that the UW System Administration determine and establish policies and procedures to assure to the public and the Legislature that any employee charged with a felony will be immediately investigated and disciplinary action, if any, will be determined in a timely manner. In the event such policies and procedures are precluded by applicable law, the Board of Regents and the UW System President will work with the Legislature to enact appropriate changes to the law to effectuate the intent of this resolution. Nothing herein shall preclude institutions from otherwise following normal disciplinary procedures;

(3) All UW institutions shall be required to seek approval from the UW System President for any settlement involving the termination of a limited appointee. Such settlements shall be reported to the Board of Regents;

(4) UW System Administration shall revise its policy such that when administrators return to their faculty position, they will be compensated at a salary rate consistent with other faculty members of the same rank in the department (when considering years of service, previous salary as a faculty member, length of time served as an administrator and other factors normally considered when setting faculty salaries). The UW System

Office of Human Resources shall approve all such salaries along with appropriate justification prior to implementation;

(5) All UW institutions shall require that employees who are returning to the faculty from an administrative position, and are being offered transition time to prepare to teach, shall provide the equivalent of a sabbatical proposal and subsequent report of work accomplished during the transition. The transition period should be no longer than one academic semester unless the person has served in a limited position for five or more years, whereby two academic semesters may be allowed;

(6) UW System Administration, in consultation with UW institutions, shall develop a revised sick leave policy by October 1, 2005 that specifies the time period after which a health professional's certification for use of sick leave will be required;

(7) The Board of Regents shall review and approve as appropriate the total compensation package for the President and each Chancellor; and

(8) In light of Sarbanes-Oxley regulations, the President shall review and prepare for the Board a recommendation on whether the internal audit function is sufficient and whether the System Auditor shall report directly to the President and the Board.



## Informational Hearing: *Employment Practices, University of Wisconsin System*

### A. Opening Statement (to summarize purpose and approach)

#### 1. Timeline

July 19, Representatives Kerkman and Kreibich submitted a written request to the co-chairs for an audit of the UW System's use of back-up appointments and paid leaves.

July 25, the co-chairs sent a letter to President Reilly and committee members, expressing concern about the use of back-up appointments and paid leaves after retirement. The letter requested a written report by September 2, 2005, that:

- identified the employees at each UW System campus with back-up positions as of June 2005;
- identified the employees at each UW System campus who were reassigned to a back-up position from July 1, 2002 through June 30, 2005; and
- identified any employees at any UW System campus who were granted paid leave after resigning from July 1, 2002 through June 30, 2005.

•  
July 27, President Reilly wrote that he will provide information by September 2 deadline

August 23, President Reilly wrote the co-chairs to request an audit of UW System employment practices by the nonpartisan Legislative Audit Bureau.

August 29, the co-chairs publicly noticed an informational hearing for today and outlined the parameters for discussion (September 13).

September 2, President Reilly submitted a written report to the co-chairs. The key highlights of this report were:

- 1,092, or 3.3 percent of 33,063 UW System employees, have "back-up" appointments;
- 79, or 0.24 percent of UW System employees, moved from a limited appointment to a back-up over the past three years; and
- although there are situations in which an employee may be placed on paid leave as part of a transition from a

limited appointment to a back-up appointment or in connection with the resolution of an employment dispute, no UW System employees were granted paid leave after resigning.

## 2. **Informational Hearing**

The purpose of this hearing is to engage in a discussion with President Reilly about the action steps taken by UW System and the UW Board of Regents to examine its employment practices. **In this component of the hearing, no public testimony will be received and questions will be limited to only those asked by members of the Committee.** The State Auditor and staff from the Legislative Audit Bureau are listening attentively to the testimony and to the questions raised by committee members this morning. Based on this information, it is my intention, and that of my co-chair, to ask the Legislative Audit Bureau to prepare a scope memorandum for an audit of UW System employment practices. This committee would then hold a public hearing in mid-October to consider the scope memorandum and, potentially, advance an audit.

