

CHAPTER 19

GENERAL DUTIES OF PUBLIC OFFICIALS

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SUBCHAPTER I

OFFICIAL OATHS AND BONDS

19.01 Oaths and bonds. (1) FORM OF OATH. Every official oath required by article IV, section 28, of the constitution or by any statute shall be in writing, subscribed, sworn to, and except as provided otherwise by s. 757.02 and SCR 40.13, shall be in substantially the following form:

STATE OF WISCONSIN,
County of

I, the undersigned, who have been elected (or appointed) to the office of, but have not yet entered upon the duties thereof, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability. So help me God.

Subscribed and sworn to before me this day of, 19...
.....(Signature).....

(1m) FORM OF ORAL OATH. If it is desired to administer the official oath orally in addition to the written oath prescribed above, it shall be in substantially the following form:

I,, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully and impartially discharge the duties of the office of to the best of my ability. So help me God.

(2) FORM OF BOND. (a) Every official bond required of any public officer shall be in substantially the following form:

We, the undersigned, jointly and severally, undertake and agree that, who has been elected (or appointed) to the office of, will faithfully discharge the duties of his said office according to law, and will pay to the parties entitled to receive the same, such damages, not exceeding in the aggregate

..... dollars, as may be suffered by them in consequence of his failure so to discharge such duties.

Dated, 19..

.....(Principal).....
.....(Surety).....

(b) Any further or additional official bond lawfully required of any public officer shall be in the same form and it shall not affect or impair any official bond previously given by him for the same or any other official term. Where such bond is in excess of the sum of \$25,000, the officer may give 2 or more bonds.

(2m) EFFECT OF GIVING BOND. Any bond purportedly given as an official bond by a public officer, of whom an official bond is required, shall be deemed to be an official bond and shall be deemed as to both principal and surety to contain all the conditions and provisions required in sub. (2), regardless of its form or wording, and any provisions restricting liability to less than that provided in sub. (2) shall be void.

(3) OFFICIAL DUTIES DEFINED. The official duties referred to in subs. (1) and (2) include performance to the best of his or her ability by the officer taking the oath or giving the bond of every official act required, and the nonperformance of every act forbidden, by law to be performed by the officer; also, similar performance and nonperformance of every act required of or forbidden to the officer in any other office which he or she may lawfully hold or exercise by virtue of incumbency of the office named in the official oath or bond. The duties mentioned in any such oath or bond include the faithful performance by all persons appointed or employed by the officer either in his or her principal or subsidiary office, of their respective duties and trusts therein.

(4) WHERE FILED. Official oaths and bonds shall be filed:

(a) In the office of the secretary of state: Of all members and officers of the legislature; of the governor, lieutenant

governor and state superintendent; of the justices, reporter and clerk of the supreme court; of the judges of the court of appeals; of the judges and reporters of the circuit courts; of all notaries public; of every officer, except the secretary of state, state treasurer, district attorney and attorney general, whose compensation is paid in whole or in part out of the state treasury, including every member or appointee of a board or commission whose compensation is so paid; and of every deputy or assistant of an officer who files with the secretary of state;

(b) In the office of the governor: Of the secretary of state, state treasurer and attorney general;

(c) In the office of the clerk of the circuit court for any county: Of all court commissioners, of all family court commissioners, of all municipal judges, and of all other judges or judicial officers elected or appointed for that county, or whose jurisdiction is limited thereto;

(d) In the office of the county clerk of any county: Of all county officers elected or appointed in and for such county, other than those enumerated in par. (c), and of all officers whose compensation is paid out of the treasury of such county. The members of the governing board, and the superintendent and other officers of any joint county school, county hospital, county sanatorium, county asylum or other joint county institution shall file in the county in which the buildings of such institutions are located;

(dd) Bonds specified in pars. (c) and (d) and bonds of any county employe required by statute or county ordinance to be bonded shall be approved by the district attorney as to amount, form and execution before the bonds are accepted for filing. The clerk of the circuit court and the county clerk respectively shall notify in writing the county board or chairperson within 5 days after the entry upon the term of office of a judicial or county officer specified in pars. (c) and (d) or after a county employe required to be bonded has begun employment. The notice shall state whether or not the required bond has been furnished and shall be published with the proceedings of the county board.

(e) In the office of any town clerk: Of all officers elected or appointed in and for such town except the town clerk who shall file in the office of the town treasurer;

(f) In the office of any city clerk: Of all officers elected or appointed in and for such city except the city clerk who shall file in the office of the city treasurer;

(g) In the office of any village clerk: Of all officers elected or appointed in and for such village, except the village clerk who shall file in the office of the village treasurer;

(h) The official oath and bond of any officer of a school district or of an incorporated school board shall be filed with the clerk of such school district or the clerk of such incorporated school board.

(j) With the secretary of a vocational, technical and adult education district: Of all members of the district board of such district.

(5) TIME OF FILING. Every public officer required to file an official oath or an official bond shall file the same before entering upon the duties of his office; and when both are required, both shall be filed at the same time.

(6) CONTINUANCE OF OBLIGATION. Every such bond continues in force and is applicable to official conduct during the incumbency of the officer filing the same and until his successor is duly qualified and installed.

(7) INTERPRETATION. This section shall not be construed as requiring any particular officer to furnish or file either an official oath or an official bond. It is applicable to such officers only as are elsewhere in these statutes or by the constitution or by special, private or local law required to

furnish such an oath or bond. Provided, however, that whether otherwise required by law or not, an oath of office shall be filed by every member of any board or commission appointed by the governor, and by every administrative officer so appointed, also by every secretary and other chief executive officer appointed by such board or commission.

(8) PREMIUM ON BOND ALLOWED AS EXPENSE. The state and any county, town, village, city or school district may pay the cost of any official bond furnished by an officer or employe thereof pursuant to law or any rules or regulations requiring the same if said officer or employe shall furnish a bond with a licensed surety company as surety, said cost not to exceed the current rate of premium per year. The cost of any such bond to the state shall be charged to the proper expense appropriation.

History: 1971 c. 154; 1977 c. 29 s. 1649; 1977 c. 187 ss. 26, 135; 1977 c. 305 s. 64; 1977 c. 449; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (13); 1983 a. 6, 192; 1983 a. 538 s. 271; 1989 a. 31.

19.015 Actions by the state, municipality or district.

Whenever the state or any county, town, city, village, school district or vocational, technical and adult education district is entitled to recover any damages, money, penalty or forfeiture on any official bond, the attorney general, county chairperson, town chairperson, mayor, village president, school board president or vocational, technical and adult education district board chairperson, respectively, shall prosecute or cause to be prosecuted all necessary actions in the name of the state, or the municipality, against the officer giving the bond and the sureties for the recovery of the damages, money, penalty or forfeiture.

History: 1971 c. 154; 1983 a. 192; 1989 a. 56.

19.02 Actions by individuals. Any person injured by the act, neglect or default of any officer, except the state officers, his deputies or other persons which constitutes a breach of the condition of the official bond of such officer, may maintain an action in his own name against such officer and his sureties upon such bond for the recovery of any damages he may have sustained by reason thereof, without leave and without any assignment of any such bond.

19.03 Security for costs; notice of action. (1) Every person commencing an action against any officer and sureties upon an official bond, except the obligee named therein, shall give security for costs by an undertaking as prescribed in s. 814.28 (3), and a copy thereof shall be served upon the defendants at the time of the service of the summons. In all such actions if final judgment is rendered against the plaintiff the same may be entered against the plaintiff and the sureties to such undertaking for all the lawful costs and disbursements of the defendants in such action, by whatever court awarded.

(2) The plaintiff in any such action shall, within 10 days after the service of the summons therein, deliver a notice of the commencement of such action to the officer who has the legal custody of such official bond, who shall file the same in his office in connection with such bond.

History: Sup. Ct. Order, 67 W (2d) 773; 1975 c. 218.

19.04 Other actions on same bond. No action brought upon an official bond shall be barred or dismissed by reason merely that any former action shall have been prosecuted on such bond, but any payment of damages made or collected from the sureties or any of them on any judgment in an action previously begun by any party on such bond shall be applied as a total or partial discharge of the penal sum of such bond, and such defense or partial defense may be pleaded by answer or supplemental answer as may be proper. The verdict and judgment in every such action shall be for no more than the

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89-90 Wis. Stats. 356

actual damages sustained or damages, penalty or forfeiture awarded, besides costs. The court may, when it shall be necessary for the protection of such sureties, stay execution on any judgment rendered in such actions until the final determination of any actions so previously commenced and until the final determination of any other action commenced before judgment entered in any such action.

19.05 Execution; lien of judgment. Whenever a judgment shall be rendered against any officer and his sureties on his official bond in any court other than the circuit court of the county in which such official bond is filed, no execution for the collection thereof shall issue from such other court unless the plaintiff therein, his agent or attorney shall make and file with such court an affidavit showing that no other judgment has been rendered in any court in an action upon such bond against the sureties therein which remains in whole or in part unpaid and that no other action upon such bond against said sureties was pending and undetermined in any other court at the time of the entry of such judgment; but every such judgment may be docketed in other courts and in other counties, shall constitute a lien, and may be enforced, in all respects the same as if it were an ordinary judgment, for the recovery of money, except as provided otherwise in this section.

19.06 Sureties, how relieved. Whenever several judgments shall be recovered against the sureties on any official bond in actions which shall have been commenced before the date of the entry of the last of such judgments the aggregate of which, exclusive of costs, shall exceed the sum for which such sureties remain liable at the time of the commencement of such actions, they may discharge themselves from all further liability upon such judgments by paying into court the sum for which they are then liable, together with the costs recovered on such judgments; or the court may, upon motion supported by affidavit, order that no execution for more than a proportional share of such judgments shall be issued thereon against the property of such sureties or either of them and that upon payment or collection of such proportional share they shall be discharged from the judgment or judgments upon which such proportional share shall be paid or collected. When the money is paid into court by the sureties as above specified the same, exclusive of the costs so paid in, shall be distributed by an order of the court to the several plaintiffs in such judgments in proportion to the amount of their respective judgments. But every judgment shall have precedence of payment over all judgments in other actions commenced after the date of the recovery of such judgment.

History: 1979 c. 110 s. 60 (11).

19.07 Bonds of public officers and employes. (1) CIVIL SERVICE EMPLOYEES; BLANKET BONDS. (a) The surety bond of any civil service employe of a county, city or village may be canceled in the manner provided by sub. (3).

(b) Any number of officers, department heads or employes may be combined in a schedule or blanket bond, where such bond is to be filed in the same place, and in the event such bond is executed by a corporate surety company, payment of the premium therefor is to be made from the same fund or appropriation prescribed in s. 19.01.

(2) CONTINUATION OF OBLIGATION. Unless canceled pursuant to this section, every such bond shall continue in full force and effect.

(3) CANCELLATION OF BOND. (a) Any county or city by their respective governing body may cancel such bond or bonds of any one employe or any number of employes by giving

written notice to the surety by registered mail, such cancellation to be effective 15 days after receipt of such notice.

