Presented below are water quality standards that are in effect for Clean Water Act purposes.

EPA is posting these standards as a convenience to users and has made a reasonable effort to assure their accuracy. Additionally, EPA has made a reasonable effort to identify parts of the standards that are not approved, disapproved, or are otherwise not in effect for Clean Water Act purposes.
CHAPTER 227

ADMINISTRATIVE PROCEDURE AND REVIEW

SUBCHAPTER I
GENERAL PROVISIONS

227.01 Definitions. In this chapter:
(1) “Agency” means a board, commission, committee, department or officer in the state government, except the governor, a district attorney or a military or judicial officer.

(2) “Code,” when used without further modification, means the Wisconsin administrative code under s. 35.93.

(3) “Contested case” means an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order. There are 3 classes of contested cases as follows:
(a) A “class 1 proceeding” is a proceeding in which an agency acts under standards conferring substantial discretionary authority upon it. “Class 1 proceedings” include rate making, price setting, the granting of a certificate of convenience and necessity, the making, review or equalization of tax assessments and the granting or denial of a license.

(b) A “class 2 proceeding” is a proceeding in which an agency determines whether to impose a sanction or penalty against a party. “Class 2 proceedings” include the suspension or revocation of or refusal to renew a license because of an alleged violation of law. Any proceeding which could be construed to be both a class 1 and a class 2 proceeding shall be treated as a class 2 proceeding.

(c) A “class 3 proceeding” is any contested case not included in class 1 or 2.

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227.30 Review of administrative rules or guidelines.

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NOTES. (Published 1−18−17)

1 Updated 15−16 Wis. Stats. Published and certified under s. 35.18. January 18, 2017.

2015−16 Wisconsin Statutes updated through all Supreme Court and Controlled Substances Board Orders effective on or before January 18, 2017. Published and certified under s. 35.18. Changes effective after January 18, 2017 are designated by NOTES. (Published 1−18−17)
not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, which:
(a) Concerns the internal management of an agency and does not affect private rights or interests,
(b) Is a decision or order in a contested case,
(c) Is an order directed to a specifically named person or to a group of specifically named persons that does not constitute a general class, and which is served on the person or persons to whom it is directed by the appropriate means applicable to the order. The fact that a named person serves a group of unnamed persons that will also be affected does not make an order a rule,
(d) Relates to the use of highways and is made known to the public by means of signs or signals,
(e) Relates to the construction or maintenance of highways or bridges, except as provided in ss. 84.11 (1r) and 83.025,
(f) Relates to the curriculum of, admission to or graduation from a public educational institution, as determined by each institution,
(g) Relates to the use of facilities of a public library,
(h) Prorates or establishes priority schedules for state payments under s. 16.53 (10) (a) or temporarily reallocates state monies under s. 20.002 (11),
(i) Relates to military or naval affairs,
(j) Relates to the form and content of reports, records or accounts of a state, county or municipal officer, institution or agency,
(k) Relates to expenditures by a state agency, the purchase of materials, equipment or supplies by or for a state agency, or printing or duplicating of materials for a state agency,
(km) Establishes policies for information technology development projects as required under s. 16.971 (2) (Lg),
(kr) Establishes policies for information technology development projects as required under s. 36.59 (1) (c),
(L) Establishes personnel standards, job classifications or salary ranges for state, county or municipal employees in the classified civil service,
(Lm) Relates to the personnel systems developed under s. 36.115,
(Lr) Determines what constitutes high-demand fields for purposes of s. 38.28 (2) (be) 1. b.,
(m) Determines water levels,
(n) Fixes or approves rates, prices or charges, unless a statute specifically requires them to be fixed or approved by rule,
(o) Determines the valuation of securities held by an insurer,
(p) Is a statistical plan relating to the administration of rate regulation laws under ch. 625 or 626,
(pm) Relates to setting fees under s. 655.27 (3) for the injured patients and families compensation fund or setting fees under s. 655.61 for the mediation fund,
(q) Is a form the content or substantive requirements of which are prescribed by a rule or a statute,
(r) Is a pamphlet or other explanatory material that is not intended or designed as interpretation of legislation enforced or administered by an agency, but which is merely informational in nature,
(rm) Is a form prescribed by the attorney general for an accounting under s. 846.40 (8) b. 2,
(rs) Relates to any form prescribed by the department of transportation under s. 348.03 (1) or 348.27 (19) d. 1. or procedure prescribed under s. 348.27 (19) d. 2,
(rt) Is a general permit issued under s. 30.206 or 30.2065,
(ru) Is a wetland general permit issued under s. 281.36 (3g),
(s) Prescribes or relates to a uniform system of accounts for any person, including a municipality, that is regulated by the office of the commissioner of railroads or the public service commission.
(u) Relates to computing or publishing the number of nursing home beds to be added in each health planning area under s. 150.33 (1),
(um) Lists over–the–counter drugs covered by Medical Assistance under s. 49.46 (2) b. 6. i. or 49.471 (11) a.,
(v) Establishes procedures used for the determination of allocations as charges to agencies under s. 20.865 (1) fm.,
(w) Establishes rates for the use of a personal automobile under s. 20.916 (4) a.,
(x) Establishes rental policies for state–owned housing under s. 16.004 (8),
(xm) Establishes camping fees within the fee limits specified under s. 27.01 (10) d. 1. or 2.
(y) Specifies measures to minimize the adverse environmental impact of bridge and highway construction and maintenance,
(ya) Establishes personnel standards, job classifications or salary ranges for state, county or municipal employees in the classified civil service,
(yb) Establishes policies for information technology development projects as required under s. 16.971 (2) (Lg),
(yk) Establishes policies for information technology development projects as required under s. 36.59 (1) (c),
(L) Establishes personnel standards, job classifications or salary ranges for state, county or municipal employees in the classified civil service,
(Lm) Relates to the personnel systems developed under s. 36.115,
(Lr) Determines what constitutes high-demand fields for purposes of s. 38.28 (2) (be) 1. b.,
(m) Determines water levels,
(n) Fixes or approves rates, prices or charges, unless a statute specifically requires them to be fixed or approved by rule,
(o) Determines the valuation of securities held by an insurer,
(p) Is a statistical plan relating to the administration of rate regulation laws under ch. 625 or 626,
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(v) Establishes procedures used for the determination of allocations as charges to agencies under s. 20.865 (1) fm.,
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(xm) Establishes camping fees within the fee limits specified under s. 27.01 (10) d. 1. or 2.
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(L) Establishes personnel standards, job classifications or salary ranges for state, county or municipal employees in the classified civil service,
(Lm) Relates to the personnel systems developed under s. 36.115,
(Lr) Determines what constitutes high-demand fields for purposes of s. 38.28 (2) (be) 1. b.,
(m) Determines water levels,
(n) Fixes or approves rates, prices or charges, unless a statute specifically requires them to be fixed or approved by rule,
(o) Determines the valuation of securities held by an insurer,
(p) Is a statistical plan relating to the administration of rate regulation laws under ch. 625 or 626,
(pm) Relates to setting fees under s. 655.27 (3) for the injured patients and families compensation fund or setting fees under s. 655.61 for the mediation fund,
(q) Is a form the content or substantive requirements of which are prescribed by a rule or a statute,
(r) Is a pamphlet or other explanatory material that is not intended or designed as interpretation of legislation enforced or administered by an agency, but which is merely informational in nature,
(rm) Is a form prescribed by the attorney general for an accounting under s. 846.40 (8) b. 2,
Paragraphs 3.1 to 3.27 of the Wisconsin Administrative Code, Section 227.02, Compliance with other statutes.

A rule: 1) is a regulation, standard, statement of policy, or general order; 2) is of general application; 3) has the effect of law; 4) is issued by an agency; 5) is to implement, interpret, or make specific legislation administered by the agency. The terms “rule” and “order” are mutually exclusive. Wis. Elec. Power Co. v. DNR, 93 Wis. 2d 222, 287 N.W.2d 113 (1980). See also Cholvin v. Department of Health and Family Services, 2008 WI App 127, 313 Wis. 2d 749, 758 N.W.2d 118, 117-118.

Orders of the elections commission under s. 5.06(6) are not subject to this chapter.

Except as provided in s. 230.44 (4) (bm), this chapter does not apply to proceedings involving the revocation of parole, extended supervision, or probation, the grant of probation, prison discipline, mandatory release under s. 302.11, or any other proceeding involving the care and treatment of a resident or an inmate of a correctional institution.

Except as provided in s. 292.63 (6s), this chapter does not apply to proceedings in matters that are arbitrated under s. 292.63 (6s).

This chapter does not apply to determinations made by the secretary of administration or the secretary of revenue under s. 227.50 (1).


227.04 Considerations for small business. (1) In this section:

(a) “Minor violation” means a rule violation that does not cause serious harm to the public, is committed by a small business, and the violation is not willful, the violation is not likely to be repeated, there is a history of compliance by the violator, or the small business has voluntarily disclosed the violation.

(b) “Small business” has the meaning given in s. 227.114 (1).

(2m) (a) Each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules against a small business that has committed a minor violation. The rule promulgated under this subsection may include the reduction or waiver of penalties for a voluntary disclosure, by a small business, of actual or potential violations of rules.

(b) The rule promulgated under this subsection shall specify the situations in which the agency will allow discretion in the enforcement of a rule against a small business that has committed

(2) Except as provided in s. 108.105, only the provisions of this chapter relating to rules are applicable to matters arising out of s. 66.191, 1981 stats., s. 40.65 (2), 289.33, 303.07 (7) or 303.21 or subch. II of ch. 107 or ch. 102, 108 or 949.

(3) Any provision of s. 227.42, 227.44 or 227.49 that is inconsistent with a requirement of title 45 of the code of federal regulations does not apply to hearings held under ch. 49.

(3m) (a) This chapter does not apply to proceedings before the department of workforce development relating to housing discrimination under s. 106.50, except as provided in s. 106.50 (6).

(b) Only the provisions of this chapter relating to rules are applicable to matters arising out of potential discrimination in a public place of accommodation or amusement under s. 106.52.

