



State of Wisconsin
2019 - 2020 LEGISLATURE

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2019 ASSEMBLY BILL 370

August 12, 2019 - Introduced by Representatives MURPHY, KERKMAN, NYGREN, FELZKOWSKI, ZIMMERMAN, PRONSCHINSKE, RAMTHUN and KNODL, cosponsored by Senators COWLES, JACQUE and STROEBEL. Referred to Committee on Government Accountability and Oversight.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 18.01 (4) (intro.), 19.32 (2) and 36.09 (1) (f);
2 *to amend* 18.05 (2), 18.05 (3), 18.06 (8) (am) 2., 18.10 (1), 18.10 (8), 18.10 (9),
3 18.14 (title), 36.115 (1) and 36.17 (1); and *to create* 18.01 (4) (bm), 18.11, 19.32
4 (2) (c), 19.42 (10) (t), 19.42 (13) (q), 36.09 (1) (f) 1. a., 36.09 (1) (f) 1. b., 36.09 (1)
5 (f) 2., 36.09 (3) (c), 36.11 (59) and 36.115 (9) of the statutes; **relating to:** state
6 debt guaranties; delegations by the Board of Regents of the University of
7 Wisconsin System; organizations affiliated with the UW System; and
8 standards of conduct for certain UW System employees.

Analysis by the Legislative Reference Bureau

This bill provides that any agreement by the state to guaranty the debt of another is not a debt of the state and is unenforceable except as expressly provided otherwise by law. The bill also makes the following changes regarding the University of Wisconsin System.

Delegations of authority. The bill makes changes to the delegation authority of the Board of Regents of the UW System. The bill requires the Board of Regents to make all limited appointments, except for those that current law requires the president of the UW System to make, and prohibits the Board of Regents from delegating its authority to make limited appointments. The bill also prohibits the

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Board of Regents from delegating its governance powers or duties to the president of the UW System or a chancellor or other administrative officer of a UW institution. "Governance powers or duties" is defined as those powers or duties that rise above duties related to administration or operation and include the power to approve policies or budgets or to specify the mission of the UW System or a UW institution. The bill also prohibits the Board of Regents from delegating the authority to enter into a guaranty, financial agreement, or obligation involving an affiliated organization. Subject to the foregoing prohibitions, the bill allows the Board of Regents to adopt policies that explicitly delegate authority it considers appropriate to a committee of the Board of Regents, an institutional board, a committee of an institution, or another group.

UW-affiliated organizations. The bill prohibits a chancellor or administrative officer or other employee of an institution to make a guaranty or enter into a financial agreement or obligation with a UW-affiliated organization without the express written consent of the Board of Regents. The bill defines a "UW-affiliated organization" as an entity that 1) is legally distinct from a UW institution; 2) is organized and operated for the benefit or in support of a UW institution; and 3) is either permitted to use a UW institution's name (name permission) or is provided use of a UW institution's space, resources, or employees (institutional use). However, excluded from the definition is the UW Hospitals and Clinics Authority and its affiliated entities. Also excluded is any "state agency," which is defined as any office, department, agency, institution of higher education, association, society, or other body in state government that is 1) created or authorized to be created by the state's constitution or any law and 2) entitled to expend moneys appropriated by law. "State agency" is also defined to include any authority, but to exclude the legislature and the courts.

The bill provides that a violation of the above prohibition is malfeasance and requires the violator to be dismissed for cause. The bill also provides that a guaranty, financial agreement, or obligation made or entered into in violation of the prohibition is void and unenforceable, except the violator is personally liable for any obligation incurred on behalf of a UW institution in the guaranty, financial agreement, or obligation.

The bill imposes other requirements regarding UW-affiliated organizations. The bill requires UW institutions to annually report to the Board of Regents the name permission and institutional use provided to UW-affiliated organizations and the payments made for the name permission and institutional use. The bill defines "payment" to include any payment in cash, goods, services, or any other thing of value. The report must also include the difference between the monetary value of the payments and the fair market value of the name permission and institutional use. In addition, the report must describe and set forth all payments made by a UW institution to a UW-affiliated organization. The bill also requires the Board of Regents to establish requirements for regularly evaluating the relationship between UW institutions and UW-affiliated organizations.