(b) When a surety, either personal or corporate, on such bond, shall desire to be released from such bond, he or it may give notice in writing that he or it desires to be released by giving written notice by registered mail, to the clerk of the respective county or city, and such cancellation shall be permitted if approved by the governing body thereof, such cancellation to be effective 15 days after receipt of such notice. This section shall not be so construed as to operate as a release of the sureties for liabilities incurred previous to the expiration of said 15 days' notice.

(c) Whenever a surety bond is canceled in the manner provided by this section, a proportional refund shall be made of the premium paid thereon.

History: 1979 c. 110 s. 60 (11).

19.10 Oaths. Each of the officers enumerated in s. 8.25 (4) (a) shall take and subscribe the oath of office prescribed by article IV, section 28, of the constitution, as follows: The governor and lieutenant governor, before entering upon the duties of office; the secretary of state, treasurer, attorney general, state superintendent and each district attorney, within 20 days after receiving notice of election and before entering upon the duties of office.

History: 1983 a. 192; 1989 a. 31.

19.11 Official bonds. (1) The secretary of state, treasurer and attorney general shall each furnish a bond to the state, at the time he takes and subscribes his oath of office, conditioned for the faithful discharge of the duties of his office, and his duties as a member of the board of commissioners of public lands, and in the investment of the funds arising therefrom. The bond of each of said officers shall be further conditioned for the faithful performance by all persons appointed or employed by him in his office of their duties and trusts therein, and for the delivery over to his successor in office, or to any person authorized by law to receive the same, of all moneys, books, records, deeds, bonds, securities and other property and effects of whatsoever nature belonging to his said offices.

(2) Each of said bonds shall be subject to the approval of the governor and shall be guaranteed by resident freeholders of this state, or by a surety company as provided in s. 632.17 (2). The amount of each such bond, and the number of sureties thereon if guaranteed by resident freeholders, shall be as follows: secretary of state, \$25,000, with sufficient sureties; treasurer, \$100,000, with not less than 6 sureties; and the attorney general, \$10,000, with not less than 3 sureties.

(3) The attorney general shall renew his bond in a larger amount and with additional security, and the treasurer shall give an additional bond, when required by the governor.

(4) The governor shall require the treasurer to give additional bond, within such time, in such reasonable amount not exceeding the funds in the treasury, and with such security as he shall direct and approve, whenever the funds in the treasury exceed the amount of the treasurer's bond; or whenever the governor deems the treasurer's bond insufficient by reason of the insolvency, death or removal from the state of any of the sureties, or from any other cause.

History: 1975 c. 375 s. 44.

19.12 Bond premiums payable from public funds. Any public officer required by law to give a suretyship obligation may pay the lawful premium for the execution of the obligation out of any moneys available for the payment of expenses of the office or department, unless payment is otherwise provided for or is prohibited by law.

History: 1977 c. 339.

SUBCHAPTER II

PUBLIC RECORDS AND PROPERTY

19.21 Custody and delivery of official property and records. (1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers.

(2) Upon the expiration of his term of office, or whenever his office becomes vacant, each such officer, or on his death his legal representative, shall on demand deliver to his successor all such property and things then in his custody, and his successor shall receipt therefor to said officer, who shall file said receipt, as the case may be, in the office of the secretary of state, county clerk, town clerk, city clerk, village clerk, school district clerk, or clerk or other secretarial officer of the municipality or district, respectively; but if a vacancy occurs before such successor is qualified, such property and things shall be delivered to and be receipted for by such secretary or clerk, respectively, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(3) Any person who violates this section shall, in addition to any other liability or penalty, civil or criminal, forfeit not less than \$25 nor more than \$2,000; such forfeiture to be enforced by a civil action on behalf of, and the proceeds to be paid into the treasury of the state, municipality, or district, as the case may be.

(4) (a) Any city council, village board or town board may provide by ordinance for the destruction of obsolete public records. Prior to the destruction at least 60 days' notice in writing of such destruction shall be given the historical society which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive such notice. No assessment roll containing forest crop acreage may be destroyed without prior approval of the secretary of revenue.

(b) The period of time any town, city or village public record is kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in the ordinance may not be less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records and forms board under s. 16.61 (3) (e) and except as provided under sub. (7).

(c) Any local governmental unit or agency may provide for the keeping and preservation of public records kept by that governmental unit through the use of microfilm or other reproductive device. A local governmental unit or agency shall make such provision by ordinance or resolution. Any such action by a subunit of a local governmental unit or agency shall be in conformity with the action of the unit or agency of which it is a part. Any photographic reproduction of a record authorized to be reproduced under this paragraph is deemed an original record for all purposes if it meets the applicable standards established in s. 16.61 (7). This paragraph does not apply to public records kept by counties electing to be governed by ch. 228.

(cm) Paragraph (c) does not apply to court records kept by a clerk of circuit court and subject to SCR chapter 72.

(5) (a) Any county having a population of 500,000 or more may provide by ordinance for the destruction of obsolete

public records, except for court records subject to SCR chapter 72.

(b) Any county having a population of less than 500,000 may provide by ordinance for the destruction of obsolete public records, subject to ss. 59.716 and 59.717, except for court records governed by SCR chapter 72.

(c) The period of time any public record shall be kept before destruction shall be determined by ordinance except that in all counties the specific period of time expressed within s. 7.23 or 59.715 or any other law requiring a specific retention period shall apply. The period of time prescribed in the ordinance for the destruction of all records not governed by s. 7.23 or 59.715 or any other law prescribing a specific retention period may not be less than 7 years, unless a shorter period is fixed by the public records and forms board under s. 16.61 (3) (e).

(d) Prior to any destruction of records under this subsection, except those specified within s. 59.715, at least 60 days' notice of such destruction shall be given in writing, to the historical society, which may preserve any records it determines to be of historical interest. Notice is not required for any records for which destruction has previously been approved by the historical society or in which the society has indicated that it has no interest for historical purposes. Records which have a confidential character while in the possession of the original custodian shall retain such confidential character after transfer to the historical society unless the director of the historical society, with the concurrence of the original custodian, determines that such records shall be made accessible to the public under such proper and reasonable rules as the historical society promulgates.

(e) The county board of any county may provide, by ordinance, a program for the keeping, preservation, retention and disposition of public records including the establishment of a committee on public records and may institute a records management service for the county and may appropriate funds to accomplish such purposes.

(6) A school district, except a 1st class city school district, may provide for the destruction of obsolete school records. Prior to any such destruction, at least 60 days' notice in writing of such destruction shall be given to the historical society, which shall preserve any records it determines to be of historical interest. The historical society may, upon application, waive the notice. The period of time a school district record shall be kept before destruction shall be not less than 7 years, unless a shorter period is fixed by the public records and forms board under s. 16.61 (3) (e) and except as provided under sub. (7). This section does not apply to pupil records under s. 118.125.

(7) Notwithstanding any minimum period of time for retention set under s. 16.61 (3) (e), any taped recording of a meeting, as defined in s. 19.82 (2), by any governmental body, as defined under s. 19.82 (1), of a city, village, town or school district may be destroyed no sooner than 90 days after the minutes have been approved and published if the purpose of the recording was to make minutes of the meeting.

(8) Any metropolitan sewerage commission created under ss. 66.88 to 66.918 may provide for the destruction of obsolete commission records. No record of the metropolitan sewerage district may be destroyed except by action of the commission specifically authorizing the destruction of that record. Prior to any destruction of records under this subsection, the commission shall give at least 60 days' prior notice of the proposed destruction to the state historical society, which may preserve records it determines to be of historical interest. Upon the application of the commission, the state historical society may waive this notice. Except as provided under sub.

(7), the commission may only destroy a record under this subsection after 7 years elapse from the date of the record's creation, unless a shorter period is fixed by the public records and forms board under s. 16.61 (3) (e).

History: 1971 c. 215; 1975 c. 41 s. 52; 1977 c. 202; 1979 c. 35, 221; 1981 c. 191, 282, 335; 1981 c. 350 s. 13; 1981 c. 391; 1983 a. 532; 1985 a. 180 ss. 22, 30m; 1985 a. 225; 1985 a. 332 s. 251 (1); Sup. Ct. Order, 136 W (2d) xviii; 1987 a. 147 ss. 20, 25; 1989 a. 248.

Mandamus petition to inspect county hospital's statistical, administrative and other records not identifiable with individual patients, states cause of action under this section. State ex rel. Dalton v. Mundy, 80 W (2d) 190, 257 NW (2d) 877.

Police daily arrest list must be open for public inspection. Newspapers, Inc. v. Breier, 89 W (2d) 417, 279 NW (2d) 179 (1979).

See note to 968.26, citing In re Wis. Family Counseling Services v. State, 95 W (2d) 670, 291 NW (2d) 631 (Ct. App. 1980).

Examination of birth records cannot be denied simply because the examiner has a commercial purpose. 58 Atty. Gen. 67.

See note to 19.81, citing 60 Atty. Gen. 9.

Inspection of public records obtained under official pledges of confidentiality may be denied where a clear pledge has been made in order to obtain the information, where the pledge was necessary to obtain the information, and where the custodian determines that the harm to the public interest resulting from inspection would outweigh the public interest in full access to public records. Custodian must permit inspection of information submitted under an official pledge of confidentiality where the official or agency had specific statutory authority to require its submission. 60 Atty. Gen. 284.

The right to inspection and copying of public records in decentralized offices discussed. 61 Atty. Gen. 12.

Public records subject to inspection and copying by any person would include list of students awaiting particular program in a VTAE district school. 61 Atty. Gen. 297.

The investment board can only deny members of the public from inspecting and copying portions of the minutes relating to the investment of state funds and documents pertaining thereto on a case-by-case basis where valid reasons for denial exist and are specially stated. 61 Atty. Gen. 361.

Matters and documents in the possession or control of school district officials containing information concerning the salaries, including fringe benefits, paid to individual teachers are matters of public record. 63 Atty. Gen. 143.

Common school districts are presently without authority to destroy records which fall within (1) and which are not pupil records under 118.125 (1). Where city school district is involved, city council could by ordinance provide for destruction of obsolete school district records under (5) (a). Meaning of public records as related to school districts discussed. 63 Atty. Gen. 272.

Department of administration probably has authority under (1) and 19.21 (2), 1979 stats., [now see 19.35] to provide private corporation with camera-ready copy of session laws which is product of printout of computer stored public records if costs are minimal. State cannot contract on a continuing basis for the furnishing of this service. 63 Atty. Gen. 302.

Scope of the duty of the governor to allow members of the public to examine and copy public records in his custody discussed. 63 Atty. Gen. 400.

Public's right to inspect land acquisition files of the department of natural resources and relationship with 66.77 discussed. 63 Atty. Gen. 573.

Financial statements filed in connection with applications for motor vehicle dealers' and motor vehicle salvage dealers' licenses are public records under (2), subject to limitations. 66 Atty. Gen. 302.

Sheriff's radio log, intradepartmental documents kept by sheriff and blood test records of deceased automobile drivers in hands of sheriff are public records under (2), subject to limitations. 67 Atty. Gen. 12.

Plans and specifications filed with DILHR under 101.12 are public records under 16.61 and 19.21 and are available for public inspection. 67 Atty. Gen. 214.

Under (1), district attorneys must preserve indefinitely papers of a documentary nature, evidencing activities of prosecutor's office. 68 Atty. Gen. 17.