(4) The provisions of this chapter relating to contested cases do not apply to proceedings involving the revocation of community supervision or aftercare supervision under s. 938.357 (5), the revocation of parole, extended supervision, or probation, the grant of probation, prison discipline, mandatory release under s. 302.11, or any other proceeding involving the care and treatment of a resident or an inmate of a correctional institution.

(4m) Subchapter III does not apply to any decision of an agency to suspend or restrict or not issue or renew a license if the agency suspends or restricts or does not issue or renew the license pursuant to a memorandum of understanding entered into under s. 49.857.

(5) This chapter does not apply to proceedings of the claims board, except as provided in ss. 775.05 (5), 775.06 (7) and 775.11 (2).

(6) Orders of the elections commission under s. 5.06 (6) are not subject to this chapter.

(7) Except as provided in s. 230.44 (4) (bm), this chapter does not apply to proceedings involving the revocation of parole, extended supervision, or probation, the grant of probation, prison discipline, mandatory release under s. 302.11, or any other proceeding involving the care and treatment of a resident or an inmate of a correctional institution.

(7m) Except as provided in s. 292.63 (6s), this chapter does not apply to proceedings in matters that are arbitrated under s. 292.63 (6s).

This chapter does not apply to determinations made by the secretary of administration or the secretary of revenue under s. 227.50 (1).

227.04 ADMINISTRATIVE PROCEDURE

a minor violation. The rule shall consider the following criteria for allowing discretion in the enforcement of the rule and the assessment of a penalty, including as a forfeiture, fine, or interest:

1. The difficulty and cost of compliance with the rule by the small business.
2. The financial capacity of the small business, including the ability of the small business to pay the amount of any penalty that may be imposed.
3. The compliance options available, including options for achieving voluntary compliance with the rule.
4. The level of public interest and concern.
5. The opportunities available to the small business to understand and comply with the rule.
6. Fairness to the small business and to other persons, including competitors and the public.

c) The rule promulgated under this subsection shall specify the situations in which the agency will not allow discretion in the enforcement of a rule against small businesses that have committed minor violations and shall include all of the following situations in which discretion is not allowed:

1. The violation results in a substantial economic advantage for the small business.
2. The small business has violated the same rule or guideline more than 3 times in the past 5 years.
3. The violation may result in an imminent endangerment to the environment, or to public health or safety.

(d) A rule promulgated under this subsection applies to minor violations committed after the effective date of the rule.

(3) Consistent with the requirements under sub. (2m) and, to the extent possible, each agency shall do all of the following:

(1) Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.

(c) In deciding whether to impose a fine against a small business found to be in violation of a rule, consider the appropriateness of a written warning, reduced fine, or alternative penalty if all of the following apply:

1. The small business has made a good faith effort to comply with the rule.
2. The rule violation does not pose a threat to public health, safety, or welfare.

(d) Establish methods to encourage the participation of small businesses in rule making under s. 227.114 (4).

(4) Each agency shall fully document every instance in which it made the decision to utilize discretion in penalizing businesses as provided in this section, including the reasons for its decision, and shall keep records of those instances on file for no fewer than 5 years.

History: 2011 a. 46; 2013 a. 296 ss. 1 to 7g, 9, 11, 12g, 13.

Cross-reference: See also chs. DFI−Gen 2 and DHS 19 and ss. ATCP 1.40, SPS 500.02, Tax 1.15, and Tax 61.25 Wis. adm. code.

SUBCHAPTER II

ADMINISTRATIVE RULES

227.10 Statements of policy and interpretations of law; discrimination prohibited. (1) Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule.

(2) No agency may promulgate a rule which conflicts with state law.

(2m) No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter, except as provided in s. 186.118 (2) (c) and (3) (b) 3. The governor, by executive order, may prescribe guidelines that ensure that rules are promulgated in compliance with this subchapter.

(a) No rule, either by its terms or in its application, may discriminate for or against any person by reason of sex, race, creed, color, sexual orientation, national origin or ancestry.

(b) A rule may discriminate for or against a person by reason of medical condition or developmental disability as defined in s. 51.01 (5) only if it is strictly necessary to a function of the agency and is supported by data demonstrating that necessity.

(c) Each person affected by a rule is entitled to the same benefits and is subject to the same obligations as any other person under the same or similar circumstances.

(d) No rule may use any term removed from the statutes by chapter 83, laws of 1977.

(e) Nothing in this section prohibits the director of the bureau of merit recruitment and selection in the department of administration from promulgating rules relating to expanded certification under s. 230.25 (1n).


Guidelines promulgated outside the context of one particular contested case do not qualify for exception to the requirement that all rules must be filed under s. 227.023 (now s. 227.20). Here, failure to file the guideline as a rule did not deprive the department of the authority to decide contested cases dealing with pregnancy leaves under the sex discrimination statute. Wisconsin Telephone Co. v. Department of Industry, Labor, and Human Relations, 228 NW 2d 649, 68 Wis. 2d 345, (1975).

An agency’s revised interpretation of a statute constituted administrative rule−making under s. 227.01 (4) (now s. 227.10) and declaratory relief under s. 227.40 was accordingly proper. What constitutes a rule is discussed. Schoolway Transportation Co. v. Division of Motor Vehicles, 72 Wis. 2d 223, 240 N.W.2d 403 (1976).

The legislature may constitutionally prescribe a criminal penalty for the violation of an administrative rule. State v. Courtenay, 74 Wis. 2d 705, 247 N.W.2d 714 (1976).

A memorandum announcing new policies and specific criteria governing all decisions on good time for mandatory release parole violations was a “rule” and should have been promulgated properly. State ex rel. Clifton v. Young, 133 Wis. 2d 193, 394 N.W.2d 769 (Cl. App. 1986).

An agency may use policies and guidelines to assist in the implementation of administrative rules provided they are consistent with state and federal legislation. Tannler v. Department of Health and Social Services, 211 Wis. 2d 179, 564 NW 2d 735 (1997).

An administrative agency cannot regulate the activities of another agency or promulgate rules to bind another agency without express statutory authority. George v. Schwarz, 2001 WI App 72, 242 Wis. 2d 450, 650 N.W.2d 57, 00−2711. Under s. 227.10 (2m) and s. 227.11 (4), an agency must have explicit authority to impose license and permit conditions and must have explicit authority for rulemaking. Act 21 makes clear that permit conditions and rulemaking may no longer be premised on implied agency authority. OAG 1−16

227.11 Extent to which chapter confers rule−making authority. (1) Except as expressly provided, this chapter does not confer rule−making authority upon or augment the rule−making authority of any agency.

(2) Rule−making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but the bounds of such a rule are not defined by any previous rule or interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule−making authority on the agency or augment the agency’s rule−making authority beyond the rule−making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency’s general powers or duties does not confer rule−making authority on the agency or augment the agency’s rule−making authority beyond the rule−
making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute’s effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.


Under ss. 227.10 (2m) and 227.11 (2) (a), created by 2011 Wis. Act 21, an agency must have explicit authority to impose license and permit conditions and must have explicit authority for rulemaking. Act 21 makes clear that permit conditions and rulemaking may no longer be imposed on implied agency authority. OAG 1–16.

Sub. (2) (a) clearly disallows rulemaking based on broad statements of policy or duty. Although sub. (2) (a) only speaks to rulemaking, it follows that an agency is prohibited from conditioning a permit based on broad statements of policy or duty. OAG 1–16.

227.113 Incorporation of local, comprehensive planning goals. Each agency, where applicable and consistent with the laws that it administers, is encouraged to design the rules promulgated by the agency to reflect a balance between the mission of the agency and the goals specified in s. 1.13 (2).

History: 1999 a. 9.

227.114 Rule making; considerations for small business. (1) In this section, “small business” means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than $5,000,000.

(2) When an agency proposes or revises a rule that may have an effect on small businesses, the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

(a) The establishment of less stringent compliance or reporting requirements for small businesses.

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

(c) The consolidation or simplification of compliance or reporting requirements for small businesses.

(d) The establishment of performance standards for small businesses to replace design or operational standards required in the rule.

(e) The exemption of small businesses from any or all requirements of the rule.

(3) The agency shall incorporate into the proposed rule any of the methods specified under sub. (2) which it finds to be feasible, unless doing so would be contrary to the statutory objectives which are the basis for the proposed rule.

(4) In addition to the requirements under s. 227.17, the agency shall provide an opportunity for small businesses to participate in the rule-making process, using one or more of the following methods:

(a) The inclusion in the notice under s. 227.17 of a statement that the rule may have an impact on small businesses.

(b) The direct notification of any small business that may be affected by the rule.

(c) The conduct of public hearings concerning the impact of the rule on small businesses.

(d) The use of special hearing procedures to reduce the cost or complexity of participation in the rule-making process by small businesses.

(6) When an agency, under s. 227.20 (1), files with the legislative reference bureau a rule that is subject to this section, the agency shall include with the rule a summary of the analysis prepared under s. 227.19 (3) (e) and a summary of the comments of the legislative standing committees, if any. If, under s. 227.19 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the agency shall include with the rule a statement of the reason for the rule. The small business regulatory review board’s determination that the rule will not have a significant economic impact on a substantial number of small businesses. The legislative reference bureau shall publish the summaries or the statement in the register with the rule.

(6m) (a) Notwithstanding sub. (1), in this subsection, “small business” does not include an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c).

(b) A small business may commence an action against an agency for injunctive relief to prevent the imposition of a penalty if the small business is subject to the penalty as the result of any of the following:

1. The small business acted or failed to act due to the failure by the agency’s employee, officer, or agent with regulatory responsibility for that legal requirement to respond to a specific question in a reasonable time.

2. The small business acted or failed to act in response to inaccurate advice given to the small business by the agency’s employee, officer, or agent with regulatory responsibility for that legal requirement.

(c) The small business may commence the action in the circuit court for the county where the property affected is located or, if no property is affected, in the circuit court for the county where the dispute arose.

(d) The circuit court may issue an order enjoining the imposition of the penalty if the court determines that par. (b) 1. or 2. applies.

(7m) Each agency shall designate at least one employee to serve as the small business regulatory coordinator for the agency, and shall publicize that employee’s electronic mail address and telephone number. The small business regulatory coordinator shall act as a contact person for small business regulatory issues for the agency.

