



1995 SENATE BILL 198

May 16, 1995 - Introduced by Senators LEEAN, ELLIS and RUDE, by request of Governor Tommy G. Thompson. Referred to Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs.

1 **AN ACT to repeal** 230.08 (4) (b) 1.; **to renumber and amend** 111.81 (13); **to**
2 **amend** 19.42 (10) (k), 19.42 (13) (j), 73.02 (2), 111.825 (5), 230.08 (4) (a), 230.25
3 (1), 440.64 (2) (a) and 454.14 (1); and **to create** 20.923 (11), 111.81 (13) (b),
4 230.08 (2) (rd), 230.08 (2) (rm) and 230.80 (3) (c) of the statutes; **relating to:**
5 classification status of department of revenue and department of regulation
6 and licensing employes; exclusion of certain legal counsels under state
7 employment labor relations act; bargaining unit representative for
8 supervisors; and increased flexibility for position vacancies in the classified
9 service.

Analysis by the Legislative Reference Bureau

This bill does all of the following:

1. Under current law, with certain exceptions, the employes in the departments of revenue (DOR) and regulation and licensing (DORL) serve in positions in the classified service. In contrast to an unclassified position, a classified position must be filled through an examination procedure that determines the applicant's merit and fitness for appointment to the position. Also, a person in the classified service who has successfully completed his or her probationary period may not be demoted, suspended, removed or discharged from his or her position except for just cause, and the person has certain reinstatement privileges if he or she is laid off or voluntarily separates from the classified service; a person in an unclassified position does not have the same protections or privileges.

In addition, under current law, a person in the classified service, other than a limited term employe, sessional employe, project employe, supervisor, management

employee or individual who is privy to confidential matters affecting the employer-employee relationship, may exercise collective bargaining rights under the state employment labor relations act (SELRA). Under SELRA, employees are expressly guaranteed the right of self-organization and the right to engage in lawful, concerted activities for the purpose of collective bargaining. Collective bargaining is expressly authorized and required with certified representative organizations in relation to specified subjects of bargaining. Mandatory subjects of bargaining are salaries, fringe benefits, hours and conditions of employment, except that supervisors may bargain collectively concerning wages and fringe benefits only. Bargaining is not required on certain subjects reserved to the management and direction of the state, except that procedures for the adjustment of grievances arising out of disciplinary actions are a mandatory subject of bargaining. In addition, bargaining is not permitted regarding the mission of a state agency. Bargaining units are structured on a statewide basis, with employees performing different functions assigned to different units. Employees in the units have the right to vote in an election conducted by the employment relations commission as to whether there shall be collective bargaining and, if so, with which representative. Responsibilities of the state as an employer are handled by the department of employment relations (DER). Unfair labor practices are established, applicable to the state and to labor unions representing employees. The employment relations commission adjudicates unfair labor practice complaints and may mediate disputes and arbitrate grievances. Strikes are expressly prohibited. No compulsory means of dispute settlement are provided. "Fair-share" (agency shop) and "maintenance of membership" agreements are authorized whereby the cost of collective bargaining and contract administration may be deducted from the wages of certain employees under certain conditions. Under a fair-share agreement, the state must deduct the amount of dues uniformly required of all members of a union for the cost of the collective bargaining process and contract administration from the paychecks of all employees in the bargaining unit represented by that union, regardless of whether the employees are union members, and pay the total amount deducted to the union. A fair-share agreement requires the approval of two-thirds of the employees voting in a unit before it may take effect; it may also be discontinued in accordance with a similar procedure. Under a maintenance of membership agreement, the state must deduct the amount of dues uniformly required of all members of a union for the cost of the collective bargaining process and contract administration from the paychecks of all employees in the bargaining unit who are members of the union, and all employees who are hired after the effective date of the agreement, and pay the total amount deducted to the union. A maintenance of membership agreement requires the approval of a majority of the employees voting in a unit before it may become effective, and may also be discontinued in accordance with a similar procedure.

Finally, compensation of persons in the classified service is determined in accordance with the state compensation plan, unless the persons are represented. If persons are represented, their compensation is determined according to the collective bargaining agreement.

This bill, beginning on July 1, 1996, places all employes in DOR and DORL in the unclassified service. These employes are no longer covered by SELRA, with the result that they no longer have collective bargaining rights, and their compensation, with certain exceptions, is determined in accordance with the state compensation plan.

2. Current law also provides that a state employe (other than an employe of the office of the governor, the courts, the legislature or a legislative service agency or an employe who is, or whose immediate supervisor is, assigned to an executive salary group) is protected from retaliation for disclosing information that the employe reasonably believes demonstrates a violation of law, mismanagement, abuse of authority, a substantial waste of public funds or a danger to public health and safety (whistleblower law). This bill removes the employes in DOR and DORL from the protections provided under the whistleblower law.