Right to privacy law, 895.50, does not affect duties of custodian of public records under 19.21. 68 Atty. Gen. 68.

Right to examine and copy computer-stored information discussed. 68 Atty. Gen. 231.

After transcript of court proceedings is filed with clerk of court, any person may examine or copy transcript. 68 Atty. Gen. 313.

County under 500,000 may destroy obsolete case records maintained by county social services agency under 48.59 (1). 70 Atty. Gen. 196.

VTAE district is "school district" under (6). District may not maintain records on microfilm. 71 Atty. Gen. 9.

19.22 Proceedings to compel the delivery of official property.

(1) If any public officer refuses or neglects to deliver to his or her successor any official property or things as required in s. 19.21, or if the property or things shall come to the hands of any other person who refuses or neglects, on demand, to deliver them to the successor in the office, the successor may make complaint to any circuit judge for the county where the person refusing or neglecting resides. If the judge is satisfied by the oath of the complainant and other testimony as may be offered that the property or things are withheld, the judge shall grant an order directing the person so refusing to show cause, within some short and reasonable time, why the person should not be compelled to deliver the property or things.

(2) At the time appointed, or at any other time to which the matter may be adjourned, upon due proof of service of such order, if the person complained against makes affidavit before such judge that he has delivered to such successor all the official property and things in his custody or possession pertaining to such office, within his knowledge, the person complained against shall be discharged and all further proceedings in the matter before such judge shall cease.

(3) If the person complained against does not make such affidavit the matter shall proceed as follows:

(a) The judge shall inquire further into the matters set forth in the complaint, and if it appears that any such property or things are withheld by the person complained against the judge shall by warrant commit him to the county jail, there to remain until the delivery of such property and things to the complainant or until he be otherwise discharged according to law.

(b) If required by the complainant the judge shall also issue his warrant, directed to the sheriff or any constable of the county, commanding him in the daytime to search such places as shall be designated in such warrant for such official property and things as were in the custody of the officer whose term of office expired or whose office became vacant, or of which he was the legal custodian, and seize and bring them before the judge issuing such warrant.

(c) When any such property or things are brought before the judge by virtue of such warrant, he shall inquire whether the same pertain to such office, and if it thereupon appears that they pertain thereto he shall order their delivery to the complainant.

History: 1977 c. 449.

19.23 Transfer of records or materials to historical society.

(1) Any public records, in any state office, that are not required for current use may, in the discretion of the public records and forms board, be transferred into the custody of the historical society, as provided in s. 16.61.

(2) The proper officer of any county, city, village, town, school district or other local governmental unit, may under s. 44.09 offer title and transfer custody to the historical society of any records deemed by the society to be of permanent historical importance.

(3) The proper officer of any court may, on order of the judge of that court, transfer to the historical society title to such court records as have been photographed or microphotographed or which have been on file for at least 75 years, and which are deemed by the society to be of permanent historical value.

(4) Any other articles or materials which are of historic value and are not required for current use may, in the discretion of the department or agency where such articles or materials are located, be transferred into the custody of the historical society as trustee for the state, and shall thereupon become part of the permanent collections of said society.

History: 1975 c. 41 s. 52; 1981 c. 350 s. 13; 1985 a. 180 s. 30m; 1987 a. 147 s. 25.

19.24 Refusal to deliver money, etc., to successor.

Any public officer whatever, in this state, who shall, at the expiration of his term of office, refuse or wilfully neglect to deliver, on demand, to his successor in office, after such successor shall have been duly qualified and be entitled to said office according to law, all moneys, records, books, papers or other property belonging to said office and in his hands or under his control by virtue thereof, shall be imprisoned not more than 6 months or fined not more than \$100.

19.25 State officers may require searches, etc., without fees. The secretary of state, treasurer and attorney general, respectively, are authorized to require searches in the respective offices of each other and in the offices of the clerk of the supreme court, of the court of appeals, of the circuit courts, of the registers of deeds for any papers, records or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof and extracts therefrom without the payment of any fee or charge whatever.

History: 1977 c. 187, 449.

19.31 Declaration of policy. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employes who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employes whose responsibility it is to provide such information. To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.

History: 1981 c. 335, 391.

The Wisconsin public records law. 67 MLR 65 (1983).

Municipal responsibility under the Wisconsin revised public records law. Maloney. WBB Jan 1983.

The public records law and the Wisconsin department of revenue. Boykoff WBB Dec 1983.

The Wis. open records act: an update on issues. Trubek and Foley. WBB Aug 1986.

19.32 Definitions. As used in ss. 19.33 to 19.39:

(1) "Authority" means any of the following having custody of a record: a state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation created under ch. 232; any public purpose corporation, as defined in s. 181.79 (1); any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in s. 59.001 (3), and which provides services related to public health or safety to the county or municipality; a nonprofit corporation operating an ice rink which is owned by the state; or a formally constituted subunit of any of the foregoing.

(2) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), and computer printouts. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

(3) "Requester" means any person who requests inspection or copies of a record.

History: 1981 c. 335; 1985 a. 26, 29, 332; 1987 a. 305.

See note to 59.14, citing *C. L. v. Edson*, 140 W (2d) 168, 409 NW (2d) 417 (Ct. App 1987).

Risk management study commissioned by corporation counsel was not "draft" under (2); evidence showed county paid for and used study in various ways. *Fox v. Bock*, 149 W (2d) 403, 438 NW (2d) 589 (1989).

"Records" must have some relation to functions of agency. 72 Atty. Gen. 99.

Treatment of drafts under the public records law discussed. 77 Atty. Gen. 100.

19.33 Legal custodians. (1) An elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employe of his or her staff to act as the legal custodian.

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

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

(4) Every authority not specified in subs. (1) to (3) shall designate in writing one or more positions occupied by an officer or employe of the authority or the unit of government of which it is a part as a legal custodian to fulfill its duties under this subchapter. In the absence of a designation the authority's highest ranking officer and the chief administrative officer, if any, are the legal custodians for the authority. The legal custodian shall be vested by the authority with full legal power to render decisions and carry out the duties of the authority under this subchapter. Each authority shall provide the name of the legal custodian and a description of the nature of his or her duties under this subchapter to all employes of the authority entrusted with records subject to the legal custodian's supervision.

(5) Notwithstanding sub. (4), if an authority specified in sub. (4) or the members of such an authority are appointed by another authority, the appointing authority may designate a legal custodian for records of the authority or members of the authority appointed by the appointing authority, except that if such an authority is attached for administrative purposes to another authority, the authority performing administrative duties shall designate the legal custodian for the authority for whom administrative duties are performed.

(6) The legal custodian of records maintained in a publicly owned or leased building or the authority appointing the legal custodian shall designate one or more deputies to act as legal custodian of such records in his or her absence or as otherwise required to respond to requests as provided in s. 19.35 (4). This subsection does not apply to members of the legislature or to members of any local governmental body.

(7) The designation of a legal custodian does not affect the powers and duties of an authority under this subchapter.

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

History: 1981 c. 335

19.34 Procedural information. (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its

custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub. (1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

History: 1981 c. 335.

19.35 Access to records; fees. (1) RIGHT TO INSPECTION. (a)

Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.

(b) Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record which appears in written form. If a requester requests a copy of the record, the authority having custody of the record may, at its option, permit the requester to photocopy the record or provide the requester with a copy substantially as readable as the original.

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

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

(e) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is not in a readily comprehensible form a copy of the information contained in the record assembled and reduced to written form on paper.

(f) Except as otherwise provided by law, any requester has a right to inspect any record not specified in pars. (b) to (e) the

form of which does not permit copying. If a requester requests permission to photograph the record, the authority having custody of the record may permit the requester to photograph the record. If a requester requests that a photograph of the record be provided, the authority shall provide a good quality photograph of the record.

(g) Paragraphs (a) to (c), (e) and (f) do not apply to a record which has been or will be promptly published with copies offered for sale or distribution.

(h) A request under pars. (a) to (f) is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under s. 19.37.

(i) Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the request is received by mail, unless prepayment of a fee is required under sub. (3) (f). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(j) Notwithstanding pars. (a) to (f), a requester shall comply with any regulations or restrictions upon access to or use of information which are specifically prescribed by law.

(k) Notwithstanding pars. (a), (b) and (f), a legal custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

(L) Except as necessary to comply with pars. (c) to (e) or s. 19.36 (6), this subsection does not require an authority to create a new record by extracting information from existing records and compiling the information in a new format.

(2) FACILITIES. The authority shall provide any person who is authorized to inspect or copy a record under sub. (1) (a), (b) or (f) with facilities comparable to those used by its employees to inspect, copy and abstract the record during established office hours. An authority is not required by this subsection to purchase or lease photocopying, duplicating, photographic or other equipment or to provide a separate room for the inspection, copying or abstracting of records.

(3) FEES. (a) An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law.

(b) An authority may impose a fee upon the requester of a copy of a record for the actual, necessary and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.

(c) Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is \$50 or more.

(d) An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.

(e) An authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

(f) An authority may require prepayment by a requester of any fee or fees imposed under this subsection if the total amount exceeds \$5.

(4) **TIME FOR COMPLIANCE AND PROCEDURES.** (a) Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor.

(b) If a request is made orally, the authority may deny the request orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request. Every written denial of a request by an authority shall inform the requester that if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37 (1) or upon application to the attorney general or a district attorney.

(5) **RECORD DESTRUCTION.** No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record under sub. (1) until after the request is granted or until at least 60 days after the date that the request is denied. If an action is commenced under s. 19.37, the requested record may not be destroyed until after the order of the court in relation to such record is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record and the order is not appealed, the requested record may not be destroyed until after the request for inspection or copying is granted.

(6) **ELECTED OFFICIAL RESPONSIBILITIES.** No elected official is responsible for the record of any other elected official unless he or she has possession of the record of that other official.

History: 1981 c. 335, 391.

See note to 59.14, citing *State ex rel. Bilder v. Delavan Tp.* 112 W (2d) 539, 334 NW (2d) 252 (1983).

Although meeting was properly closed, in order to refuse inspection of meeting records custodian was required by (1) (a) to state specific and sufficient public policy reasons why public interest in nondisclosure outweighed public's right of inspection. *Oshkosh Northwestern Co. v. Oshkosh Library Bd.* 125 W (2d) 480, 373 NW (2d) 459 (Ct. App. 1985).

Public records germane to pending litigation were available under this section even though discovery cutoff deadline had passed. *State ex rel. Lank v. Rzentkowski*, 141 W (2d) 846, 416 NW (2d) 635 (Ct. App. 1987).

In determining whether trial court properly upheld custodian's denial of access, appellate court will inquire whether trial court made a factual determination supported by record of whether documents implicate secrecy interest, and, if so, whether secrecy interest outweighs release interest. *Milwaukee Journal v. Call*, 153 W (2d) 313, 450 NW (2d) 515 (Ct. App. 1989).

Custodian may not require requester to pay cost of unrequested certification. Unless fee for copies of records is established by law, custodian may not charge more than actual and direct cost of reproduction. 72 Atty. Gen. 36.

Copying fee but not location fee may be imposed on requester for cost of computer run. 72 Atty. Gen. 68.

Fee for copying public records discussed. 72 Atty. Gen. 150.

