

Governance

Statutory References

GOV 0. STATUTORY REFERENCES

Chapter 36, Wisconsin Statutes (Excerpts Relevant to Shared Governance and Personnel)

UNIVERSITY OF WISCONSIN SYSTEM

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16 **36.01 Statement of Purpose and Mission.**

17 (1) The legislature finds it in the public interest to provide a system of higher education which enables students of all
18 ages, backgrounds and levels of income to participate in the search for knowledge and individual development; which
19 stresses undergraduate teaching as its main priority; which offers selected professional graduate and research pro-
20 grams with emphasis on state and national needs; which fosters diversity of educational opportunity; which promotes
21 service to the public; which makes effective and efficient use of human and physical resources; which functions coop-
22 eratively with other educational institutions and systems; and which promotes internal coordination and the wisest
23 possible use of resources.

24 (2) The mission of the system is to develop human resources, to discover and disseminate knowledge, to extend knowl-
25 edge and its application beyond the boundaries of its campuses and to serve and stimulate society by developing in
26 students heightened intellectual, cultural and humane sensitivities, scientific, professional and technological expertise
27 and a sense of purpose. Inherent in this broad mission are methods of instruction, research, extended training and
28 public service designed to educate people and improve the human condition. Basic to every purpose of the system is
29 the search for truth.

30 **History: 1973 c. 335.**

31 **36.03 System.**

32 There is created in this state a system of institutions of learning to be known as the University of Wisconsin System. The princi-
33 pal office and one university of the system shall be located at or near the seat of state government.

34 **History: 1973 c. 335.**

35 **36.05 Definitions.**

36 In this chapter:

37 (1) "Academic staff" means professional and administrative personnel with duties, and subject to types of appointments,
38 that are primarily associated with higher education institutions or their administration, but does not include faculty and
39 staff provided under s. 16.57.

40 (2) "Board of regents" or "board" means the board of regents of the University of Wisconsin System.

41 (3) "Campus" means the publicly owned or leased buildings and grounds which comprise all or part of a university, a cen-
42 ter or the extension.

43 (4) "Center" means any one of the 2-year collegiate campuses of the system.

44 (5) "Chancellor" means the chief executive of an institution.

45 (6) "Classified staff" means all employees of the system other than faculty, academic staff, persons whose employment is
46 a necessary part of their training, student assistants and student hourly help.

47 (6m) "College campus" means any one of the 2-year collegiate campuses of the system.

48 (7) "Extension" means the community outreach, public service and extension services of the system.

49 (8) "Faculty" means persons who hold the rank of professor, associate professor, assistant professor or instructor in an
50 academic department or its functional equivalent in an institution, persons described under s.36.13(4)(c) and such
51 academic staff as may be designated by the chancellor and faculty of the institution.

52 (9) "Institution" means any university or an organizational equivalent designated by the board and the University of Wis-
53 consin colleges.

- 1 (9m) "Instructional academic staff" means academic staff members with teaching responsibilities.
- 2 (9s) "Mainframe" means a large scale, central computer maintained by the board for multipurpose functions.
- 3 (10) "President" means the chief executive of the system.
- 4 (11) "Student" means any person who is registered for study in any institution for the current academic period. For the
- 5 purpose of administering particular programs or functions involving students, the board shall promulgate rules defin-
- 6 ing continuation or termination of student status during periods between academic periods.
- 7 (12) "System" means the University of Wisconsin System.
- 8 (13) "University" means any baccalaureate or graduate degree granting institution.
- 9 (14) "University of Wisconsin Colleges" means the college campuses as a whole.

10 **History: 1973 c. 335; 1985 a. 332 s. 251 (3); 1989 a. 31, 67; 1991 a. 39; 1995 a. 27; 1997 a. 237.**

11 **36.07 Corporate title, officers, meetings, records.**

- 12 (1) Corporate status and title. The board and their successors in office shall constitute a body corporate by the name of
- 13 "Board of Regents of the University of Wisconsin System".
- 14 (2) Secretary. The board shall appoint a secretary of the board who shall keep a faithful record of all its transactions.
- 15 (3) Treasurer. The state treasurer shall be the treasurer of the board, but the board may appoint other persons to receive
- 16 other moneys that may be due or remitted from any source.
- 17 (4) Meetings, times, notice. The times for holding the regular annual meeting and such other meetings as are required,
- 18 and the manner of providing notice for such meetings, shall be determined by the board's bylaws.
- 19 (5) Access to the board. The board shall provide in its operating policies for access to the board by the public, faculty,
- 20 students and chancellors.
- 21 (6) Meetings and records public. The board meetings shall be open and all records of such meetings and of all proceed-
- 22 ings of the board shall be open to inspection in accordance *sub chs. II and V of ch. 19*.

23 **History: 1973 c. 335; 1975 c. 426 s. 3; 1981 c. 335 s. 26; 1991 a. 39.**

24 **36.09 Responsibilities.**

- 25 (1) The board of regents.
 - 26 (a) The primary responsibility for governance of the system shall be vested in the board which shall enact policies
 - 27 and promulgate rules for governing the system, plan for the future needs of the state for university education,
 - 28 ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate
 - 29 training and research centers and promote the widest degree of institutional autonomy within the controlling lim-
 - 30 its of system-wide policies and priorities established by the board.
 - 31 (b) The board, after public hearing at each institution, shall establish for each institution a mission statement deline-
 - 32 ating specific program responsibilities and types of degrees to be granted.
 - 33 (c) The board shall determine the educational programs to be offered in the system and may discontinue educa-
 - 34 tional programs as it deems necessary.
 - 35 (d) The board shall establish policies to guide program activities to ensure that they will be compatible with the mis-
 - 36 sions of the institutions of the system. To this end, the board shall make all reasonable effort to provide night
 - 37 courses.
 - 38 (e) The board shall appoint a president of the system; a chancellor for each institution; a dean for each college
 - 39 campus; the state geologist; the director of the laboratory of hygiene; the director of the psychiatric institute; the
 - 40 state cartographer; and the requisite number of officers, other than the vice presidents, associate vice presidents
 - 41 and assistant vice presidents of the system; faculty; academic staff and other employees and fix the salaries,
 - 42 subject to the limitations under *par. (j) and ss. 20.923 (4g) and 230.12 (3) (e)*, the duties and the term of office for
 - 43 each. The board shall fix the salaries, subject to the limitations under *par. (j) and ss. 20.923 (4g) and 230.12 (3)*
 - 44 *(e)*, and the duties for each chancellor, vice president, associate vice president and assistant vice president of
 - 45 the system. No sectarian or partisan tests or any tests based upon race, religion, national origin or sex shall ever
 - 46 be allowed or exercised in the appointment of the employees of the system.
 - 47 (f) The board shall delegate to each chancellor the necessary authority for the administration and operation of the
 - 48 institution within the policies and guidelines established by the board. The board may also delegate or rescind
 - 49 other authority to chancellors, committees of the board, administrative officers, members of the faculty and stu-
 - 50 dents or such other groups as it deems appropriate.
 - 51 (gm) The board shall not create, except as specifically authorized by the legislature in each instance, any new college,
 - 52 school or its functional equivalent if such college, school or functional equivalent has academic programs at the
 - 53 graduate or professional, post-baccalaureate level.
 - 54 (gm) 1. For the purposes of this paragraph, college or school means an academic unit below the institutional level but
 - 55 above the departmental level, including but not limited to a graduate school, law school, medical school, social
 - 56 work school, architecture school, business school and a public administration school.

- 1 (gm) 2. For the purposes of this paragraph, a new college or school shall be deemed to have been created if an ad-
 2 ministrative position of dean or its functional equivalent is established and if a new instructional program, sepa-
 3 rate and distinct from the programs currently available at that institution, is established.
- 4 (gm) 3. This paragraph does not apply to the redesignation or reorganization of existing colleges or schools if accom-
 5 plished through the reclassification of existing positions or the restructuring of existing organizational entities.
- 6 (h) The board shall allocate funds and adopt budgets for the respective institutions giving consideration to the prin-
 7 ciples of comparable budgetary support for similar programs and equitable compensation for faculty and aca-
 8 demic staff with comparable training, experience and responsibilities and recognizing competitive ability to recruit
 9 and retain qualified faculty and academic staff. If the board ceases or suspends operation of any institution or
 10 college campus, the appropriations to the board for operation of the institution or college campus may be utilized
 11 by the board for any other purpose authorized by the appropriations within the period for which the appropria-
 12 tions are made.
- 13 (hm) The board shall develop policies for the purpose of specifically identifying the general purpose revenue and non-
 14 general purpose revenue funding sources used for noninstructional student activities and for the purpose of gov-
 15 erning the allocation of funds to those noninstructional student activities supported by both general purpose and
 16 nongeneral purpose revenue.
- 17 (i) Upon recommendation of the president and the administrator of the division of merit recruitment and selection in
 18 the office of state employment relations, the board and the director of the office shall jointly adopt general poli-
 19 cies governing the designation of positions to be exempt from the classified service as academic staff as defined
 20 in s. 36.15 (1) (a) and (b). No position in the classified service may be designated as an academic staff position
 21 under the general policies unless the director of the office of state employment relations approves the designa-
 22 tion.
- 23 (j) Except where such matters are a subject of bargaining with a certified representative of a collective bargaining
 24 unit under s. 111.91, the board shall establish salaries for persons not in the classified staff prior to July 1 of
 25 each year for the next fiscal year, and shall designate the effective dates for payment of the new salaries. In the
 26 first year of the biennium, payments of the salaries established for the preceding year shall be continued until the
 27 biennial budget bill is enacted. If the budget is enacted after July 1, payments shall be made following enactment
 28 of the budget to satisfy the obligations incurred on the effective dates, as designated by the board, for the new
 29 salaries, subject only to the appropriation of funds by the legislature and s. 20.928 (3). This paragraph does not
 30 limit the authority of the board to establish salaries for new appointments. The board may not increase the sala-
 31 ries of employees specified in ss. 20.923 (5) and (6) (m) and 230.08 (2) (d) under this paragraph unless the sala-
 32 ry increase conforms to the proposal as approved under s. 230.12 (3) (e) or the board authorizes the salary in-
 33 crease to correct salary inequities under *par. (h)*, to fund job reclassifications or promotions, or to recognize
 34 competitive factors. The board may not increase the salary of any position identified in s. 20.923 (4g) under this
 35 paragraph unless the salary increase conforms to the proposal as approved under s. 230.12 (3) (e) or the board
 36 authorizes the salary increase to correct a salary inequity or to recognize competitive factors. The board may not
 37 increase the salary of any position identified in s. 20.923 (4g) (ae) and (am) unless the increase is approved by
 38 the office of state employment relations. The granting of salary increases to recognize competitive factors does
 39 not obligate inclusion of the annualized amount of the increases in the appropriations under s. 20.285 (1) for
 40 subsequent fiscal bienniums. No later than October 1 of each year, the board shall report to the joint committee
 41 on finance and the secretary of administration and director of the office of state employment relations concerning
 42 the amounts of any salary increases granted to recognize competitive factors, and the institutions at which they
 43 are granted, for the 12-month period ending on the preceding June 30.
- 44 (k) 1. The board shall, with respect to academic staff, correct pay inequities based on gender or race.
 45 2. The board shall do all of the following:
- 46 a. Establish and maintain job categories in which to place academic staff positions. The job categories
 47 shall be described in sufficient detail to enable the board to comply with *sub d. 1*.
- 48 b. Establish and maintain pay ranges, each of which has a minimum and a maximum rate of pay and,
 49 assign the job categories established under *sub d. 2. a.* to those pay ranges. This *sub d. 2. b.* does not
 50 apply to appointments under s. 36.13 (4).
- 51 (l) The board shall possess all powers necessary or convenient for the operation of the system except as limited in
 52 this chapter.
- 53 (2) The president.
- 54 (a) The president shall be president of all the faculties and shall be vested with the responsibility of administering the
 55 system under board policies and shall direct a central administration which shall assist the board and the presi-
 56 dent in establishing system-wide policies in monitoring, reviewing and evaluating these policies, in coordinating
 57 program development and operation among institutions, in planning the programmatic, financial and physical
 58 development of the system, in maintaining fiscal control and compiling and recommending educational pro-
 59 grams, operating budgets and building programs for the board. Subject to *par. (b)*, the president shall appoint
 60 each senior vice president, vice president, associate vice president and assistant vice president of the system.
 61 The president shall fix the term of office for each senior vice president, vice president, associate vice president
 62 and assistant vice president of the system.
- 63 (b) The sum of the number of senior vice presidents and vice presidents of the system that the president may ap-
 64 point under *par. (a)* may not exceed 4.

- 1 (3) The chancellors.
- 2 (a) The chancellors shall be the executive heads of their respective faculties and institutions and shall be vested
3 with the responsibility of administering board policies under the coordinating direction of the president and be
4 accountable and report to the president and the board on the operation and administration of their institutions.
5 Subject to board policy the chancellors of the institutions in consultation with their faculties shall be responsible
6 for designing curricula and setting degree requirements; determining academic standards and establishing grad-
7 ing systems; defining and administering institutional standards for faculty peer evaluation and screening candi-
8 dates for appointment, promotion and tenure; recommending individual merit increases; administering associ-
9 ated auxiliary services; and administering all funds, from whatever source, allocated, generated or intended for
10 use of their institutions.
- 11 (b) The chancellor may designate a person as provost, to act as chief executive officer of the institution in the chan-
12 cellor's absence, if the person currently holds a limited appointment as vice chancellor, associate chancellor, as-
13 sistant chancellor, associate vice chancellor or assistant vice chancellor. The chancellor may not create an addi-
14 tional administrative position for the purpose of this paragraph.
- 15 (4) Faculty. The faculty of each institution, subject to the responsibilities and powers of the board, the president and the
16 chancellor of such institution, shall be vested with responsibility for the immediate governance of such institution and
17 shall actively participate in institutional policy development. As such, the faculty shall have the primary responsibility
18 for academic and educational activities and faculty personnel matters. The faculty of each institution shall have the
19 right to determine their own faculty organizational structure and to select representatives to participate in institutional
20 governance.
- 21 (4m) Academic staff. The academic staff members of each institution, subject to the responsibilities and powers of the
22 board, the president and the chancellor and faculty of the institution, shall be active participants in the immediate gov-
23 ernance of and policy development for the institution. The academic staff members have the primary responsibility for
24 the formulation and review, and shall be represented in the development, of all policies and procedures concerning
25 academic staff members, including academic staff personnel matters. The academic staff members of each institution
26 shall have the right to organize themselves in a manner they determine and to select their representatives to partici-
27 pate in institutional governance.
- 28 (5) Students. The students of each institution or campus subject to the responsibilities and powers of the board, the
29 president, the chancellor and the faculty shall be active participants in the immediate governance of and policy devel-
30 opment for such institutions. As such, students shall have primary responsibility for the formulation and review of poli-
31 cies concerning student life, services and interests. Students in consultation with the chancellor and subject to the fi-
32 nal confirmation of the board shall have the responsibility for the disposition of those student fees which constitute
33 substantial support for campus student activities. The students of each institution or campus shall have the right to
34 organize themselves in a manner they determine and to select their representatives to participate in institutional gov-
35 ernance.