(8) This section does not apply to:

(a) Rules promulgated under s. 227.24.

(b) Rules that do not affect small businesses directly, including, but not limited to, rules relating to county or municipal administration of state and federal programs.


227.115 Review of rules affecting housing. (1) DEFINITIONS. In this section:

(a) “Department” means the department of administration.
(b) “State housing strategy plan” means the plan developed
under s. 16.301.

(2) REPORT ON RULES AFFECTING HOUSING. If a proposed rule
directly or substantially affects the development, construction,
cost, or availability of housing in this state, the department shall
prepare a report on the proposed rule before it is submitted to the
legislative council staff under s. 227.15. The department may
request any information from other state agencies, local govern-
ments or individuals or organizations that is reasonably necessary
for the department to prepare the report. The department shall pre-
pare the report within 30 days after the rule is submitted to the
department.

(3) FINDINGS OF THE DEPARTMENT TO BE CONTAINED IN THE
REPORT. (a) The report of the department shall contain informa-
tion about the effect of the proposed rule on housing in this state,
including information on the effect of the proposed rule on all of
the following:
1. The policies, strategies and recommendations of the state
housing strategy plan.
2. The cost of constructing, rehabilitating, improving or
maintaining single family or multifamily dwellings.
3. The purchase price of housing.
4. The cost and availability of financing to purchase or
develop housing.
5. Housing costs, as defined in s. 16.301 (3) (a) and (b).

(b) The report shall analyze the relative impact of the effects
of the proposed rule on low- and moderate-income households.

(4) APPLICABILITY. This section does not apply to emergency
rules promulgated under s. 227.24.

(5) RULE-MAKING AUTHORITY. The department may promul-
gate any rules necessary for the administration of this section.

Sub. (2) requires a report on the effect of a proposed rule on housing if the “rule
directly or substantially affects the development, construction, cost, or availability
of housing in this state . . .”. The use of the phrase “directly or substantially” demon-
strates that not just any effect will trigger the housing impact report requirement.
A housing impact report is not required simply because the subject matter of a proposed
rule relates to housing, or because the rule tangentially affects housing in some way.

227.116 Rules to include time period. (1g) In this sec-
tion, “permit” means any approval of an agency required as a con-
dition of operating a business in this state.

(1r) Each proposed rule submitted to the legislative council
under s. 227.15 that includes a requirement for a business to obtain
a permit shall specify the number of business days, calculated
beginning on the day a permit application is received, within
which the agency will review and make a determination on a per-
mits application.

(2) If any existing rule does not comply with sub. (1r), the
agency that promulgated the rule shall submit to the legislative
council a proposed revision of the rule that will bring the rule into
compliance with sub. (1r). The legislative council staff’s review
of the proposed revision is limited to determining whether or not
the agency has complied with this subsection.

(3) Subsections (1r) and (2) do not apply to a rule if the rule,
or a law under which the rule was promulgated, effective prior to
November 17, 1983, contains a specification of a time period for
review and determination on a permit application.

(4) If an agency fails to review and make a determination
on a permit application within the time period specified in a rule
or law, for each such failure the agency shall prepare a report and
submit it to the department of safety and professional services
within 5 business days of the last day of the time period specified,
setting forth all of the following:

(a) The name of the person who submitted the permit applica-
tion and the business activity for which the permit is required.
(b) Why the review and determination were not completed
within the specified time period and a specification of the revised
time period within which the review and determination will be
completed.
(c) How the agency intends to avoid such failures in the future.

(5) If an agency fails to review and make a determination on
a permit application within the time period specified in a rule or
law, upon completion of the review and determination for that
application, the agency shall notify the department of safety and
professional services.

(6) (a) An agency’s failure to review and make a determina-
tion on a permit application within the time period specified in a
rule or law, that finding shall not constitute grounds for
declaring the agency’s determination invalid.

(b) If a court finds that an agency failed to review and make
a determination on a permit application within the time period
specified in a rule or law, that finding shall not constitute grounds
for declaring the agency’s determination invalid.


227.117 Review of rules impacting energy availability. (1) The public service commission shall prepare an energy
impact report on any proposed rule if, not later than 30 days after
the public hearing under s. 227.18, the chairperson or ranking
member of a standing committee, the speaker of the
assembly, or the presiding officer of the senate requests in writing
that the commission determine the rule’s impact on the cost or reli-
bility of electricity generation, transmission, or distribution or of
fuels used in generating electricity. The energy impact report shall
include an evaluation and related findings and conclusions on the
probable impact of the proposed rule on the cost or reliability of
electricity generation, transmission, or distribution or of fuels
used in generating electricity.

(2) Within 30 days after the written request is submitted to the
public service commission, the commission shall submit a copy
of any energy impact report prepared under sub. (1) to the agency
that proposed the rule that resulted in the report.

(3) An agency that receives an energy impact report under
sub. (2), shall consider the energy impact report before submitting
the notification and report to the legislature under s. 227.19 (2) and
(3).

History: 2003 a. 277.

227.12 Petition for rules. (1) Unless the right to petition for
a rule is restricted by statute to a designated group or unless the
form of procedure for a petition is otherwise prescribed by statute,
a municipality, an association which is representative of a farm,
labor, business or professional group, or any 5 or more persons
having an interest in a rule may petition an agency requesting it to
promulgate a rule.

(2) A petition shall state clearly and concisely:
(a) The substance or nature of the rule making requested.
(b) The reason for the request and the petitioners’ interest in
the requested rule.
(c) A reference to the agency’s authority to promulgate the
requested rule.

(3) Except as provided in sub. (4), within a reasonable period
of time after the receipt of a petition under this section, an agency
shall either deny the petition in writing or proceed with the
requested rule making. If the agency denies the petition, it shall
promptly notify the petitioner of the denial, including a brief state-
ment of the reason for the denial. If the agency proceeds with the
requested rule making, it shall follow the procedures prescribed
in this subchapter.

(4) If a petition to the department of revenue establishes that
the department has established a standard by which it is construing
227.135 Statements of scope of proposed rules. (1) An agency shall prepare a statement of the scope of any rule that it plans to promulgate. The statement shall include all of the following:

(a) A description of the objective of the rule.

(b) A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

(c) The statutory authority for the rule.

(d) Estimates of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule.

(e) A description of all of the entities that may be affected by the rule.

(f) A summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

(2) An agency that has prepared a statement of the scope of the proposed rule shall present the statement to the governor and to the individual or body with policy–making powers over the subject matter of the proposed rule for approval. The agency may not send the statement to the legislative reference bureau for publication under sub. (3) until the governor issues a written notice of approval of the statement. The individual or body with policy–making powers may not approve the statement until at least 10 days after publication of the statement under sub. (3).

(3) If the governor approves a statement of the scope of a proposed rule under sub. (2), the agency shall send an electronic copy of the statement to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. On the same day that the agency sends the statement to the legislative reference bureau, the agency shall send a copy of the statement to the secretary of administration. The agency shall include with any statement of scope sent to the legislative reference bureau the date of the governor’s approval of the statement of scope. The legislative reference bureau shall assign a discrete identifying number to each statement of scope and shall include that number and the date of the governor’s approval in the publication of the statement of scope in the register.

(4) If at any time after a statement of the scope of a proposed rule is approved under sub. (2) the agency changes the scope of the proposed rule or in any meaningful or measurable way, including changing the scope of the proposed rule so as to include in its scope any activity, business, material, or product that is not specifically included in the original scope of the proposed rule, the agency shall prepare and obtain approval of a revised statement of the scope of the proposed rule in the same manner as the original statement was prepared and approved under subs. (1) and (2). No state employee or official may perform any activity in connection with the drafting of the proposed rule except for an activity necessary to prepare the revised statement of the scope of the proposed rule until the revised statement is so approved.

History: 1985 a. 182; 2011 a. 68.

227.137 Economic impact analyses of proposed rules. (2) An agency shall prepare an economic impact analysis for a proposed rule before submitting the proposed rule to the legislative council staff under s. 227.15.

(3) An economic impact analysis of a proposed rule shall contain information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state’s economy as a whole. When preparing the analysis, the agency shall soliciting information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule. The agency shall prepare the economic impact analysis in coordination with local governmental units that may be affected by the proposed rule. The agency may request information that is reasonably necessary for the preparation of an economic impact analysis from other businesses, associations, local governmental units, and individuals and from other agencies. The economic impact analysis shall include all of the following:

(a) An analysis and quantification of the policy problem that the proposed rule is intended to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem, and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.

(b) An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule.

(c) An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.

(d) An analysis of alternatives to the proposed rule, including the alternative of not promulgating the proposed rule.

(e) A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely


NOTE: In Coyne v. Walker, 2016 WI 38, the Supreme Court held that provisions of 2011 Wisconsin Act 21 that give to the Governor, and in limited cases, the Secretary of Administration, the power to intervene in the process of drafting and promulgating administrative rules are unconstitutional as applied to the Superintendent of Public Instruction.


affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

(f) Except as provided in this paragraph, if the economic impact analysis relates to a proposed rule of the department of safety and professional services under s. 101.63 (1) establishing standards for the construction of a dwelling, as defined in s. 101.61 (1), an analysis of whether the proposed rule would increase the cost of constructing or remodeling such a dwelling by more than $1,000. This paragraph applies notwithstanding that the purpose of the one- and 2-family dwelling code under s. 101.60 includes promoting interstate uniformity in construction standards. This paragraph does not apply to a proposed rule whose promulgation has been authorized under s. 227.19 (5) (fm).

(g) An analysis of the ways in which and the extent to which the proposed rule would place any limitations on the free use of private property, including a discussion of alternatives to the proposed rule that would minimize any such limitations.

(4) On the same day that the agency submits the economic impact analysis to the legislative council staff under s. 227.15 (1), the agency shall also submit that analysis to the department of administration, to the governor, and to the chief clerks of each house of the legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, as designated by those presiding officers, and to the cochairpersons of the joint committee for review of administrative rules. If a proposed rule is modified after the economic impact analysis is submitted under this subsection so that the economic impact of the proposed rule is significantly changed, the agency shall prepare a revised economic impact analysis for the proposed rule as modified. A revised economic impact analysis shall be prepared and submitted in the same manner as an original economic impact analysis is prepared and submitted.