The bill prohibits an individual employed by a UW institution from being employed at the same time by a UW-affiliated organization, unless the dual

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employment is approved by the Board of Regents and the institution's chancellor. The prohibition is prospective, as it applies to UW institution employees whose employment by a UW-affiliated organization commences on the bill's effective date. If approval is granted for an individual, the bill prohibits the UW institution and UW-affiliated organization from compensating the individual for the same time worked. The bill imposes reporting requirements to ensure compliance with that prohibition.

Ethics and public records. Under the bill, an employee of a UW institution who is any of the following is considered a state public official subject to the state code of ethics and required to file an annual statement of economic interests with the Ethics Commission:

1. A chancellor, dean, or director.
2. Responsible for signing a contract on behalf of the institution.
3. Also an officer or board member of a UW-affiliated organization on an ongoing basis.

The bill provides that information provided by a UW-affiliated organization to a UW institution employee is considered a public record, not including donor information.

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

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

1 **SECTION 1.** 18.01 (4) (intro.) of the statutes is renumbered 18.01 (4) (am) (intro.)
2 and amended to read:

3 18.01 (4) (am) (intro.) "Public debt" ~~or "debt"~~ means every voluntary,
4 unconditional undertaking by the state, other than an operating note, to repay a sum
5 certain:

6 **SECTION 2.** 18.01 (4) (bm) of the statutes is created to read:

7 18.01 (4) (bm) "Public debt" does not include any agreement by the state to
8 guaranty the debt of another.

9 **SECTION 3.** 18.05 (2) of the statutes is amended to read:

10 18.05 (2) The last determination made by the department of revenue of the full
11 market value of all general property of the state liable to taxes pursuant to s. 70.575

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1 shall be the aggregate value of all taxable property in the state. The department of
2 revenue shall certify such value when requested for use in connection with the
3 contracting of state public debt.

4 **SECTION 4.** 18.05 (3) of the statutes is amended to read:

5 18.05 (3) The legislative audit bureau shall annually determine the amounts
6 under sub. (1) (b) 1. and 2. and shall certify such amounts when requested for use in
7 connection with the contracting of state public debt. It shall use in making such
8 determination the fair market value of all property on hand in the sinking funds of
9 the bond security and redemption fund. It shall take into account any anticipatory
10 contracts under s. 18.10 (1).

11 **SECTION 5.** 18.06 (8) (am) 2. of the statutes is amended to read:

12 18.06 (8) (am) 2. The interest exchange agreement must identify by maturity,
13 bond issue, or bond purpose the public debt or obligation to which the agreement is
14 related. The determination of the commission included in an interest exchange
15 agreement that such agreement relates to a debt or obligation shall be conclusive.

16 **SECTION 6.** 18.10 (1) of the statutes is amended to read:

17 18.10 (1) ANTICIPATORY CONTRACTS. After adoption of an authorizing resolution
18 for a purpose which is to be accomplished wholly or in part through performance of
19 an executory contract by some other contracting party, such contract may be entered
20 into prior to the contracting of the public debt authorized by such resolution with like
21 effect as if the funds necessary for payments on the contract were already available.
22 In such cases the public debt authorized by such resolution shall be deemed to have
23 been contracted pursuant to such resolution in the amount necessary to make such
24 payments on the date such contract is entered into and the authority of such
25 resolution shall promptly thereafter be exercised.

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1 **SECTION 7.** 18.10 (8) of the statutes is amended to read:

2 18.10 (8) TRUSTEES AND FISCAL AGENTS. The commission may appoint one or
3 more trustees and fiscal agents for each issue of bonds or notes. The secretary of
4 administration may be denominated the trustee and the sole fiscal agent or a cofiscal
5 agent for any issue of bonds or notes. Every other such fiscal agent shall be an
6 incorporated bank or trust company authorized by the laws of the United States or
7 of the state in which it is located to do a banking or trust company business. There
8 may be deposited with a trustee, in a special account administered as provided in this
9 chapter, moneys to be used only for the purposes expressly provided in a resolution
10 authorizing the issuance of public debt or an agreement between the commission and
11 the trustee. The commission may make such other provisions respecting trustees
12 and fiscal agents as it deems necessary or useful and may enter into a contract with
13 any trustee or fiscal agent containing such terms, including compensation, and
14 conditions in regard to the trustee or fiscal agent as it deems necessary or useful.