36 **History:** 1973 c. 335; 1975 c. 39, 224; 1977 c. 196 ss. 130 (1), (2), 131; 1977 c. 418; 1979 c. 34 s. 2102 (29) (a); 1981 c. 20
37 s. 2202 (1) (a); 1983 a. 27 s. 2200 (15); 1983 a. 366; 1985 a. 29, 42, 45, 332; 1987 a. 4, 27, 340; 1989 a. 31, 336, 359; 1991 a.
38 39; 1997 a. 27 ss. 1156 ad, 9456 (3m); 1997 a. 35, 237, 307; 1999 a. 42; 2001 a. 16, 104; 2003 a. 33 ss. 930, 931, 2811,
39 9160; 2003 a. 48 ss. 10, 11; 2003 a. 206 s. 23; 2003 a. 320; 2005 a. 25 ss. 695, 2493.

40 *Sub. (5) gives student organizations, rather than the student body, the right to select representatives to participate in institu-*
41 *tional governance. Student Assoc., U.W.-Milw. v. Baum, 74 Wis (2d) 283, 246 NW (2d) 622 (1976).*

42 *The board of regents has no authority to provide a deferred salary plan for employees other than through the state teachers*
43 *retirement system or the Wisconsin retirement fund. 61 Atty. Gen. 6.*

44 *A ruling by chancellor of University of Wisconsin-Eau Claire denying a request to conduct door-to-door solicitation in residence*
45 *halls did not violate constitutional rights. 61 Atty. Gen. 373.*

46 *A classified audit fee structure may be established by university regents using age for classification purposes. 62 Atty. Gen. 1.*

47 *The leasing of university buildings to a religious congregation during nonschool days and hours on a temporary basis while the*
48 *congregation's existing facility is being renovated and leasing convention space to a church conference would not violate the*
49 *separation of church and state provisions of the First Amendment to the U.S. Constitution and Art I, s. 18. 63 Atty. Gen. 374.*

50 *Regents should identify how compulsory fees will be used to necessarily and conveniently further the objects of the university*
51 *before approving a segregated fee, under 37.11 (8) (1971 Stats.), to finance a legal services program for Oshkosh Student*
52 *Association. Regent's duties are unchanged under sub. (5). 63 Atty. Gen. 385.*

53 *A Board of Regents' proposed one percent raise of the pay range minima and maxima of academic staff required the prior ap-*
54 *proval of secretary of employment relations. 80 Atty. Gen. 138.*

55 *The financing of student organizations through mandatory student fees does not violate the 1st amendment if viewpoint neutral-*
56 *ity is the operational principal. Board of Regents v. Southworth, 529 U.S. 217, 146 L. Ed. 2d 193 (2000).*

57 *With one exception, the university's system, as required by Southworth, for distributing compelled fees collected from university*
58 *students to student groups that delegates funding decisions to the student government was subject to sufficient limits. South-*
59 *worth v. Board of Regents of the University of Wisconsin System, 307 F. 3d 566 (2002).*

60 **36.11 Powers and duties of the board of regents.**

- 61 (1) Protection of people; custody and management of property.

- 1 (a) The board may promulgate rules under *ch. 227* to protect the lives, health and safety of persons on property under
2 its jurisdiction and to protect such property and to prevent obstruction of the functions of the system. Any
3 person who violates any rule promulgated under this paragraph may be fined not more than \$500 or imprisoned
4 not more than 90 days or both.
- 5 (b) Except as provided in this paragraph, the board may purchase, have custody of, hold, control, possess, lease,
6 grant easements and enjoy any lands, buildings, books, records and all other property of any nature which may
7 be necessary and required for the purposes, objects and uses of the system authorized by law. Any lease is sub-
8 ject to the powers of the University of Wisconsin Hospitals and Clinics Authority under *s. 233.03 (13)* and the
9 rights of the authority under any lease agreement, as defined in *s. 233.01 (6)*. The board shall not permit a facil-
10 ity that would be privately owned or operated to be constructed on state-owned land without obtaining prior
11 approval of the building commission under *s. 13.48 (12)*. The board may sell or dispose of such property as pro-
12 vided by law, or any part thereof when in its judgment it is for the best interests of the system and the state. All
13 purchases and sales of real property shall be subject to the approval of the building commission. The provision
14 of all leases of real property to be occupied by the board shall be the responsibility of the department of admini-
15 stration under *s. 16.84 (5)*.
- 16 (c) The board may promulgate rules under *ch. 227* for the management of all property under its jurisdiction, for the
17 care and preservation thereof and for the promotion and preservation of the orderly operation of the system in
18 any or all of its authorized activities and in any or all of its institutions with forfeitures for their violation, which
19 may be sued for and collected in the name of the board before any court having jurisdiction of such action. For-
20 feitures shall not exceed \$500.
- 21 (cm) The board shall promulgate rules under *ch. 227* prescribing the times, places and manner in which political litera-
22 ture may be distributed and political campaigning may be conducted in state-owned residence halls. No such
23 rule may authorize any activity prohibited in *s. 11.36 (3) or (4)*.
- 24 (d) All fines imposed and collected under this subsection shall be transmitted to the county treasurer for disposition
25 in accordance *s. 59.25 (3) (f) and (j)*. All forfeitures, including forfeitures of posted bail if any, imposed and col-
26 lected under this subsection shall be transmitted to the county treasurer for disposition in accordance with *ss.*
27 *778.13 and 778.17*.
- 28 (e) The board, with the approval of the building commission, may sell or lease state-owned residence halls to an-
29 other state agency or nonstate nonprofit agency for purposes of alternate use.
- 30 (2) Police authority.
- 31 (a) The board shall have concurrent police power, with other authorized peace officers, over all property subject to
32 its jurisdiction, and all property contiguous to such property at the University of Wisconsin-Parkside if owned by a
33 nonprofit corporation the primary purpose of which, as determined by the board, is to benefit the system. Such
34 concurrent police authority shall not be construed to reduce or lessen the authority of the police power of the
35 community or communities in which a campus may be located. All campus police officers shall cooperate with
36 and be responsive to the local police authorities as they meet and exercise their statutory responsibilities. The
37 designated agents of the board may arrest, with or without warrant, any person on such property who they have
38 reasonable grounds to believe has violated a state law or any rule promulgated under this chapter and deliver
39 such person to any court having jurisdiction over the violation and execute a complaint charging such person
40 with the violation. This subsection does not impair the duty of any other peace officers within their jurisdictions to
41 arrest and take before the proper court persons found violating any state law on such property.
- 42 (b) The board may employ police for the institutions and chiefs to head such police, or contract for police, all of
43 whom shall be deemed peace officers under *s. 939.22 (22)* under the supervision and control of the appropriate
44 chancellor or the chancellor's designees. Such police officers shall meet the minimum standards established for
45 other police officers by the law enforcement standards board or a comparable agency. Such police shall pre-
46 serve the peace on all property described under *par. (a)*, enforce all rules promulgated under this chapter and all
47 other laws, and for that purpose the chancellor or the chancellor's designee may call for aid from such other per-
48 sons as is deemed necessary.
- 49 (3) Admission of applicants.
- 50 (a) The board may establish the policies for admission within the system and within these policies each institution
51 shall establish specific requirements for admission to its courses of instruction. No sectarian or partisan tests or
52 any tests based upon race, religion, national origin of U.S. citizens or sex shall ever be allowed in the admission
53 of students thereto.
- 54 (b) The board shall establish policies for the appropriate transfer of credits between institutions within the system,
55 including the designation of those courses which shall be transferable between and within institutions without
56 loss of credit toward graduation or toward completion of a specific course of study.
- 57 (c) The board shall establish policies for the appropriate transfer of credits with other educational institutions outside
58 the system.
- 59 (cm) The board shall establish and maintain a computer-based credit transfer system that shall include, but not be
60 limited to, the following:
- 61 1. All transfers of credit between institutions within the system.
- 62 2. Program-specific course requirements in the system.

- 1 3. Technical college collegiate transfer program offerings, as defined in s. 38.01 (3).
- 2 4. Other courses for which the transfer of credits is accepted under *par. (b) or (c)*.
- 3 (d) 1. Except as provided in *sub d. 2.*, the board shall require that a \$35 fee accompany each application for admittance from persons seeking admittance to any school within the system as new freshmen or as transfer students from outside the system. The board may exempt from the fee under this subdivision, on the basis of financial need, a maximum of 5% of the applications in any school year.
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- 7 2. The board shall require that a \$45 fee accompany each application for admittance to a graduate school, law school or medical school within the system.
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- 9 3. Of the fee received with each application under *sub ds. 1. and 2.* the board shall provide \$3 for the support of the higher education location program under s. 36.25 (36).
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- 11 (4) Injunctive relief. The board may obtain injunctive relief to enforce this chapter or any rules promulgated under this chapter.
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- 13 (5) Insurance.
- 14 (a) The board may procure liability insurance covering the members of the board, any officer, employee or such students whose activities may constitute an obligation or responsibility of the system.
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- 16 (b) The board may procure insurance to cover injuries sustained by students as a result of their participation in intercollegiate athletics. The board may not use general purpose revenue to pay for such insurance. With respect to any of the risks to be covered by the insurance, the board may contract for the services of a claims administrator and may obtain coverage by any combination of self-insurance, excess or stop-loss insurance or blanket insurance.
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- 21 (6) Financial aids.
- 22 (a) The board may:
- 23 1. Make grants to students from funds budgeted to or controlled by the system and formulate policies and promulgate rules for the grants.
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- 25 2. Make grants equivalent in value to the payment of incidental fees to disabled residents of the state who are recommended and supervised by the department of workforce development under s. 47.02.
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- 27 (b) The board may not make a grant under *par. (a)* to a person whose name appears on the statewide support lien docket under s. 49.854 (2) (b), unless the person provides to the board a payment agreement that has been approved by the county child support agency under x. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).
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- 31 (c) By April 10, 1998, and annually thereafter, the board shall develop and submit to the higher educational aids board for its review under s. 39.285 (1) a proposed formula for the awarding of grants under s. 39.435, except for grants awarded under s. 39.435 (2) or (5), for the upcoming academic year to students enrolled in the system.
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- 34 (7) Confer degrees. The board may confer such degrees and grant such diplomas as are usual in universities or as it deems appropriate.
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- 36 (8) Parking rules.
- 37 (a) The board may make general policies and shall authorize the chancellors to adopt rules regulating the parking of motor vehicles on property under their jurisdiction. Such rules shall not be subject to *ch. 227*.
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- 39 (b) The board shall establish fines for the violation of any rule made under *par. (a)*. The institutions are authorized to collect such fines together with moneys collected from the sale of parking permits and other fees established under *par. (a)* and such moneys shall be paid into the state treasury and credited to s. 20.285 (1) (h), to be used only for the purpose of developing and operating parking or other transportation facilities at the institution at which collected and for enforcing parking rules under *par. (a)*.
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- 44 (8e) Parking fees. The board shall direct each institution within the system to charge a parking fee for the parking of motor vehicles by students, faculty, academic and classified staff and visitors at campus. The board shall require the fee to be sufficient to recover the costs of the construction and maintenance necessary for the parking facilities. Nothing in this paragraph shall be deemed to require the recovery of the costs of land for parking facilities. Nothing in this paragraph shall be deemed to require that all users of the parking facilities be charged a parking fee. College campus facilities owned by a county are not required to charge a parking fee.
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- 50 (8m) Transportation planning. The board shall direct the administrative officers of each campus to work with the regional planning commissions and the local authorities of the community in which the campus is located to evaluate the transportation needs of the campus population. The board shall require each campus to develop a transportation plan for the campus to effect energy resource conservation and efficient use of transportation resources. The plan shall include pedestrian walkways, bikeways, bike routes, bicycle storage racks, car and van pools and, to the extent feasible, improved mass transit services. The transportation plans shall detail parking management strategies which provide incentives for the use of mass transit and high occupancy vehicles.
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- 57 (9) Condemnation. The board may acquire by condemnation proceedings in *ch. 32* such parcels of land as it deems necessary for the use of any institution whenever the board is unable to agree with the owner upon the compensation
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- 1 therefor, or whenever the absence or legal incapacity of such owner, or other cause, prevents or unreasonably de-
2 lays, such agreement.
- 3 (10) University fund. The board may expend such portion of the income of the university fund on or at the University of
4 Wisconsin-Madison as is appropriated by the legislature for the erection of buildings and the purchase of equipment
5 or books.
- 6 (11) Surplus money. The board may invest any of the surplus money designated in s. 20.285 (1) (h) in such securities as
7 are legal for trust fund investments; or invest such funds or any part thereof, in the senior or junior bonds or obliga-
8 tions which may be issued by such nonprofit-sharing corporation as may be contracted with by the board for the con-
9 struction or equipment of dormitories, commons or field houses, which bonds or obligations shall be secured by a
10 mortgage or pledge of the buildings or improvements erected or to be erected by such corporations and by a mort-
11 gage or pledge of its leasehold interest. Any interest on any of such bonds or securities shall when received be added
12 to the revolving funds and may be used for the purposes set forth in this subsection.
- 13 (12) Library depository.
- 14 (a) The board may participate in the formation and maintenance of a nonprofit-sharing corporation sponsored by
15 participating colleges, universities and libraries for the purpose of providing and operating a central library de-
16 pository at a location in a midwestern state for the storage of little used books and other library and research ma-
17 terials of participating institutions, and which corporation may also perform other functions for the benefit of par-
18 ticipating institutions such as, without limitation because of enumeration, the correlating of library catalogs of the
19 participating institutions, the coordinating and planning of the purchasing by each institution of costly or infre-
20 quently used books and research materials in order to avoid unnecessary duplication and facilitating the loaning
21 of library books and other library and research materials between participating institutions. The board shall pos-
22 sess all powers necessary or convenient to accomplish the foregoing, including the authority to designate repre-
23 sentatives or members of such corporation in accordance with its articles and bylaws.
- 24 (b) The board may make use of and pay for the use of the facilities and services of such nonprofit-sharing corpora-
25 tion, but the board shall retain title to all books and materials deposited with such corporation for storage or
26 loaned to other participating institutions and the authority of the board to expend funds for the purchase of land,
27 the construction of buildings and additions to buildings and the purchase of equipment for the purpose of provid-
28 ing such facilities shall be limited to funds appropriated under s. 20.285. Except as hereinbefore provided, the
29 appropriations to the board are to be available for the purposes of this subsection to the extent that such appro-
30 priation may be applicable and without reference to whether any particular appropriation is available for expendi-
31 ture at any institution.
- 32 (13) Auxiliary reserves. Auxiliary enterprise reserve funds established prior to merger of this state's public institutions of
33 higher education for the benefit or support of an institution or group of institutions shall not be utilized for any other
34 purpose.
- 35 (15) Tax deferred annuities. The board may continue all salary reduction agreements with its employees pursuant to sec-
36 tion 403 (b) of the internal revenue code. The board may enter into new salary reduction agreements with its employ-
37 ees pursuant to section 403 (b) of the internal revenue code or other applicable federal law and may purchase annui-
38 ties for its employees pursuant to these agreements from such annuity providers, both public and private, as the
39 board deems appropriate.
- 40 (15m) Football coaches pension plan. The board may deduct contributions from the salaries of football coaches employed
41 in the system who are eligible and wish to participate in the qualified pension plan for football coaches established as
42 the American football coaches retirement trust, and remit the deductions to the administrator of that plan, if the Ameri-
43 can football coaches retirement trust or the administrator or agent of the plan indemnifies the board and its employees
44 against, and holds the board and its employees harmless from, all claims and demands associated with the plan.
- 45 (16) Commencement of fall semester. The board shall ensure that no fall semester classes at any institution, except medi-
46 cal school classes and 4th year classes at the school of veterinary medicine, commence until after September 1.
- 47 (17) Sabbatical leave for instructional faculty. The board may grant sabbatical leave of up to one year to instructional fac-
48 ulty, in order to recognize and enhance teaching efforts and excellence, under rules and procedures adopted by the
49 board, subject to the following conditions:
- 50 (a) Sabbatical leave may be granted only to those faculty members who have completed 6 or more years, or the
51 equivalent, of full-time instructional service in the system.
- 52 (b) Only one sabbatical leave may be granted for each 6 years of full-time instructional service in the system with
53 preference given to those who have been making significant contributions to teaching and have not had a leave
54 of absence except under s. 103.10, regardless of source of funding, in the previous 4 years.
- 55 (c) Sabbatical leave shall be granted for the purposes of enhancing teaching, course and curriculum development
56 or conducting research or any other scholarly activities related to instructional programs within the field of exper-
57 tise of the faculty member taking such leave.
- 58 (d) Sabbatical leave shall be approved by appropriate faculty and administrative committees.
- 59 (e) A faculty member shall receive compensation while on sabbatical leave, but such compensation, when com-
60 bined with outside compensation earned while on leave, shall not exceed the full compensation normally re-
61 ceived from the system.