To begin, we have invited President Reilly to appear before us this morning and asked that he:

- respond to questions from committee members on the content of the report submitted to the co-chairs on September 2<sup>nd</sup>;
- testify on the specific outcomes of any internal reviews of employment practices conducted by the UW System and the status of any reviews still underway; and
- provide a detailed summary of the actions taken to date by the UW System and the UW Board of Regents to address the serious concerns raised about employment practices.

At this time, I would invite President Reilly to begin his testimony.

## B. **Potential Questions for President Reilly**

1. Last week, the Board of Regents discussed personnel policies and practices and noted the desirability of making both short-term and long-term changes. We understand that UW System will be reporting to the Board by November 2005. What is the sequence of events, and the timeline you envision, for the Board of Regents completing their work on

these issues and for the Audit Bureau to proceed with its independent analysis?

2. At the Regents meeting last week, there seemed to be conflicting information offered on the importance of back-up appointments in recruitment. While some speakers said that it was a critical recruitment tool, a number of University employees recruited from other states had never heard of back-up appointments. Is UW System is currently conducting research on personnel policies and procedures in other states and at peer institutions?

3. The Board of Regents voted to require that institutions immediately commence internal investigations and take appropriate disciplinary actions when any UW employee is accused of criminal activity. Would you please explain the legal issues that might limit the University's ability to take immediate action once an employee is convicted of a crime?





## **Timeline**

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## NEWS RELEASE

FOR IMMEDIATE RELEASE  
 July 26, 2005

Contact: Doug Bradley  
 (608) 262-5061

### UW System Board of Regents suspends use of back-up appointments

MADISON – The practice of granting back-up appointments for administrative employees within the University of Wisconsin System will be suspended, pending a review of employment policies and practices by the Board of Regents' Business and Finance Committee.

Board of Regents President David G. Walsh and UW System President Kevin P. Reilly ordered the immediate suspension and directed UW institutions to provide information about such appointments for the Board's review without delay. The suspension will not affect employees' statutory rights.

"Through this review, we will ensure our policies are not only proper, but followed by each UW institution in both letter and spirit," Reilly said.

"At my request, and in consultation with UW System President Reilly, the Board of Regents has directed UW chancellors and the president *not* to include so-called 'back-up' appointments as part of any employment package until we are confident that our policies match our principles," Walsh added.

Walsh announced in June that the Board, through its Business and Finance Committee, would address employment agreements across the UW System as part of an ongoing assessment of a wide range of salary, compensation and competitiveness issues. He specifically requested that the review include the practice of negotiated appointments and administrative leave. The Board's report is due in the fall.

The UW System's 13 four-year campuses, 13 freshman-sophomore UW Colleges, statewide UW-Extension and central administration, at the Business and Finance Committee's

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**Board of Regents/Page 2**

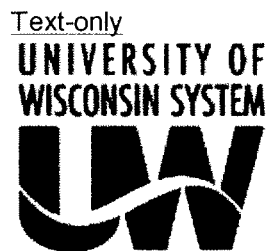
request, are all collecting data on a number of employment issues, including the current use of back-up appointments for faculty, academic staff or classified staff who accept limited administrative appointments within the university. The data will be made public as part of the Board's review.

Walsh also announced that he has appointed Regents Thomas Loftus and Peggy Rosenzweig to serve as Board liaisons to the Wisconsin State Legislature in an effort to improve communication. Walsh has asked Loftus and Rosenzweig to immediately consult with legislative leaders and seek their input on matters to be included in the Regents' current review of employment practices.

"It's important that the public, our elected officials, and our faculty and staff know that the questions raised regarding UW employment policies and practices are receiving our deliberate and serious consideration," Walsh said. "I look forward to working with President Reilly to ensure openness, public accountability, and wise stewardship of the UW System's very limited resources. If this review determines that any policy, practice, or public trust is broken, we will fix it."

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# NEWS & EVENTS

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September 9, 2005

**University of Wisconsin System Board of Regents  
September 2005 Meeting  
Day Two News Summary**

## **Board of Regents enacts changes to UW System employment policies**

WEST BEND—The Board of Regents voted Friday to make changes to improve employment policies and practices of the University of Wisconsin System, and upheld a freeze on the granting of new concurrent positions to individuals who accept administrative limited appointments.

