



2013 SENATE BILL 421

December 10, 2013 – Introduced by LAW REVISION COMMITTEE. Referred to Committee on Judiciary and Labor.

1 **AN ACT** *to renumber* 19.365; *to renumber and amend* 19.36 (7) (a); *to amend*
2 19.32 (intro.), 19.32 (1), 19.32 (1m), 19.32 (2), 19.33 (1) to (3) and (8), 19.34
3 (title), 19.35 (1) (am) (intro.), 19.35 (1) (b), 19.35 (1) (c), 19.35 (1) (d), 19.35 (6)
4 and 19.36 (13); and *to create* 19.32 (1bd) and 19.32 (3m) of the statutes;
5 **relating to:** access to public records (suggested as remedial legislation by the
6 Legislative Reference Bureau).

Analysis by the Legislative Reference Bureau

This bill makes various changes to the public records access law. The bill:

1. Defines and specifically covers all special purpose districts under the law. Currently, the law specifically enumerates only local exposition and long-term care districts but other language specifically applies the law to cover every state or local “agency” and also every “public body corporate and politic,” which likely covers special purpose districts.

2. Modifies the definition of “record,” which includes electronically stored records, to substitute general language for current language referencing specific formats and to eliminate references that are obsolete and already covered by other language in the definition.

3. Applies the law to every elective official who is a custodian of records regardless of whether the official was elected to an office or appointed to fill a vacancy in an office.

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4. Modifies the law that permits an individual to have access to a record containing certain personally identifiable information that pertains to more than one individual so that an individual only has access under the law to personally identifiable information pertaining to himself or herself.

5. Modifies the term “person authorized by the individual,” which is used to allow an individual to act on another’s behalf in accessing and petitioning for correction of certain personally identifiable information related to the individual, so that it applies to any person who is authorized in writing to act on behalf of an individual and is not limited to a person exercising rights. The revised language more clearly covers a person exercising a durable power of attorney.

6. Substitutes the term “copying” for “photocopying” to allow for other forms of copying in a provision that addresses photocopying of records, and removes references to “tapes” in provisions that address copying audio and video recordings, in order to recognize other modes of copying audio and video material.

7. Reorganizes and makes other changes to a provision addressing access to the names of final candidates for positions to improve clarity and readability.

The bill also standardizes certain word usage to conform to defined terminology, renumbers a provision to a better location near related provisions, and corrects a title for accuracy.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Legislative Reference Bureau and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 19.32 (intro.) of the statutes is amended to read:

2 **19.32 Definitions.** (intro.) As used in ss. ~~19.33~~ 19.32 to 19.39:

NOTE: Expands the application of s. 19.32, stats. (definitions), to apply to itself so that the definition proposed in SECTION 6 (special purpose district) will apply to s. 19.32 (1), stats. (definition of “authority”).

3 **SECTION 2.** 19.32 (1) of the statutes is amended to read:

4 19.32 (1) “Authority” means any of the following having custody of a record: a
5 state or local office, elected elective official, agency, board, commission, committee,
6 council, department or public body corporate and politic created by the constitution,

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1 or by any law, ordinance, rule or order; a governmental or quasi-governmental
2 corporation except for the Bradley center sports and entertainment corporation; a
3 ~~local exposition district under subch. II of ch. 229; a long-term care district under s.~~
4 ~~46.2895~~ special purpose district; any court of law; the assembly or senate; a nonprofit
5 corporation which receives more than 50% of its funds from a county or a
6 municipality, as defined in s. 59.001 (3), and which provides services related to public
7 health or safety to the county or municipality; or a formally constituted subunit of
8 any of the foregoing.

NOTE: 1. Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

2. Clarifies that all special purpose districts are covered entities, not just local exposition and long-term care districts. Examples of special purpose districts include school districts, technical college districts, metropolitan sewerage districts, town sanitary districts, and public inland lake protection and rehabilitation districts. It has long been accepted that these entities are covered under the public records access law. The current reference to two specific special purpose districts implies that other special purpose districts are not covered. Special purpose districts are generally governed by boards and commissions that are currently covered, and the entities themselves are probably currently covered as agencies or public bodies corporate and politic. See also SECTION 6 below.

