



## 1999 SENATE BILL 268

October 28, 1999 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Labor.

1     **AN ACT** *to repeal* 20.923 (6) (n), 230.16 (8) and 230.20 (3); *to amend* 230.12 (1)  
2           (c) 2., 230.33 (1), 230.33 (2), 230.34 (1) (a), 230.34 (1) (ar), 230.40 (2) and 230.44  
3           (1) (c); and *to create* 230.33 (1m) of the statutes; **relating to:** restoration and  
4           reinstatement rights of classified employes appointed to unclassified positions;  
5           leaves of absence from state employment to seek partisan political office;  
6           compensation and employment rights of assistant district attorneys; the salary  
7           of the position of Wisconsin veterans museum superintendent; authority of the  
8           administrator of the division of merit recruitment and selection in the  
9           department of employment relations to appoint local examiners; and  
10          solicitation of recommendations for positions in the classified service of the  
11          state (suggested as remedial legislation by the department of employment  
12          relations).

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### *Analysis by the Legislative Reference Bureau*

This bill does all of the following:

1. Under current law, "a person appointed by the governor, elected officer, judicial body or by a legislative body or committee, or by any other appointing

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authority when both the classified and unclassified positions are within his or her department,” must be granted a leave of absence without pay for the duration of the unclassified appointment and for three months following the end of the appointment. During this period, the person has restoration rights to the state agency from which he or she last held an appointment in the classified service. According to the department of employment relations (DER), there is some ambiguity as to whether the classified and unclassified positions must be within the same department when the person is appointed by the governor, elected officer, judicial body or by a legislative body or committee for the person to be granted a leave of absence and have the restoration rights.

This bill clearly provides that a person employed in the classified service of this state and who is appointed to any unclassified position by the governor, an elected officer, a judicial body or by a legislative body or committee must be granted a leave of absence without pay for the duration of the unclassified appointment and for three months following the end of the appointment. During this period, the person has restoration rights to the state agency from which he or she last held an appointment in the classified service.

2. Under current law, if a person in the classified service of the state declares an intention to run for partisan political office the person shall be *given* a leave of absence for the duration of the election campaign and if elected shall separate from the classified service on assuming the duties and responsibilities of such office. According to DER, this provision may be interpreted in such a manner that the employer or employe may regard the granting of the leave of absence as discretionary. This bill provides that if a person in the classified service declares an intention to run for partisan political office the person shall be *placed on* a leave of absence for the duration of the election campaign and if elected shall separate from the classified service on assuming the duties and responsibilities of such office. According to DER, this change in the law will now make this provision mandatory on the employer and employe.

3. Under current law, assistant district attorneys are state employes. Other than assistant district attorneys who are supervisors, assistant district attorneys have their compensation established in collective bargaining agreements under the state employment labor relations act (SELRA). Before 1990, however, assistant district attorneys were not state employes and did not have their compensation established in a collective bargaining agreement under SELRA. Current law provides for extra compensation for assistant district attorneys in the compensation plan. This bill eliminates this provision, with the result that those assistant district attorneys whose compensation is established in the compensation plan are governed by the general extra compensation provisions of the compensation plan.

In addition, current law refers to certain employment rights of assistant district attorneys who first became state employes in 1990 and had accumulated at least 12 months of continuous service as county and state employes. These rights pertain to demotion, layoff, suspension and discharge. This bill eliminates the references to these assistant district attorneys who became state employes in 1990 and who had accumulated at least 12 months of continuous service as county and state employes.

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4. This bill eliminates a provision in current law that the salary of the superintendent of the Wisconsin veterans museum is established by the secretary of veterans affairs. Currently, there is no such position in state government; instead, the department of veterans affairs operates the Wisconsin veterans museum.

5. Under current law, the administrator of the division of merit recruitment and selection in DER is authorized to designate any person in or out of state government or any person employed by a municipal or county government to act as a local examiner for filling positions in state government. This bill eliminates this authority.

6. Under current law, an applicant for a promotion to a position in the classified service of this state may not solicit recommendations. This bill eliminates this prohibition.

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

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

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

1           **SECTION 1.** 20.923 (6) (n) of the statutes is repealed.

NOTE: Under current law, the salary of the superintendent of the Wisconsin veterans museum is established by the secretary of veterans affairs. However, there is no such position. Therefore, this section is repealed.

2           **SECTION 2.** 230.12 (1) (c) 2. of the statutes is amended to read:

3           230.12 (1) (c) 2. The secretary may establish a plan of extra compensation for  
4 work performed during selected hours at an hourly rate or rates subject to approval  
5 of the joint committee on employment relations. ~~The secretary may establish a plan  
6 of extra compensation for assistant district attorneys, which may include extra  
7 compensation for work performed during selected hours or for special duty such as  
8 on-call duty, at hourly rates subject to the approval of the joint committee on  
9 employment relations. Eligibility for such extra compensation shall be as provided  
10 in the compensation plan.~~

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NOTE: This provision is amended to eliminate the authority of the secretary of employment relations to establish a plan of extra compensation for assistant district attorneys. The effect of this change is that the assistant district attorneys whose compensation is established in the compensation plan will be governed by the general extra compensation provisions of that plan.

1       **SECTION 3.** 230.16 (8) of the statutes is repealed.

NOTE: Currently, the administrator of the division of merit recruitment and selection in the department of employment relations is authorized to designate a person in or out of state government or any person employed by a municipal or county government to act as a local examiner for filling positions in state government. The provision is not used. Therefore, it is repealed.

2       **SECTION 4.** 230.20 (3) of the statutes is repealed.

NOTE: Currently, applicants for a promotion to a position in the classified service in Wisconsin may not solicit “recommendations”. This bill eliminates the prohibition.