- 1 (f) The faculty member taking a sabbatical leave shall agree to return to the institution from which leave was
2 granted for at least one year after the termination of the sabbatical or return any compensation received from the
3 system during the sabbatical.
- 4 (g) Funding for the sabbatical leave program shall be provided from the existing general operations appropriation for
5 the system.
- 6 (18) Midwest technology development institute. The board may maintain membership of this state in the midwest technol-
7 ogy development institute.
- 8 (19) Furnishing of services to school districts.
- 9 (a) The board may furnish, and school districts may accept, services for educational study and research projects
10 and they may enter into contracts under s. 66.0301 for that purpose.
- 11 (b) A group of school districts, if authorized by each school board, may form a nonprofit-sharing corporation to con-
12 tract with the state or the board for the furnishing of the services specified in par (a).
- 13 (c) The corporation shall be organized under ch. 181 and shall have the powers there applicable. Members of the
14 school boards specified in par. (b) may serve as incorporators, directors and officers of the corporation.
- 15 (d) The property of the corporation shall be exempt from taxation.
- 16 (e) The corporation may receive gifts and grants and be subject to their use, control and investment as provided in
17 s. 118.27, and the transfer of the property to the corporation shall be exempt from income, franchise and death
18 taxes.
- 19 (21) Controlled substances and controlled substance analogs; discipline. Any student who engages in an activity, on cam-
20 pus or at an event sponsored by a college campus or institution or by the system, that constitutes a violation of *ch.*
21 *961* is subject to nonacademic misconduct disciplinary sanctions, as provided by the board by rule. In determining the
22 appropriate sanction, the board or its designee shall consider those penalties, including suspension and expulsion,
23 that will contribute most effectively to maintaining a system environment that is free from controlled substances, as
24 defined in s. *961.01 (4)*, and controlled substance analogs, as defined in s. *961.01 (4m)*.
- 25 (22) Orientation program; information on sexual assault and sexual harassment.
- 26 (a) The board shall direct each institution and college campus to:
- 27 1. Incorporate in its orientation program for newly entering students oral and written or electronic information
28 on sexual assault and sexual harassment, as defined in s. *111.32 (13)*, including information on sexual as-
29 sault by acquaintances of the victims and on all of the following:
- 30 a. The legal definitions of, and penalties for, sexual assault under ss. *940.225, 948.02, and 948.025*,
31 sexual exploitation by a therapist under s. *940.22* and harassment under s. *947.013*.
- 32 b. Generally available national and state statistics, and campus statistics as compiled under *par. (c)* and
33 as reported under *par. (d)*, on sexual assaults and on sexual assaults by acquaintances of the victims.
- 34 c. The rights of victims under *ch. 950* and the services available at the institution or college campus and
35 in the community to assist a student who is the victim of sexual assault or sexual harassment.
- 36 d. Protective behaviors, including methods of recognizing and avoiding sexual assault and sexual har-
37 assment and locations in the community where courses on protective behaviors are provided.
- 38 2. Annually supply to all students enrolled in the institution or college campus printed or electronic material
39 that includes all of the information under *par. (a)*.
- 40 (b) Annually, the board shall submit a report to the chief clerk of each house of the legislature for distribution to the
41 appropriate standing committees under s. *13.172 (3)*. The report shall indicate the methods each institution and
42 college campus have used to comply with *par. (a)*.
- 43 (c) Any person employed at an institution who witnesses a sexual assault on campus or receives a report from a
44 student enrolled in the institution that the student has been sexually assaulted shall report to the dean of stu-
45 dents of the institution. The dean of students shall compile reports for the purpose of disseminating statistical in-
46 formation under *par. (a) 1. b.*
- 47 (d) Annually, each institution shall report to the office of justice assistance in the department of administration statis-
48 tics on sexual assaults and on sexual assaults by acquaintances of the victims that occurred on each campus of
49 the institution in the previous year. The office of justice assistance shall include the statistics in appropriate crime
50 reports published by the office.
- 51 (23) Board staff. The board shall provide office space, furnishings and supplies for the staff provided by the department of
52 administration under s. *16.57*.
- 53 (23m) Compliance with environmental laws. The board shall designate 2 positions, funded from the appropriation under s.
54 *20.285 (3) (a)*, to coordinate system compliance with state and federal laws relating to the environment.
- 55 (24) State documents. The board shall assure that each campus identifies and collects significant state documents, as de-
56 fined in s. *35.81 (3)*, relating to administration and academic programs of that campus. The board shall provide for the
57 identification and collection of significant state documents, as defined in s. *35.81 (3)*, published by the board or the
58 system administration.

- 1 (25) Training of health professionals. The board shall promote public awareness of, access to and training of health pro-
2 fessionals for rural and underserved urban areas.
- 3 (26) Building program planning and approval. The board shall establish a process for submission of building projects to the
4 building commission for approval. No building project for the system may be submitted by the board to the building
5 commission unless the project is developed and approved by the board in conformity with this subsection. This sub-
6 section does not apply to building projects of the University of Wisconsin Hospitals and Clinics Authority.
- 7 (27) Condition on financial assistance. The board may not provide any state financial assistance under this chapter to any
8 person during the period that the person is required to register with the selective service system under 50 USC, Ap-
9 pendix, sections 451 to 473 if the person has not so registered.
- 10 (30) Information technology reports. The board shall prepare and submit reports to the joint committee on information poli-
11 cy and technology upon request of the committee under s. 13.58 (5) (b) 3.
- 12 (32) Computer services data collection. The board shall collect and maintain data necessary to calculate numerical meas-
13 ures of the efficiency and effectiveness of the mainframe computer services provided by the board at the University of
14 Wisconsin-Madison.
- 15 (33) Report on management and staff positions.
- 16 (a) The board shall categorize each position in the system as either a management position or a staff position. The
17 board shall define "management" and "staff" for the purposes of this paragraph.
- 18 (b) By January 1, 1998, and annually thereafter by January 1, the board shall submit a report to the joint committee
19 on finance that includes all of the following:
- 20 1. The definitions of "management" and "staff" used by the board under par. (a).
- 21 2. A list of the position titles in each category.
- 22 3. The criteria used by the board to categorize the positions.
- 23 4. The current number of authorized positions in each category at each campus.
- 24 (35) Student identification numbers. The board may assign to each student enrolled in the system a unique identification
25 number. The board shall not assign to any student an identification number that is identical to or incorporates the stu-
26 dent's social security number. This subsection does not prohibit the board from requiring a student to disclose his or
27 her social security number, nor from using a student's social security number if such use is required by a federal or
28 state agency or private organization in order for the system or the student to participate in a particular program.
29 NOTE: Sub. (35) (title) is renumbered s.36.32 (title) and sub. (35) is renumbered s. 36.32 (2) and amended, all eff. 7-
30 1-06, by 2003 Wis. Act 282.
- 31 (36) Aquaculture demonstration facility. The board, in consultation with representatives of the aquaculture industry, shall
32 operate the aquaculture demonstration facility authorized under 1999 Wisconsin Act 9, section 9107 (l) (i) 3.
- 33 (36m) School safety research. The board shall direct the schools of education and other appropriate research-oriented de-
34 partments within the system, to work with the technical college system board under s. 38.04 (27), school districts, pri-
35 vate schools and the department of public instruction to present to school districts and private schools the results of
36 research on models for and approaches to improving school safety and reducing discipline problems in schools and
37 at school activities.
- 38 (37) Extension local planning program. The board shall offer a local planning program through the extension to educate
39 local policymakers about local planning and the grant program under s. 16.965.
- 40 (38) Gaylord Nelson chair of integrated environmental studies. The board shall establish the Gaylord Nelson chair of inte-
41 grated environmental studies and seek private funding for this chair.
- 42 (44) Report on courses. By October 31, 2001, and annually by October 31 thereafter, the board shall submit a report to the
43 cochairpersons of the joint committee on finance that contains the number and type of, and the number of students
44 enrolled in, each course offered by the system for which the academic fees or tuition charged equals at least 100% of
45 the cost of offering the course.
- 46 (47) Armed forces. If a student who is a resident of Wisconsin and a member of a national guard or a member of a reserve
47 unit of the U.S. armed forces withdraws from school after September 11, 2001, because he or she is called into state
48 active duty under ch. 21 or into active service with the U.S. armed forces for at least 30 days, the board shall, at the
49 student's request, do one of the following for all courses from which the student had to withdraw:
- 50 (a) Reimburse the student all tuition and fees paid for all the courses and a prorated portion of room and board
51 payments.
- 52 (b) Grant the student an incomplete in all the courses and permit the student to complete the courses within 6
53 months after leaving state service or active service, without paying additional tuition or fees.
- 54 (49) Telecommunications services. The board may use telecommunications services, including data and voice over Inter-
55 net services, procured by the board only for the purpose of carrying out its mission. The board shall not offer, resell,
56 or provide telecommunications services, including data and voice over Internet services, that are available from a pri-
57 vate telecommunications carrier to the general public or to any other public or private entity.

- 1 (50) Reserve officer training corps. The board may not allocate general purpose revenue for the operation of an institution
2 or college campus that prohibits the reserve officer training corps from operating on its campus.
- 3 (51) Automobile allowance. The board may not use general purpose revenue, tuition, or academic fees for the president's
4 or the chancellors' automobile allowance.
- 5 (52) Midwestern higher education compact dues. the board shall make full annual payments of membership dues to the
6 Midwestern Higher Education Compact.

7 **History:** 1973 c. 335; 1975 c. 39, 41, 224, 400; 1977 c. 29, 418; 1979 c. 32 s. 92 (8); 1979 c. 221; 1981 c. 20; 1983 a. 27,
8 366; 1983 a. 435 s. 7; 1983 a. 484; 1985 a. 62, 120; 1985 a. 332 ss. 47, 49, 50; 1985 a. 332 s. 251 (1); 1987 a. 27, 287; 1989
9 a. 31, 56, 121, 177, 359; 1991 a. 39, 203, 250, 269, 285, 315; 1993 a. 16, 213, 227, 399; 1995 a.27 ss. 1757 to 1762y, 9130
10 (4); 1995 a. 201, 404, 448; 1997 a. 3., 27, 128,237; 1999 a. 9, 29; 1999 a. 150 ss. 7, 351; 2001 a. 16, 22; 2003 a. 33, 69, 149,
11 282; 2005 a. 25.

12 *The board of regents has power to make reasonable rules governing student use of automobiles on university property and can
13 enforce them by imposing reasonable monetary penalties and withholding records. A student court can be designated by the
14 board of regents as an auxiliary enterprise. Moneys collected must be paid into the general fund. By regent action, they may be
15 appropriated therefrom for operation of that activity. 59 Atty. Gen. 82.*

16 *The collective bargaining agreement between the University of Wisconsin and the teaching assistants association is valid. 59
17 Atty. Gen. 200.*

18 *A valid collective bargaining contract between the board of regents and the union representing unclassified employees may not
19 be impaired, during its term, by the current or a future board of regents or the legislature. 60 Atty. Gen. 64.*

20 *The legality of having students and faculty voting participation on board of regents discussed. 60 Atty. Gen. 395.*

21 *The University of Wisconsin System may sell a dormitory which no longer is needed for educational purposes upon such terms
22 as are agreeable to the Wisconsin state agencies building corporation and H.U.D. to guarantee the payment of the bonds is-
23 sued for the initial construction of the building. 63 Atty. Gen. 252.*

24 *Campus police have jurisdiction under (2) to arrest only on campus unless deputized by a sheriff. Local ordinances are not
25 applicable on campus. 68 Atty. Gen. 67.*

27 **36.12 Student discrimination prohibited.**

- 28 (1) No student may be denied admission to, participation in or the benefits of, or be discriminated against in any service,
29 program, course or facility of the system or its institutions or centers because of the student's race, color, creed, relig-
30 ion, sex, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status.
- 31 (2) (a) The board shall direct each institution to establish policies and procedures to protect students from discrimina-
32 tion under *sub. (1)*. The policies and procedures shall do all of the following:
- 33 1. Provide criteria for determining whether *sub. (1)* has been violated.
- 34 2. Provide remedies and sanctions for violations of *sub. (1)*.
- 35 3. Require a complainant to file a complaint with the institution within 300 days of the alleged violation of *sub.*
36 *(1)*.
- 37 4. Provide periods within which the complainant and the institution must act for each procedural step leading
38 to the issuance of a final decision and for appeal of the final decision to the chancellor of the institution.
- 39 (b) The board shall establish policies and procedures for the appeal of the chancellor's or dean's decision to the
40 board.
- 41 (3) By September 1, 1991, 1992, 1993, and 1994, the board shall submit a report to the chief clerk of each house of the
42 legislature for distribution to the appropriate standing committees under s. 13.172 (3). The report shall specify all of
43 the following for the previous academic year:
- 44 (a) The number of complaints received at each institution alleging a violation of *sub. (1)* and the disposition of each
45 such complaint.
- 46 (b) The number of requests for review received by the board and the disposition of each such request.

47 **History:** 1989 a. 186; 1997 a. 237.

48 *The exclusion of contraceptives from an employer or college or university sponsored benefits program that otherwise provides
49 prescription drug coverage violates Wisconsin law prohibiting sex discrimination in employment and in higher education, ss.
50 111.31 to 111.395, 36.12 and 38.23. OAG 1-04. Student body diversity is a compelling state interest that can justify the use of
51 race in university admissions. A race-conscious admissions program cannot use a quota system, but may consider race or eth-
52 nicity as a plus factor for an applicant, without insulating the individual from comparison with all other candidates for the avail-
53 able seats. An admissions program must be flexible enough to consider all pertinent elements of diversity in light of the particu-
54 lar qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according
55 them the same weight. Race-conscious admissions policies must be limited in time. Grutter v. Bollinger. 539 U.S. 306, 123 S.
56 Ct. 2325 (2003). See also Gratz v. Vollinger, 539 U.S. 244, 156 L. Ed. 2d 304, 123 S. Ct. 2411 (2003).*

1 **36.13 Faculty tenure and probationary appointments.**

2 (1) Definitions. In this section:

- 3 (a) "Probationary appointment" means an appointment by the board held by a faculty member during the period
4 which may precede a decision on a tenure appointment.
- 5 (b) "Tenure appointment" means an appointment for an unlimited period granted to a ranked faculty member by the
6 board.

