

1987 Senate Bill 315

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1987 Wisconsin Act 365

AN ACT to repeal 16.49 and 19.52 (5); to renumber and amend 19.45 (9m); to amend 19.42 (10) (c), 19.51 (1) (b), 19.52 (2) and (4), 19.53 (6) and 227.46 (1) (intro.); to repeal and recreate 19.52 (3); and to create 16.417 (title) and (1), 19.42 (10) (j) and (13) (i), 19.45 (12), 19.53 (1m) and 19.545 of the statutes, relating to various changes in the code of ethics for state public officials.

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

SECTION 1. 16.417 (title) and (1) of the statutes are created to read:

16.417 (title) Limitation on dual employment or retention. (1) In this section:

(a) "Agency" has the meaning given under s. 16.52 (7).

(b) "Authority" means a body created under ch. 231, 232, 233 or 234.

SECTION 1g. 16.49 of the statutes is repealed.

SECTION 1m. 19.42 (10) (c) of the statutes is amended to read:

19.42 (10) (c) A state public official identified under s. 20.923 except an official holding a state public office identified under s. 20.923 (6) (h).

SECTION 4. 19.42 (10) (j) and (13) (i) of the statutes are created to read:

19.42 (10) (j) A division administrator of an office created under ch. 14 or a department or independent agency created or continued under ch. 15.

(13) (i) A division administrator of an office created under ch. 14 or a department or independent agency created or continued under ch. 15.

SECTION 4m. 19.45 (9m) of the statutes is renumbered 16.417 (2) and amended to read:

16.417 (2) No state public official or state employe individual who is employed or retained in a state full-time position full-time at an annual salary in excess of the current salary for the office of legislator estab-

lished under s. 20.923 (2) or capacity with an agency or authority may hold any other position or be retained in any other capacity with an agency or authority from which he or she the individual receives income from the state exceeding, directly or indirectly, more than \$5,000 per from the agency or authority as compensation for the individual's services during the same year. No department agency or authority may employ any individual or enter into any contract in violation of this subsection. Every The department shall annually check to assure that no employe of the department individual violates this subsection. Any employe who is found The department shall order any individual whom it finds to be in violation of this subsection shall be required to accept a termination or reduction in salary sufficient to bring the employe into compliance. This provision does not apply to those state public officials or state employes who accept other state employment during a period they are not receiving a full-time salary to forfeit that portion of the economic gain that the individual realized in violation of this subsection. The attorney general, when requested by the department, shall institute proceedings to recover any forfeiture incurred under this subsection which is not paid by the individual against whom it is assessed.

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

19.45 (12) No agency, as defined in s. 16.52 (7), or officer or employe thereof may present any request, or knowingly utilize any interests outside the agency to

present any request, to either house of the legislature or any member or committee thereof, for appropriations which exceed the amount requested by the agency in the agency's most recent request submitted under s. 16.42.

SECTION 6. 19.51 (1) (b) of the statutes is amended to read:

19.51 (1) (b) An order setting a date for hearing ~~before the board~~ to determine whether a violation of this subchapter has occurred. ~~Such~~ The board shall serve the order shall be served upon the accused. A hearing ordered under this paragraph shall be commenced within 30 days ~~of~~ after the date it is ordered unless the accused petitions for and the board consents to a later date. Prior to any hearing ordered under this paragraph, the accused is entitled to full discovery rights, including adverse examination of witnesses who will testify at the hearing at a reasonable time before the date of the hearing.

SECTION 7. 19.52 (2) and (4) of the statutes are amended to read:

19.52 (2) The board shall appoint a reserve judge to serve as hearing examiner. Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the board and who, in the opinion of the board, may be adversely affected thereby, may, upon request of the person or a representative of the person, or upon the request of any member of the board, appear ~~personally before the board and at the hearing~~ to testify on his or her own behalf or have a representative appear to so testify, and the board may permit any other person to appear and to testify at a hearing.

(4) After the conclusion of ~~its~~ the hearing the board shall as soon as practicable begin deliberations on the evidence presented at such hearing and shall then proceed to determine whether the accused has violated this subchapter. ~~If a hearing examiner is appointed under s. 227.46 (1) and a majority of the members of the board were not present at the hearing, the~~ The board shall not begin deliberations until after the proposed decision under s. 227.46 (2) is served and opportunity is given for arguments.

SECTION 8. 19.52 (3) of the statutes is repealed and recreated to read:

19.52 (3) Chapters 901 to 911 apply to the admission of evidence at the hearing. The board shall not find a violation of this subchapter except upon clear and convincing evidence admitted at the hearing.

SECTION 9. 19.52 (5) of the statutes is repealed.

SECTION 10. 19.53 (1m) of the statutes is created to read:

19.53 (1m) In the case of a state public official in the classified service, a recommendation that the state public official be disciplined or discharged under s. 230.34 (1). Such recommendation shall be made to the appropriate appointing authority.

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

19.53 (6) An order requiring the accused to forfeit not more than \$500 for each violation of s. 19.43, 19.44 or 19.56 (2) or not more than \$5,000 for each violation of any other provision of this subchapter; and, if the board determines that the accused has realized economic gain as a result of the violation, an order requiring the accused to forfeit the amount gained as a result of the violation. The attorney general, when so requested by the board, shall institute proceedings to recover any forfeiture incurred under this section or s. 19.545 which is not paid by the person against whom it is assessed.

SECTION 12. 19.545 of the statutes is created to read:

19.545 Settlements. (1) The board may compromise and settle any potential action for a violation of this subchapter which the board is authorized to take under s. 19.53.

(2) Whenever the board enters into a settlement agreement with an individual who is accused of a violation of this subchapter or who is investigated by the board for a possible violation of this subchapter, the board shall reduce the agreement to writing, together with a statement of the board's findings and reasons for entering into the agreement and shall retain the agreement and statement in its office for inspection under s. 19.55 (1).

SECTION 13. 227.46 (1) (intro.) of the statutes is amended to read:

227.46 (1) (intro.) Except as provided under s. 227.43 (1), an agency may designate an official of the agency or an employe on its staff or borrowed from another agency under s. 20.901 or 230.047 as a hearing examiner to preside over any contested case. In hearings under s. 19.52, ~~another qualified person may a~~ reserve judge shall be appointed. Subject to rules of the agency, examiners presiding at hearings may:

SECTION 14. Nonstatutory provisions. (1) INITIAL STATEMENTS OF ECONOMIC INTERESTS. Notwithstanding section 19.43 (2) of the statutes, division administrators specified in section 19.42 (10) (j) of the statutes, as created by this act, who have not filed a statement of economic interests with the ethics board on the effective date this subsection shall file a statement at the time prescribed in section 19.43 (1) of the statutes.

(2) STUDY. The ethics board shall conduct a study of the effectiveness, wisdom and constitutionality of the provisions of section 19.45 (12) of the statutes, as created by this act, and report to the legislature no later than January 1, 1989.

SECTION 15. **Initial applicability.** The treatment of sections 19.51 (1) (b), 19.52 (2) to (5) and 227.46 (1) (intro.) of the statutes first applies to hearings concerning violations of subchapter III of chapter 19 of the statutes ordered on the effective date of this SECTION.