Public records relating to employee grievances are not generally exempt from disclosure. Nondisclosure must be justified on case-by-case basis. 73 Atty. Gen. 20.

Disclosure of employee's birth date, sex, ethnic heritage and handicapped status discussed. 73 Atty. Gen. 26.

Department of regulation and licensing may refuse to disclose records relating to complaints against health care professionals while the matters are merely "under investigation"; good faith disclosure of same will not expose custodian to liability for damages; prospective continuing requests for records are not contemplated by public records law. 73 Atty. Gen. 37.

Prosecutors' case files are exempt from disclosure. 74 Atty. Gen. 4.

Relationship between public records law and pledges of confidentiality in settlement agreements discussed. 74 Atty. Gen. 14.

See note to 146.50, citing OAG 14-89.

19.36 Limitations upon access and withholding. (1) APPLICATION OF OTHER LAWS. Any record which is specifically exempted from disclosure by state or federal law or authorized

to be exempted from disclosure by state law is exempt from disclosure under s. 19.35 (1), except that any portion of that record which contains public information is open to public inspection as provided in sub. (6).

(2) **LAW ENFORCEMENT RECORDS.** Except as otherwise provided by law, whenever federal law or regulations require or as a condition to receipt of aids by this state require that any record relating to investigative information obtained for law enforcement purposes be withheld from public access, then that information is exempt from disclosure under s. 19.35 (1).

(3) **CONTRACTORS' RECORDS.** Each authority shall make available for inspection and copying under s. 19.35 (1) any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority.

(4) **COMPUTER PROGRAMS AND DATA.** A computer program, as defined in s. 16.97 (4) (c), is not subject to examination or copying under s. 19.35 (1), but the material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying, except as otherwise provided in s. 19.35 or this section.

(5) **TRADE SECRETS.** An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90 (1) (c).

(6) **SEPARATION OF INFORMATION.** If a record contains information that may be made public and information that may not be made public, the authority having custody of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release.

History: 1981 c. 335; 1985 a. 236.

Separation costs must be borne by agency. 72 Atty. Gen. 99.

Computerized compilation of bibliographic records discussed in relation to copyright law; requester is entitled to copy of computer tape or printout of information on tape. 75 Atty. Gen. 133 (1986).

Federal exemption was not incorporated under (1). 77 Atty. Gen. 20.

Public access to law enforcement records. Fitzgerald 68 MLR 705 (1985).

19.37 Enforcement and penalties. (1) MANDAMUS. If an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made, the requester may pursue either, or both, of the alternatives under pars. (a) and (b).

(a) The requester may bring an action for mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate.

(b) The requester may, in writing, request the district attorney of the county where the record is found, or request the attorney general, to bring an action for mandamus asking a court to order release of the record to the requester. The district attorney or attorney general may bring such an action.

(2) **COSTS, FEES AND DAMAGES.** The court shall award reasonable attorney fees, damages of not less than \$100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action filed under sub. (1). Costs and fees shall be paid by the authority affected or the unit of government of which it is a part, or by the unit of government by which the legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

(3) **PUNITIVE DAMAGES.** If a court finds that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously denied or delayed response to a request or charged excessive fees, the court may award punitive damages to the requester.

(4) **PENALTY.** Any authority which or legal custodian under s. 19.33 who arbitrarily and capriciously denies or delays response to a request or charges excessive fees may be required to forfeit not more than \$1,000. Forfeitures under this section shall be enforced by action on behalf of the state by the attorney general or by the district attorney of any county where a violation occurs. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

History: 1981 c. 335, 391.

Party seeking fees under (2) must show that prosecution of action could reasonably be regarded as necessary to obtain information and that "causal nexus" exists between that action and agency's surrender of information. State ex rel. Vaughan v. Faust, 143 W (2d) 868, 422 NW (2d) 898 (Ct. App. 1988).

If agency exercises due diligence but is unable to respond timely to records request, plaintiff must show that mandamus action was necessary to secure records release to qualify for award of fees and costs under (2). Racine Ed. Ass'n v. Bd. of Ed., 145 W (2d) 518, 427 NW (2d) 414 (Ct. App. 1988).

Assuming (1) (a) applies before mandamus is issued, trial court retains discretion to refuse counsel's participation in in camera inspection. Milwaukee Journal v. Call, 153 W (2d) 313, 450 NW (2d) 515 (Ct. App. 1989).

Where trial court has incomplete knowledge of contents of public records sought, it must conduct in camera inspection to determine what may be disclosed following custodian's refusal. State ex rel. Morke v. Donnelly, 155 W (2d) 521, 455 NW (2d) 893 (1990).

Actual damages are liability of agency. Punitive damages and forfeitures can be liability of either agency or legal custodian or both. Section 895.46 (1) (a) probably provides indemnification for punitive damages assessed against custodian but not for forfeitures. 72 Atty. Gen. 99.

19.39 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances. The attorney general may respond to such a request.

History: 1981 c. 335.

SUBCHAPTER III

CODE OF ETHICS FOR PUBLIC OFFICIALS AND EMPLOYEES

19.41 Declaration of policy. (1) It is declared that high moral and ethical standards among state public officials and state employes are essential to the conduct of free government; that the legislature believes that a code of ethics for the guidance of state public officials and state employes will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their state public officials and state employes.

(2) It is the intent of the legislature that in its operations the board shall protect to the fullest extent possible the rights of individuals affected.

History: 1973 c. 90; Stats. 1973 s. 11 01; 1973 c. 334 s. 33; Stats. 1973 s. 19.41; 1977 c. 277.

19.42 Definitions. In this subchapter:

(1) "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

(2) "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity.

(3) "Board" means the ethics board.

(4) "Candidate for state public office" means any individual who files nomination papers and a declaration of candidacy under s. 8.21 or who is nominated at a caucus under s. 8.05 (1) for the purpose of appearing on the ballot for election as a state public official or any individual who is nominated for the purpose of appearing on the ballot for election as a state public official through the write-in process or by appointment to fill a vacancy in nomination and who files a declaration of candidacy under s. 8.21.

(5) "Department" means the legislature, the university of Wisconsin system, any authority or public corporation created and regulated by an act of the legislature and any office, department, independent agency or legislative service agency created under ch. 13, 14 or 15, any vocational, technical and adult education district or any constitutional office other than a judicial office. In the case of a district attorney, "department" means the department of administration unless the context otherwise requires.

(6) "Gift" means the payment or receipt of anything of value without valuable consideration.

(7) "Immediate family" means:

(a) An individual's spouse; and

(b) An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.

(7m) "Income" has the meaning given under section 61 of the internal revenue code.

(7s) "Internal revenue code" has the meanings given under s. 71.01 (5).

(8) "Ministerial action" means an action that an individual performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of the individual's own judgment as to the propriety of the action being taken.

(9) "Nominee" means any individual who is nominated by the governor for appointment to a state public office and whose nomination requires the advice and consent of the senate.

(10) "Official required to file" means:

(a) A member of the elections board.

(b) A member of a district board or district director of vocational, technical and adult education, or any individual occupying the position of assistant, associate or deputy district director of vocational, technical and adult education.

(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).

(d) A state public official whose appointment to state public office requires the advice and consent of the senate, except a member of the board of directors of the Bradley center sports and entertainment corporation created under ch. 232.

(e) An individual appointed by the governor pursuant to s. 17.20 (2) other than a trustee of any private higher educational institution receiving state appropriations.

(f) An auditor for the legislative audit bureau.

(g) The chief clerk and sergeant at arms of each house of the legislature.

(h) The members and employes of the Wisconsin housing and economic development authority, except clerical employes.

(i) A municipal judge.

(j) A member or the executive director of the judicial commission.

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

(L) The executive director, executive assistant to the executive director and investment directors of the investment board.

(11) "Organization" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

(12) "Security" has the meaning given under s. 551.02 (13), except that the term does not include a certificate of deposit or a deposit in a mutual savings and loan association, mutual savings bank, credit union, or similar association organized under the laws of any state.

(13) "State public office" means:

(a) All positions to which individuals are regularly appointed by the governor, except the position of trustee of any private higher educational institution receiving state appropriations.

(b) The positions of associate and assistant vice presidents of the university of Wisconsin system and vice chancellors identified in s. 20.923 (5).

(c) All positions identified under s. 20.923 (2), (4), (4m), (6) (f) to (hd) and (hp) and (8) to (10), except clerical positions.

(d) A member of the pharmacy internship board.

(e) The chief clerk and sergeant at arms of each house of the legislature or a full-time, permanent employe occupying the position of auditor for the legislative audit bureau.

(f) A member of a district board or district director of vocational, technical and adult education, or any position designated as assistant, associate or deputy district director of vocational, technical and adult education.

(g) The members and employes of the Wisconsin housing and economic development authority, except clerical employes.

(h) A municipal judge.

(i) A member or the executive director of the judicial commission.

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

(k) The executive director, executive assistant to the executive director and investment directors of the investment board.

(14) "State public official" means any individual holding a state public office.

History: 1973 c. 90; Stats. 1973 s. 11.02; 1973 c. 333; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.42; 1977 c. 29, 223, 277; 1977 c. 447 ss. 35, 209; 1979 c. 34, 177, 221; 1981 c. 20, 269, 349, 391; 1983 a. 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 166 ss. 1 to 4, 16; 1983 a. 484, 538; 1985 a. 26; 1985 a. 29 s. 3202 (46); 1985 a. 304; 1987 a. 72, 119; 1987 a. 312 s. 17; 1987 a. 340, 365, 399, 403; 1989 a. 31, 338.

Law Revision Committee Note, 1983: This bill establishes consistency in the usage of the terms "person", "individual" and "organization" in the code of ethics for state public officials. The term "person" is the broadest of these terms; and refers to any legal entity. The use of the term "person" in the bill is consistent with the definition of the word in s. 990.01 (26), stats., which provides that "person" includes all partnerships, associations and bodies politic or corporate. The term "organization" is narrower, and is defined in s. 19.42 (11), stats., as "any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic". "Individual", although not specifically defined in the current statutes or in this bill, is used consistently in this bill to refer to natural persons.

The term "income" is used several times in the code of ethics for state public officials. This bill clarifies the current definition of income by providing a specific cross-reference to the internal revenue code and by providing that the definition refers to the most recent version of the internal revenue code which has been adopted by the legislature for state income tax purposes.

When person holds 2 government positions, one included in and the other exempted from the (8) definition of state public official, the applicability of subch. III depends upon the capacity in which the person acted. 64 Atty. Gen. 143.

19.43 Financial disclosure. (1) Each individual who in January of any year is an official required to file shall file with

the board no later than April 30 of that year a statement of economic interests meeting each of the requirements of s. 19.44 (1). The information contained on the statement shall be current as of December 31 of the preceding year.

(2) An official required to file shall file with the board a statement of economic interests meeting each of the requirements of s. 19.44 (1) no later than 21 days following the date he or she assumes office if the official has not previously filed a statement of economic interests with the board during that year. The information on the statement shall be current as per the date he or she assumes office.

(3) A nominee shall file with the board a statement of economic interests meeting each of the requirements of s. 19.44 (1) within 21 days of being nominated unless the nominee has previously filed a statement of economic interests with the board during that year. The information on the statement shall be current as per the date he or she was nominated. Following the receipt of a nominee's statement of economic interests, the board shall forward copies of such statement to the members of the committee of the senate to which the nomination is referred.