15 **SECTION 8.** 18.10 (9) of the statutes is amended to read:

16 18.10 (9) PREPAYMENT. The commission may authorize public debt having any
17 provisions for prepayment deemed necessary or useful, including the payment of any
18 premium.

19 **SECTION 9.** 18.11 of the statutes is created to read:

20 **18.11 Guaranty agreements unenforceable.** Unless otherwise expressly
21 provided by law, an agreement by the state to guaranty the debt of another is
22 unenforceable.

23 **SECTION 10.** 18.14 (title) of the statutes is amended to read:

24 **18.14 (title) Validation of public debt.**

ASSEMBLY BILL 370**SECTION 11**

1 **SECTION 11.** 19.32 (2) of the statutes is renumbered 19.32 (2) (a) and amended
2 to read:

3 19.32 (2) (a) “Record” means any material on which written, drawn, printed,
4 spoken, visual, or electromagnetic information or electronically generated or stored
5 data is recorded or preserved, regardless of physical form or characteristics, that has
6 been created or is being kept by an authority.

7 (b) “Record” includes, but is not limited to, handwritten, typed, or printed
8 pages, maps, charts, photographs, films, recordings, tapes, optical discs, and any
9 other medium on which electronically generated or stored data is recorded or
10 preserved.

11 (d) “Record” does not include drafts, notes, preliminary computations, and like
12 materials prepared for the originator’s personal use or prepared by the originator in
13 the name of a person for whom the originator is working; materials that are purely
14 the personal property of the custodian and have no relation to his or her office; donor
15 information provided by a UW-affiliated organization, as defined in s. 36.11 (59) (a)
16 3., to an employee of a University of Wisconsin System institution; materials to which
17 access is limited by copyright, patent, or bequest; and published materials in the
18 possession of an authority other than a public library that are available for sale, or
19 that are available for inspection at a public library.

20 **SECTION 12.** 19.32 (2) (c) of the statutes is created to read:

21 19.32 (2) (c) “Record” also includes budgets, meeting minutes, and other
22 information provided by a UW-affiliated organization, as defined in s. 36.11 (59) (a)
23 3., to an employee of any University of Wisconsin System institution.

24 **SECTION 13.** 19.42 (10) (t) of the statutes is created to read:

25 19.42 (10) (t) A state public official described under sub. (13) (q).

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1 **SECTION 14.** 19.42 (13) (q) of the statutes is created to read:

2 19.42 (13) (q) An employee of a University of Wisconsin System institution who
3 is any of the following:

4 1. A chancellor, dean, or director.

5 2. Responsible for signing a contract on behalf of the institution.

6 3. Also an officer or board member of a UW-affiliated organization, as defined
7 in s. 36.11 (59) (a) 3., on an ongoing basis.

8 **SECTION 15.** 36.09 (1) (f) of the statutes is renumbered 36.09 (1) (f) 1. (intro.)
9 and amended to read:

10 36.09 (1) (f) 1. (intro.) The board shall delegate to each chancellor the necessary
11 authority for the administration and operation of the institution within the policies
12 and guidelines established by the board. The board may also not delegate or rescind
13 ~~other authority to chancellors, committees of the board, administrative officers,~~
14 ~~members of the faculty and students or such other groups as it deems appropriate.~~
15 do any of the following:

16 **SECTION 16.** 36.09 (1) (f) 1. a. of the statutes is created to read:

17 36.09 (1) (f) 1. a. Delegate the board's governance powers or duties to the
18 president or a chancellor or administrative officer of an institution. For purposes of
19 this subd. 1. a., "governance powers or duties" mean those powers or duties that rise
20 above duties related to administration or operation, and include the power to
21 approve policies or budgets or to specify the mission of the system or an institution.

22 **SECTION 17.** 36.09 (1) (f) 1. b. of the statutes is created to read:

23 36.09 (1) (f) 1. b. Delegate the authority to enter into a guaranty, financial
24 agreement, or obligation involving a UW-affiliated organization, as defined in s.
25 36.11 (59) (a) 3.

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1 **SECTION 18.** 36.09 (1) (f) 2. of the statutes is created to read:

2 36.09 (1) (f) 2. Subject to subd. 1., the board may adopt policies that explicitly
3 delegate authority that the board considers appropriate to a committee of the board,
4 an institutional board, a committee of an institution, or any other group that the
5 board considers appropriate.

