

2005 BILL

1 **AN ACT** *to amend* 13.621 (3); and *to create* 13.62 (14) of the statutes; **relating**
2 **to:** an exemption for certain tribal officials under the lobbying law.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: Under the Wisconsin lobbying law, subch. III of ch. 13, stats., a lobbyist is a person who is employed or contracted to attempt to influence state legislative or administrative actions on behalf of the employing or contracting entity. The entity that employs or contracts with a lobbyist is a “principal.” The lobbying law prohibits lobbyists from engaging in a number of practices, such as furnishing things of pecuniary value to elective state officials, agency employees, or legislative employees, or making campaign contributions at certain times. It also generally requires lobbyists to obtain a state license to lobby. It requires principals to provide information for a state registry, including the identity of lobbyists that the principal employs or contracts with, the subject areas in which each lobbyist works, and the agencies that each lobbyist lobbies, and to submit detailed semiannual lobbying expense reports to the state ethics board. Penalties for violations of the law include civil forfeitures up to \$5,000. The penalty for knowingly filing a false report is a fine of up to \$10,000, imprisonment for up to 6 years, or both.

Under current law, certain public officials are exempt from portions of the lobbying law when acting in an official capacity. Specifically, state elective officials, local officials,

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and employees of the legislature are exempt from the requirements that a lobbyist obtain a license and that the principal for such a public official submit registry information and lobbying expense reports with respect to such a public official. “Local official” is defined as any person who holds or has been elected to a local office (any elective office under state law that is not a state or federal office) and any person employed by a county, town, city, village, or school district who is not employed principally to influence legislative or administrative action. Public officials are not exempt from the prohibitions on specified practices.

An advisory opinion of the Wisconsin ethics board (2003 Wis. Eth. Bd. 14) states that elected tribal leaders are not “local officials” under the lobbying law and so are not exempt from the lobbyist licensing and principal reporting and registration requirements of the law. The question of whether the lobbying law applies to tribal officials and tribal governments has not been decided by the courts, though. An argument can be made that the law is civil regulatory in nature and that the state does not have the authority to enforce it against Indian tribes or tribal officials, especially with respect to activities that occur on a reservation or on off-reservation trust land, because congress has not delegated such authority to the states and the courts have not clearly held that the state has this authority under common law. On the other hand, a court could apply the balancing of interests test (a test often used by the courts to determine whether a state civil regulatory law applies to a tribe or tribal member in Indian country) and find that the state’s interest in regulating lobbying of state officials or agencies outweighs tribal and federal interests and that, thus, the lobbying law applies to tribes and tribal members.

This bill extends to tribal officials the same exemptions provided to the public officials described above. It defines “tribal official” as any person who holds an elective tribal office and any person employed by a tribe who is not employed principally to influence state legislative or administrative action. This definition is modeled on the current definition of “local official.” In light of the uncertainty regarding whether the lobbying law applies to tribal officials or tribes, this draft ensures that certain aspects of the lobbying law do not apply to them.

The bill does not exempt tribal officials from the prohibitions on specified practices. It also does not address application of the lobbying law to lobbyists who are not tribal officials but who are employed or contracted by a tribe principally to influence state legislative or administrative action or to tribes that employ or contract with such lobbyists.

1 **SECTION 1.** 13.62 (14) of the statutes is created to read:

2 **13.62 (14)** “Tribal official” means any person who holds an elective office of the
3 government of a federally recognized American Indian tribe or band in this state, or
4 has been elected to such an office but has not yet taken office, and any person who
5 is employed by a federally recognized American Indian tribe or band in this state and
6 who is not employed principally to influence state legislative or administrative
7 action. A person who is appointed to fill a vacant elective office of a federally
8 recognized American Indian tribe or band in this state is a tribal official.

9 **SECTION 2.** 13.621 (3) of the statutes is amended to read:

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1 **13.621 (3)** PERFORMANCE OF PUBLIC OFFICIAL DUTIES. An elective state official,
2 local official, tribal official, or employee of the legislature is not subject to s. 13.63,
3 13.64, 13.65, 13.68, or 13.695 when acting in an official capacity.

4 (END)