(5) This section does not apply to emergency rules promulgated under s. 227.24.

(6) If an economic impact analysis regarding a proposed rule indicates that a total of $20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, the department of administration shall review the proposed rule and issue a report. The agency may not submit a proposed rule to the legislature for review under s. 227.19 (2) until the agency receives a copy of the department's report and the approval of the secretary of administration. The report shall include all of the following findings:

(a) That the economic impact analysis is supported by related documentation contained or referenced in the economic impact analysis.

(b) That the agency has statutory authority to promulgate the proposed rule.

(c) That the proposed rule, including any administrative requirements, is consistent with and not duplicative of other state rules or federal regulations.

(d) That the agency has adequately documented the factual data and analytical methodologies that the agency used in support of the proposed rule and the related findings that support the regulatory approach that the agency chose for the proposed rule.

(7) Before issuing a report under sub. (6), the department of administration may return a proposed rule to the agency for further consideration and revision with a written explanation of why the proposed rule is being returned. If the agency head disagrees with the department’s reasons for returning the proposed rule, the agency head shall so notify the department in writing. The secretary of administration shall approve the proposed rule when the agency has adequately addressed the issues raised during the department’s review of the rule.
legislative council staff under s. 227.15 or, for a rule promulgated under s. 186.118 (2) (a) or (3) (b) 1., submitted as provided in s. 186.118 (2) (b) or (3) (b) 2.

(2) If the proposed rule is prepared in the format authorized under sub. (1m), the analysis shall include a reference to the federal regulation upon which it is based. If the proposed rule is prepared in the format authorized under sub. (1m) but differs from the federal regulation as permitted under sub. (1m) (b), the analysis shall specify each portion of the proposed rule that differs from the federal regulation upon which it is based.

(2g) Review by the small business regulatory review board. On the same day that an agency submits to the legislative council staff under s. 227.15 a proposed rule that may have an economic impact on small businesses, the agency shall submit the proposed rule, the analysis required under sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3) to the small business regulatory review board. The board may use cost–benefit analysis to determine the fiscal effect of the rule on small businesses and shall determine whether the proposed rule will have a significant economic impact on a substantial number of small businesses and whether the agency has complied with subs. (2) and (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and (1s), each proposed rule shall include provisions detailing how the rule will be enforced. If the board determines that the rule does not include an enforcement provision or that the agency failed to comply with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall notify the agency of that determination and ask the agency to comply with any of those requirements. If the board determines that the proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board’s decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule under sub. (6). In addition, the board may submit other suggested changes in the proposed rule to the agency, including proposals to reduce the use of cross–references in the rule. The board shall send a report of any suggested changes and of any notice of failure to include enforcement provisions or to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to the legislative council staff. The notification to the agency may include a request that the agency do any of the following:

(a) Verify that the proposed rule does not conflict with, overlap, or duplicate other rules or federal regulations.

(b) Require the inclusion of fee information and fee schedules in the analysis under sub. (2), including why fees are necessary and for what purpose the fees will be used.

(2m) Quality of agency data and reduction of cross references. Each agency shall, in cooperation with the department of administrative services, ensure the accuracy, integrity, objectivity, and consistency of the data that is used when preparing a proposed rule and when completing an analysis of the proposed rule under sub. (2). Each agency shall reduce the amount of cross–references to the statutes in proposed and final rules. A person affected by a proposed rule may submit comments to the agency regarding the accuracy, integrity, or consistency of that data.

(3) Reference to applicable forms. If a proposed rule requires a new or revised form, an agency shall include a reference to the form in a note to the proposed rule and shall attach to the proposed rule a copy of the form or a description of how a copy may be obtained. The legislative reference bureau shall insert the reference in the code as a note to the rule.

(4) Fiscal estimates. (a) An agency shall prepare a fiscal estimate for each proposed rule before it is submitted to the legislative council staff under s. 227.15.

(b) The fiscal estimate shall include the major assumptions used in its preparation and a reliable estimate of the fiscal impact of the proposed rule, including:

1. The anticipated effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues.

2. A projection of the anticipated state fiscal effect during the current biennium and a projection of the net annualized fiscal impact on state funds.

3. For rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule.

(c) If a proposed rule interpreting or implementing a statute has no independent fiscal effect, the fiscal estimate prepared under this subsection shall be based on the fiscal effect of the statute.

(d) If a proposed rule is revised so that its fiscal effect is significantly changed prior to its issuance, an agency shall prepare a revised fiscal estimate before promulgating the rule. The agency shall give notice of a revised fiscal estimate in the same manner that notice of the original estimate is given.

(4m) Notice of submittal to legislative council staff. On the same day that an agency submits a proposed rule to the legislative council staff under s. 227.15, the agency shall prepare a written notice of the agency’s submittal to the legislative council staff. The notice shall include a statement of the date on which the proposed rule has been submitted to the legislative council staff for review, of the subject matter of the proposed rule and of whether a public hearing on the proposed rule is required, and shall identify the organizational unit within the agency that is primarily responsible for the promulgation of the rule. The notice shall also include a statement containing the identifying number of the statement of scope for the proposed rule assigned under s. 227.135 (3), the date of publication and issue number of the register in which the statement of scope is published, and the date of approval of the statement of scope by the individual or body with policy–making powers over the subject matter of the proposed rule and of whether a public hearing on the proposed rule is required. The notice shall be approved by the individual or body with policy–making powers over the subject matter of the proposed rule. The agency shall send an electronic copy of the notice to the legislative reference bureau, for publication in the register. On the same day that the agency sends the notice to the legislative reference bureau, the agency shall send a copy of the notice to the secretary of administration.

(5) Copies available to the public at no cost. An agency, upon request, shall make available to the public at no cost a copy of any proposed rule, including the analysis, fiscal estimate and any related form.

(6) Withdrawal of a rule. (a) Notwithstanding s. 227.01 (10), in this subsection, “proposed rule” means all of the agency’s proposal to promulgate a rule.

(b) An agency may withdraw a proposed rule at any time prior to filing under s. 227.20 by notifying the presiding officer of each house of the legislature and the legislative council staff of its intention not to promulgate the proposed rule.

(c) A proposed rule shall be considered withdrawn on December 31 of the 4th year after the year in which it is submitted to the legislative council staff under s. 227.15 (1), unless it has been filed with the legislative reference bureau under s. 227.20 (1) or withdrawn by the agency before that date. No action by a legislative committee or by either house of the legislature under s. 227.19 delays the date of withdrawal of a proposed rule under this paragraph.

(d) If a proposed rule is withdrawn, the proposed rule may be promulgated only by commencing the rule–making procedure.
again with the preparation, under s. 227.135, of a statement of the scope of the proposed rule that the agency plans to promulgate.


227.15 Legislative council staff. (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing on a proposed rule or, if no public hearing is required, prior to notice under s. 227.19, an agency shall submit the proposed rule to the legislative council staff for review. The proposed rule shall be in the form required under s. 227.14 (1), and shall include the material required under s. 227.14 (2), (3), and (4), the economic analysis required under s. 227.137 (2), and any revised economic impact analysis required under s. 227.137 (4). An agency may not hold a public hearing on a proposed rule or give notice under s. 227.19 until after it has received a written report of the legislative council staff review of the proposed rule or until after the initial review period of 20 working days under sub. (2) (intro.), whichever comes first. An agency may give notice of a public hearing prior to receipt of the legislative council staff report. This subsection does not apply to rules promulgated under s. 227.24.

(1m) INTERNET ACCESS TO PROPOSED RULE. The legislative council staff shall create and maintain an Internet site that includes a copy of or link to each proposed rule received under sub. (1) in a format that allows searching using keywords. Each agency shall provide the legislative council staff with the proposed rules and other information needed to comply with this subsection in the format required by the legislative council staff. The Internet site shall identify or provide a link to a site that identifies proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet site shall also include or provide a link to all of the following:

(a) The electronic mail address and telephone number of an agency contact person for each proposed rule.

(b) The material required under s. 227.14 (2), (3), and (4).

(bm) The economic impact analysis required under s. 227.137 (2) and any revised economic impact analysis required under s. 227.137 (4).

(c) Any report submitted to the legislative council staff under s. 227.14 (2g).

(d) The written report of the legislative council staff review of the proposed rule prepared under sub. (2) and any agency comments regarding that report.

(e) The time, date, and place of any public hearing specified in the notice in s. 227.17 as soon as that notice is submitted to the legislative council staff.

(f) Review proposed rules for clarity, grammar, punctuation and use of plain language.

(g) Review proposed rules to determine potential conflicts and to make comparisons with related federal statutes and regulations.

(h) Review proposed rules for compliance with the requirements of s. 227.116.

(i) Streamline and simplify the rule-making process.

(3) ASSISTANCE TO COMMITTEES. The legislative council staff shall work with and assist the appropriate committees of the legislature during the rule-making process. The legislative council staff may include in its report recommendations concerning proposed rules which the agency shall submit with the notice required under s. 227.19 (2).

(4) NOTICE OF CHANGES IN RULE-MAKING AUTHORITY. Whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment or creation of a statute, by the interpretive decision of a court of competent jurisdiction or for any other reason, the legislative council staff shall notify the joint committee for review of administrative rules and the appropriate committees of each house of the legislature as determined by the presiding officer of each house. This subsection applies whether or not the rules of the agency are under review by the legislative council staff at the time of the change in rule-making authority.

(5) ANNUAL REPORT. The legislative council staff shall submit an annual report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), and to the governor summarizing any action taken and making recommendations to streamline the rule-making process and eliminate obsolete, duplicative and conflicting rules.

(6) PUBLIC LIASON. The legislative council staff shall assist the public in resolving problems related to rules. The assistance shall include but is not limited to providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing the location where a copy of a rule, proposed rule or form is available and encouraging and assisting participation in the rule-making process.

(7) RULES PROCEDURES MANUAL. The legislative council staff and the legislative reference bureau shall prepare a manual to provide agencies with information on drafting, promulgation and legislative review of rules.


227.16 When hearings required. (1) Except as provided under sub. (2), all rule making by an agency shall be preceded by notice and public hearing as provided in ss. 227.17 and 227.18.