7 (2) Appointments.

- 8 (a) Except as provided under *par. (b)*, the board may grant a tenure appointment only upon the affirmative recom-
9 mendation of the appropriate chancellor and the appropriate academic department or its functional equivalent.
10 Neither the chancellor nor the academic department or its functional equivalent may base a tenure recommenda-
11 tion upon impermissible factors, as defined by the board by rule.

- 12 (b) The board may grant a tenure appointment without the affirmative recommendation of the appropriate academic
13 department or its functional equivalent if all of the following apply:

- 14 1. The board has the affirmative recommendation of the appropriate chancellor.
- 15 2. A faculty committee authorized by the board by rule to review the negative recommendation of the aca-
16 demic department or its functional equivalent finds that the decision of the academic department or its func-
17 tional equivalent was based upon impermissible factors, as defined by the board by rule.
- 18 3. The board has the affirmative recommendation of a committee appointed according to the policies and pro-
19 cedures of the appropriate institution to review the individual's record with reference to criteria for tenure
20 published by the institution under procedures established by the board by rule. No person may be ap-
21 pointed to the committee under this subdivision unless the person is knowledgeable or experienced in the
22 individual's academic field or in a substantially similar academic field. No member of the committee ap-
23 pointed under this subdivision may be a member of the academic department, or its functional equivalent,
24 that made the negative recommendation. The committee appointed under this subdivision may not base its
25 tenure recommendation upon impermissible factors, as defined by the board by rule.

- 26 (c) A tenure appointment may be granted to any ranked faculty member who holds or will hold a half-time appoint-
27 ment or more. The proportion of time provided for in the appointment may not be diminished nor increased with-
28 out the mutual consent of the faculty member and the institution subject only to *sub. (5) and s. 36.21*.

- 29 (d) A probationary appointment shall not exceed 7 consecutive academic years in a full-time position in an institu-
30 tion. A leave of absence, sabbatical or a teacher improvement assignment does not constitute a break in con-
31 tinuous service and shall not be included in the 7-year period. The board may promulgate rules specifying addi-
32 tional circumstances that do not constitute a break in continuous service and that shall not be included in the
33 7-year period.

- 34 (3) Rules. The board and its several faculties after consultation with appropriate students shall promulgate rules for ten-
35 ure and probationary appointments, for the review of faculty performance and for the nonretention and dismissal of
36 faculty members. Such rules shall be promulgated under *ch. 227*.

37 (4) Continuation of appointment.

- 38 (a) Any person who holds a tenure appointment under *ch. 36, 1971 stats. and ch. 37, 1971 stats.*, and related rules
39 on July 9, 1974 shall continue to hold tenure as defined under those chapters and related rules.

- 40 (b) Any person who holds the equivalent of a probationary appointment under *ch. 36, 1971 stats., and ch. 37, 1971*
41 *stats.*, and related rules on July 9, 1974 shall continue to enjoy the contractual rights and guarantees as defined
42 under those chapters and related rules, and may elect to be considered for tenure according to the procedures
43 existing under that appointment or under *sub. (2)*.

- 44 (c) Any person who is not a ranked faculty member on August 15, 1991, and who is also described under *subd. 1.*
45 *or 2.* shall be treated as a faculty member with the rank of associate professor for all purposes:

- 46 1. Any person who held an unranked faculty tenure appointment or unranked faculty concurrent tenure ap-
47 pointment under *ch. 37, 1971 stats.*, prior to July 10, 1974.
- 48 2. Any person who held an unranked probationary appointment under *ch. 37, 1971 stats.*, prior to July 10,
49 1974, and who subsequently received an unranked faculty tenure appointment or unranked faculty concur-
50 rent tenure appointment.

- 51 (5) Procedural guarantees. Any person having tenure may be dismissed only for just cause and only after due notice and
52 hearing. Any person having a probationary appointment may be dismissed prior to the end of the person's contract
53 term only for just cause and only after due notice and hearing. The action and decision of the board in such matters
54 shall be final, subject to judicial review under *ch. 227*. The board and its several faculties shall develop procedures for
55 the notice and hearing which shall be promulgated by rule under *ch. 227*.

- 56 (6) Limitation. Tenure and probationary appointments are in a particular institution. A tenure appointment is limited to the
57 institution in which the appointment is held.

58 **History: 1973 c. 335; 1983 a. 189; 1985 a. 332 s. 251 (1); 1987 a. 403 s. 256; 1989 a. 31; 1991 a. 39, 118.**

1 See note to Art. I, sec. 1, citing *Patterson v. University Board of Regents*, 119 W (2d) 570, 350 NW (2d) 612 (1984).

2 Board did not have authority to grant tenure without affirmative recommendation of academic department under (1) (b). *Trojan*
3 *v. Univ. Wis. Regents Bd.* 128 W (2d) 270, 382 NW (2d) 75 (Ct. App. 1985).

4 This section specifically authorizes the board of regents to adopt termination procedures and the board has adopted administra-
5 tive rules that lay out the process to be applied in faculty dismissal cases. *White sub. (5)* provides that dismissal decisions are
6 reviewed under ch. 227, other provisions of ch. 227 do not apply to faculty dismissal cases and the administrative rules do.
7 *Marder v. Board of Regents UW-Madison*, 2004 WI App 177, 276 Wis. 2d 186, 687 N.W.2d 832, 03-2755.

8 Under 37.31, Stats. 1971, the faculty acquires tenure in the system as distinct from tenure at one particular institution within the
9 system. 60 Atty. Gen. 116.

10 A nontenured teacher who is not rehired has no constitutional right to a statement of the reason for not renewing his contract
11 nor to a hearing on the matter. *Board of Regents v. Roth*, 408 US 564.

13 36.14 Wisconsin distinguished professorships.

- 14 (1) The board may establish distinguished professorships under this section.
- 15 (2) The board may pay under this section the salary and fringe benefit costs of the professor holding the distinguished
16 professorship and of any graduate assistant assigned to the professor, and the equipment, supplies and travel costs
17 of the professor and the graduate assistants assigned to the professor.
- 18 (3) The board may pay the costs specified under only from the appropriations under s. 20.285 (1) (a), (am), and (jm). The
19 board may pay any of the costs specified under sub. 2 from the appropriation under s. 20.285 (1) (jm). The board may
20 pay from the appropriation under s. 20.285 (1) (am) only the salary and fringe benefit costs of the professor but may
21 not pay more than 50% of those costs from that appropriation. Annually the board shall report to the department of
22 administration all expenditures from the appropriation under s. 20.285 (1) (a) made for the purposes of this section.
- 23 (4) The board shall ensure that at least 3 of the professors awarded distinguished professorships under this section after
24 August 9, 1989, are not employed by the board when they are awarded the professorships.

25 History: 1987 a. 27; 1989 a. 31.

26 36.15 Academic staff appointments.

- 27 (1) Definitions. In this section:
- 28 (a) "Administrative Appointment" means an academic staff appointment for a fixed or indefinite term granted to a
29 system, campus, college, school or other divisional officer involved in policy development or execution and to
30 persons involved in directing, organizing or supervising higher education related activities.
- 31 (b) "Professional appointment" means an academic staff appointment for a fixed or indefinite term granted to a pro-
32 fessional employee who is involved in the guidance or counseling of students, assisting the faculty in research,
33 public service or in the instruction of students or who is involved in other professional duties which are primarily
34 associated with institutions of higher education; including, but not limited to, such employment titles as visiting
35 faculty, clinical staff, lecturer, scientist, specialist and such other equivalent titles as the board approves.
- 36 (2) Appointments. Appointments under this section shall be made by the board, or by an appropriate official authorized
37 by the board, under policies and procedures established by the board and subject to s. 36.09 (1) (f). The policies for
38 indefinite appointments shall provide for a probationary period, permanent status and such other conditions of ap-
39 pointment as the board establishes.
- 40 (2m) Librarian appointments. If in any institution all professional librarians with appropriate graduate degrees as deter-
41 mined in accordance with that institution's policies, have formerly been ranked faculty, all present and future appoint-
42 ments of professional librarians with appropriate graduate degrees in such institution shall be as ranked faculty, ex-
43 cept in those institutions where the chancellor and faculty designate that such appointments shall be as academic
44 staff.
- 45 (3) Procedural guarantees. A person having an academic staff appointment for a term may be dismissed prior to the end
46 of the appointment term only for just cause and only after due notice and hearing. A person having an academic staff
47 appointment for an indefinite term who has attained permanent status may be dismissed only for just cause and only
48 after due notice and hearing. In such matters the action and decision of the board, or the appropriate official author-
49 ized by the board, shall be final, subject to judicial review under ch. 227. The board shall develop procedures for no-
50 tice and hearing which shall be promulgated as rules under ch. 227.

51 History: 1973 c. 335 and Supp; 1985 a. 332; 1989 a. 31.

52 36.17 Limited appointments.

- 53 (1) An appointment to a position listed in sub. (2) shall be a limited appointment and the appointment shall be at the
54 pleasure of the board. A person holding a tenured or academic staff appointment under ss. 36.13 and 36.15 shall not
55 lose that appointment by accepting a limited appointment.
- 56 (2) Limited appointments apply to the following positions: president, provost, vice president, associate vice president, as-
57 sistant vice president, chancellor, vice chancellor, associate chancellor, assistant chancellor, associate vice chancel-
58 lor, assistant vice chancellor, college campus dean, secretary of the board, associate secretary of the board, assistant

1 secretary of the board, trust officer and assistant trust officer and such other administrative positions as the board de-
2 termines at the time of the appointment.

3 **History: 1973 c. 335; 1997 a. 237.**

4 **36.19 Other appointments.**

5 The board may make or authorize fixed term appointments for student assistants and employees in training, such as residents,
6 interns, post-doctoral fellows or trainees or associates. Appointments made under this section shall not be subject to ss. 36.13
7 and 36.15.

8 **History: 1973 c. 335.**

9 **36.21 Lapse of appointments.**

10 Notwithstanding ss. 36.13 (4) and 36.15, the board may, with appropriate notice, terminate any faculty or academic staff ap-
11 pointment when a financial emergency exists. No person may be employed at the institution within 2 years to perform reasona-
12 bly comparable duties to those of the person whose appointment was terminated without first offering such person a reappoint-
13 ment. The board, after consultation with the faculty and chancellor of each institution, shall adopt procedures to be followed in
14 the event of termination under this section.

15 **History: 1973 c. 335.**

16 **36.23 Conflict of interest.**

17 No regent or officer or other person appointed or employed in any position in the system may at any time act as agent for any
18 person or organization where such act would create a conflict of interest with the terms of the person's service in the system.
19 The board shall define conflicts of interest and promulgate rules related thereto.

20 **History: 1973 c. 335; 1985 a. 332 s. 251 (1).**

21 *A regent of the University of Wisconsin is not precluded by law from attending the university as a student or from receiving a*
22 *degree from the university, but he must guard against and refrain from any possible conflict of interest. 58 Atty. Gen. 158.*

2
3
4 **Section 19.31, *Wisconsin Statutes***
5 **{Open Records Law}**

6 **19.31 Declaration of policy.**

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

14 **History: 1981 c. 335, 391.**

15 *An agency cannot promulgate an administrative rule which creates an exception to the open records law. Chavala v. Bubolz,*
16 *204 W (2d) 82, 552 NW (2d) 892 (Ct. App. 1996).*

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

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

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

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

21 *Toward a More Open and Accountable Government: A Call For Optimal Disclosure Under the Wisconsin Open Records Law.*
22 *Roang. 1994 WLR 719.*

23 **19.32 Definitions.**

24 As used in ss. 19.33 to 19.39:

25 (1) "Authority" means any of the following having custody of a record: a state or local office, elected official, agency,
26 board, commission, committee, council, department or public body corporate and politic created by constitution,
27 law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center
28 sports and entertainment corporation; a local exposition district under *subch. II of ch. 229*; a family care district
29 under s. 46.2895; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50%
30 of its funds from a county or a municipality, as defined in s. 59.001 (3), and which provides services related to
31 public health or safety to the county or municipality; a nonprofit corporation operating the Olympic ice training center
32 under s. 42.11 (3); or a formally constituted subunit of any of the foregoing.

33 (1bg) "Employee" means any individual who is employed by an authority, other than an individual holding local public office
34 or a state public office, or any individual who is employed by an employer other than an authority.

35 (1de) "Local governmental unit" has the meaning given in s. 19.42 (7u).

36 (1dm) "Local public office" has the meaning given in S. 19.42 (7w), and also includes any appointive office or position of a
37 local governmental unit in which an individual serves as the head of a department, agency, or division of the local it,
38 but does not include any office or position filled by a municipal employee, as defined in s. 111.70 (1) (i).

39 (1m) "Person authorized by the individual" means the parent, guardian, as defined in s. 48.02 (8), or legal custodian, as de-
40 fined in s. 48.02 (11), of a child, as defined in s. 48.02 (2), the guardian, as defined in s. 880.01 (3), of an individual
41 adjudged incompetent, as defined in s. 880.01 (4), the personal representative or spouse of an individual who is de-
42 ceased or any person authorized, in writing, by the individual to exercise the rights granted under this section.

43 (1r) "Personally identifiable information" has the meaning specified in s. 19.62 (5) .

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

53 (2g) "Record subject" means an individual about whom personally identifiable information is contained in a record.

54 (3) "Requester" means any person who requests inspection or copies of a record, except an incarcerated person, unless
55 the person requests inspection or copies of a record that contains specific references to that person or his or her mi-
56 nor children for whom he or she has not been denied physical placement under *ch. 767*, and the record is otherwise
57 accessible to the person by law.

1 (4) "State public office" has the meaning given in S 19.42 (13), but does not include a position identified in s. 20.923 (6)
2 (f) to (gm).

3 **History:** 1981 c. 335; 1985 a. 26, 29, 332; 1987 a. 305; 1991 a. 39, 1991 a. 269 ss. 26pd, 33b; 1993 a. 215, 263, 491; 1995 a.
4 158; 1997 a. 79, 94; 1999 a. 9; 2001 a. 16; 2003 a. 47.

5 **NOTE:** 2003 Wis. Act 47, which affects this section, contains extensive explanatory notes. A study commissioned by
6 the corporation counsel and used in various ways was not a "draft" under sub. (2), although it was not in final form. a
7 document prepared other than for the originator's personal use, although in preliminary form or marked "draft," is a
8 record. *Fox v. Bock*, 149 Wis. 2d 403, 438, 438 N.W. 3d 589 (1989)

9 *A settlement agreement containing a pledge of confidentiality kept in the possession of a school district's attorney was a public*
10 *record subject to public access. Journal/Sentinel v. Shorewood School Bd.* 186 W (2d) 443, 521 NW (2d) 165 (Ct. App. 1994).

11 *A nonprofit corporation that receives 50% of its funds from a municipality or county is an authority under sub. (1) regardless of*
12 *the source from which the municipality or county obtained those funds. Davey v. Walrath*, 229 Wis. 2d 105, 598 N.W. 2d 240
13 (Ct. App. 1999), 98-0072.

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

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

16 *Applying Open Records Policy to Wisconsin District Attorneys: Can Charging Guidelines Promote Public Awareness?* Mayer.
17 1996 WLR 295.

18 **19.33 Legal custodians.**

19 (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
20 designate an employee of his or her staff to act as the legal custodian.