“These changes are the beginning of a process to reform employment policies within the state’s public university system,” said Regent President David G. Walsh of Madison. “This is a real commitment, and we should all be on board.”

Walsh and UW System President Kevin P. Reilly froze the granting of concurrent appointments in August, pending the Board’s review of a larger set of employment policies and practices, including terms of employment, use of accrued leave, compensation and competitiveness. The full Board will vote before the freeze is lifted.

According to Regent Charles Pruitt of Milwaukee, who chairs the Business and Finance Committee, the Board’s actions are intended to ensure the principle that employees will be paid at rates that are commensurate for current duties, not those of any prior position.

“The status quo is not acceptable,” agreed Regent Danae Davis of Milwaukee. “I do support the notion that we’re not trying to tie hands and discourage, but I think we are also trying to be accountable.”

Board members noted the deep concern they share with state citizens about felony crimes committed by UW employees, and voted to require that when any UW employees are accused of criminal activity, their respective institutions immediately commence internal investigations and take appropriate disciplinary actions.

“The bottom line is that the public doesn’t understand why a person who has been convicted of a heinous crime has not been disciplined earlier, or why they are still on the payroll,” Walsh said. “We need to tell the public why we can’t move faster, and then move as quickly as possible.”

Following Board action, the UW System will consult with faculty and staff governance groups to review position titles designated as limited appointments, and consider implementing a fixed-term contract system in lieu of limited-term appointments.

The Board also upheld Reilly’s recent action to require the president’s approval for any settlements involving the termination of a limited appointee, and required that such settlements also be reported to the Board.

The actions now require administrators who assume faculty positions to be compensated at a rate consistent only with their faculty duties, and the Board directed that any such employees granted leave to transition to teaching must provide a work proposal and subsequent report, and will receive no more than one semester to do so. Administrators that do serve as limited appointees for more than five years would be eligible for two semesters of leave.

The Board's actions also require the UW System to develop a revised sick leave policy; to present for review by the full Board compensation offered to the president and chancellors; and to prepare a recommendation on the sufficiency of the UW's internal audit functions.

"I do believe that one of the key ingredients here was that we needed to send a very strong message," Pruitt said.

Regent Michael Spector of Milwaukee warned that the Board may be looking to make sweeping changes to UW personnel structures too quickly, and urged the Board to gather more information before enacting more changes.

"I understand the urgency of this response, but whatever we're doing, we need to make sure we're doing it right, and that we put in place something that will stand the test of time," agreed Regent Judy Crain of Green Bay. "I want to clear things up and to be able to explain what the university is doing about this, but I want the answers to be right."

The UW System will report to the Board on these matters by November 2005.

## **Board approves tuition waiver for hurricane victims**

College students displaced by Hurricane Katrina and who now plan to attend UW System campuses will receive nonresident tuition remissions for the Fall 2005 semester, under a resolution approved Friday by the Board.

"We fully recognize the impact this disaster has had on the lives of university students on the Gulf Coast," Reilly said. "Allowing those victims to continue their education with little or no tuition cost is a way we can truly help."

On Sept. 2, Reilly announced the UW System's intention to assist victims of Hurricane Katrina by welcoming Gulf Coast college students to several UW campuses. In most cases, these students will enroll for the Fall 2005 semester as a class of students designated by the Board as "Hurricane Katrina Victims."

Students who qualify for this tuition assistance are those who were enrolled at, or had been actively attending, a higher education institution located in areas in Mississippi and Louisiana now designated as federal disaster areas. Many colleges and universities in these areas have been closed for a semester or longer — some indefinitely.

"These students have nothing," said UW-Madison Chancellor John Wiley. "They're scared to death that down the road they will get a tuition bill they won't be able to afford."

"If you remove any opportunity to receive financial aid, you may as well not admit them at all," agreed Regent Jesus Salas of Milwaukee. "They are coming here in some dire economic straits."

The Board directed Reilly and Regent President David G. Walsh to consult with legislative leadership and the Governor regarding options to reduce, not charge, or otherwise provide financial aid support for these students. A special meeting of the Board may be held after these consultations to establish a tuition rate for the "Hurricane Katrina Victims."

The action will not affect enrollment or financial aid already established for current UW students. The