(2) Subsection (1) does not apply if any of the following conditions exist:

(b) The proposed rule brings an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision.

(c) The proposed rule is promulgated under s. 227.24, in which case the agency shall hold a hearing under s. 227.24 (4).

(d) The proposed rule is being promulgated at the direction of the joint committee for review of administrative rules under s. 227.26 (2) (b).

(e) The proposed rule, as submitted to the legislative council staff under s. 227.15 (1), is sent to the legislative reference bureau in an electronic format approved by the legislative reference bureau and published in the notice section of the register with a statement that the proposed rule will be promulgated without public hearing unless a petition is received by the agency within 30 days after publication of the notice, signed by any of the following:

1. Twenty-five natural persons who will be affected by the proposed rule.

2. A municipality that will be affected by the proposed rule.
3. An association which is representative of a farm, labor, business or professional group that will be affected by the proposed rule.

(3) If the agency receives a petition under sub. (2) (e), it may not proceed with the proposed rule until after it has given notice and held a public hearing under ss. 227.17 and 227.18.

(4) The exemptions in sub. (2) do not apply if another statute specifically requires the agency to hold a hearing prior to promulgating the proposed rule under consideration.

(5) If a hearing is not required because of an exemption under sub. (2), the agency may hold a hearing on the proposed rule under ss. 227.17 and 227.18.

(6) For the purpose of soliciting public comment, an agency may hold a hearing on the general subject matter of possible or anticipated rules before preparing a proposed rule in draft form. A hearing held under this subsection does not satisfy the requirement of sub. (1) with respect to the promulgation of a specific proposed rule.


The purpose of a public hearing is to give interested parties not only a chance to be heard, but to have an influence in the final form of the regulations involved. That purpose would not be served if the adopted rules were required to be identical in form to those proposed before the hearing. HM Distributors of Milwaukee, Inc. v. Department of Agriculture, 55 Wis. 2d 261, 198 N.W.2d 598 (1972).

227.17 Notice of hearing. (1) If a hearing is required, the agency shall:

(a) Send written notice of the hearing, in an electronic format approved by the legislative reference bureau, to the legislative reference bureau for publication in the register and, if required, publish the notice in a local newspaper.

(b) Send an electronic copy of the written notice of the hearing under par. (a) to each member of the legislature who has filed a written request for notice with the legislative reference bureau.

Upon request, the legislative reference bureau shall furnish an agency with the name and address of each legislator who has requested notice.

(bm) Send written notice of the hearing to the secretary of administration on the same day that the notice is sent to the legislative reference bureau under par. (a).

(c) Take any action it considers necessary to provide notice to other interested persons.

(2) The notice under sub. (1) shall be given at least 10 days prior to the date set for a hearing. Notice through the register is considered to have been given on the date on which the issue of the register in which the notice first appears is published under s. 35.93 (2).

(2m) The notice under sub. (1) shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule.

(3) The notice under sub. (1) shall include:

(a) A statement of the date, time and place of the hearing.

(b) A copy of the proposed rule as submitted to the legislative council staff under s. 227.15 (1).

(em) Any report prepared by the department of administration under s. 227.137 (6).

(f) If the proposed rule will have an effect on small businesses, as defined under s. 227.114 (1), an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses that will be affected by the rule, a brief description of the proposed reporting, bookkeeping and other procedures required for compliance with the rule and a description of the types of professional skills necessary for compliance with the rule.

(g) Any additional matter required by statute.

(i) The electronic mail address and telephone number of the small business regulatory coordinator and a link to an Internet site that allows a person to review the rule and make comments regarding the rule.

4. An agency may modify a proposed rule prior to a hearing without providing additional notice under this section if the modification is germane to the subject matter of the proposed rule. In this subsection, an agency’s proposal to delete part of a proposed rule for which notice was given under sub. (1) shall be treated as a germane modification of the proposed rule.

(5) Failure of any person to receive notice of a hearing on proposed rule making is not grounds for invalidating the resulting rule if notice of the hearing was published as provided in sub. (1). (a)


Changes in a proposed rule after notice was published did not so alter the scope of the proposed rule as to require a second hearing. Brown County v. DHSSS, 103 Wis. 2d 37, 307 N.W.2d 247 (1981).

227.18 Conduct of hearings. (1) An agency shall hold a public hearing at the date, time and place designated in the notice of hearing. The person conducting the hearing shall:

(a) Explain the purpose of the hearing and describe how testimony will be received.

(b) At the beginning of the hearing, present a summary of the factual information on which the proposed rule is based, including any information obtained from an advisory committee, informal conference or consultation.

(c) Afford each interested person or a representative the opportunity to present facts, opinions or arguments in writing, whether or not there is an opportunity to present them orally.

(d) Keep a record of the hearing in a manner the agency considers desirable and feasible.

(2) The person conducting the hearing may:

(a) Limit oral presentations if the hearing would be unduly lengthened by repetitious testimony.

(b) Question or allow others present to question the persons appearing.

(c) Administer an oath or affirmation to any person appearing.

(d) Continue or postpone the hearing to a specified date, time and place.

(3) (a) If the agency officer or a quorum of the board or commission responsible for promulgating the proposed rule is not present at the hearing, the procedures in this subsection apply.

(b) At the beginning of the hearing, the person conducting it shall inform those present that any person who presents testimony at the hearing may present his or her argument to the agency officer, board or commission prior to promulgation of the proposed rule if the request to do so is made in writing at the hearing.

(c) If required by the agency officer, board or commission, an argument shall be presented to the agency in writing. If oral arguments are permitted, the agency officer, board or commission may impose reasonable limitations on the length and number of appearances to conserve time and preclude undue repetition.

(d) If a record of the hearing has been made, arguments before the agency officer, board or commission shall be limited to the record of the hearing.

(4) The procedures required by this section do not supersede procedures required by any statute relating to a specific agency or to the rule or class of rules under consideration.

History: 1985 a. 182.

227.185 Approval by governor. After a proposed rule is in final draft form, the agency shall submit the proposed rule to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed rule. If the governor approves a proposed rule, the governor shall provide the agency with a written notice of that approval. No proposed rule may be submitted to the legislature for review under s. 227.19 (2) unless the governor has approved the proposed rule in writing.

History: 2011 a. 21.

NOTE: In Coyne v. Walker, 2016 WI 38, the Supreme Court held that provisions of 2011 Wisconsin Act 21 that give to the Governor, and in limited cases, the Secretary of Administration, the power to intervene in the process of draft-
227.19 Legislative review prior to promulgation. (1) STATEMENT OF PURPOSE. RULE-MAKING POWERS. (a) Article IV of the constitution of this state vests in the legislature the power to make laws, and thereby to establish agencies and to designate agency functions, budgets and purposes. Article V of the constitution of this state charges the executive with the responsibility to expedite all measures which may be resolved upon by the legislature. 

(b) The legislature recognizes the need for efficient administration of public policy. In creating agencies and designating their functions and purposes, the legislature may delegate rule-making authority to these agencies to facilitate administration of legislative policy. The delegation of rule-making authority is intended to eliminate the necessity of establishing every administrative aspect of general public policy by legislation. In so doing, however, the legislature reserves to itself:

1. The right to retract any delegation of rule-making authority.
2. The right to establish any aspect of general policy by legislation, notwithstanding any delegation of rule-making authority.
3. The right and responsibility to designate the method for rule promulgation, review and modification.
4. The right to delay or suspend the implementation of any rule or proposed rule while under review by the legislature.

(2) NOTIFICATION OF LEGISLATURE. An agency shall submit a notice to the chief clerk of each house of the legislature when a proposed rule is in final draft form. The notice shall be submitted in triplicate and shall be accompanied by a report in the form specified under sub. (3). A notice received under this subsection after the last day of the legislature’s final general-business floorperiod in the biennial session as established in the joint resolution required under s. 13.02 (3) shall be considered received on the first day of the next regular session of the legislature, unless the presiding officers of both houses direct referral of the notice and report under this subsection before that day. The presiding officer of each house of the legislature shall, within 10 working days following the day on which the notice and report are received, direct the appropriate chief clerk to refer the notice and report to one standing committee. The agency shall submit to the legislative reference bureau for publication in the register, in an electronic format approved by the legislative reference bureau, a statement that a proposed rule has been submitted to the chief clerk of each house of the legislature. The agency shall also include in the statement the date of approval of the proposed rule by the governor under s. 227.185. Each chief clerk shall enter a similar statement in the journal of his or her house.

(3) FORM OF REPORT. The report required under sub. (2) shall be in writing and shall include the proposed rule in the form specified in s. 227.14 (1); the material specified in s. 227.14 (2), (3), and (4); including any statement, suggested changes, or other material submitted to the agency by the small business regulatory review board; a copy of any economic impact analysis prepared by the agency under s. 227.137 (2); a copy of any revised economic impact analysis prepared by the agency under s. 227.137 (4); a copy of any report prepared by the department of administration under s. 227.137 (6); a copy of any energy impact report received from the public service commission under s. 227.117 (2); and a copy of any recommendations of the legislative council staff. The report shall also include all of the following:

(a) A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.
(b) A summary of public comments to the proposed rule and the agency’s response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at a public hearing.
(c) A list of the persons who appeared or registered for or against the proposed rule at a public hearing.

(cm) Any changes to the analysis prepared under s. 227.14 (2) or the fiscal estimate prepared under s. 227.14 (4).
(d) A response to the legislative council staff recommendations under s. 227.15 indicating:
1. Acceptance of the recommendations in whole or in part.
2. Rejection of the recommendations in whole or in part.
3. The specific reason for rejecting any recommendation.
(e) Except as provided under sub. (3m), for all proposed rules that will have an effect on small businesses, as defined under s. 227.114 (1), a final regulatory flexibility analysis, which shall contain as much information about the following as the agency can feasibly obtain and analyze with its existing staff and resources:
1. The agency’s reason for including or failing to include in the proposed rule any of the methods specified under s. 227.114 (2) for reducing its impact on small businesses.
2. A summary of issues raised by small businesses during the hearings on the proposed rule, any changes in the proposed rule as a result of alternatives suggested by small businesses and the reasons for rejecting any alternatives suggested by small businesses.
3. The nature of any reports and the estimated cost of their preparation by small businesses that must comply with the rule.
4. The nature and estimated cost of other measures and investments that will be required of small businesses in complying with the rule.
5. The additional cost, if any, to the agency of administering or enforcing a rule which includes any of the methods specified under s. 227.114 (2).
6. The impact on public health, safety and welfare, if any, caused by including in the rule any of the methods specified under s. 227.114 (2).