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

23 (3) The co-chairpersons of a joint committee of elected officials, or the designee of the co-chairpersons, are the legal
24 custodians of the records of the joint committee.

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

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

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

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

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

45 **History:** 1981 c. 335.

46 **19.34 Procedural information.**

47 (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the
48 guidance of the public, a notice containing a description of its organization and the established times and places at
49 which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information
50 and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof.
51 This subsection does not apply to members of the legislature or to members of any local governmental body.

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

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

57 1. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a re-
58 cord; or

- 1 2. Establish a period of at least 2 consecutive hours per week during which access to the records of the au-
2 thority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent
3 to inspect or copy a record.
- 4 (c) An authority imposing a notice requirement under *par. (b)* shall include a statement of the requirement in its no-
5 tice under *sub. (1)*, if the authority is required to adopt a notice under that subsection.
- 6 (d) If a record of an authority is occasionally taken to a location other than the location where records of the author-
7 ity are regularly kept, and the record may be inspected at the place at which records of the authority are regularly
8 kept upon one business day's notice, the authority or legal custodian of the record need not provide access to
9 the record at the occasional location.

10 **History: 1981 c. 335.**

11 *NOTE: 2003 Wis. Act 47, which affects this section, contains extensive explanatory notes.*

12 **19.345 Time computation.** In ss. 19.33 to 19.39, when a time period is provided for performing an act, whether
13 the period is expressed in hours or days, the whole of Saturday, Sunday, and any legal holiday, from midnight to
14 midnight, shall be excluded in computing the period.

15 **19.35 Access to records; fees.**

16 (1) Right to inspection.

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

23 (1)(am) In addition to any right under *par. (a)*, any requester who is an individual or person authorized by the individual,
24 has a right to inspect any record containing personally identifiable information pertaining to the individual that is
25 maintained by an authority and to make or receive a copy of any such information. The right to inspect or copy a
26 record under this paragraph does not apply to any of the following:

- 27 1. Any record containing personally identifiable information that is collected or maintained in connection with a
28 complaint, investigation or other circumstances that may lead to an enforcement action, administrative pro-
29 ceeding, arbitration proceeding or court proceeding, or any such record that is collected or maintained in
30 connection with such an action or proceeding.
- 31 2. Any record containing personally identifiable information that, if disclosed, would do any of the following:
- 32 a. Endanger an individual's life or safety.
- 33 b. Identify a confidential informant.
- 34 c. Endanger the security, including the security of the population or staff, of any state prison under s.
35 301.01, jail, as defined in s. 165.85 (2) (bg), juvenile correctional facility, as defined in s. 938.02 (10p),
36 secured residential care center for children and youth, as defined in s. 938.02 (15g), mental health in-
37 stitute, as defined in s. 51.01 (12), center for the developmentally disabled, as defined in s. 51.01 (3),
38 or facility, specified under s. 980.065, for the institutional care of sexually violent persons
- 39 d. Compromise the rehabilitation of a person in the custody of the department of corrections or detained
40 in a jail or facility identified in *subd. 2. c.*
- 41 3. Any record that is part of a records series, as defined in s. 19.62 (7), that is not indexed, arranged or auto-
42 mated in a way that the record can be retrieved by the authority maintaining the records series by use of an
43 individual's name, address or other identifier.

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

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

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

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

58 (em) If an authority receives a request to inspect or copy a record that is in handwritten form or a record that is in the
59 form of a voice recording which the authority is required to withhold or from which the authority is required to de-

- 1 lete information under s. 19.36 (8) (b) because the handwriting or the recorded voice would identify an informant,
2 the authority shall provide to the requester, upon his or her request, a transcript of the record or the information
3 contained in the record if the record or information is otherwise subject to public inspection and copying under
4 this subsection.
- 5 (f) Except as otherwise provided by law, any requester has a right to inspect any record not specified in *pars. (b) to*
6 *(e)* the form of which does not permit copying. If a requester requests permission to photograph the record, the
7 authority having custody of the record may permit the requester to photograph the record. If a requester requests
8 that a photograph of the record be provided, the authority shall provide a good quality photograph of the record.
- 9 (g) *Paragraphs (a) to (c), (e) and (f)* do not apply to a record which has been or will be promptly published with cop-
10 pies offered for sale or distribution.
- 11 (h) A request under *pars. (a) to (f)* is deemed sufficient if it reasonably describes the requested record or the infor-
12 mation requested. However, a request for a record without a reasonable limitation as to subject matter or length
13 of time represented by the record does not constitute a sufficient request. A request may be made orally, but a
14 request must be in writing before an action to enforce the request is commenced under s. 19.37.
- 15 (i) Except as authorized under this paragraph, no request under *pars. (a) and (b) to (f)* may be refused because the
16 person making the request is unwilling to be identified or to state the purpose of the request. Except as author-
17 ized under this paragraph, no request under *pars. (a) to (f)* may be refused because the request is received by
18 mail, unless prepayment of a fee is required under *sub. (3)(f)*. A requester may be required to show acceptable
19 identification whenever the requested record is kept at a private residence or whenever security reasons or fed-
20 eral law or regulations so require.
- 21 (j) Notwithstanding *pars. (a) to (f)*, a requester shall comply with any regulations or restrictions upon access to or
22 use of information which are specifically prescribed by law.
- 23 (k) Notwithstanding *pars. (a) , (am), (b) and (f)*, a legal custodian may impose reasonable restrictions on the manner
24 of access to an original record if the record is irreplaceable or easily damaged.
- 25 (l) Except as necessary to comply with *pars. (c) to (e) or s. 19.36 (6)*, this subsection does not require an authority
26 to create a new record by extracting information from existing records and compiling the information in a new for-
27 mat.
- 28 (2) Facilities. The authority shall provide any person who is authorized to inspect or copy a record under *sub. (1) (a),*
29 *(am), (b) or (f)* with facilities comparable to those used by its employees to inspect, copy and abstract the record dur-
30 ing established office hours. An authority is not required by this subsection to purchase or lease photocopying, dupli-
31 cating, photographic or other equipment or to provide a separate room for the inspection, copying or abstracting of re-
32 cords.
- 33 (3) Fees.
- 34 (a) An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, nec-
35 essary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically es-
36 tablished or authorized to be established by law.
- 37 (b) Except as otherwise provided by law or as authorized to be prescribed by law an authority may impose a fee
38 upon the requester of a copy of a record that does not exceed the actual, necessary and direct cost of photo-
39 graphing and photographic processing if the authority provides a photograph of a record, the form of which does
40 not permit copying.
- 41 (c) Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee
42 upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost
43 is \$50 or more.
- 44 (d) An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping
45 of any copy or photograph of a record which is mailed or shipped to the requester.
- 46 (e) An authority may provide copies of a record without charge or at a reduced charge where the authority deter-
47 mines that waiver or reduction of the fee is in the public interest.
- 48 (f) An authority may require prepayment by a requester of any fee or fees imposed under this subsection if the total
49 amount exceeds \$5. If the requester is a prisoner, as defined in s. 301.01 (2), or is a person confined in a federal
50 correctional institution located in this state, and he or she has failed to pay any fee that was imposed by the au-
51 thority for a request made previously by that requester, the authority may require prepayment both of the amount
52 owed for the previous request and the amount owed for the current request.
- 53 (4) Time for compliance and procedures.
- 54 (a) Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the re-
55 quest or notify the requester of the authority's determination to deny the request in whole or in part and the rea-
56 sons therefore.
- 57 (b) If a request is made orally, the authority may deny the request orally unless a demand for a written statement of
58 the reasons denying the request is made by the requester within 5 business days of the oral denial. If an author-
59 ity denies a written request in whole or in part, the requester shall receive from the authority a written statement
60 of the reasons for denying the written request. Every written denial of a request by an authority shall inform the

1 requester that if the request for the record was made in writing, then the determination is subject to review by
2 mandamus under s. 19.37 (1) or upon application to the attorney general or a district attorney.

3 (c) If an authority receives a request under *sub. (1) (a) or (am)* from an individual or person authorized by the indi-
4 vidual who identifies himself or herself and states that the purpose of the request is to inspect or copy a record
5 containing personally identifiable information pertaining to the individual that is maintained by the authority, the
6 authority shall deny or grant the request in accordance with the following procedure:

7 1. The authority shall first determine if the requester has a right to inspect or copy the record under *sub. (1)*
8 *(a)*.

9 2. If the authority determines that the requester has a right to inspect or copy the record under *sub. (1) (a)*, the
10 authority shall grant the request.

11 3. If the authority determines that the requester does not have a right to inspect or copy the record under *sub.*
12 *(1) (a)*, the authority shall then determine if the requester has a right to inspect or copy the record under
13 *sub. (1) (am)* and grant or deny the request accordingly.

14 (5) Record destruction. No authority may destroy any record at any time after the receipt of a request for inspection or
15 copying of the record under *sub. (1)* until after the request is granted or until at least 60 days after the date that the
16 request is denied or, if the requester is a committed or incarcerated person, until at least 90 days after the date that
17 the request is denied. If an authority receives written notice that an action relating to a record has been commenced
18 under s. 19.37, the record may not be destroyed until after the order of the court in relation to such record is issued
19 and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the ap-
20 peal is issued. If the court orders the production of any record and the order is not appealed, the record may not be
21 destroyed until after the request for inspection or copying is granted.

22 (6) Elected official responsibilities. No elected official is responsible for the record of any other elected official unless he
23 or she has possession of the record of that other official.

24 **History:** 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9;
25 2001 a. 16; 2005 a. 344..

26 *A mandamus petition to inspect a county hospital's statistical, administrative, and other records not identifiable with individual*
27 *patients, states a cause of action under this section. State ex rel. Dalton v. Mundy, 80 Wis. 2d 190, 257 N.W. 2d 877 (1977).*

28 *Police daily arrest lists must be open for public inspection. Newspapers, Inc. v. Breier, 89 Wes. 2d 417, 279 N.W. 2d 179*
29 *(1979).*

30 *This section is a statement of the common law rule that public records are open to public inspection subject to common law*
31 *limitations. Section 59.14 [now 59.20 (3)] is a legislative declaration granting persons who come under its coverage an absolute*
32 *right of inspection subject only to reasonable administrative regulations. State ex rel. Bilder v. Town of Delavan, 112 Wis. 2d*
33 *539, 334 N.W. 2d 252 (1983).*

34 *A newspaper had the right to intervene to protect its right to examine sealed court files. State ex rel Bilder v. Town of Delavan*
35 *112 Wis. 2d 539, 334 N.W. 2d 252 (1983).*

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

39 *Courts must apply the open records balancing test to questions involving disclosure of court records. The public interests favor-*
40 *ing secrecy must outweigh those favoring disclosure. C.L. v. Edson, 140 Wis. 2d 168, 409 N.W. 2d 417 (Ct. App. 1987).*

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

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

46 *That releasing records would reveal confidential informant's identity was legally specific reason for denial of records request;*
47 *public interest in revealing informant's identity outweighed public interest in disclosure of records. Mayfair Chrysler-Plymouth v.*
48 *Baldarotta, 162 W (2d) 142, 469 NW (2d) 638 (1991).*

49 *Items subject to examination under 346.70 (4) (f) may not be withheld by prosecution under common law rule that investigative*
50 *material may be withheld from criminal defendant. State ex rel. Young v. Shaw, 165 W (2d) 276, 477 NW (2d) 340 (Ct. App.*
51 *1991).*

52 *Prosecutor's files are exempt from public access under common law. State ex rel. Richards v. Foust, 165 W (2d) 429, 477 NW*
53 *(2d) 608 (1991).*

54 *Records relating to pending claims against state under 893.82 need not be disclosed under 19.35; records of non-pending*
55 *claims must be disclosed unless an in camera inspection reveals attorney client privilege would be violated. George v. Record*
56 *Custodian, 169 W (2d) 573, 485 NW (2d) 460 (Ct. App. 1992).*

57 *The public records law confers no exemption as of right on indigents from payment of fees under (3). George v. Record Custodi-*
58 *dian, 169 W (2d) 573, 485 NW (2d) 460 (Ct. App. 1992).*

1 A settlement agreement containing a pledge of confidentiality and kept in the possession of a school district's attorney was a
2 public record subject to public access under sub. (3). *Journal/Sentinel v. School district of Shorewood*, 186 Wis. 2d 443, 521
3 N.W. 2d 165 (Ct. App. 1994).

4 The denial of prisoner's information request regarding illegal behavior by guards on the grounds that it could compromise the
5 guards' effectiveness and subject them to harassment was insufficient. *State ex. rel. Ledford v. Turcotte*, 195 Wis (2d) 244, 536
6 N.W. (2d) 130 (Ct. App. 1995), 94-2710.

7 The amount of prepayment required for copies may be based on a reasonable estimate. *State ex rel. Hill v. Zimmerman*, 196 W
8 (2d) 419, 538 NW (2d) 608 (Ct. App. 1995), 94-1861.

9 The *Foust* decision does not automatically exempt all records stored in a closed prosecutorial file. The exemption is limited to
10 material actually pertaining to the prosecution. *Nichols v. Bennett*, 199 W (2d) 268, 544 NW (2d) 428 (1996), 93-2480.

11 Department of Regulation and Licensing test scores were subject to disclosure under the open records law. *Munroe v. Braatz*,
12 201 W (2d) 442, 549 NW (2d) 452 (Ct. App. 1996), 95-2557.

13 Sub. (1) (l) and (3) (f) did not permit a demand for prepayment of \$1.29 in response to a mail request for a record. *Borzych v.*
14 *Paluszcyk*, 201 W (2d) 523, 549 NW (2d) 253 (Ct. App. 1996), 95-1711.

15 An agency cannot promulgate an administrative rule which creates an exception to the open records law. *Chavala v. Bubolz*,
16 204 W (2d) 82, 552 NW (2d) 892 (Ct. App. 1996), 92-3120.

17 While certain statutes grant explicit exceptions to the open records law, many statutes set out broad categories of records not
18 open to an open records request. A custodian faced with such a broad statute must state with specificity a public policy reason
19 for refusing to release the requested record. *Chavala v. Bubolz*, 204 W (2d) 82, 552 NW (2d) 892 (Ct. App. 1996), 95-3120.

20 The custodian is not authorized to comply with an open records request at some unspecified date in the future. Such a re-
21 sponse constitutes a denial of the request. *WTMJ, Inc. v. Sullivan*, 204 W (2d) 452, 555 NW (2d) 125 (Ct. App. 1996), 96-0053.

22 Subject to the redaction of officers' home addresses and supervisors' conclusions and recommendations regarding discipline,
23 police records regarding use of deadly force are subject to public inspection. *State ex rel. Journal/Sentinel, Inc. v. Arreola*, 207
24 W (2d) 496, 558 NW (2d) 670 (Ct. App. 1996), 95-2956.

25 A public school student's interim grades are pupil records specifically exempted from disclosure under s. 118.125. If records are
26 specifically exempted from disclosure, failure to specifically state reasons for denying an open records request for those records
27 does not compel disclosure of those records. *State ex rel. Blum v. Board of Education*, 209 Wis. 2d 377, 565 N.W. 2d 140 (Ct.
28 App. 1997), 96-0758.

29 Requesting a copy of 180 hours of audiotape of "911" calls, together with a transcription of the tape and log of each transmis-
30 sion received, was a request without "reasonable limitation" and was not a "sufficient request" under sub. (1) (h). *Schopper v.*
31 *Gehring*, 210 Wis. 2d 208, 565 N.W. 2d 187 (Ct. App. 1997), 96-2782.