6 **SECTION 19.** 36.09 (3) (c) of the statutes is created to read:

7 36.09 (3) (c) A chancellor or administrative officer or other employee of an
8 institution may not make a guaranty or enter into a financial agreement or
9 obligation with a UW-affiliated organization, as defined in s. 36.11 (59) (a) 3. without
10 the express written consent of the board. A violation of this paragraph is
11 malfeasance and a person who commits a violation shall be dismissed for cause. A
12 guaranty, financial agreement, or obligation made or entered into in violation of this
13 paragraph is void and unenforceable, except that the person who made or entered
14 into the guaranty, financial agreement, or obligation is personally liable for any
15 obligation incurred on behalf of an institution in the guaranty, financial agreement,
16 or obligation.

17 **SECTION 20.** 36.11 (59) of the statutes is created to read:

18 36.11 (59) UW-AFFILIATED ORGANIZATIONS. (a) *Definitions.* In this subsection:

19 1. "Name permission" means permission to use an institution's name or a
20 variation of the name.

21 2. "Payment" means payment in cash, goods, services, or any other thing of
22 value.

23 3. "UW-affiliated organization" means an entity, except a state agency, as
24 defined in s. 16.298 (1) (d), and except an authority created under ch. 233 and its
25 affiliated entities, that satisfies all of the following:

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- 1 a. The entity is legally distinct from an institution.
- 2 b. The entity is organized and operated for the benefit or in support of an
3 institution.
- 4 c. The entity is provided name permission or use of an institution's space,
5 resources, or employees.

6 (b) *Reports.* The board shall require each institution to annually report to the
7 board the name permission or use of the institution's space, resources, or employees
8 that the institution provided to UW-affiliated organizations during each year, the
9 payments made by UW-affiliated organizations for that name permission or use,
10 and the difference between the monetary value of those payments and the fair
11 market value of that name permission or use. The reports shall also describe and set
12 forth the monetary value of all payments made by institutions to UW-affiliated
13 organizations.

14 (c) *Evaluations.* The board shall establish requirements for regularly
15 evaluating the relationship between institutions and UW-affiliated organizations.

16 **SECTION 21.** 36.115 (1) of the statutes is amended to read:

17 36.115 (1) In this section, except sub. (9), "chancellor" means the chancellor of
18 the University of Wisconsin-Madison.

19 **SECTION 22.** 36.115 (9) of the statutes is created to read:

20 36.115 (9) (a) In this subsection, "UW-affiliated organization" has the meaning
21 given in s. 36.11 (59) (a) 3.

22 (b) No individual who is employed by an institution may be employed at the
23 same time by a UW-affiliated organization without the approval of both the
24 chancellor of the institution and the board.

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1 (c) An individual who obtains approval under par. (b) may not be compensated
2 by both an institution and a UW-affiliated organization for the same time worked.
3 To ensure compliance with this paragraph, the board shall require individuals
4 employed at institutions other than the University of Wisconsin-Madison and the
5 chancellor of the University of Wisconsin-Madison shall require individuals
6 employed at that institution to report time worked for UW-affiliated organizations.

7 (d) The board and the chancellor of the University of Wisconsin-Madison shall
8 revise the personnel systems developed under subs. (2) and (3) and the employment
9 relations policies and practices established under sub. (7) as necessary to ensure
10 compliance with this subsection.

11 **SECTION 23.** 36.17 (1) of the statutes is amended to read:

12 36.17 (1) An appointment to a position listed in sub. (2) shall be a limited
13 appointment and the appointment shall, except as provided in s. 36.09 (2) (a), be
14 made by the board and shall be at the pleasure of the board. Notwithstanding s.
15 39.09 (1) (f), the board may not delegate its authority to make limited appointments.

16 A faculty member who has been granted tenure or a person holding an academic staff
17 appointment under s. 36.15 shall not lose that appointment by accepting a limited
18 appointment.

19 **SECTION 24. Initial applicability.**

20 (1) UW-AFFILIATED ORGANIZATION EMPLOYMENT. The treatment of s. 36.115 (9) (b)
21 first applies to University of Wisconsin System employees whose employment by a
22 UW-affiliated organization, as defined in s. 36.11 (59) (a) 3., commences on the
23 effective date of this subsection.

24 (END)