(f) If an energy impact report regarding the proposed rule was submitted with the report required under sub. (2), an explanation of the changes, if any, that were made in the proposed rule in response to that report.
(g) The report of the department of administration, as required by s. 227.115, if a proposed rule directly or substantially affects the development, construction, cost, or availability of housing in this state.

(h) A response to any report prepared by the small business regulatory review board under s. 227.14 (2g).

(3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis specified under sub. (3) (e) is not required for any rule if the small business regulatory review board determines that the rule will not have a significant economic impact on a substantial number of small businesses.

(4) COMMITTEE REVIEW. (a) Notice of referral. Upon receipt of notice that a proposed rule has been referred to a committee under sub. (2), the chairperson or chairpersons of the committee shall notify, in writing, each committee member of the referral.

(am) Committee meeting. A committee may be convened upon the call of its chairperson or cochairpersons to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice and report were referred. A committee may hold a public hearing to review a proposed rule.

(b) Committee review period. 1. Except as provided under subs. 1m. and 5., the committee review period for each committee extends for 30 days after referral of the proposed rule to the committee under sub. (2). If the chairperson or the cochairpersons of a committee take either of the following actions within the 30-day period, the committee review period for that committee is...
continued for 30 days from the date on which the first 30-day review period would have expired:

a. Request in writing that the agency meet with the committee to review the proposed rule.

b. Publish or post notice that the committee will hold a meeting or hearing to review the proposed rule and immediately send a copy of the notice to the agency.

1m. Except as provided under subd. 5., if a notice and report received under sub. (2) after the last day of the legislature’s final general–business floor period as specified in sub. (2) is referred for committee review before the first day of the next regular session of the legislature, the committee review period for each committee to which the proposed rule is referred extends to the day specified under s. 13.02 (1) for the next legislature to convene.

2. If a committee, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to consider making modifications, the review period for both committees to which the proposed rule is referred is extended either to the 10th working day following receipt by those committees of the modified proposed rule or a written statement to those committees that the agency will not make the modifications or to the expiration of the review period under subd. 1. or, if applicable, subd. 1m., whichever is later. There is no limit either on the number of modification agreements that may be entered into or on the time within which modifications may be made.

2m. If a committee requests in writing that the public service commission determine the rule’s impact on the cost or reliability of electricity generation, transmission, or distribution or of fuels used in generating electricity, the commission shall prepare an energy impact report in the manner provided under s. 227.117 (1). The commission shall submit a copy of the report to the committee and to the agency that proposed the rule within 30 days after the written request is submitted to the commission. The review period for both committees to which the proposed rule is referred is extended to the 10th working day following receipt by those committees of the report, to the expiration of the review period under subd. 1. or, if applicable, subd. 1m., or to the expiration of the review period under subd. 2., whichever is later.

3. An agency may, on its own initiative, submit a germane modification to a proposed rule to a committee during its review period. If a germane modification is submitted within the final 10 days of a committee review period under subd. 1., the review period for both committees to which the proposed rule is referred is extended for 10 working days. If a germane modification is submitted to a committee after the committee in the other house has concluded its jurisdiction over the proposed rule, the jurisdiction of the committee of the other house is revived for 10 working days. In this subdivision, an agency’s proposal to delete part of a proposed rule under committee review shall be treated as a germane modification of the proposed rule.

3m. An agency may, during the committee review period, reconsider its action by recalling the proposed rule from the chief clerk of each house of the legislature. If the agency decides to continue the rule—making process with regard to the proposed rule, the agency shall resubmit the proposed rule, either in its recalled form or with one or more germane modifications, to the chief clerk in each house of the legislature as provided in sub. (2) and the committee review period under subd. 1. or, if applicable, subd. 1m. shall begin again.

4. An agency may modify a proposed rule following the committee review period if the modification is germane to the subject matter of the proposed rule. If a germane modification is made, the agency shall recall the proposed rule from the chief clerk of each house of the legislature. The proposed rule, with the germane modification, shall be resubmitted to the presiding officer in each house of the legislature as provided in sub. (2) and the committee review period shall begin again. Following the committee review period, an agency may not make any modification that is not germane to the subject matter of the proposed rule. In this subdivision, an agency’s proposal to delete part of a proposed rule under committee review shall be treated as a germane modification of the proposed rule.

5. If a committee in one house votes to object to a proposed rule or to a part of the proposed rule under par. (d), the chairperson or cochairpersons of the committee shall immediately notify the chairperson or cochairpersons of the committee in the other house to which the proposed rule was referred. Upon receipt of the notice, the review period for the committee in the other house immediately ceases and no further action on the proposed rule or part of the proposed rule objected to may be taken under this paragraph by that committee, but the committee may proceed under par. (d) to object to the proposed rule or part of the proposed rule.

6. If a committee has not concluded its jurisdiction over a proposed rule or a part of a proposed rule before the day specified under s. 13.02 (1) for the next legislature to convene, that jurisdiction immediately ceases and, within 10 working days after that date, the presiding officer of the appropriate house shall refer the proposed rule or part of the proposed rule to the appropriate standing committee of the next legislature as provided under sub. (2). If a committee review period is interrupted by the loss of jurisdiction under this subdivision, a new committee review period as provided in subd. 1. shall begin for the committee to which the proposed rule or part of the proposed rule is referred under this subdivision beginning on the date of referral under this subdivision.

(c) Waiver of committee review. A committee may waive its jurisdiction over a proposed rule prior to the expiration of the committee review period by adopting, by a majority vote of a quorum of the committee, a motion waiving the committee’s jurisdiction.

(d) Committee action. A committee, by a majority vote of a quorum of the committee during the applicable review period under par. (b), may object to a proposed rule or to a part of a proposed rule for one or more of the following reasons:

1. An absence of statutory authority.
2. An emergency relating to public health, safety or welfare.
3. A failure to comply with legislative intent.
4. A conflict with state law.
5. A change in circumstances since enactment of the earliest law upon which the proposed rule is based.
6. Arbitrariness and capriciousness, or imposition of an undue hardship.
7. In the case of a proposed rule of the department of safety and professional services under s. 101.63 (1) establishing standards for the construction of a dwelling, as defined in s. 101.61 (1), the proposed rule would increase the cost of constructing or remodeling such a dwelling by more than $1,000. This subdivision applies notwithstanding that the purpose of the one- and two-family dwelling code under s. 101.60 includes promoting interstate uniformity in construction standards. This subdivision does not apply to a proposed rule whose promulgation has been authorized under sub. (5) (fm).

(e) Conclusion of committee jurisdiction. Subject to par. (b) 3., a committee’s jurisdiction over a proposed rule is concluded when the committee objects to, approves, or waives its jurisdiction over the proposed rule or when the committee review period ends, whichever occurs first. When a committee’s jurisdiction over a proposed rule is concluded, the committee shall report the proposed rule and any objection as provided in sub. (5) (a).

(5) Joint Committee for Review of Administrative Rules.

(a) Referral. When a committee’s jurisdiction over a proposed rule is concluded as provided in sub. (4) (e), the committee shall report the proposed rule and any objection to the chief clerk of the appropriate house within 5 working days after that jurisdiction is concluded. The chief clerk shall refer the proposed rule and any

NOTES. (Published 1−18−17)
objection to the joint committee for review of administrative rules within 5 working days after receiving the committee report.

(b) Joint committee review period. 1. Except as provided in subd. 1m., the review period for the joint committee for review of administrative rules extends for 30 days after the last referral of a proposed rule and any objection to that committee, and during that review period that committee may take any action on the proposed rule in whole or in part permitted under this subsection. The joint committee for review of administrative rules shall meet and take action in executive session during that period with respect to any proposed rule or any part of a proposed rule to which a committee has objected and may meet and take action in executive session during that period with respect to any proposed rule or any part of a proposed rule to which no committee has objected, except that if the cochairpersons take either of the following actions within the 30-day period, the joint committee review period is continued for 30 days from the date on which the first 30-day review period would have expired:

a. Request in writing that the agency meet with the joint committee for review of administrative rules to review the proposed rule.

b. Publish or post notice that the joint committee for review of administrative rules will hold a meeting or hearing to review the proposed rule and immediately send a copy of the notice to the agency.

c. If a notice and report received under sub. (2) after the last day of the legislature’s final general—business floorperiod as specified in sub. (2) is referred for review by the joint committee for review of administrative rules before the first day of the next regular session of the legislature, the review period for the joint committee for review of administrative rules extends to the day specified under s. 13.02 (1) for the next legislature to convene. During that review period, the joint committee for review of administrative rules may meet and take action in executive session and may take any action on the proposed rule in whole or in part permitted under this subsection. If the joint committee for review of administrative rules meets in executive session with respect to a proposed rule or part of a proposed rule to which a committee has objected, that joint committee shall take action as permitted under this subsection with respect to the committee’s objection.

2. If the joint committee for review of administrative rules, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to consider making modifications, the review period for the joint committee is extended either to the 10th working day following receipt by the joint committee of the modified proposed rule or a written statement to the joint committee that the agency will not make the modifications or to the expiration of the review period under subd. 1. or, if applicable, subd. 1m., whichever is later. There is no limit on either the number of modification agreements that may be entered into or on the time within which modifications may be made.

4. If the joint committee for review of administrative rules has not concluded its jurisdiction over a proposed rule or a part of a proposed rule before the day specified under s. 13.02 (1) for the next legislature to convene, that jurisdiction immediately ceases and, within 10 working days after that date, the presiding officer of the appropriate house shall refer the proposed rule or part of the proposed rule to the joint committee for review of administrative rules of the next legislature. If a committee review period is interrupted by the loss of jurisdiction under this subdivision, a new committee review period as provided in subd. 1. shall begin for the joint committee for review of administrative rules to which the proposed rule or part of the proposed rule is referred under this subdivision beginning on the date of referral under this subdivision.