32 If the requested information is covered by an exempting statute that does not request a balancing of public interests, there is no
33 need for a custodian to conduct such a balancing. Written denial claiming a statutory exception by citing the specific statute or
34 regulation is sufficient. *state ex rel. Savinski v. Kimble*, 221 Wis. 2d 833, 586 N.W. 2d 36 (Ct. App. 1998), 97-3356.

35 Protecting persons who supply information or opinions about an inmate to the parole commission is a public interest that may
36 outweigh the public interest in access to documents that could identify those persons. *State ex rel. Bergmann v. Faust*, 226 Wis.
37 2d 273, 595 N.W.2d 75 (Ct. App. 1999), 98-2537.

38 The ultimate purchasers of municipal bonds from the bond's underwriter, whose only obligation was to purchase the bonds,
39 were not "contractor's records under sub (3). *Machotka v. Village of West Salem*, 2000 WI App 43, 233 Wis. 2d 106, 607 N.W.
40 2d 319, 99-1163.

41 Sub (1) (b) gives the record custodian, and not the requester, the choice of how a record will be copied. The requester cannot
42 elect to use his or her own copying equipment without the custodian's permission. *Grebner v. Schiebel*, 2001 WI App 17, 240
43 Wis 2d 551, 624 N.W. 2d 892, 00-1549.

44 Requests for university admissions records focusing on test scores, class rank, grade point average, race, gender, ethnicity,
45 and socio-economic background was not a request for personally identifiable information, and release was not barred by federal
46 law or public policy. That the requests would require the university to redact information from thousands of documents under s.
47 19.36 (6) did not essentially require the university to create new records and, as such, did not provide grounds for denying the
48 request under s 19.35 (1) (L). *Osborn v. Board of Regents of the University of Wisconsin System*, 2002 WI 83, 254 Wis 2d 266,
49 647 N.W. 2d 158, 00-2861.

50 The police report of a closed investigation regarding a teacher's conduct that did not lead either to an arrest, prosecution, or any
51 administrative disciplinary action, was subject to release. *Linzmeyer v. Forcey*, 2002 WI 84, 254 Wis 2d 306, 646 N.W. 2d 811,
52 01-0197.

53 The *John Doe* statute, s 968.26, which authorizes secrecy in *John Doe* proceedings, is a clear statement of legislative policy
54 and constitutes a specific exception to the public records law. On review of a petition for write stemming from a secret *John Doe*
55 proceeding, the court of appeals may seal parts of a record in order to comply with existing secrecy orders issued by the *John*
56 *Doe* judge. *Unnamed Persons Numbers 1, 2, and 3 v. State*, 2003 WI 30, 260 Wis. 2d 653, 660 N. W. 2d 260, 01-3220.

57 Sub (1)(am) is not subject to a balancing of interests. Therefore, the exceptions to sub. (1)(am) should not be narrowly con-
58 strued. A requester who does not qualify for access to records under sub. (1)(am) will always have the right to seek records
59 under sub. (1) (a), in which case the records custodian must determine whether the requested records are subject to a statutory
60 or common law exception, and if not whether the strong presumption favoring access and disclosure is overcome by some even

1 stronger public policy favoring limited access or nondisclosure determined by applying a balancing test. *Hempel v. City of Bara-*
2 *boo*, 2005 WI 120, 284 Wis. 2d 162, 699 N.W.2d 551, 03-0500.

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

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

7 Inspection of public records obtained under official pledges of confidentiality may be denied if: 1) a clear pledge has been made
8 in order to obtain the information; 2) the pledge was necessary to obtain the information; and 3) the custodian determines that
9 the harm to the public interest resulting from inspection would outweigh the public interest in full access to public records. The
10 custodian must permit inspection of information submitted under an official pledge of confidentiality if the official or agency had
11 specific statutory authority to require its submission, 60 Atty. Gen 284

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

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

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

18 Matters and documents in the possession or control of school district officials containing information concerning the salaries,
19 including fringe benefits, paid to individuals teachers are matters of public record. 62 Atty. Gen. 143.

20 The scope of the duty of the governor to allow members of the public to examine and copy public records in his custody is dis-
21 cussed. 63 Atty. Gen. 400.

22 The public's right to inspect land acquisition files of the department of natural resources is discussed. 63 Atty. Gen. 573.

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

25 Sheriff's radio logs, intradepartmental documents kept by the sheriff, and blood test records of deceased automobile drivers in
26 the hands of the sheriff are public records, subject to limitations. 67 Atty. Gen. 12.

27 copy computer-stored information is discussed. 68 Atty. Gen. 231.

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

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

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

33 The fee for copying public records discussed. 72 Atty. Gen. 150.

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

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

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

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

41 The relationship between public records law and pledges of confidentiality in settlement agreements discussed. 74 Atty. Gen.
42 14.

43 Ambulance records relating to medical history, condition, or treatment are confidential while other ambulance call records are
44 subject to disclosure under the public records law. 78 Atty. Gen. 71.

45 Courts are likely to require disclosure of legislators' mailing and distribution lists absent a factual showing that the public interest
46 in withholding the records outweighs the public interest in their release. OAG 2-03.

47 If a legislator custodian decides that a mailing or distribution list compiled and used for official purposes must be released under
48 the public records statute, the persons whose names, addresses or telephone numbers are contained on the list are not entitled
49 to notice and the opportunity to challenge the decision prior to release of the record. OAG 2-03.

50 Access Denied: How *Wiznicki v. Erickson* Reversed the Statutory Presumption of Openness in the Wisconsin Open Records
51 law. *Munro*. 2002 WLR 1197.

52 **19.356 Notice to record subject; right of action.**

53 (1) Except as authorized in this section or as otherwise provided by statute, no authority is required to notify a record
54 subject prior to providing to a requester access to a record containing information pertaining to that record subject,

- 1 and no person is entitled to judicial review of the decision of an authority to provide a requester with access to a record.
2
- 3 (2) (a) Except as provided in pars. (b) and (c) and as otherwise authorized or required by statute, if an authority decides
4 under s. 19.35 to permit access to a record specified in this paragraph, the authority shall, before permitting access
5 and within 3 days after making the decision to permit access, serve written notice of that decision on any record sub-
6 ject to whom the record pertains, either by certified mail or by personally serving the notice on the record subject. The
7 notice shall briefly describe the requested record and include a description of the rights of the record subject under
8 subs. (3) and (4). this paragraph applies only to the following records:
- 9 1. A record containing information relating to an employee that is created or kept by the authority and that is the re-
10 sult of an investigation into a disciplinary matter involving the employee or possible employment-related violation
11 by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer.
- 12 2. A record obtained by the authority through a subpoena or search warrant.
- 13 3. A record prepared by an employer other than an authority, if that record contains information relating to an em-
14 ployee of that employer, unless the employee authorizes the authority to provide access to that information.
- 15 (b) Paragraph (a) does not apply to an authority who provides access to a record pertaining to an employee to the
16 employee who is the subject of the record or to his or her representative to the extent required under s. 103.13
17 or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain
18 or pursuant to a collective bargaining agreement under ch. 111.
- 19 (c) Paragraph (a) does not apply to access to a record produced in relation to a function specified in s. 106.54 or
20 230.45 or subch. 11 or ch. 111 if the record is provided by an authority having responsibility for that function.
- 21 (3) Within 5 days after receipt of a notice under sub. (2) (a), a record subject may provide written notification to the au-
22 thority of his or her intent to seek a court order restraining the authority from providing access to the requested record.
- 23 (4) Within 10 days after receipt of a notice under sub. (2) (a), a record subject may commence an action seeking a court
24 order to restrain the authority from providing access to the requested record. If a record subject commences such an
25 action, the record subject shall name the authority as a defendant. Notwithstanding s. 803.09, the requester may in-
26 tervene in the action as a matter of right. If the requester does not intervene in the action, the authority shall notify the
27 requester of the results of the proceedings under this subsection and sub. (5).
- 28 (5) An authority shall not provide access to a requested record within 12 days of sending a notice pertaining to that re-
29 cord under sub. (2) (a). In addition, if the record subject commences an action under sub. (4), the authority shall not
30 provide access to the requested record during pendency of the action. If the record subject appeals or petitions for re-
31 view of a decision of the court or the time for appeal or petition for review of a decision adverse to the record subject
32 has not expired, the authority shall not provide access to the requested record until any appeal is decided, until the
33 period for appealing or petitioning for review expires, until a petition for review is denied, or until the authority receives
34 written notice from the record subject that an appeal or petition for review will not be filed, whichever occurs first.
- 35 (6) The courts, in an action commenced under sub. (4), may restrain the authority from providing access to the requested
36 record. the court shall apply substantive common law principles construing the right to inspect, copy, or receive cop-
37 ies of records in making its decision.
- 38 (7) The court, in an action commenced under sub. (4), shall issue a decision within 10 days after filing of the summons
39 and complaint and proof of service of the summons and complaint upon the defendant, unless a party demonstrates
40 cause for extension of this period. In any event, the court shall issue a decision within 30 days after those filings are
41 complete.
- 42 (8) If a party appeals a decision of the court under sub. (7), the court of appeals shall grant precedence to the appeal
43 over all other matters not accorded similar precedence by law. an appeal shall be taken within the time period speci-
44 fied in x. 808.04 (1m).
- 45 (9) (a) Except as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a
46 record containing information relating to a record subject who is an officer or employee of the authority holding a local
47 public office or a state public office, the authority shall, before permitting access and within 3 days after making the
48 decision to permit access, serve written notice of that decision on the record subject, either by certified mail or by per-
49 sonally serving the notice on the record subject. The notice shall briefly describe the requested record and include a
50 description of the rights of the record subject under par. (b).
- 51 (b) Within 5 days after receipt of a notice under par. (a), a record subject may augment the record to be released
52 with written comments and documentation selected by the record subject. Except as otherwise authorized or re-
53 quired by statute, the authority under par. (a) shall release the record as augmented by the record subject.

54 **History: 2003 a. 47.**

55 **NOTE: 2003 Wis. Act 47, which creates this section, contains extensive explanatory notes.**

56 *The right of a public employee to obtain de novo judicial review of an authority's decision to allow public access to certain re-*
57 *records granted by this section is no broader than the common law right previously recognized. It is not a right to prevent disclo-*
58 *sure solely on the basis of a public employee's privacy and reputational interests. The public's interest in not injuring the reputa-*
59 *tions of public employees must be given due consideration, but it is not controlling. Local 2489 v. Rock County, 2004 WI app*
60 *210, 277 Wis. 2d 208, 689 N.W.2d 644, 03-3101.*

61

1 **19.36 Limitations upon access and withholding.**

- 2 (1) Application of other laws. Any record which is specifically exempted from disclosure by state or federal law or author-
3 ized to be exempted from disclosure by state law is exempt from disclosure under s. 19.35 (1), except that any portion
4 of that record which contains public information is open to public inspection as provided in sub. (6).
- 5 (2) Law enforcement records. Except as otherwise provided by law, whenever federal law or regulations require or as a
6 condition to receipt of aids by this state require that any record relating to investigative information obtained for law
7 enforcement purposes be withheld from public access, then that information is exempt from disclosure under s. 19.35
8 (1).
- 9 (3) Contractors' records. Subject to sub. (12), each authority shall make available for inspection and copying under s.
10 19.35 (1) any record produced or collected under a contract entered into by the authority with a person other than an
11 authority to the same extent as if the record were maintained by the authority. This subsection does not apply to the
12 inspection or copying of a record s. 19.35 (1) (am).
- 13 (4) Computer programs and data. A computer program, as defined in s. 16.971 (4) (c) is not subject to examination or
14 copying under s. 19.35 (1), but the material used as input for a computer program or the material produced as a
15 product of the computer program is subject to the right of examination and copying, except as otherwise provided in s.
16 19.35 or this section.
- 17 (5) Trade secrets. An authority may withhold access to any record or portion of a record containing information qualifying
18 as a trade secret as defined in s. 134.90 (1) (c).
- 19 (6) Separation of information. If a record contains information that is subject to disclosure under s. 19.35 (1) (a) or (am)
20 and information that is not subject to such disclosure, the authority having custody of the record shall provide the in-
21 formation that is subject to disclosure and delete the information that is not subject to disclosure from the record be-
22 fore release.
- 23 (7) Identities of applicants for public positions.
- 24 (a) In this section, "final candidate" means each applicant for a position who is seriously considered for appointment
25 or whose name is certified for appointment and whose name is submitted for final consideration to an authority
26 for appointment to any state position, except a position in the classified service, or to any local public office. "Fi-
27 nal candidate" includes, whenever there are at least 5 candidates for an office or position, each of the 5 candi-
28 dates who are considered most qualified for the office or position by an authority, and whenever there are less
29 than 5 candidates for an office or position, each such candidate. Whenever an appointment is to be made from a
30 group of more than 5 candidates, "final candidate" also includes each candidate in the group.
- 31 (b) Every applicant for a position with any authority may indicate in writing to the authority that the applicant does
32 not wish the authority to reveal his or her identity. Except with respect to an applicant whose name is certified for
33 appointment to a position in the state classified service or a final candidate, if an applicant makes such an indica-
34 tion in writing, the authority shall not provide access to any record related to the application that may reveal the
35 identity of the applicant.
- 36 (8) Identities of law enforcement informants.
- 37 (a) In this subsection:
- 38 1. "Informant" means an individual who requests confidentiality from a law enforcement agency in conjunction with
39 providing information to that agency or, pursuant to an express promise of confidentiality by a law enforcement
40 agency or under circumstances in which a promise of confidentiality would reasonable be implied, provides in-
41 formation to a law enforcement agency or, is working with a law enforcement agency to obtain information, re-
42 lated in any case to any of the following:
- 43 a. Another person who the individual or the law enforcement agency suspects has violated, is violating or will vio-
44 late a federal law, a law of any state or an ordinance of any local government.
- 45 b. Past, present or future activities that the individual or law enforcement agency believes may violate a federal law,
46 a law of any state or an ordinance of any local government.
- 47 2. "Law enforcement agency" has the meaning given in s. 165.83 (1) (b), and includes the department of correc-
48 tions.
- 49 (b) If an authority that is a law enforcement agency receives a request to inspect or copy a record or portion of a re-
50 cord under s. 19.35 (1) (a) that contains specific information including but not limited to a name, address, tele-
51 phone number, voice recording or handwriting sample which, if disclosed, would identify an informant, the au-
52 thority shall delete the portion of the record in which the information is contained or, if no portion of the record
53 can be inspected or copied without identifying the informant, shall withhold the record unless the legal custodian
54 of the record, designated under s. 19.33, makes a determination, at the time that the request is made, that the
55 public interest in allowing a person to inspect, copy or receive a copy of such identifying information outweighs
56 the harm done to the public interest by providing such access.
- 57 (9) Records of plans or specifications for state buildings. Records containing plans or specifications for any state-owned
58 or state-leased building, structure or facility or any proposed state-owned or state-leased building, structure or facility
59 are not subject to the right of inspection or copying under s. 19.35 (1) except as the department of administration oth-
60 erwise provides by rule.