9 **SECTION 3.** 19.32 (1bd) of the statutes is created to read:

10 19.32 (1bd) “Elective official” means an individual who holds an office that is
11 regularly filled by vote of the people.

NOTE: Creates a definition of “elective official,” which is used in SECTIONS 2, 7, and 13.

12 **SECTION 4.** 19.32 (1m) of the statutes is amended to read:

13 19.32 (1m) “Person authorized by the individual” means the parent, guardian,
14 as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of ~~a~~ an
15 individual who is a child, as defined in s. 48.02 (2);~~;~~ the guardian of an individual
16 adjudicated incompetent in this state;~~;~~ the personal representative or spouse of an
17 individual who is deceased;~~;~~ or any person authorized, in writing, by ~~the~~ an
18 individual to ~~exercise the rights granted under this section~~ act on his or her behalf.

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NOTE: 1. Standardizes word usage in this definition.

2. Clarifies that a “person authorized by the individual” is not limited to persons acting in situations involving a “right,” but can include any person authorized in writing to act on behalf of another.

3. Removes erroneous reference to “this section” (the definition section).

1 **SECTION 5.** 19.32 (2) of the statutes is amended to read:

2 19.32 (2) “Record” means any material on which written, drawn, printed,
3 spoken, visual, or electromagnetic information or electronically generated or stored
4 data is recorded or preserved, regardless of physical form or characteristics, which
5 has been created or is being kept by an authority. “Record” includes, but is not limited
6 to, handwritten, typed or printed pages, maps, charts, photographs, films,
7 recordings, tapes (including computer tapes), computer printouts and, optical disks,
8 and any other medium on which electronically generated or stored data is recorded
9 or preserved. “Record” does not include drafts, notes, preliminary computations and
10 like materials prepared for the originator’s personal use or prepared by the
11 originator in the name of a person for whom the originator is working; materials
12 which are purely the personal property of the custodian and have no relation to his
13 or her office; materials to which access is limited by copyright, patent or bequest; and
14 published materials in the possession of an authority other than a public library
15 which are available for sale, or which are available for inspection at a public library.

NOTE: Deletes a reference in the definition of “record” to computer tapes and printouts and substitutes a more general reference to “electronically generated or stored data” in order to explicitly capture other current and possible future formats.

16 **SECTION 6.** 19.32 (3m) of the statutes is created to read:

17 19.32 (3m) “Special purpose district” means a district, other than a state
18 governmental unit or a county, city, village, or town, that is created to perform a
19 particular function and whose geographic jurisdiction is limited to some portion of
20 this state.

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NOTE: Creates a definition of “special purpose district,” which is used in SECTION 2. The definition is designed to capture all nonstate governmental districts, except counties, cities, villages, and towns, that are created to perform a particular function and whose geographic jurisdiction is limited to some portion of this state.

1 **SECTION 7.** 19.33 (1) to (3) and (8) of the statutes are amended to read:

2 19.33 (1) An elected elective official is the legal custodian of his or her records
3 and the records of his or her office, but the official may designate an employee of his
4 or her staff to act as the legal custodian.

5 (2) The chairperson of a committee of elected elective officials, or the designee
6 of the chairperson, is the legal custodian of the records of the committee.

7 (3) The cochairpersons of a joint committee of elected elective officials, or the
8 designee of the cochairpersons, are the legal custodians of the records of the joint
9 committee.

10 (8) No elected elective official of a legislative body has a duty to act as or
11 designate a legal custodian under sub. (4) for the records of any committee of the body
12 unless the official is the highest ranking officer or chief administrative officer of the
13 committee or is designated the legal custodian of the committee’s records by rule or
14 by law.

NOTE: Covers under the law a person who holds an elective office even if the person was appointed to fill a vacancy in that office.