3       **SECTION 5.** 230.33 (1) of the statutes is amended to read:

4       230.33 (1) A person appointed to an unclassified position by the governor,  
5       elected officer, judicial body or by a legislative body or committee, ~~or by any other~~  
6       ~~appointing authority when both the classified and unclassified positions are within~~  
7       ~~his or her department,~~ shall be granted a leave of absence without pay for the  
8       duration of the appointment and for 3 months thereafter, during which time the  
9       person has restoration rights to the former position or equivalent position in the  
10      department in which last employed in a classified position without loss of seniority.  
11      The person shall also have reinstatement privileges for 5 years following  
12      appointment to the unclassified service or for one year after termination of the  
13      unclassified appointment whichever is longer. Restoration rights and reinstatement  
14      privileges shall be forfeited if the reason for termination of the unclassified  
15      appointment would also be reason for discharge from the former position in the  
16      classified service.

NOTE: This provision is amended to limit its applicability to persons appointed to an unclassified position by the governor, elected official judicial body or by a legislative body or committee.

17      **SECTION 6.** 230.33 (1m) of the statutes is created to read:

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1           230.33 (1m) A person appointed to an unclassified position by an appointing  
2 authority other than an appointing authority described under sub. (1), when both the  
3 classified and unclassified positions are within the appointing authority's  
4 department, shall be granted a leave of absence without pay for the duration of the  
5 appointment and for 3 months thereafter, during which time the person has  
6 restoration rights to the former position or equivalent position in the department in  
7 which last employed in a classified position without loss of seniority. The person  
8 shall also have reinstatement privileges for 5 years following appointment to the  
9 unclassified service or for one year after termination of the unclassified appointment  
10 whichever is longer. Restoration rights and reinstatement privileges shall be  
11 forfeited if the reason for termination of the unclassified appointment would also be  
12 reason for discharge from the former position in the classified service.

NOTE: This provision provides that a person who is appointed in an unclassified position by an appointing authority other than those listed in s. 230.33 (1), stats., when both the classified and unclassified positions are within the appointing authority's department, shall be granted a leave of absence without pay for the duration of the appointment and for 3 months thereafter. The person will have restoration and reinstatement rights that are the same as a person appointed to an unclassified position by those authorities listed in s. 230.33 (1), stats.

13           **SECTION 7.** 230.33 (2) of the statutes is amended to read:

14           230.33 (2) A person appointed to an unclassified position by an appointing  
15 authority other than an elected officer, ~~judicial body, legislative body or committee~~  
16 appointing authority described under sub. (1), to a department other than the one  
17 in which the person was a classified employe may be granted a leave of absence  
18 without pay at the option of the person's former appointing authority in accordance  
19 with the leave of absence provisions in the rules of the secretary. An employe granted  
20 a leave of absence shall have the same restoration rights and reinstatement

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1 privileges as under sub. ~~(1)~~ (1m). If not granted a leave of absence, the employe shall  
2 be entitled only to the reinstatement privileges under sub. ~~(1)~~ (1m).

3 **SECTION 8.** 230.34 (1) (a) of the statutes is amended to read:

4 230.34 **(1)** (a) An employe with permanent status in class or an employe who  
5 has served with the state ~~or a county, or both,~~ as an assistant district attorney for a  
6 continuous period of 12 months or more may be removed, suspended without pay,  
7 discharged, reduced in base pay or demoted only for just cause.

NOTE: This provision removes references to employes who have served with the state or county or both, as an assistant district attorney for a continuous period of 12 months. All assistant district attorneys are state, rather than county, employes, effective January 1, 1990.

8 **SECTION 9.** 230.34 (1) (ar) of the statutes is amended to read:

9 230.34 **(1)** (ar) Paragraphs (a) and (am) apply to all employes with permanent  
10 status in class in the classified service and all employes who have served with the  
11 state ~~or a county, or both,~~ as an assistant district attorney for a continuous period of  
12 12 months or more, except that for employes specified in s. 111.81 (7) (a) in a collective  
13 bargaining unit for which a representative is recognized or certified, or for employes  
14 specified in s. 111.81 (7) (b) or (c) in a collective bargaining unit for which a  
15 representative is certified, if a collective bargaining agreement is in effect covering  
16 employes in the collective bargaining unit, the determination of just cause and all  
17 aspects of the appeal procedure shall be governed by the provisions of the collective  
18 bargaining agreement.

NOTE: This section deletes the reference to counties in this provision to be consistent with the change made by SECTION 8.

19 **SECTION 10.** 230.40 (2) of the statutes is amended to read:

20 230.40 **(2)** If a person in the classified service declares an intention to run for  
21 partisan political office the person shall be ~~given~~ placed on a leave of absence for the

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1 duration of the election campaign and if elected shall separate from the classified  
2 service on assuming the duties and responsibilities of such office.

NOTE: This provision removes a perceived ambiguity in whether a leave of absence is discretionary if a person in the classified service declares an intention to run for partisan political office. It provides that a person shall be placed on a leave of absence rather than "given" a leave of absence. This clarifies that the provision is not discretionary. The person must be placed on a leave of absence regardless of the wishes of the person or agency.

3 **SECTION 11.** 230.44 (1) (c) of the statutes is amended to read:

4 230.44 (1) (c) *Demotion, layoff, suspension or discharge.* If an employe has  
5 permanent status in class, or an employe has served with the state ~~or a county, or~~  
6 ~~both,~~ as an assistant district attorney for a continuous period of 12 months or more,  
7 the employe may appeal a demotion, layoff, suspension, discharge or reduction in  
8 base pay to the commission, if the appeal alleges that the decision was not based on  
9 just cause.

NOTE: This section deletes the reference to counties to be consistent with the change made by SECTION 8.

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**(END)**