- 1 (10) Employee personnel records. Unless access is specifically authorized or required by statute, an authority shall not
2 provide access under x. 19.35 (1) to records containing the following information, except to an employee or the em-
3 ployee's representative to the extent required under s. 103.13 or to a recognized or certified collective bargaining rep-
4 resentative to the extent required to fulfill a duty to bargain under ch. 111 or pursuant to a collective bargaining
5 agreement under ch. 111:
- 6 (a) Information maintained, prepared, or provided by an employer concerning the home address, home electronic
7 mail address, home telephone number, or social security number of an employee, unless the employee author-
8 izes the authority to provide access to such information.
- 9 (b) Information relating to the current investigation of a possible criminal offense or possible misconduct connected
10 with employment by an employee prior to disposition of the investigation.
- 11 (c) Information pertaining to an employee's employment examination, except an examination score if access to that
12 score is not otherwise prohibited.
- 13 (d) Information relating to one or more specific employees that is used by an authority or by the employer of the em-
14 ployees for staff management planning, including performance evaluations, judgments, or recommendations
15 concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job as-
16 signments, letters of reference, or other comments or ratings relating to employees.
- 17 (11) Records of an individual holding a local public office or a state public office. Unless access is specifically authorized
18 or required by statute, an authority shall not provide access under x. 1935 (1) to records, except to an individual to the
19 extent required under s. 103.13, containing information maintained, prepared or provided by an employer concerning
20 the home address, home electronic mail address, home telephone number, or social security number of an individual
21 who holds a local public office or a state public office, unless the individual authorizes the authority to provide access
22 to such information. This subsection does not apply to the home address of an individual who holds an elective public
23 office or to the home address of an individual who, as a condition of employment, is required to reside in a specified
24 location.
- 25 (12) Information relating to certain employees. Unless access is specifically authorized or required by statute, an authority
26 shall not provide access to a record prepared or provided by an employer performing work on a project to which s.
27 66.0903, 103.49, or 103.50 applies, or on which the employer is otherwise required to pay prevailing wages, if that re-
28 cord contains the name or other personally identifiable information relating to an employee or that employer, unless
29 the employee authorizes the authority to provide access to that information. In this subsection, "personally identifiable
30 information" does not include an employee's work classification, hours or work, or wage or benefit payments received
31 for work on such a project.
- 32 (13) Financial identifying information. An authority shall not provide access to personally identifiable data that contains an
33 individual's account or customer number with a financial institution, as defined in s. 895.505 (1) (b) [s. 134.97 (1) (b)],
34 including credit card numbers, debit card numbers, checking account numbers, or draft account numbers, unless
35 specifically required by law.

36 NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

37 **History: 1981 c. 335; 1985 a. 236; 1991 a. 39, 269, 317; 1993 a. 93; 1995 a. 27; 2001 a. 16; 2003 a. 33, 47; 2005 a. 59, 253.**

38 **NOTE: 2003 Wis. Act 47, which affects this section contains extensive explanatory notes.**

39 *Sub (2) does not require providing access to payroll records of subcontractors of a prime contractor of a public construction*
40 *project. Building and Construction Trades Council v. Waunakee Community School District, 221 Wis. 2d 575, 585 N.W.2d 726*
41 *(Ct. App. 1999), 97-3282.*

42 *Production of an analog audio tape was insufficient under sub. (4) when the requester asked for examination and copying of the*
43 *original digital audio tape. State ex rel. Milwaukee Police association v. Jones. 2000 WI App 146, 237 Wis. 2d 840, 615 N.W.2d*
44 *190, 98-3629.*

45 *Requests for university admissions records focusing on test scores, class rank, grade point average, race, gender, ethnicity,*
46 *and socio-economic background was not a request for personally identifiable information and release was not barred by federal*
47 *law or public policy. That the requests would require the university to redact information from thousands of documents under s.*
48 *19.36 (6) did not essentially require the university to create new records and, as such, did not provide grounds for denying the*
49 *request under s. 19.35 (1) (L). Osborn v. Board of Regents of the University of Wisconsin System, 2002 WI 83, 254 Wis. 2d*
50 *266, 647 N.W.2d 158, 00-2861.*

51 *"Investigation" in sub. (10) (b) includes only that conducted by the public authority itself as a prelude to possible employee disci-*
52 *plinary action. An investigation achieves its "disposition" when the authority acts to impose discipline on an employee as a result*
53 *of the investigation, regardless of whether the employee elects to pursue grievance arbitration or another review mechanism*
54 *that may be available. Local 2489 v. Rock County, 2004 WI App 210, 277 Wis. 2d 208, 689 N.W.2d 644, 03-3101.*

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

56 *A computerized compilation of bibliographic records is discussed in relation to copyright law; requester is entitled to a copy of a*
57 *computer tape or a printout of information on the tape. 75 Atty. Gen. 133 (1986).*

58 *And exemption to the federal Freedom of Information Act was not incorporated under (1). 77 Atty. Gen. 20.*

59 *Sub. (7) is an exception to the public records law and should be narrowly construed. In sub. (7) "applicant" and "candidate" are*
60 *synonymous. "Final candidates" are the five most qualified unless there are less than five applicants in which case all are final*
61 *candidates. 81 Atty. Gen. 37.*

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

2 **19.365 Rights of data subject to challenge; authority corrections.**

3 (1) Except as provided under *sub. (2)*, an individual or person authorized by the individual may challenge the accuracy of
4 a record containing personally identifiable information pertaining to the individual that is maintained by an authority if
5 the individual is authorized to inspect the record under *s. 19.35 (1) (a) or (am)* and the individual notifies the authority,
6 in writing, of the challenge. After receiving the notice, the authority shall do one of the following:

7 (a) Concur with the challenge and correct the information.

8 (b) Deny the challenge, notify the individual or person authorized by the individual of the denial and allow the indi-
9 vidual or person authorized by the individual to file a concise statement setting forth the reasons for the individ-
10 ual's disagreement with the disputed portion of the record. A state authority that denies a challenge shall also
11 notify the individual or person authorized by the individual of the reasons for the denial.

12 (2) This section does not apply to any of the following records:

13 (a) Any record transferred to an archival depository under *s. 16.61 (13)*.

14 (b) Any record pertaining to an individual if a specific state statute or federal law governs challenges to the accuracy
15 of the record.

16 **History: 1991 a. 269 ss. 27d, 27e, 35am, 37am, 39am.**

17 **19.37 Enforcement and penalties.**

18 (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
19 record after a written request for disclosure is made, the requester may pursue either, or both, of the alternatives un-
20 der *pars. (a) and (b)*.

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

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

27 (1m) Time for commencing action. No action for mandamus under *sub. (1)* to challenge the denial of a request for access
28 to a record or part of a record may be commenced by any committed or incarcerated person later than 90 days after
29 the date that the request is denied by the authority having custody of the record or part of the record.

30 (1n) Notice of claim. *Sections 893.80 and 893.82* do not apply to actions commenced under this section.

31 (2) Costs, fees and damages.

32 (a) Except as provided in this paragraph, the court shall award reasonable attorney fees, damages of not less than
33 \$100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action
34 filed under *sub. (1)* relating to access to a record or part of a record *s. 19.35 (1) (a)*. If the requester is A commit-
35 ted or incarcerated person, the requester is not entitled to any minimum amount of damages, but the court may
36 award damages. Costs and fees shall be paid by the authority affected or the unit of government of which it is a
37 part, or by the unit of government by which the legal custodian under *s. 19.33* is employed and may not become
38 a personal liability of any public official.

39 (b) In any action filed under *sub. (1)* relating to access to a record or part of a record under *s. 19.35 (1) (am)*, if the
40 court finds that the authority acted in a willful or intentional manner, the court shall award the individual actual
41 damages sustained by the individual as a consequence of the failure.

42 (3) Punitive damages. If a court finds that an authority or legal custodian under *s. 19.33* has arbitrarily and capriciously
43 denied or delayed response to a request or charged excessive fees, the court may award punitive damages to the re-
44 quester.

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

51 **History: 1981 c. 335, 391; 1991 a. 269 s. 43d; 1995 a. 158; 1997 a. 94.**

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

55 *If agency exercises due diligence but is unable to respond timely to records request, plaintiff must show that mandamus action*
56 *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*
57 *W (2d) 518, 427 NW (2d) 414 (Ct. App. 1988).*

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

3 *If the trial court has incomplete knowledge of the contents of the public records sought, it must conduct in camera inspection to determine what may be disclosed following a custodian's refusal. State ex rel. Morke v. Donnelly, 155 W (2d) 521, 455 NW (2d) 893 (1990).*
4
5

6 *A pro se litigant not entitled to attorney's fees. State ex rel. Young v. Shaw, 165 W (2d) 276, 477 NW (2d) 340 (Ct. App. 1991).*
7

8 *A favorable judgment or order is not a necessary condition precedent for finding that a party prevailed against an agency under sub. (2); a causal nexus must be shown between the prosecution of the mandamus action and the release of the requested information. Eau Claire Press Co. v. Gordon, 176 W (2d) 154, 499 NW (2d) 918 (Ct. App. 1993).*
9

10 *Actions brought under the open meetings and open records laws are exempt from the notice provisions of s. 893.80. (1). Auchinleck v. Town of LaGrange, 200 W (2d) 585, 547 NW (2d) 587 (1996), 94-2809.*
11

12 *An inmate's right to mandamus under this section is subject to s. 801.02 (7), which requires exhaustion of administrative remedies before an action may be commenced. Moore v. Stahowiak, 212 Wis. 2d 744, 569 N.W.2d 711 (Ct. App. 1997), 96-2547.*
13

14 *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 a custodian but not for forfeitures. 72 Atty. Gen. 99.*
15
16

17 **19.39 Interpretation by attorney general.**

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

20 **History: 1981 c. 335.**

2 **SUBCHAPTER V**
3 **OPEN MEETINGS OF**
4 **GOVERNMENTAL BODIES**

5 **19.81 Declaration of policy.**

- 6 (1) In recognition of the fact that a representative government of the American type is dependent upon an informed elec-
7 torate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information
8 regarding the affairs of government as is compatible with the conduct of governmental business.
- 9 (2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies
10 shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all
11 times unless otherwise expressly provided by law.
- 12 (3) In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain
13 open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the
14 fullest extent with this subchapter.
- 15 (4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal
16 statutes must be strictly construed shall be limited to the enforcement of forfeitures and shall not otherwise apply to
17 actions brought under this subchapter or to interpretations thereof.

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

19 *NOTE: The following annotations relate to 66.77, repealed by Chapter 426, laws of 1975.*

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

25 *Under unique facts presented in which City of Milwaukee and private non-profit festival organization incorporated Open Meet-*
26 *ings Law into contract, court construes contract to allow public enforcement of contractual provisions concerning open meet-*
27 *ings. *Journal/Sentinel, Inc. v. Pleva, 15 W (2d) 704, 456 NW (2d) 359 (1990).**

28 *Sub. (2) requires that a meeting be held in a facility which gives reasonable public access, not total access; no person may be*
29 *systematically excluded or arbitrarily refused admittance. *State ex rel. Badke v. Greendale Village Bd. 173 W (2d) 553, 494 NW**
30 *(2d) 408 (1993).*

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

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

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

38 *Voting procedures employed by workmen's compensation and unemployment advisory councils which utilize adjournment of*
39 *public meeting for purposes of having members representing employers and members representing employees or workers to*
40 *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.*
41 *Gen. 414.*

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

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

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

48 *Under 66.77 (6), a county board may not utilize unidentified paper ballot in voting to appoint county highway commissioner, but*
49 *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 man-*
50 *ner that the vote of each member may be ascertained and recorded. 63 Atty. Gen. 569.*

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

52 *NOTE: The following annotations refer to ss. 19.81 to 19.98.*

53 *Open meeting law is not applicable to the Wis. judicial commission. *State ex rel. Lynch v. Dancey, 71 W (2d) 287, 238 NW (2d)**
54 *81.*

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

- 1 *Public notice requirements for meetings of city district school board under this subchapter and s. 120.48, 1983 stats., discussed.*
2 *66 Atty. Gen. 93.*
- 3 *Volunteer fire department organized as a nonprofit corporation under 213.05 is not subject to the open meeting law. 66 Atty.*
4 *Gen. 113.*
- 5 *Anyone has the right to tape-record an open meeting of a governmental body provided the meeting is not thereby physically*
6 *disrupted. 66 Atty. Gen. 318.*
- 7 *Open meeting law does not apply to a coroner's inquest. 67 Atty. Gen. 250.*
- 8 *Open meeting law does not apply where common council hears a grievance under a collective bargaining agreement. 67 Atty.*
9 *Gen. 276.*
- 10 *Application of open meeting law to duties of WERC discussed. 68 Atty. Gen. 171.*
- 11 *Meeting of committee on reapportionment was probably held in violation of open meetings law. 71 Atty. Gen. 63.*
- 12 *Foundations, building corporations and independent bodies politic and corporate are not "governmental bodies". 73 Atty. Gen.*
13 *53.*
- 14 *"Quasi-governmental corporation" in (1) includes private corporations which closely resemble governmental corporations in*
15 *function, effect or status. 80 Atty. Gen. 129.*
- 16 *Understanding Wisconsin's open meeting law. Harvey, WBB September 1980.*

17 **19.82 Definitions.**

18 As used in this subchapter:

- 19 (1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public
20 body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or
21 quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition
22 district under *subch. II of ch. 229*; A family care district under S. 46.2895; a nonprofit corporation operating the Olymp-
23 ic ice training center under s. 42.11 (3); or a formally constituted subunit of any of the foregoing, but excludes any
24 such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargain-
25 ing under *subch. I, IV or V of ch. 111*.
- 26 (2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities,
27 authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental
28 body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, author-
29 ity, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or
30 conference which is not intended to avoid this subchapter, any gathering of the members of a town board for the pur-
31 pose specified in s. 60.50 (6), any gathering of the commissioners of a town sanitary district for the purpose specified
32 in s. 60.77 (5) (k) or any gathering of the members of a drainage board created under s. 88.16, 1991 stats., or under
33 s. 88.17, for a purpose specified in s. 88.065 (5) (a).
- 34 (3) "Open session" means a meeting which is held in a place reasonably accessible to members of the public and open
35 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
36 room thereof which enables access by persons with functional limitations, as defined in s. 101.13 (1).

37 **History: 1975 c. 426; 1977 c. 364, 447; 1985 a. 26, 29, 332; 1987 a. 305; 1993 a. 215, 263, 456, 491; 1995 a. 27, 185; 1997**
38 **a. 79; 1999 a. 9..**

39 *A "meeting" under sub. (2) was found although governmental body was not empowered to exercise the final powers of its parent*
40 *body. State v. Swanson, 92 W (2d) 310, 284 NW (2d) 655 (1979).*

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

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

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

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

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

50 **19.83 Meetings of governmental bodies.**

- 51 (1) Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in
52 open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or
53 informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.
- 54 (2) During a period of public comment under s. 19.84 (2), a governmental body may discuss any matter raised by the
55 public.

56 **History: 1975 c. 426; 1997 a. 123.**

1 When a quorum of a governmental body attends the meeting of another governmental body when any one of the members is
2 not also a member of the second governmental body, the gathering is a "meeting" unless the gathering is social or by chance.
3 *State ex rel. Badke v. Greendale Village Bd.* 173 W (2d) 553, 494 NW (2d) 408 (1993).