3. Under SELRA, state employes in the classified service and assistant district attorneys, except management, supervisory, confidential and project employes, are included within collective bargaining units established by law. The employes in each unit may select a representative for purposes of collective bargaining. The state is required to bargain collectively with the representative of each unit, if any, concerning wages, hours, conditions of employment and fringe benefits, with certain exceptions. Employes who are included within a collective bargaining unit may be required to contribute to the cost of collective bargaining and contract administration through a "fair-share" or "maintenance of membership" agreement between the representative and the state. The state and the employes, individually or collectively, are prohibited from engaging in certain unfair labor practices. Employes are expressly prohibited from engaging in a strike. Under SELRA, a "management" employe includes any individual who is engaged predominantly in executive and managerial functions, and specifically includes division administrators, bureau directors and institutional heads, as well as individuals exercising similar functions, as determined by the employment relations commission.

This bill excludes from coverage under SELRA, in addition, any individual who serves as "chief legal counsel" or "deputy chief legal counsel" in a state agency within the executive branch, or any individual who exercises functions and responsibilities similar to such an individual, as determined by the commission. Because some of the individuals who serve in these positions may already be excluded as management, supervisory or confidential employes, the bill does not affect all such positions.

4. Under current law, the employment relations commission has the authority to consider a petition for a statewide collective bargaining unit that consists of professional supervisors or for a statewide bargaining unit that consists of nonprofessional supervisors who are in the classified service. Representatives of these bargaining units, however, may not be affiliated with any labor organization that represents employes other than employes who are supervisors, management employes or individuals who are privy to confidential matters affecting the employer-employe relationship. Under current law, it is also specifically provided that affiliation does not include membership in a national, state, county or municipal

federation of national or international labor organizations. This bill eliminates that provision regarding the meaning of “affiliation”.

5. Under current law, with certain exceptions, DER is required to certify for vacant classified civil service positions the top 5 names from the register of eligible applicants if the register has fewer than 50 names or the top 10% of names if the register has more than 50 names but an agency never has to interview more than 10 persons for a single position.

This bill requires DER to certify the top 10 names on the register of eligible applicants regardless of the size of the register and allows DER to certify additional names based on statistical methods and personnel management principles that are designed to maximize the number of certified names that are appropriate for the specific, classified civil service position vacancy.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 19.42 (10) (k) of the statutes is amended to read:

2 19.42 **(10)** (k) A division administrator of an office created under ch. 14 or a
3 department or independent agency created or continued under ch. 15, except for the
4 department of regulation and licensing and the department of revenue. In the
5 department of regulation and licensing and the department of revenue, “official
6 required to file” includes a division administrator who holds a position enumerated
7 under s. 230.08 (2) (e).

8 **SECTION 2.** 19.42 (13) (j) of the statutes is amended to read:

9 19.42 **(13)** (j) A division administrator of an office created under ch. 14 or a
10 department or independent agency created or continued under ch. 15, except for the
11 department of regulation and licensing and the department of revenue. In the
12 department of regulation and licensing and the department of revenue, “state public
13 official” includes a division administrator who holds a position enumerated under s.
14 230.08 (2) (e).

1 **SECTION 3.** 20.923 (11) of the statutes is created to read:

2 20.923 (11) DEPARTMENT OF REVENUE. The salary range for division
3 administrators in the department of revenue who are not enumerated in s. 230.08
4 (2) (e) 11. shall not equal or exceed the salary range for executive salary group 1.

5 **SECTION 4.** 73.02 (2) of the statutes is amended to read:

6 73.02 (2) The secretary shall designate or appoint ~~under the classified service,~~
7 within the department of revenue, an income tax coordinator, whose duties shall
8 include the setting up and operation of a coordination program with the internal
9 revenue service to facilitate the reporting of federal adjustments to the department
10 and the interchange of information with respect to examination of returns,
11 adjustments to income, extension of limitations, furnishing copies of returns and
12 other activities essential to an integrated and effective coordination program with
13 the internal revenue service.

14 **SECTION 5.** 111.81 (13) of the statutes is renumbered 111.81 (13) (intro.) and
15 amended to read:

16 111.81 (13) (intro.) "Management" includes ~~those personnel:~~

17 (a) Those individuals who are engaged predominately in executive and
18 managerial functions, including such officials as division administrators, bureau
19 directors, institutional heads and ~~employees~~ individuals exercising similar functions
20 and responsibilities as determined by the commission.

21 **SECTION 6.** 111.81 (13) (b) of the statutes is created to read:

22 111.81 (13) (b) Any individual who is designated by his or her appointing
23 authority as a chief legal counsel or deputy chief legal counsel and who serves in the
24 office of a constitutional officer specified in s. 15.02 (1) or in a department as defined
25 in s. 15.01 (5) or an independent agency as defined in s. 15.01 (9), or any individual

1 who exercises functions and responsibilities similar to such an individual, as
2 determined by the commission.