(4) A candidate for state public office shall file with the board a statement of economic interests meeting each of the requirements of s. 19.44 (1) no later than 4:30 p.m. on the 3rd day following the deadline for filing nomination papers for the office which the candidate seeks, no later than 4:30 p.m. on the 5th day after notification of nomination is mailed or personally delivered to the candidate by the municipal clerk in the case of a candidate who is nominated at a caucus, or no later than 4:30 p.m. on the 3rd day after notification of nomination is mailed or personally delivered to the candidate by the appropriate official or agency in the case of a write-in candidate or candidate who is appointed to fill a vacancy in nomination under s. 8.35 (2) (a). The information contained on the statement shall be current as of December 31 of the year preceding the filing deadline. Before certifying the name of any candidate for state public office under s. 7.08 (2) (a), the elections board, municipal clerk or board of election commissioners shall ascertain whether that candidate has complied with this subsection. If not, the elections board, municipal clerk or board of election commissioners may not certify the candidate's name for ballot placement.

(5) Each member of the investment board and each employe of the investment board who is a state public official shall complete and file with the ethics board a quarterly report of economic transactions no later than the last day of the month following the end of each calendar quarter during any portion of which he or she was a member or employe of the investment board. Such reports of economic transactions shall be in the form prescribed by the ethics board and shall identify the date and nature of any purchase, sale, put, call, option, lease, or creation, dissolution or modification of any economic interest made during the quarter for which the report is filed and disclosure of which would be required by s. 19.44 if a statement of economic interests were being filed.

(7) If an official required to file fails to make a timely filing, the board shall promptly provide notice of the delinquency to the state treasurer, and to the chief executive of the department of which the official's office or position is a part, or, in the case of a district attorney, to the chief executive of that department and to the county clerk of each county served by the district attorney or in the case of a municipal judge to the clerk of the municipality of which the official's office is a part, or in the case of a justice, court of appeals judge or circuit judge, to the director of state courts. Upon such notification both the state treasurer and the department, municipality or director shall withhold all payments for compensation, reim-

bursement of expenses and other obligations to the official until the board notifies the officers to whom notice of the delinquency was provided that the official has complied with this section.

(8) On its own motion or at the request of any individual who is required to file a statement of economic interests, the board may extend the time for filing or waive any filing requirement if the board determines that the literal application of the filing requirements of this subchapter would work an unreasonable hardship on that individual or that the extension of the time for filing or waiver is in the public interest. The board shall set forth in writing as a matter of public record its reason for the extension or waiver.

History: 1973 c. 90; Stats. 1973 s. 11.03; 1973 c. 333; 1973 c. 334 s. 33; Stats. 1973 s. 19.43; 1977 c. 223, 277; 1979 c. 221; 1983 a. 166 ss. 5, 16; 1983 a. 484, 538; 1985 a. 29, 304; 1987 a. 399; 1989 a. 31.

Extent of confidentiality of investment board nominees' statement of economic interests rests in sound discretion of senate committee to which nomination is referred under (3). 68 Atty. Gen. 378

Discussion of possible conflict between requirements of financial disclosure and confidentiality requirements for lawyers. 68 Atty. Gen. 411.

19.44 Form of statement. (1) Every statement of economic interests which is required to be filed under this subchapter shall be in the form prescribed by the board, and shall contain the following information:

(a) The identity of every organization with which the individual required to file is associated and the nature of his or her association with the organization, except that no identification need be made of:

1. Any organization which is described in section 170 (c) of the internal revenue code.

2. Any organization which is organized and operated primarily to influence voting at an election including support for or opposition to an individual's present or future candidacy or to a present or future referendum.

3. Any nonprofit organization which is formed exclusively for social purposes and any nonprofit community service organization.

4. A trust.

(b) The identity of every organization or body politic in which the individual who is required to file or that individual's immediate family, severally or in the aggregate, owns, directly or indirectly, securities having a value of \$5,000 or more, the identity of such securities and their approximate value, except that no identification need be made of a security or issuer of a security when it is issued by any organization not doing business in this state or by any government or instrumentality or agency thereof, or an authority or public corporation created and regulated by an act of such government, other than the state of Wisconsin, its instrumentalities, agencies and political subdivisions, or authorities or public corporations created and regulated by an act of the legislature.

(c) The name of any creditor to whom the individual who is required to file or such individual's immediate family, severally or in the aggregate, owes \$5,000 or more and the approximate amount owed.

(d) The real property located in this state in which the individual who is required to file or such individual's immediate family holds an interest, other than the principal residence of the individual or his or her immediate family, and the nature of the interest held. An individual's interest in real property does not include a proportional share of interests in real property if the individual's proportional share is less than 10% of the outstanding shares or is less than an equity value of \$5,000.

(e) The identity of each payer from which the individual who is required to file or a member of his or her immediate family received \$1,000 or more of his or her income for the

preceding taxable year, except that if the individual who is required to file identifies the general nature of the business in which he or she or his or her immediate family is engaged, then no identification need be made of a decedent's estate or an individual, not acting as a representative of an organization, unless the individual is a lobbyist as defined in s. 13.62. In addition, no identification need be made of payers from which only dividends or interest, anything of pecuniary value reported under s. 19.56, or political contributions reported under ch. 11 were received.

(f) If the individual who is required to file or a member of his or her immediate family received \$1,000 or more of his or her income for the preceding taxable year from a partnership, corporation electing to be taxed as a partnership under subchapter S of the federal internal revenue code or service corporation under ss. 180.1901 to 180.1921 in which the individual or a member of his or her immediate family, severally or in the aggregate, has a 10% or greater interest, the identity of each payer from which the organization received \$1,000 or more of its income for its preceding taxable year, except that if the individual who is required to file identifies the general nature of the business in which he or she or his or her immediate family is engaged then no identification need be made of a decedent's estate or an individual, not acting as a representative of an organization, unless the individual is a lobbyist as defined in s. 13.62. In addition, no identification need be made of payers from which dividends or interest are received.

(g) The identity of each person from which the individual who is required to file received, directly or indirectly, any gift or gifts having an aggregate value of more than \$50 within the taxable year preceding the time of filing, except that the source of a gift need not be identified if the donor is the donee's parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, niece, nephew, spouse, fiance or fiancée.

(h) Lodging, transportation, money or other things of pecuniary value reportable under s. 19.56 (2).

(2) Whenever a dollar amount is required to be reported pursuant to this section, it is sufficient to report whether the amount is not more than \$50,000, or more than \$50,000.

(3) (a) An individual is the owner of a trust and the trust's assets and obligations if he or she is the creator of the trust and has the power to revoke the trust without obtaining the consent of all of the beneficiaries of the trust.

(b) An individual who is eligible to receive income or other beneficial use of the principal of a trust is the owner of a proportional share of the principal in the proportion that the individual's beneficial interest in the trust bears to the total beneficial interests vested in all beneficiaries of the trust. A vested beneficial interest in a trust includes a vested reverter interest.

(4) Information which is required by this section shall be provided on the basis of the best knowledge, information and belief of the individual filing the statement.

History: 1973 c. 90; Stats. 1973 s. 11.04; 1973 c. 334 ss. 33, 57, 58; Stats. 1973 s. 19.44; 1977 c. 277; 1979 c. 110 s. 60 (4), (11); 1983 a. 61; 1983 a. 166 ss. 6, 16; 1983 a. 538; 1989 a. 303, 338.

Law Revision Committee Note, 1983: Under the ethics code, each state public official and candidate for state public office must file a statement of economic interests with the ethics board listing the businesses, organizations and other legal entities from which they and their families received substantial income during the preceding taxable year. However, the ethics code does not require identification of individual persons from whom the income is received. This bill provides that if the individual filing the statement of economic interests identifies the general nature of the business in which the individual or a member of his or her family is engaged, then no identification need be made of the estate of any deceased individual from which income was received. This bill makes it unnecessary to identify a decedent's estate which was indebted to a state public official or candidate for state public office, and makes it unnecessary to identify decedents' estates which are represented by lawyer-public officials.

19.45 Standards of conduct. (1) The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This subchapter does not prevent any state public official from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this state. The legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

(2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

(3m) No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56 (3).

(4) No state public official may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information.

(5) No state public official may use or attempt to use his public position to influence or gain unlawful benefits, advantages or privileges for himself or others.

(6) No state public official, member of a state public official's immediate family, nor any organization with which the state public official or a member of the official's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from state funds unless the state public official has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department acting for the state in regard to such contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the state in an action commenced

within 3 years of the date on which the ethics board, or the department or officer acting for the state in regard to the allocation of state funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of s. 946.13.

(7) (a) No state public official who is identified in s. 20.923 may represent a person for compensation before a department or any employe thereof, except:

1. In a contested case which involves a party other than the state with interests adverse to those represented by the state public official; or

2. At an open hearing at which a stenographic or other record is maintained; or

3. In a matter that involves only ministerial action by the department; or

4. In a matter before the department of revenue or tax appeals commission that involves the representation of a client in connection with a tax matter.

(b) This subsection does not apply to representation by a state public official acting in his or her official capacity.

(8) Except in the case where the state public office formerly held was that of legislator, legislative employe under s. 20.923 **(6) (f), (g) or (h)**, chief clerk of a house of the legislature, sergeant at arms of a house of the legislature or a permanent employe occupying the position of auditor for the legislative audit bureau:

(a) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employe of the department with which he or she was associated as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

(b) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employe of a department in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former official's responsibility as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

(c) No former state public official may, for compensation, act on behalf of any party other than the state in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a state public official.

(9) The attorney general may not engage in the private practice of law during the period in which he or she holds that office. No justice of the supreme court and no judge of any court of record may engage in the private practice of law during the period in which he or she holds that office. No full-time district attorney may engage in the private practice of law during the period in which he or she holds that office, except as authorized in s. 978.06 (5).

(10) This section does not prohibit a legislator from making inquiries for information on behalf of a person or from representing a person before a department if he or she receives no compensation therefor beyond the salary and other compensation or reimbursement to which the legislator is entitled by law, except as authorized under sub. (7).

(11) The legislature recognizes that all state public officials and employes should be guided by a code of ethics and thus:

(a) The administrator of the division of merit recruitment and selection in the department of employment relations shall, with the board's advice, promulgate rules to implement a code of ethics for classified and unclassified state employes except state public officials subject to this subchapter, unclassified personnel in the university of Wisconsin system and officers and employes of the judicial branch.

(b) The board of regents of the university of Wisconsin system shall establish a code of ethics for unclassified personnel in that system who are not subject to this subchapter.

(c) The supreme court shall promulgate a code of judicial ethics for officers and employes of the judiciary and candidates for judicial office which shall include financial disclosure requirements. All justices and judges shall, in addition to complying with this subchapter, adhere to the code of judicial ethics.

(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.

History: 1973 c. 90; Stats. 1973 s. 11.05; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.45; 1977 c. 29; 1977 c. 196 s. 130 (2); 1977 c. 223, 277; 1977 c. 418 s. 923 (14); 1977 c. 419, 447; 1979 c. 120; 1983 a. 27 ss. 112, 2200 (15); 1983 a. 166 ss. 7, 16; 1985 a. 332 s. 251 (1); 1987 a. 365; 1989 a. 31, 338.