15 **SECTION 8.** 19.34 (title) of the statutes is amended to read:

16 **19.34 (title) Procedural information; access times and locations.**

NOTE: Expands title to reflect the complete content of s. 19.34, stats.

17 **SECTION 9.** 19.35 (1) (am) (intro.) of the statutes is amended to read:

18 19.35 (1) (am) (intro.) In addition to any right under par. (a), any requester who
19 is an individual or person authorized by the individual, has a right to inspect any
20 personally identifiable information pertaining to the individual in a record
21 containing personally identifiable information ~~pertaining to the individual~~ that is

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1 maintained by an authority and to make or receive a copy of any such information.

2 The right to inspect or copy information in a record under this paragraph does not

3 apply to any of the following:

NOTE: Clarifies that if a record contains personally identifiable information relating to more than one individual, an individual has a right to inspect or copy only the portion of the record containing personally identifiable information relating to himself or herself.

4 **SECTION 10.** 19.35 (1) (b) of the statutes is amended to read:

5 19.35 (1) (b) Except as otherwise provided by law, any requester has a right to
6 inspect a record and to make or receive a copy of a record. If a requester appears
7 personally to request a copy of a record that permits ~~photocopying~~ copying, the
8 authority having custody of the record may, at its option, permit the requester to
9 ~~photocopy~~ copy the record or provide the requester with a copy substantially as
10 readable as the original.

NOTE: Broadens application of the right to photocopy or receive a photocopy of a record to apply to other forms of copying.

11 **SECTION 11.** 19.35 (1) (c) of the statutes is amended to read:

12 19.35 (1) (c) Except as otherwise provided by law, any requester has a right to
13 receive from an authority having custody of a record which is in the form of a
14 comprehensible audio ~~tape~~ recording a copy of the ~~tape~~ recording substantially as
15 audible as the original. The authority may instead provide a transcript of the
16 recording to the requester if he or she requests.

NOTE: Removes reference to “tape” to apply this paragraph to records in digital and other recording formats.

17 **SECTION 12.** 19.35 (1) (d) of the statutes is amended to read:

18 19.35 (1) (d) Except as otherwise provided by law, any requester has a right to
19 receive from an authority having custody of a record which is in the form of a video
20 ~~tape~~ recording a copy of the ~~tape~~ recording substantially as good as the original.

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NOTE: Removes reference to “tape” to apply this paragraph to records in digital and other formats.

1 **SECTION 13.** 19.35 (6) of the statutes is amended to read:

2 19.35 (6) ~~ELECTED~~ ELECTIVE OFFICIAL RESPONSIBILITIES. No elected elective
3 official is responsible for the record of any other elected elective official unless he or
4 she has possession of the record of that other official.

NOTE: Covers under the law any person who holds an elective office even if the person was appointed to fill a vacancy in that office.

5 **SECTION 14.** 19.36 (7) (a) of the statutes is renumbered 19.36 (7) (a) 1. (intro.)
6 and amended to read:

7 19.36 (7) (a) 1. (intro.) In this section subsection, “final candidate” means each
8 applicant ~~for a position~~ who is seriously considered for appointment or whose name
9 is certified for appointment, and whose name is submitted for final consideration to
10 an authority for appointment, to any of the following:

11 a. A state position, except a position in the classified service, ~~or to any~~,

12 b. A local public office.

13 2. “Final candidate” includes, ~~whenever~~ all of the following:

14 a. Whenever there are at least 5 ~~candidates~~ applicants for an office or position,
15 each of the 5 ~~candidates~~ applicants who are considered the most qualified for the
16 office or position by an authority, ~~and whenever~~,

17 b. Whenever there are less fewer than 5 ~~candidates~~ applicants for an office or
18 position, each ~~such candidate~~ applicant.

19 c. Whenever an appointment is to be made from a group of more than 5
20 candidates, “final candidate” also includes applicants considered the most qualified
21 for an office or position by an authority, each candidate applicant in the that group.

NOTE: 1. Breaks out organizational structure for definition of “final candidate” in s. 19.36 (7), stats., to improve readability.