3 **SECTION 7.** 111.825 (5) of the statutes is amended to read:

4 111.825 (5) Although supervisors are not considered employes for purposes of
5 this subchapter, the commission may consider a petition for a statewide collective
6 bargaining unit of professional supervisors or a statewide unit of nonprofessional
7 supervisors in the classified service, but the representative of supervisors may not
8 be affiliated with any labor organization representing employes. ~~For purposes of this~~
9 ~~subsection, affiliation does not include membership in a national, state, county or~~
10 ~~municipal federation of national or international labor organizations.~~ The certified
11 representative of supervisors may not bargain collectively with respect to any matter
12 other than wages and fringe benefits as provided in s. 111.91 (1).

13 **SECTION 8.** 230.08 (2) (rd) of the statutes is created to read:

14 230.08 (2) (rd) All employes of the department of revenue.

15 **SECTION 9.** 230.08 (2) (rm) of the statutes is created to read:

16 230.08 (2) (rm) All employes of the department of regulation and licensing.

17 **SECTION 10.** 230.08 (4) (a) of the statutes is amended to read:

18 230.08 (4) (a) The number of administrator positions specified in sub. (2) (e)
19 includes all administrator positions specifically authorized by law to be employed
20 outside the classified service in each department, board or commission and the
21 historical society, except for the departments of regulation and licensing and
22 revenue. In this paragraph, “department” has the meaning given under s. 15.01 (5),
23 “board” means the educational communications board, investment board, public
24 defender board and technical college system board and “commission” means the
25 public service commission and the gaming commission. Notwithstanding sub. (2) (z),

1 no division administrator position exceeding the number authorized in sub. (2) (e)
2 may be created in the unclassified service, except in the departments of regulation
3 and licensing and revenue.

4 **SECTION 11.** 230.08 (4) (b) 1. of the statutes is repealed.

5 **SECTION 12.** 230.25 (1) of the statutes is amended to read:

6 230.25 (1) Appointing authorities shall give written notice to the administrator
7 of any vacancy to be filled in any position in the classified service. The administrator
8 shall certify, under this subchapter and the rules of the administrator, from the
9 register of eligibles appropriate for the kind and type of employment, the grade and
10 class in which the position is classified, the ~~5~~ 10 names at the head thereof ~~if the~~
11 ~~register of eligibles is less than 50. If the register is more than 50, the top 10%, with~~
12 ~~any fraction rounded to the next whole number, up to a maximum of 10 names, shall~~
13 ~~be certified. The administrator may certify additional names from the register, using~~
14 statistical methods and personnel management principles that are designed to
15 maximize the number of certified names that are appropriate for filling the specific
16 position vacancy. Up to 2 persons considered for appointment 3 times and not
17 selected may be removed from the register for each 3 appointments made.
18 Certification under this subsection shall be made before granting any preference
19 under s. 230.16 (7).

20 **SECTION 13.** 230.80 (3) (c) of the statutes is created to read:

21 230.80 (3) (c) A person who is employed by the department of regulation and
22 licensing or the department of revenue.

23 **SECTION 14.** 440.64 (2) (a) of the statutes is amended to read:

24 440.64 (2) (a) The department shall appoint auditors and inspectors ~~under the~~
25 ~~classified service~~ to audit and inspect schools and specialty schools.

1 **SECTION 15.** 454.14 (1) of the statutes is amended to read:

2 454.14 (1) The department shall appoint inspectors ~~under the classified service~~
3 to inspect licensed establishments.

4 **SECTION 16. Initial applicability.**

5 (1) CERTIFICATION REQUIREMENTS. The treatment of section 230.25 (1) of the
6 statutes first applies to lists of names that are certified on the first day of the 6th
7 month beginning after publication.

8 **SECTION 17. Effective dates.** This act takes effect on the day after
9 publication, except as follows:

10 (1) CLASSIFIED CIVIL SERVICE STATUS OF EMPLOYES AT THE DEPARTMENT OF
11 REGULATION AND LICENSING. The treatment of sections 230.08 (2) (rm), 440.64 (2) (a)
12 and 454.14 (1) of the statutes takes effect on July 1, 1996.

13 (2) CLASSIFIED CIVIL SERVICE STATUS OF EMPLOYES AT THE DEPARTMENT OF REVENUE.
14 The treatment of sections 19.42 (10) (k) and (13) (j), 20.923 (11), 73.02 (2), 230.08 (2)
15 (rd) and (4) (a) and (b) 1. and 230.80 (3) (c) of the statutes takes effect on July 1, 1996.

16 (END)