County board may provide for a penalty in the nature of a forfeiture for violation of a code of ethics ordinance but may not bar violators from running for office. Violation is not a neglect of duties under 59.10 or ipso facto cause for removal under 17.09 (1). See also 67 Atty. Gen. 164. 66 Atty. Gen. 148.

19.46 Conflict of interest prohibited; exception. (1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

(2) Any individual, either personally or on behalf of an organization or governmental body, may request of the board an advisory opinion regarding the propriety of any matter to which the person is or may become a party; and any appointing officer, with the consent of a prospective appointee, may request of the board an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The board shall review a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests therefor shall be in writing. The board's deliberations and actions upon such requests shall be in meetings not open to the public. It is prima facie evidence of intent to comply with this subchapter or subch. III of ch. 13 when a person refers a matter to the board and abides by the board's advisory opinion, if the material facts are as stated in the opinion request. The board may authorize the executive director to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party. No member or employe of the board may make public the identity of the individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.

(3) This section does not prohibit a state public official from taking any action concerning the lawful payment of salaries or employe benefits or reimbursement of actual and necessary expenses, or prohibit a state public official from taking official action with respect to any proposal to modify state law or the state administrative code.

History: 1973 c. 90; Stats. 1973 s. 11.06; 1973 c. 334 ss. 33, 57, 58; Stats. 1973 s. 19.46; 1975 c. 422; 1977 c. 223, 277, 449; 1983 a. 166; 1985 a. 29; 1989 a. 338.

19.47 Operation. (1) The office of the board shall be in Madison, but the board may, after proper public notice and in compliance with subch. IV, meet or exercise any or all of its powers at any other place in this state.

(2) The board shall appoint an executive director outside the classified service to serve at the pleasure of the board. The executive director shall appoint such other personnel as he or she requires to carry out the duties of the board. The executive director shall perform such duties as the board assigns to him or her in the administration of this subchapter and subch. III of ch. 13.

(3) All members and employes of the board shall file statements of economic interests with the board.

(4) Any action by the board, except an action relating to procedure of the board, requires the affirmative vote of 4 of its members.

(5) No later than September 1 of each year, the board shall submit a report concerning its actions in the preceding fiscal year to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2). Such report shall contain the names and duties of all individuals employed by the board and a summary of its determinations and advisory opinions. The board shall make sufficient alterations in the summaries to prevent disclosing the identities of individuals or organizations involved in the decisions or opinions. The board shall make such further reports on the matters within its jurisdiction and such recommendations for further legislation as it deems desirable.

(6) The joint committee on legislative organization shall be advisory to the board on all matters relating to operation of the board.

History: 1973 c. 90; Stats. 1973 s. 11.07; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.47; 1975 c. 426 s. 3; 1977 c. 26, 277; 1983 a. 27, 166, 378; 1987 a. 186; 1989 a. 338.

19.48 Duties of the board. The board shall:

(1) Promulgate rules necessary to carry out this subchapter and subch. III of ch. 13. The board shall give prompt notice of the contents of its rules to state public officials who will be affected thereby.

(2) Prescribe and make available forms for use under this subchapter and subch. III of ch. 13, including the forms specified in s. 13.685 (1).

(3) Accept and file any information related to the purposes of this subchapter or subch. III of ch. 13 which is voluntarily supplied by any person in addition to the information required by this subchapter.

(4) Preserve the statements of economic interests filed with it for a period of 6 years from the date of receipt in such form, including microfilming, as will facilitate document retention, except that:

(a) Upon the expiration of 3 years after an individual ceases to be a state public official the board shall, unless the former state public official otherwise requests, destroy any statement of economic interests filed by him or her and any copies thereof in its possession.

(b) Upon the expiration of 3 years after any election at which a candidate for state public office was not elected, the board shall destroy any statements of economic interests filed

by him or her as a candidate for state public office and any copies thereof in the board's possession, unless the individual continues to hold another position for which he or she is required to file a statement, or unless the individual otherwise requests.

(c) Upon the expiration of 3 years from the action of the senate upon a nomination for state public office at which the senate refused to consent to the appointment of the nominee, the board shall destroy any statements of economic interests filed by him or her as a nominee and any copies thereof in the board's possession, unless the individual continues to hold another position for which he or she is required to file a statement, or unless the nominee otherwise requests. This paragraph does not apply to any individual who is appointed to state public office under s. 17.20 (2).

(5) Except as provided in s. 19.55 (2) (c), make statements of economic interests filed with the board available for public inspection and copying during regular office hours and make copying facilities available at a charge not to exceed actual cost.

(6) Compile and maintain an index to all the statements of economic interests currently on file with the board to facilitate public access to such statements of economic interests.

(7) Prepare and publish special reports and technical studies to further the purposes of this subchapter and subch. III of ch. 13.

(8) Report the full name and address of any individual and the full name and address of any person represented by an individual seeking to copy or obtain information from a statement of economic interests in writing to the individual who filed it, as soon as possible.

(9) Administer a program to explain and interpret this subchapter and subch. III of ch. 13 for state public officials, and for elective state officials, candidates for state public office, legislative officials, agency officials and lobbyists, as defined in s. 13.62. The program shall provide advice regarding appropriate ethical and lobbying practices, with special emphasis on public interest lobbying. The board may delegate creation and implementation of the program to a group representing the public interest.

History: 1973 c. 90; Stats. 1973 s. 11.08; 1973 c. 333; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.48; 1975 c. 41; 1977 c. 223, 277; 1977 c. 447 ss. 37, 209; 1983 a. 166 ss. 10, 16; 1985 a. 164; 1989 a. 338, 359.

19.49 Complaints. (1) The board shall accept from any individual, either personally or on behalf of an organization or governmental body, a verified complaint in writing which states the name of any person alleged to have committed a violation of this subchapter or subch. III of ch. 13 and which sets forth the particulars thereof. The board shall forward to the accused within 10 days a copy of the complaint and a general statement of the applicable statutes with respect to such verified complaint. If the board determines that the verified complaint does not allege facts sufficient to constitute a violation of this subchapter or subch. III of ch. 13, it shall dismiss the complaint and notify the complainant and the accused. If the board determines that the verified complaint alleges facts sufficient to constitute a violation of this subchapter or subch. III of ch. 13, it may make an investigation with respect to any alleged violation. If the board determines that the verified complaint was brought for harassment purposes, the board shall so state.

(2) Any person to whom this subchapter or subch. III of ch. 13 may have application may request the board to make an investigation of his or her own conduct or of allegations made by other persons as to his or her conduct. Such a request shall be made in writing and shall set forth in detail the reasons therefor.

(3) Following the receipt of a verified complaint or upon the receipt of other information, whether or not under oath, that provides a reasonable basis for the belief that a violation of this subchapter or subch. III of ch. 13 has been committed or that an investigation of a possible violation is warranted, the board may investigate the circumstances concerning the possible violation. Prior to invoking any power under s. 19.50, the board shall authorize an investigation by resolution, which shall state the nature and purpose of the investigation and the actions or activities to be investigated. Upon adoption of a resolution, the board shall notify each person who is the subject of the investigation pursuant to sub. (4). If the board, during the course of an investigation, finds probable cause to believe that a violation of this subchapter or subch. III of ch. 13 has occurred, it may:

(a) If no verified complaint has been filed, make upon its own motion a verified complaint, which shall be in writing, shall state the name of the person who is alleged to have committed a violation of this subchapter or subch. III of ch. 13 and shall set forth the particulars thereof. The board shall forward to the accused within 10 days a copy of the complaint, a general statement of the applicable statutes with respect to such verified complaint and a specific statement enumerating the source or sources of information upon which the complaint is based.

(b) If a verified complaint has been filed and the board finds probable cause to believe that a violation of this subchapter or subch. III of ch. 13, other than one contained in the complaint, has occurred, it may amend the complaint, upon its own motion, to include such violations. If the complaint is so amended by the board, the board shall send a copy of the amendment to the person complained against within 48 hours.

(4) Upon adoption of a resolution authorizing an investigation under sub. (3), the board shall mail a copy of the resolution to each alleged violator who is identified in the resolution, together with a notice informing the alleged violator that the person is the subject of the investigation authorized by the resolution and a general statement of the applicable statutes with respect to such investigation. Service of the notice is complete upon mailing.

(5) No action may be taken on any complaint which is filed later than 3 years after a violation of this subchapter or subch. III of ch. 13 is alleged to have occurred.

History: 1977 c. 277; 1983 a. 166; 1989 a. 338.

Law Revision Committee Note, 1983: Under current sub. (4), stats., when the ethics board authorizes the investigation of a violation of the code of the ethics for state public officials, the executive director of the ethics board is required to "forward" a copy of the resolution of the board to the alleged violator. This bill makes it clear that the executive director is required to mail a copy of the resolution to the alleged violator, and that mailing the resolution to the violator constitutes service of the notice. The bill thereby makes it clear that personal delivery of the notice is not required.

19.50 Investigations. Pursuant to any investigation authorized under s. 19.49 (3) or any hearing conducted under this subchapter or subch. III of ch. 13, the board has the power:

(1) To require any person to submit in writing such reports and answers to questions relevant to the proceedings conducted under this subchapter or subch. III of ch. 13 as the board may prescribe, such submission to be made within such period and under oath or otherwise as the board may determine.

(2) To administer oaths and to require by subpoena issued by it the attendance and testimony of witnesses and the production of any documentary evidence relating to the investigation or hearing being conducted. Notwithstanding s. 885.01 (4), the issuance of a subpoena requires action by the board in accordance with s. 19.47 (4).

19.50 GENERAL DUTIES OF PUBLIC OFFICIALS

(3) To order testimony to be taken by deposition before any individual who is designated by the board and has the power to administer oaths, and, in such instances, to compel testimony and the production of evidence in the same manner as authorized by sub. (2).

(4) To pay witnesses the same fees and mileage as are paid in like circumstances by the courts of this state.

(5) To request and obtain from the department of revenue copies of state income tax returns and access to other appropriate information under s. 71.78 (4) regarding all persons who are the subject of such investigation.

History: 1977 c. 277; 1983 a. 166 ss. 12, 16; 1987 a. 312 s. 17; 1989 a. 338.

19.51 Probable cause of violation. (1) At the conclusion of its investigation, the board shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation of this subchapter or subch. III of ch. 13 has occurred. If the board determines that no probable cause exists, it shall immediately send written notice of such determination to the accused and to the party who made the complaint. If the board determines that there is probable cause for believing that a violation of this subchapter or subch. III of ch. 13 has been committed, its preliminary findings of fact and conclusions may contain:

(a) A recommendation for criminal prosecution which shall be referred to the district attorney in whose jurisdiction the alleged violation occurred or to the attorney general if the violation concerns the district attorney, and, if the district attorney fails to commence a prosecution within 30 days, to the attorney general, who may then commence a prosecution; or

(b) An order setting a date for hearing to determine whether a violation of this subchapter or subch. III of ch. 13 has occurred. The board shall serve the order upon the accused. A hearing ordered under this paragraph shall be commenced within 30 days after the date that 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.

(2) The board shall inform the accused or his or her counsel of exculpatory evidence in its possession.