4 **19.84 Public notice.**

- 5 (1) Public notice of all meetings of a governmental body shall be given in the following manner:
- 6 (a) As required by any other statutes; and
- 7 (b) By communication from the chief presiding officer of a governmental body or such person's designee to the pub-
8 lic, to those news media who have filed a written request for such notice, and to the official newspaper desig-
9 nated under ss. 985.04, 985.05, and 985.06 or, if none exists, to a news medium likely to give notice in the area.
- 10 (2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the
11 meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably
12 likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental
13 body may provide for a period of public comment, during which the body may receive information from members of
14 the public.
- 15 (3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of
16 such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be
17 given, but in no case may the notice be provided less than 2 hours in advance of the meeting.
- 18 (4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proxi-
19 mate to the time and date of the meeting.
- 20 (5) Departments and their subunits in any University of Wisconsin System institution or campus and a nonprofit corpora-
21 tion operating the Olympic ice training center under s. 42.11 (3) are exempt from the requirements of subs. (1) to (4)
22 but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have
23 filed written requests for such notice.
- 24 (6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a
25 formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required
26 by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immedi-
27 ately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting
28 of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the
29 time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

30 **History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1997 a. 123..**

31 *The word "licenses" on a city council's agenda was specific enough to apprise members of the public of the subject matter to be*
32 *considered. State ex rel. H.D. Enterprises II, LLC v. City of Stoughton, 230 Wis. 2d 480, 602 N.W.2d 72 (Cr. App. 1999), 98-*
33 *3112.*

34 *There is no requirement in this section that the notice provided be exactly correct in every detail. State ex rel. Olson v. City of*
35 *Baraboo Joint Review Board, 2002 WI App 64, 252 Wis 2d 628, 643 N.W.2d 796, 01-0201.*

36 *Sub. (2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be*
37 *taken. The notice must alert the public of the importance of the meeting. Although a failure to expressly state whether action will*
38 *be taken could be a violation, the importance of knowing whether a vote would be taken is diminished when no input from the*
39 *audience is allowed or required. State ex rel. Olson v. City of Baraboo Joint Review Board, 2002 WI App 64, 252 Wis. 2d 628,*
40 *643 N.W. 2d 796, 01-0201.*

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

43 *The method of giving notice pursuant to sub. (1) is discussed. 65 Atty. Gen. 250.*

44 *The specificity of notice required by a governmental body is discussed. 66 Atty. Gen. 143, 195.*

45 *The requirements of notice given to newspapers under this section is discussed. 66 Atty. Gen. 230.*

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

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

50 *A newspaper is not obligated to print a notice received under sub. (1) (b), nor is governmental body obligated to pay for publica-*
51 *tion. Martin v. Wray, 473 F Supp. 1131 (1979).*

52 **19.85 Exemptions.**

- 53 (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under
54 one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner
55 that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session
56 may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is
57 made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions
58 under this subsection by which such closed session is claimed to be authorized. Such announcement shall become

1 part of the record of the meeting. No business may be taken up at any closed session except that which relates to
2 matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held
3 for any of the following purposes:

- 4 (a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that
5 governmental body.
- 6 (b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or
7 commission or the investigation of charges against such person, or considering the grant or denial of tenure for a
8 university faculty member, and the taking of formal action on any such matter; provided that the faculty member
9 or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held
10 prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a
11 statement that the person has the right to demand that the evidentiary hearing or meeting be held in open ses-
12 sion. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or
13 person licensed requests that an open session be held.
- 14 (c) Considering employment, promotion, compensation or performance evaluation data of any public employee over
15 which the governmental body has jurisdiction or exercises responsibility.
- 16 (d) Except as provided in x. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific
17 applications of probation extended supervision or parole, or considering strategy for crime detection or preven-
18 tion.
- 19 (e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other
20 specified public business, whenever competitive or bargaining reasons require a closed session.
- 21 (ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the
22 council or all employee members of the council are excluded.
- 23 (eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council
24 or all employee members of the council are excluded.
- 25 (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 de-
26 liberation and if discussing the location in public would be likely to result in disturbance of the burial site.
- 27 (f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary
28 consideration of specific personnel problems or the investigation of charges against specific persons except
29 where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the
30 reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- 31 (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strat-
32 egy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- 33 (h) Consideration of requests for confidential written advice from the ethics board under s. 19.46 (2), or from any
34 county or municipal ethics board under s. 19.59 (5).
- 35 (i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public,
36 could adversely affect the business, its employees or former employees.
- 37 (j) Considering financial information relating to the support by a person, other than an authority, of a nonprofit cor-
38 poration operating the Olympic ice training center under s. 42.11 (3), if the information is exempt from disclosure
39 under s. 42.115 or would be so exempt were the information to be contained in a record. In this paragraph, "au-
40 thority" and "record" have the meanings given under s. 19.32.
- 41 (2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene
42 again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent
43 open session was given at the same time and in the same manner as the public notice of the meeting convened prior
44 to the closed session.
- 45 (3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed
46 session the final ratification or approval of a collective bargaining agreement under *subch. I, IV or V of ch. 111* which
47 has been negotiated by such body or on its behalf.

48 **History:** 1975 c. 426; 1977 c. 260; 1983 a. 84; 1985 a. 316; 1987 a. 38, 305; 1989 a. 64; 1991 a. 39; 1993 a. 97, 215; 1995 a.
49 27; 1997 a. 39, 237, 283; 1999 a. 32.

50 *Although a meeting was properly closed, in order to refuse inspection of records of the meeting, the custodian was required by*
51 *s. 19.35 (1) (a) to state specific and sufficient public policy reasons why the public interest in nondisclosure outweighed the*
52 *public's right of inspection. Oshkosh Northwestern Co. v. Oshkosh Library Bd. 125 W (2d) 480, 373 NW (2d) 459 (Ct. App.*
53 *1985).*

54 *The balance between protection of reputation under sub. (1) (f) and public interest in openness is discussed. Wis. State Journal*
55 *v. UW-Platteville, 160 W (2d) 31, 465 NW (2d) 266 (Ct. App. 1990). See also Pangman v. Stigler, 161 W (2d) 828, 468 NW (2d)*
56 *784 (Ct. App. 1991).*

57 *A "case" under sub. (1) (a) contemplates an adversarial proceeding. It does not connote the mere application for and granting of*
58 *a permit. Hodge v. Turtle Lake, 180 W (2d) 62, 508 NW (2d) 603 (1993).*

1 A closed session to discuss an employee's dismissal was properly held under sub. (1) (b) and did not require notice to the em-
2 ployee under sub. (1) (c) when no evidentiary hearing or final action took place in the closed session. *State ex rel. Epping v.*
3 *City of Neillsville*, 218 Wis. 2d 516, 581 N.W.2d 548 (ct. App. 1998), 97-0403.

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

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

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

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

12 Sub. (1) (c) does not permit closed sessions to consider employment, compensation, promotion or performance evaluation poli-
13 cies to be applied to position of employment in general. 80 Atty. Gen. 176.

14 A governmental body may convene in closed session to formulate collective bargaining strategy, but sub. (3) requires that de-
15 liberations leading to ratification of a tentative agreement with a bargaining unit, as well as the ratification vote, must be held in
16 open session. 81 Atty. Gen. 139.

17 "Evidentiary hearing" as used in s. 19.85 (1) (b), means a formal examination of accusations by receiving testimony or other
18 forms of evidence that may be relevant to the dismissal, demotion, licensing, or discipline of any public employee or person
19 covered by that section. A council that considered a mayor's accusations against an employee in closed session without giving
20 the employee prior notice violated the requirement of actual notice to the employee. *Campana v. City of Greenfield*, 38 F. Supp.
21 2d 1043 (1999).

22 **19.86 Notice of collective bargaining negotiations.**

23 Notwithstanding s. 19.82 (1), where notice has been given by either party to a collective bargaining agreement under *subch. IV*
24 *or V of ch. 111* to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as
25 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
26 such person's designee. This section does not apply to a nonprofit corporation operating the Olympic ice training center under s.
27 42.11 (3).

28 **NOTE: This section is amended eff. 7-1-97 by 1995 Wis. Act 27 to read:**

29 **19.86 Notice of collective bargaining negotiations.**

30 **Notwithstanding s. 19.82 (1), where notice has been given by either party to a collective bargaining agreement under**
31 **subch. I, IV or V of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such con-**
32 **tract reopening as provided in s. 19.84 (1) (b). If the employer is not a governmental body, notice shall be given by the**
33 **employer's chief officer or such person's designee. This section does not apply to a nonprofit corporation operating**
34 **the Olympic ice training center under s. 42.11 (3).**

35 **History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1995 a. 27.**

36 **19.87 Legislative meetings.**

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

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

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

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

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

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

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

51 **19.88 Ballots, votes and records.**

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

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

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

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

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

5 **19.89 Exclusion of members.**

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

9 **History: 1975 c. 426.**

10 **19.90 Use of equipment in open session.**

11 Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any
12 person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing such
13 a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

14 **History: 1977 c. 322.**

15 **19.96 Penalty.**

16 Any member of a governmental body who knowingly attends a meeting of such body held in violation of this subchapter, or who,
17 in his or her official capacity, otherwise violates this subchapter by some act or omission shall forfeit without reimbursement not
18 less than \$25 nor more than \$300 for each such violation. No member of a governmental body is liable under this subchapter on
19 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
20 to prevent the violation from occurring, or if, before the violation occurs, his or her votes on all relevant motions were inconsis-
21 tent with all those circumstances which cause the violation

22 **History: 1975 c. 426.**

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

24 **19.97 Enforcement.**

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

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

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

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

44 (5) *Sections 893.80 and 893.82 do not apply to actions commenced under this section.*

45 **History: 1975 c. 426; 1981 c. 289; 1995 a. 158.**

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

48 *Awards of attorney fees are to be at a rate applicable to private attorneys. A court may review the reasonableness of the hours*
49 *and hourly rate charged, including the rates for similar services in the area, and may in addition consider the peculiar facts of*
50 *the case and the responsible party's ability to pay. Hodge v. Town of Turtle Lake, 190 W (2d) 181, 526 NW (2d) 784 (Ct. App.*
51 *1994).*

52 *Actions brought under the open meetings and open records laws are exempt from the notice provisions of sub. (1). Auchinleck*
53 *v. Town of LaGrange, 200 W (2d) 585, 547 NW (2d) 587 (1996), 94-2809.*

54 *Failure to bring an action under this section on behalf of the state is fatal and deprives the court of competency to proceed.*
55 *Fabyan v. Achtenhagen, 2002 WI App 214, 257 Wis 2d 310, 652 N.W.2d 649, 01-3298,*

1 *Complaints under the open meetings law are not brought in the individual capacity of the plaintiff but on behalf of the state,*
2 *subject to the 2-year statute of limitations under s. 893.93(2). Leung v. City of lake Geneva, 2003 WI App 129, 265 Wis. 2d 674,*
3 *666 N.W. 2d 104, 02-2747.*

4 *When a town board's action was voided by the court due to lack of statutory authority, an action for enforcement under sub. (4)*
5 *by an individual as a private attorney general on behalf of the state against individual board members for a violation of the open*
6 *meetings law that would subject the individual board members to civil forfeitures was not rendered moot. Lawton v. Town of*
7 *Barton, 2005 WI App 16, 278 Wis. 2d 388, 692 N.W.2d 304, 04-0659.*

8 **19.98 Interpretation by attorney general.**

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

10 **History: 1975 c. 426.**

2 **RECORDS OPEN TO EMPLOYEE**

3 **103.13 Records open to employee.**

- 4 (1) Definition. In this section, "employee" includes former employees.
- 5 (2) Open records. Every employer shall, upon the request of an employee, which the employer may require the employee
6 to make in writing, permit the employee to inspect any personnel documents which are used or which have been used
7 in determining that employee's qualifications for employment, promotion, transfer, additional compensation, termina-
8 tion or other disciplinary action, and medical records, except as provided in *subs. (5) and (6)*. An employee may re-
9 quest all or any part of his or her records, except as provided in *sub. (6)*. The employer shall grant at least 2 requests
10 by an employee in a calendar year, unless otherwise provided in a collective bargaining agreement, to inspect the
11 employee's personnel records as provided in this section. The employer shall provide the employee with the opportu-
12 nity to inspect the employee's personnel records within 7 working days after the employee makes the request for in-
13 spection. The inspection shall take place at a location reasonably near the employee's place of employment and dur-
14 ing normal working hours. If the inspection during normal working hours would require an employee to take time off
15 from work with that employer, the employer may provide some other reasonable time for the inspection. In any case,
16 the employer may allow the inspection to take place at a time other than working hours or at a place other than where
17 the records are maintained if that time or place would be more convenient for the employee.
- 18 (3) Personnel record inspection by representative. An employee who is involved in a current grievance against the em-
19 ployer may designate in writing a representative of the employee's union, collective bargaining unit or other desig-
20 nated representative to inspect the employee's personnel records which may have a bearing on the resolution of the
21 grievance, except as provided in *sub. (6)*. The employer shall allow such a designated representative to inspect that
22 employee's personnel records in the same manner as provided under *sub. (2)*.
- 23 (4) Personnel record correction. If the employee disagrees with any information contained in the personnel records, a
24 removal or correction of that information may be mutually agreed upon by the employer and the employee. If an
25 agreement cannot be reached, the employee may submit a written statement explaining the employee's position. The
26 employer shall attach the employee's statement to the disputed portion of the personnel record. The employee's
27 statement shall be included whenever that disputed portion of the personnel record is released to a 3rd party as long
28 as the disputed record is a part of the file.
- 29 (5) Medical records inspection. The right of the employee or the employee's designated representative under *sub. (3)* to
30 inspect personnel records under this section includes the right to inspect any personal medical records concerning
31 the employee in the employer's files. If the employer believes that disclosure of an employee's medical records would
32 have a detrimental effect on the employee, the employer may release the medical records to the employee's physi-
33 cian or through a physician designated by the employee, in which case the physician may release the medical re-
34 cords to the employee or to the employee's immediate family.
- 35 (6) Exceptions. The right of the employee or the employee's designated representative under *sub. (3)* to inspect his or
36 her personnel records does not apply to:
- 37 (a) Records relating to the investigation of possible criminal offenses committed by that employee.
- 38 (b) Letters of reference for that employee.
- 39 (c) Any portion of a test document, except that the employee may see a cumulative total test score for either a sec-
40 tion of the test document or for the entire test document.
- 41 (d) Materials used by the employer for staff management planning, including judgments or recommendations con-
42 cerning future salary increases and other wage treatments, management bonus plans, promotions and job as-
43 signments or other comments or ratings used for the employer's planning purposes.
- 44 (e) Information of a personal nature about a person other than the employee if disclosure of the information would
45 constitute a clearly unwarranted invasion of the other person's privacy.
- 46 (f) An employer who does not maintain any personnel records.
- 47 (g) Records relevant to any other pending claim between the employer and the employee which may be discovered
48 in a judicial proceeding.
- 49 (7) The right of the employee or the employee's representative to inspect records includes the right to copy or receive a
50 copy of records. The employer may charge a reasonable fee for providing copies of records, which may not exceed
51 the actual cost of reproduction.
- 52 (7m) Employment discrimination. *Section 111.322 (2m)* applies to discharge and other discriminatory acts in connection
53 with any proceeding under this section.
- 54 (8) Penalty. Any employer who violates this section may be fined not less than \$10 nor more than \$100 for each violation.
55 Each day of refusal or failure to comply with a duty under this section is a separate violation.

56 **History: 1979 c. 339; 1981 c. 164; 1983 a. 189 ss. 153, 329 (4); 1989 a. 228; 1995 a. 27**