(c) Agency not to promulgate rule during joint committee review. An agency may not promulgate a proposed rule or a part of a proposed rule until the joint committee for review of administra-

227.19 ADMINISTRATIVE PROCEDURE

Updated 2015–16 Wis. Stats. Published and certified under s. 35.18. January 18, 2017.
(fm) Rules increasing dwelling construction costs; timely introduction of bill; effect. If all bills introduced under par. (em) are defeated, or fail to be enacted in any other manner, the agency may not promulgate the proposed rule or part of the proposed rule that was objected to unless subsequent law specifically authorizes its promulgation. If any of those bills becomes law, the agency may promulgate the proposed rule or part of the proposed rule that was objected to.

(g) Introduction of bills in next session; effect. If the bills required under par. (e) are introduced on or after February 1 of an even-numbered year and before the next regular session of the legislature commences, as provided under s. 13.02 (2), or if the bills cannot be introduced during that time frame under the joint rules of the legislature, the joint committee for review of administrative rules shall introduce the bills on the first day of the next regular session of the legislature, unless either house adversely disposes of either bill. If the joint committee for review of administrative rules is required to introduce the bills, the agency may not promulgate the proposed rule or part of the proposed rule to which the bills pertain except as provided in par. (f). If either house adversely disposes of either bill, the agency may promulgate the proposed rule or part of the proposed rule that was objected to. In this paragraph, “adversely disposes of” means that one house has voted in one of the following ways:

1. To indefinitely postpone the bill.
2. To nonconcour in the bill.
3. Against ordering the bill engrossed.
4. Against ordering the bill to a 3rd reading.
5. Against passage.
6. Against concurrence.

(6) PROMULGATION PREVENTION OR AUTHORIZATION PROCEDURE. (a) The legislature may not consider a bill required or permitted under sub. (5) (e) or (em) until the joint committee for review of administrative rules has submitted a written report on the bill. The report shall be printed as an appendix to each bill and shall contain:

1. An explanation of the issue involving the proposed rule or part of the proposed rule objected to and the factual situation out of which the issue arose.
2. Arguments presented for and against the proposed rule at the executive session held under sub. (5) (b).
3. A statement of the action taken by the joint committee for review of administrative rules regarding the proposed rule.
4. A statement and analysis of the grounds upon which the joint committee for review of administrative rules relies for objecting to the proposed rule or part of the proposed rule.

(b) Upon introduction of the bills, the presiding officer of each house of the legislature shall refer the bill introduced in that house to the appropriate committee, to the calendar scheduling committee or directly to the calendar. If the committee to which a bill is referred makes no report within 30 days after referral, the bill shall be considered reported without recommendation. No later than 40 days after referral, or as soon thereafter as is possible if the legislature is not in a floor period 40 days after referral, the bills shall be placed on the calendar of each house of the legislature according to its rule governing the placement of proposals on the calendar. A bill introduced under this section which is received in the 2nd house shall be referred, reported and placed on the calendar in the same manner as an original bill introduced under this section.

(7) NONAPPLICATION. This section does not apply to rules promulgated under s. 227.24.

History:


Post-promulgation rule suspension under s. 227.26 (2) (d) does not violate the separation of powers doctrine. Martinez v. DLHR, 165 Wis. 2d 687, 478 N.W.2d 582 (1992).

227.20 Filing of rules. (1) An agency shall file a certified copy of each rule it promulgates with the legislative reference bureau. No rule is valid until the certified copy has been filed. A certified copy shall be typed or duplicated on 8 1/2 by 11 inch paper, leaving sufficient room for a stamp at the top of the first page. Forms that are filed need not comply with the specifications of this subsection. The agency shall also send a copy of each rule to the legislative reference bureau in an electronic format approved by the legislative reference bureau.

(2) The legislative reference bureau shall endorse the date and the time of filing on each certified copy filed under sub. (1). The bureau shall keep a file of all certified copies filed under sub. (1).

(3) Filing a certified copy of a rule with the legislative reference bureau creates a presumption of all of the following:

(a) That the rule was duly promulgated by the agency.

(b) That the rule was filed and made available for public inspection on the date and time endorsed on it.

(c) That all of the rule-making procedures required by this chapter were complied with, except as provided in s. 186.118 (2) (c) or (3) (b) 3. (d) That the text of the certified copy of the rule is the text as promulgated by the agency.

History:

Cross-reference: See s. 902.03 for provision for judicial notice of administrative rules.

Guidelines promulgated outside the context of one particular contested case do not qualify for exception to the requirement that all rules must be filed under s. 227.023 [now s. 227.20]. Here, failure to file the guideline as a rule did not deprive the department of the authority to decide contested cases dealing with pregnancy leaves under the sex discrimination statute. Wisconsin Telephone Co. v. Department of Industry, Labor, and Human Relations, 228 NW 2d 649, 68 Wis. 2d 345, (1975).

Sub. (3) directs a court to presume that the rule was duly promulgated by the agency and that all statutory rule-making procedures have been followed, including those pertaining to the preparation of a housing impact report. This section apparently creates a rebuttable presumption that a court is to presume that the agency that promulgated the rule followed the statute regarding housing reports, but a party challenging the rule may rebut that presumption. The statute also requires courts to respect the legislature’s rule in reviewing and approving agency rules by presuming the validity of rules that have survived the legislature’s scrutiny. Wisconsin Realtors Association v. Public Service Commission of Wisconsin, 2015 WI 63, 363 Wis. 2d 480, 867 N.W.2d 364, 13–1407.

227.21 Publication of rules; incorporation by reference. (1) The legislative reference bureau shall publish all rules that agencies are directed by this chapter to file with the legislative reference bureau under s. 227.20 in the register and shall publish all permanent rules that agencies are directed by this chapter to file with the legislative reference bureau under s. 227.20 in the code, as provided in s. 35.93.

(2) (a) Except as provided in s. 601.41 (3) (b), to avoid unnecessary expense an agency may, with the consent of the attorney general, adopt standards of technical societies and organizations of recognized national standing by incorporating the standards in its rules by reference to the specific issue or issues of the publication in which they appear, without reproducing the standards in full.

(b) The attorney general shall consent to incorporation by reference only in a rule of limited public interest and in a case where the incorporated standards are readily available in published form or are available on optical disc or in another electronic format. Each rule containing an incorporation by reference shall state how the material incorporated may be obtained and, except as provided in s. 601.41 (3) (b), that the standards are on file at the offices of the agency and the legislative reference bureau.

(c) An agency that adopts standards under par. (a) may provide the legislative reference bureau with one or more Web addresses to provide electronic access to the standards for publication in conjunction with the publication of the Wisconsin administrative code and register under s. 35.93.

(3) A rule promulgated jointly by 2 or more agencies need not be published in more than one place in the code.

(4) Agency materials that are exempt from the requirements of this chapter under s. 227.01 (13) may be published, either ver-
batim or in summary form, if the promulgating agency and the legisla-
tive reference bureau determine that the public interest would be
served by publication.

2013 a. 20; 2015 a. 196.

227.22 Effective date of rules. (1) In this section, “date of publi-
cation” means the date on which a rule is published in the
code as required under s. 35.93 (2) (c) 1.

(2) A rule is effective on the first day of the month commenc-
ing after the date of publication unless one of the following occurs:
(a) The statute under which the rule was promulgated pre-
scribes a different effective date for the rule.
(b) A later date is prescribed by the agency in a statement filed with
the rule.
(c) The rule is promulgated under s. 227.24, in which case it
becomes effective at the time prescribed in that section.
(d) The rule has a significant economic impact on small busi-
nesses, as defined in s. 227.114 (1), in which case the rule applies
to small businesses no earlier than the first day of the 3rd month
commencing after the date of publication of the rule.
(e) The legislative reference bureau may prescribe in the manu-
ual prepared under s. 227.15 (7) the monthly date prior to which
a rule must be filed in order to be included in that month’s issue
of the register. The legislative reference bureau shall compute the
effective date of each rule submitted for publication in the register
and shall publish it in a note at the end of each section. For the pur-
pose of computing the effective date, the legislative reference
bureau may presume that an issue of the register will be published
during the month in which it is designated for publication.

2013 a. 20, 172.

227.23 Forms. A form imposing a requirement which meets
the definition of a rule shall be treated as a rule for the purposes
of this chapter, except that:

(1) Its promulgation need not be preceded by notice and pub-
lie hearing.
(2) It need not be promulgated by the board or officer charged
with ultimate rule-making authority but may be promulgated by
any employee of the agency authorized by the board or officer.
(3) It need not be published in the code and register in its entirety,
but may be listed by title or description together with a
statement as to how it may be obtained.

History: 1985 a. 182.
Cross-reference: See also ch. Ins 7, Wis. adm. code.