(3) If the board makes a recommendation for criminal prosecution under sub. (1), the district attorney to whom the recommendation is made or the attorney general shall, within 30 days of receipt of such recommendation, make a decision whether to prosecute the party charged. The board shall give written notice of any referral under this subsection to the accused. The district attorney or attorney general shall give written notice of the decision to the accused, the complainant and the board.

History: 1977 c. 277; 1987 a. 365; 1989 a. 31, 338.

19.52 Hearing procedure. (1) Every hearing or rehearing under this subchapter shall be conducted in accordance with the requirements of ch. 227, except as otherwise expressly provided. During any investigation and during any hearing which is conducted to determine whether a violation of this subchapter or subch. III of ch. 13 has occurred, the person under investigation or the accused may be represented by counsel of his or her own choosing and the accused or his or her representative, if any, shall have an opportunity to challenge the sufficiency of any complaint which has been filed against him or her, to examine all documents and records obtained or prepared by the board in connection with the matter heard, to bring witnesses, to establish all pertinent

facts and circumstances, to question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses, and shall otherwise be able to exercise fully any pretrial discovery procedure usually available in civil actions. During any hearing conducted by the board to determine whether a violation of this subchapter or subch. III of ch. 13 has occurred, all evidence including certified copies of records which the board considers shall be fully offered and made a part of the record in the proceedings. The accused or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence. Upon request of the accused, the board shall issue subpoenas to compel the attendance of necessary witnesses.

(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 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.

(3) Chapters 901 to 911 apply to the admission of evidence at the hearing. The board shall not find a violation of this subchapter or subch. III of ch. 13 except upon clear and convincing evidence admitted at the hearing.

(4) After the conclusion of 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 or subch. III of ch. 13. The board shall not begin deliberations until after the proposed decision under s. 227.46 (2) is served and opportunity is given for arguments.

History: 1977 c. 277; 1983 a. 166 ss. 13, 16; 1985 a. 182 s. 57; 1987 a. 365; 1989 a. 338.

19.53 Findings of fact and conclusions; orders and recommendations. If the board determines that no violation of this subchapter or subch. III of ch. 13 has occurred, it shall immediately send written notice of such determination to the accused and to the party who made the complaint. If the board determines that a violation of this subchapter or subch. III of ch. 13 has occurred, its findings of fact and conclusions may contain one or more of the following orders or recommendations:

(1) In the case of a state public official in the unclassified service, a recommendation that the state public official be censured, suspended, or removed from office or employment. Such recommendation shall be made to the appropriate appointing authority who may censure, suspend, or take action to remove the official from office or employment.

(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.

(2) In the case of a legislator, a recommendation that the legislator be censured, suspended, or removed from office. Such recommendation shall be made to the appropriate house.

(3) In the case of a justice or judge, a recommendation that the justice or judge be reprimanded, censured, suspended or removed from office. Such recommendation shall be sent to the supreme court and to the presiding officer of each house of the legislature.

(4) In the case of a state public official liable to impeachment, a recommendation that the official be removed from office. Such recommendation shall be referred to the assembly.

(5) An order requiring the accused to conform his or her conduct to this subchapter or subch. III of ch. 13.

(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, or not more than the applicable amount specified in s. 13.69 for each violation of subch. III of ch. 13; 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.

(7) An order revoking the license of any lobbyist who violates ss. 13.61 to 13.68 for a period not to exceed 3 years.

(8) Such other recommendation or order as may be necessary and appropriate and is consistent with the intent and purposes of this subchapter or subch. III of ch. 13.

History: 1977 c. 277; 1983 a. 166; 1987 a. 365; 1989 a. 338.

19.54 Rehearings. (1) After the service upon the accused by the board of any decision under s. 19.53 containing an order or recommendation, the accused may apply to the board for a rehearing with respect to any matter determined in such decision as provided in s. 227.49.

(2) An application for rehearing is governed by such general rules as the board may establish. Only one rehearing may be granted by the board. No order of the board becomes effective until 20 days after it is issued, or while an application for rehearing or a rehearing is pending, or until 10 days after such application for rehearing is either denied, expressly or by implication, or the board has announced its final determination on rehearing.

History: 1977 c. 277; 1985 a. 182 s. 57.

19.545 Settlements. (1) The board may compromise and settle any action or potential action for a violation of this subchapter or subch. III of ch. 13 which the board is authorized to take under s. 19.53. Notwithstanding s. 778.06, an action may be settled for such sum as may be agreed upon between the board and the alleged violator.

(2) Whenever the board enters into a settlement agreement with an individual who is accused of a violation of this subchapter or subch. III of ch. 13 or who is investigated by the board for a possible violation of this subchapter or subch. III of ch. 13, 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).

History: 1987 a. 365; 1989 a. 338.

19.55 Public inspection of records. (1) Except as provided in sub. (2), all records in the possession of the board are open to public inspection at all reasonable times. The board shall require an individual wishing to examine a statement of economic interests or the list of persons who inspect any statements which are in the board's possession to provide his or her full name and address, and if the individual is representing another person, the full name and address of the person which he or she represents. Such identification may be provided in writing or in person. The board shall record and retain for at least 3 years information obtained by it pursuant to this subsection. No individual may use a fictitious name or

address or fail to identify a principal in making any request for inspection.

(2) The following records in the board's possession are not open for public inspection:

(a) Records obtained in connection with a request for an advisory opinion other than summaries of advisory opinions that do not disclose the identity of individuals requesting such opinions or organizations on whose behalf they are requested. The board may, however, make such records public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the board in connection with the request for an advisory opinion.

(b) Records obtained or prepared by the board in connection with an investigation, except that the board shall permit inspection of records that are made public in the course of a hearing by the board to determine if a violation of this subchapter or subch. III of ch. 13 has occurred. Whenever the board refers such investigation and hearing records to a district attorney or to the attorney general, they may be made public in the course of a prosecution initiated under this subchapter.

(c) Statements of economic interests and reports of economic transactions which are filed with the ethics board by members or employes of the investment board, except that the ethics board shall refer statements and reports filed by such individuals to the legislative audit bureau for its review, and except that a statement of economic interests filed by a member or employe of the investment board who is also an official required to file shall be open to public inspection.

History: 1977 c. 277; 1981 c. 335 s. 26; 1983 a. 166 ss. 15, 16; 1985 a. 164; 1989 a. 31, 338.

See note to 19.43, citing 68 Atty. Gen. 378.

19.56 Honorariums, fees and expenses. (1) Every state public official is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret legislative, administrative, executive or judicial processes and proposals and issues initiated by or affecting a department or the judicial branch.

(2) (a) Except as provided in par. (b), every official required to file who receives for a published work or for the presentation of a talk or participation in a meeting, any lodging, transportation, money or other thing with a combined pecuniary value exceeding \$50 excluding the value of food or beverage offered coincidentally with a talk or meeting shall, on his or her statement of economic interests, report the identity of every person from whom the official receives such lodging, transportation, money or other thing during his or her preceding taxable year, the circumstances under which it was received and the approximate value thereof.

(b) An official need not report on his or her statement of economic interests under par. (a) information pertaining to any lodging, transportation, money or other thing of pecuniary value which:

1. The official returns to the payor within 30 days of receipt;

2. Is paid to the official by a person identified on the official's statement of economic interests under s. 19.44 (1) (e) or (f) as a source of income;

3. The official can show by clear and convincing evidence was unrelated to and did not arise from the recipient's

19.56 GENERAL DUTIES OF PUBLIC OFFICIALS

holding or having held a public office and was made for a purpose unrelated to the purposes specified in sub. (1);

4. The official has previously reported to the board as a matter of public record; or

5. Is paid by the department or municipality of which the official's state public office is a part, or, in the case of a district attorney, is paid by that department or a county which the district attorney serves, or, in the case of a justice or judge of a court of record, is paid from the appropriations for operation of the state court system.

(3) Notwithstanding s. 19.45:

(a) A state public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic specified in sub. (1) if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

(b) A state public official may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in sub. (1).

(c) A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

(d) A state public official may receive and retain from a political committee under ch. 11 transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of costs permitted and reported in accordance with ch. 11.

(4) If a state public official receives a payment not authorized by this subchapter, in cash or otherwise, for a published work or a talk or meeting, the official may not retain it. If practicable, the official shall deposit it with the department or municipality with which he or she is associated or, in the case of a justice or judge of a court of record, with the director of state courts. If that is not practicable, the official shall return it or its equivalent to the payor or convey it to the state or to a charitable organization other than one with which he or she is associated.

History: 1977 c. 277; 1983 a. 61, 538; 1985 a. 203; 1989 a. 31, 338.

19.58 Criminal penalties. (1) Any person who intentionally violates this subchapter or a code of ethics adopted or established under s. 19.45 (11) (a) or (b) shall be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year in the county jail or both.

(2) The penalty under sub. (1) does not limit the power of either house of the legislature to discipline its own members or to impeach a public official, or limit the power of a department to discipline its state public officials or employees.

(3) In this section "intentionally" has the meaning given under s. 939.23.

History: 1973 c. 90; Stats. 1973 s. 11.10; 1973 c. 334 ss. 33, 57, 58; Stats. 1973 s. 19.50; 1975 c. 200; 1977 c. 277 ss. 34, 37; Stats. 1977 s. 19.58.

19.59 Codes of ethics for local government officials, employees and candidates. (1) Any county, city, village or town

may adopt an ordinance establishing a code of ethics for public officials and employees of the county or municipality and candidates for county or municipal elective offices.

(2) An ordinance adopted under this section shall specify the positions to which it applies. The ordinance may apply to members of the immediate family of individuals who hold positions or who are candidates for positions covered by the ordinance.

(3) An ordinance adopted under this section may contain any of the following provisions:

(a) A requirement for public officials, employees and candidates to identify any of the economic interests specified in s. 19.44, but to no greater extent than is required under that section.

(b) A provision directing the county or municipal clerk to omit the name of any candidate from an election ballot who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(c) A provision directing the county or municipal treasurer to withhold the payment of salaries or expenses from any public official or employee who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

(d) A provision vesting administration and civil enforcement of the ordinance with an ethics board appointed in a manner specified in the ordinance. A board created under this paragraph may issue subpoenas, administer oaths and investigate any violation of the ordinance on its own motion or upon complaint by any person. The ordinance may empower the board to issue opinions upon request. Notwithstanding s. 19.35, records of the board's opinions, opinion requests and investigations of violations of the ordinance may be closed in whole or in part to public inspection if the ordinance so provides.

(e) Provisions prescribing ethical standards of conduct and prohibiting conflicts of interest on the part of public officials and employees or former public officials and employees of the county or municipality, similar in scope to the provisions of s. 19.45, where applicable, but not more restrictive than the requirements of that section.

(f) A provision prescribing a forfeiture for violation of the ordinance in an amount not exceeding \$1,000 for each offense. A minimum forfeiture not exceeding \$100 for each offense may also be prescribed.

(4) This section may not be construed to limit the authority of a county, city, village or town to regulate the conduct of its officials and employees to the extent that it has authority to regulate that conduct under the constitution or other laws.

History: 1979 c. 120; 1981 c. 149; 1981 c. 335 s. 26; 1983 a. 166 s. 16.

SUBCHAPTER IV**OPEN MEETINGS OF GOVERNMENTAL BODIES**

19.81 Declaration of policy. (1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.

(3) In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall

remain open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.

(4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal statutes must be strictly construed shall be limited to the enforcement of forfeitures and shall not otherwise apply to actions brought under this subchapter or to interpretations thereof.

History: 1975 c. 426; 1983 a. 192.

Revisor's Note, 1975: The following annotations relate to 66.77, repealed by Chapter 426, laws of 1975.

Subsequent to the presentation of evidence by the taxpayer, board of review consideration of testimony by the village assessor at an executive session was contrary to the open meeting law, 66.77, since although it was permissible for the board to convene a closed session for the purpose of deliberating after a quasi-judicial hearing, the proceedings did not constitute mere deliberations but were a continuation of the quasi-judicial hearing without the presence of or notice to the objecting taxpayer. *Dolphin v. Board of Review*, 70 W (2d) 403, 234 NW (2d) 277.

Under unique facts presented in which City of Milwaukee and private non-profit festival organization incorporated Open Meetings Law into contract, court construes contract to allow public enforcement of contractual provisions concerning open meetings. *Journal/Sentinel, Inc. v. Pleva*, 155 W (2d) 704, 456 NW (2d) 359 (1990).

A regular open meeting, held subsequent to a closed meeting on another subject, does not constitute a reconvened open meeting where there was no prior open meeting on that day. 58 Atty. Gen. 41.

Consideration of a resolution is formal action of an administrative or minor governing body and when taken in proper closed session, the resolution and result of vote must be made available for public inspection, pursuant to 19.21, absent specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Joint apprenticeship committees, appointed pursuant to 4 Wis. Adm. Code, sec. Ind 85.02, are governmental bodies within the meaning of 66.77 (2) (c) and subject to the requirements of the open meeting law. 63 Atty. Gen. 363.

Voting procedures employed by workmen's compensation and unemployment advisory councils which utilize adjournment of public meeting for purposes of having members representing employers and members representing employees or workers to separately meet in closed caucuses and to vote as a block on reconvening are contrary to 66.77 and 15.09 (4), (5). 63 Atty. Gen. 414.

Governmental body can call closed sessions for proper purpose without giving notice to members of news media who have filed written request under 66.77 (2) (e). 63 Atty. Gen. 470.

Meaning of communication in 66.77 (2) (e) discussed with reference to giving the public and news media members adequate notice. 63 Atty. Gen. 509.

Posting in Governor's office of agenda of future investment board meetings is not sufficient communication under 66.77 (2) (e) to the public or the news media who have filed a written request for notice. 63 Atty. Gen. 549.

Under 66.77 (6), a county board may not utilize unidentified paper ballot in voting to appoint county highway commissioner, but may vote by ayes and nays or show of hands at open session if some member does not require vote to be taken in such manner that the vote of each member may be ascertained and recorded. 63 Atty. Gen. 569.

See note to 19.21, citing 63 Atty. Gen. 573.

Revisor's Note, 1977: The following annotations refer to ss. 19.81 to 19.98. Open meeting law is not applicable to the Wis. judicial commission. *State ex rel. Lynch v. Dancey*, 71 W (2d) 287, 238 NW (2d) 81.

Discussion of this subchapter. 65 Atty. Gen. preface.

Public notice requirements for meetings of city district school board under this subchapter and 120.48, 1983 stats., discussed. 66 Atty. Gen. 93.

Volunteer fire department organized as a nonprofit corporation under 213.05 is not subject to the open meeting law. 66 Atty. Gen. 113.

Anyone has the right to tape-record an open meeting of a governmental body provided the meeting is not thereby physically disrupted. 66 Atty. Gen. 318.

Open meeting law does not apply to a coroner's inquest. 67 Atty. Gen. 250.

Open meeting law does not apply where common council hears a grievance under a collective bargaining agreement. 67 Atty. Gen. 276.

Application of open meeting law to duties of WERC discussed. 68 Atty. Gen. 171.

Meeting of committee on reapportionment was probably held in violation of open meetings law. 71 Atty. Gen. 63.

Foundations, building corporations and independent bodies politic and corporate are not "governmental bodies". 73 Atty. Gen. 53.

Understanding Wisconsin's open meeting law. *Harvey, WBB* September 1980.

19.82 Definitions. As used in this subchapter:

(1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public body, corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation created under ch. 232; any public purpose corporation, as defined in s. 181.79 (1); a nonprofit corporation operating an ice rink which is owned

by the state; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. IV or V of ch. 111.

(2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter.

(3) "Open session" means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental body, it means a meeting which is held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13 (1).

History: 1975 c. 426; 1977 c. 364, 447; 1985 a. 26, 29, 332; 1987 a. 305. "Meeting" under (2) was found although governmental body was not empowered to exercise final powers of its parent body. *State v. Swanson*, 92 W (2d) 310, 284 NW (2d) 655 (1979).

"Meeting" under (2) was found where members met with purpose to engage in government business and number of members present was sufficient to determine parent body's course of action regarding proposal discussed. *State ex rel. Newspapers v. Showers*, 135 W (2d) 77, 398 NW (2d) 154 (1987).

A municipal public utility commission managing a city owned public electric utility is a governmental body under (1). 65 Atty. Gen. 243.

"Private conference" under 118.22 (3), on nonrenewal of teacher's contract is a "meeting" within 19.82 (2). 66 Atty. Gen. 211.

A private home may qualify as a meeting place under (3). 67 Atty. Gen. 125.

Telephone conference call involving members of governmental body is a "meeting" which must be reasonably accessible to public and public notice must be given. 69 Atty. Gen. 143.

19.83 Meetings of governmental bodies. Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.

History: 1975 c. 426.

19.84 Public notice. (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any university of Wisconsin system institution or campus and a nonprofit

corporation operating an ice rink which is owned by the state are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

History: 1975 c. 426; 1987 a. 305

Under (1) (b), written request for notice of meetings of governmental body should be filed with chief presiding officer or designee and separate written request should be filed with each specific governmental body. 65 Atty. Gen. 166.

Method of giving notice pursuant to (1) discussed. 65 Atty. Gen. 250.

Specificity of notice required by governmental body discussed. 66 Atty. Gen. 143, 195.

Requirements of notice given to newspapers under this section discussed. 66 Atty. Gen. 230.

A town board, but not an annual town meeting is a "governmental body" within the meaning of the open meetings law. 66 Atty. Gen. 237.

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for communication of notices. 77 Atty. Gen. 312.

Newspaper is not obligated to print notice received under (1) (b), nor is governmental body obligated to pay for publication. *Martin v. Wray*, 473 F Supp. 1131 (1979)

19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employe or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employe or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employe or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employe over

which the governmental body has jurisdiction or exercises responsibility.

(d) Considering specific applications of probation or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment compensation in a meeting at which all employer members of the council or all employe members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employe members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the ethics board under s. 19.46 (2), or from any local government ethics board.

(i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public, could adversely affect the business, its employes or former employes.

(j) Considering financial information relating to the support by a person, other than an authority, of a nonprofit corporation operating an ice rink which is owned by the state, if the information is exempt from disclosure under s. 23.37 or would be so exempt were the information to be contained in a record. In this paragraph, "authority" and "record" have the meanings given under s. 19.32.

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. IV or V of ch. 111 which has been negotiated by such body or on its behalf.

History: 1975 c. 426; 1977 c. 260; 1983 a. 84; 1985 a. 316; 1987 a. 38, 305; 1989 a. 64.

See note to 19.35, citing *Oshkosh Northwestern Co. v. Oshkosh Library Bd.* 125 W (2d) 480, 373 NW (2d) 459 (Ct. App. 1985).

Boards of review cannot rely on exemptions in (1) to close any meeting in view of explicit requirements in 70.47 (2m). 65 Atty. Gen. 162.

University subunit may discuss promotions not relating to tenure, merit increases and property purchase recommendations in closed session. 66 Atty. Gen. 60.

Neither (1) (c) nor (f) authorizes school board to make actual appointment of new member in closed session. 74 Atty. Gen. 70.

County board chairperson and committee are not authorized by (1) (c) to meet in closed session to discuss appointments to county board committees; however, in appropriate circumstances, (1) (f) would authorize closed sessions. 76 Atty. Gen. 276.

19.86 Notice of collective bargaining negotiations. Notwithstanding s. 19.82 (1), where notice has been given by either party to a collective bargaining agreement under subch. IV or V of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as provided in s. 19.84 (1) (b). If the employer is not a governmental body, notice shall be given by the employer's chief officer or such person's designee. This section does not apply to a nonprofit corporation operating an ice rink which is owned by the state.

History: 1975 c. 426; 1987 a. 305

19.87 Legislative meetings. This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

(4) Meetings of the senate or assembly committee on organization under s. 71.78 (4) (c) or 77.61 (5) (b) 3 shall be closed to the public.

History: 1975 c. 426; 1977 c. 418; 1987 a. 312 s. 17.

Sub (3) applied to closed meeting of Democrats on legislative committee to discuss budget bill. State ex rel. Lynch v. Conta, 71 W (2d) 662, 239 NW (2d) 313.

19.88 Ballots, votes and records. (1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in subch. II of ch. 19.

History: 1975 c. 426; 1981 c. 335 s. 26.

Under (1), common council may not vote to fill a vacancy on the common council by secret ballot. 65 Atty. Gen. 131.

19.89 Exclusion of members. No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

History: 1975 c. 426.

19.90 Use of equipment in open session. Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing

such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

History: 1977 c. 322.

19.96 Penalty. Any member of a governmental body who knowingly attends a meeting of such body held in violation of this subchapter, or who, in his or her official capacity, otherwise violates this subchapter by some act or omission shall forfeit without reimbursement not less than \$25 nor more than \$300 for each such violation. No member of a governmental body is liable under this subchapter on account of his or her attendance at a meeting held in violation of this subchapter if he or she makes or votes in favor of a motion to prevent the violation from occurring, or if, before the violation occurs, his or her votes on all relevant motions were inconsistent with all those circumstances which cause the violation.

History: 1975 c. 426.

State need not prove specific intent to violate Open Meeting Law. State v. Swanson, 92 W (2d) 310, 284 NW (2d) 655 (1979).

19.97 Enforcement. (1) This subchapter shall be enforced in the name and on behalf of the state by the attorney general or, upon the verified complaint of any person, by the district attorney of any county wherein a violation may occur. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

(2) In addition and supplementary to the remedy provided in s. 19.96, the attorney general or the district attorney may commence an action, separately or in conjunction with an action brought under s. 19.96, to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(3) Any action taken at a meeting of a governmental body held in violation of this subchapter is voidable, upon action brought by the attorney general or the district attorney of the county wherein the violation occurred. However, any judgment declaring such action void shall not be entered unless the court finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken.

(4) If the district attorney refuses or otherwise fails to commence an action to enforce this subchapter within 20 days after receiving a verified complaint, the person making such complaint may bring an action under subs. (1) to (3) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state.

History: 1975 c. 426; 1981 c. 289.

Judicial Council Note, 1981: Reference in sub. (2) to a "writ" of mandamus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613-A]

19.98 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances.

History: 1975 c. 426.