227.24 Emergency rules; exemptions. (1) PROMULGA-
tion. (a) An agency may promulgate a rule as an emergency rule
without complying with the notice, hearing and publication
requirements under this chapter if preservation of the public
peace, health, safety or welfare necessitates putting the rule into
effect prior to the time it would take effect if the agency complied
with the procedures.
(b) An agency acting under s. 186.235 (21), 215.02 (18) or
220.04 (8) may promulgate a rule without complying with the notice,
hearing and publication procedures under this chapter.
(c) A rule promulgated under par. (a) takes effect upon publica-
tion in the official state newspaper or on any later date specified in
the rule and, except as provided under sub. (2), remains in effect
only for 150 days.
(d) A rule promulgated under par. (b) takes effect upon publica-
tion in the official state newspaper or on any later date specified in
the rule and remains in effect for one year or until it is suspended
or the proposed rule corresponding to it is objected to by the joint
committee for review of administrative rules, whichever is sooner.
If a rule under par. (b) is suspended or a proposed rule under s.
186.235 (21), 215.02 (18) or 220.04 (8) is objected to by the joint
committee for review of administrative rules, any person may
complete any transaction entered into or committed to in reliance
on that rule and shall have 45 days to discontinue other activity
undertaken in reliance on that rule.
(e) An agency that promulgates a rule under this subsection
shall do all of the following:
1d. Prepare a statement of the scope of the proposed emer-
gency rule as provided in s. 227.135 (1), obtain approval of the
statement as provided in s. 227.135 (2), and send the statement to
the legislative reference bureau for publication in the register as
provided in s. 227.135 (3). If the agency changes the scope of a
proposed emergency rule as described in s. 227.135 (4), the
agency shall prepare and obtain approval of a revised statement
of the scope of the proposed emergency rule as provided in s.
227.135 (4). No state employee or official may perform any activity
in connection with the drafting of a proposed emergency rule
except for an activity necessary to prepare the statement of the
scope of the proposed emergency rule until the governor and the
individual or body with policy-making powers over the subject
matter of the proposed emergency rule approve the statement.
1g. Submit the proposed emergency rule in final draft form to
the governor for approval. The governor, in his or her discre-
mination, may approve or reject the proposed emergency rule. If the
governor approves a proposed emergency rule, the governor shall
provide the agency with a written notice of that approval. An
agency may not file an emergency rule with the legislative refer-
ence bureau as provided in s. 227.20 and an emergency rule may
not be published until the governor approves the emergency rule
in writing.
1m. Prepare a plain language analysis of the rule in the format
prescribed under s. 227.14 (2) and print the plain language analy-
sis with the rule when it is published.
2. Prepare a fiscal estimate for the rule in the format pre-
scribed under s. 227.14 (4), mail the fiscal estimate to each mem-
ber of the legislature, and send a copy of the fiscal estimate to the
legislative reference bureau in an electronic format approved by
the legislative reference bureau, not later than 10 days after the
date on which the rule is published.
(2) EXTENSION. (a) At the request of an agency, the joint com-
mittee for review of administrative rules may, at any time prior to
the expiration date of a rule promulgated under sub. (1) (a), extend
the effective period of the emergency rule or part of the emergency
rule for a period specified by the committee not to exceed 60 days.
Any number of extensions may be granted under this paragraph,
but the total period for all extensions may not exceed 120 days.

(1) (c) 1. (a) An agency shall file a rule promulgated under sub. (1) (a), extend
the effective period of the emergency rule or part of the emergency
rule for a period specified by the committee not to exceed 60 days.
Any number of extensions may be granted under this paragraph,
but the total period for all extensions may not exceed 120 days.

(1) (c) 2. Whenever the committee extends an emergency rule or part
of an emergency rule under par. (a), it shall file a statement of its
action with the agency promulgating the emergency rule and the
legislative reference bureau. The statement shall identify the spe-
cific emergency rule or part of an emergency rule to which it
relates.
(3) FILING. An agency shall file a rule promulgated under sub.
(1) as provided in s. 227.20, shall mail a copy to the chief clerk of
each house and to each member of the legislature at the time that
the rule is filed and shall take any other step it considers feasible
to make the rule known to persons who will be affected by it. The
legislative reference bureau shall insert in the notice section of
each issue of the register a brief description of each rule under sub. (1) that is currently in effect, and a copy of the rule and fiscal estimate. Each copy, notice or description of a rule promulgated under sub. (1) (a) shall be accompanied by a statement of the emergency finding by the agency or by a statement that the rule is promulgated at the direction of the joint committee for review of administrative rules under s. 227.26 (2) (b).

(3m) Review by the small business regulatory review board. On the same day that the agency files a rule under sub. (3) that may have an economic impact on small businesses, as defined in s. 227.114 (1), the agency shall submit a copy of the rule to the small business regulatory review board. The board may use cost-benefit analysis to determine the fiscal impact of the emergency rule on small businesses and shall determine whether the emergency rule will have a significant economic impact on a substantial number of small businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14 (2m). If the board determines that the emergency rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board’s decision. If the board determines that the emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency and to the legislative council staff suggested changes in the emergency rule to minimize the economic impact of the emergency rule. If the board determines that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board shall notify the agency of that determination and ask the agency to comply with any of those provisions. In addition, the board may submit other suggested changes in the proposed rule to the agency and may include a request that the agency do any of the following:

(a) Explain how the agency has responded to comments received from small businesses regarding the emergency rule.

(b) Verify that the emergency rule does not conflict with, overlap, or duplicate other rules or federal regulations.

(4) Public hearing. Notwithstanding sub. (1) (a) and (b), an agency shall hold a public hearing within 45 days after it promulgates a rule under sub. (1). If within that 45-day period the agency submits to the legislative council staff under s. 227.15 a proposed rule corresponding to the rule under sub. (1), it shall hold a public hearing on both rules within 90 days after promulgation of the rule under sub. (1), or within 30 days after the agency receives the report on the proposed rule prepared by the legislative council under s. 227.15 (2), whichever occurs later.


The effectiveness of an emergency rule may not be extended beyond the initial effective period by simply retitling it. 62 Atty Gen. 365.

227.25 Legislative reference bureau. (1) The legislative reference bureau shall, in cooperation with the legislative council staff under s. 227.15 (7), prepare a manual informing agencies about the form, style and placement of rules in the code.

(2) The legislative reference bureau shall, upon request, furnish an agency with advice and assistance on the form and mechanics of rule drafting.

(3) An agency may request an advance commitment as to the title of numbering of a proposed rule by submitting a copy of the proposed rule indicating the requested title and numbering to the legislative reference bureau prior to filing. As soon as possible after that, the legislative reference bureau shall either approve the request or inform the agency of any change necessary to preserve uniformity in the code.

(4) The legislative reference bureau may, prior to publication, edit the analysis of a proposed rule and any other material submitted for publication in the code and register, may refer to the fact that those materials are on file or may eliminate them and any reference to them in the code and register if they do not appreciably add to an understanding of the rule. The legislative reference bureau shall submit the edited version of any material to the agency for its comments prior to publication.


227.26 Legislative review after promulgation; joint committee for review of administrative rules. (1) Definition. In this section, “rule” means all or any part of a rule which has taken effect as provided under s. 227.22 (2).

(2) Review of rules by committee. (a) Purpose. The joint committee for review of administrative rules shall promote adequate and proper rules, statements of general policy and interpretations of statutes by agencies and an understanding upon the part of the public respecting the rules, statements and interpretations.

(b) Requirement for promulgation. If the committee determines that a statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule under s. 227.24 (1) (a) within 30 days after the committee’s action.

(c) Public hearing. The committee shall hold a public hearing to investigate any complaint with respect to a rule if it considers the complaint meritorious and worthy of attention.

(d) Temporary suspension of rules. The committee may suspend any rule by a majority vote of a quorum of the committee. A rule may be suspended only on the basis of testimony in relation to that rule received at a public hearing and only for one or more of the reasons specified under s. 227.19 (4) (d).

(e) Notice. When the committee suspends a rule, it shall publish a class 1 notice, under ch. 985, of the suspension in the official state newspaper and give any other notice it considers appropriate.

(f) Introduction of bills. If any rule is suspended, the committee shall, within 30 days after the suspension, meet and take executive action regarding the introduction, in each house of the legislature, of a bill to support the suspension. The committee shall introduce the bills within 5 working days after taking executive action in favor of introduction of the bills unless the bills cannot be introduced during this time period under the joint rules of the legislature.

(g) Committee report required. No bill required by this subsection may be considered by the legislature until the committee submits a written report on the proposed bill. The report shall be printed as an appendix to the bills introduced under par. (f). The report shall contain all of the following:

1. An explanation of the issue regarding the suspended rule and the factual situation out of which the issue arose.

2. Arguments presented for and against the suspension action at the public hearing held under par. (e).

3. A statement of the action taken by the committee regarding the rule.

4. A statement and analysis of the grounds upon which the committee relies for suspending the rule.

(h) Legislative procedure. Upon the introduction of bills by the committee under this subsection, the presiding officer of each house of the legislature shall refer the bill introduced in that house to the appropriate committee, to the calendar scheduling committee or directly to the calendar. If the committee to which a bill is referred makes no report within 30 days after referral, the bill shall be considered reported without recommendation. No later than 40 days after referral, or as soon thereafter as is possible if the legislature is not in a floor period within 40 days after referral, the bills shall be placed on the calendar of each house of the legislature according to its rule governing the placement of proposals on the calendar. A bill introduced under this subsection which is received in the 2nd house shall be referred, reported and placed on the calendar in the same manner as an original bill introduced under this subsection.

(i) Timely introduction of bills; effect. If both bills required under this subsection are defeated, or fail to be enacted in any other manner, the rule remains in effect and the committee may
not suspend it again. If either bill becomes law, the rule is repealed and may not be promulgated again unless a subsequent law specifically authorizes such action. This paragraph applies to bills that are introduced on or after the day specified under s. 13.02 (1) for the legislature to convene and before February 1 of an even-numbered year.

(j) Late introduction of bills; effect. If the bills required under par. (i) are introduced on or after February 1 of an even-numbered year and before the next regular session of the legislature commences, as provided under s. 13.02 (2), or if the bills cannot be introduced during this time period under the joint rules of the legislature, the chair of either house adversely disposes of either bill, the committee shall introduce the bills on the first day of the next regular session of the legislature. If the committee is required to introduce the bills on the first day of the next regular session, the rule to which the bills pertain remains suspended except as provided in par. (i). If either house adversely disposes of either bill, the rule remains in effect and the committee may not suspend it again. In this paragraph, “adversely disposes of” has the meaning given under s. 227.19 (5) (g).

(k) Biennial report. The committee shall submit a biennial report of its activities to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), and to the governor and include recommendations.

(L) Emergency rules. If the committee suspends an emergency rule under this section, the agency may not submit to the legislature under s. 227.19 (2) the substance of the emergency rule as a proposed permanent rule during the time the emergency rule is suspended.

(3) Public hearings by state agencies. By a majority vote of a quorum of the committee, the committee may require any agency to hold a public hearing in respect to recommendations made under sub. (2) and to report its action to the committee within the time specified by the committee. The agency shall publish a class 1 notice, under ch. 985, of the hearing in the official state newspaper and give any other notice which the committee directs. The hearing shall be conducted in accordance with s. 227.18 and shall be held not more than 60 days after receipt of notice of the requirement.

History: 1985 a. 182 ss. 1, 3, 50; 1987 a. 186; 2005 a. 249.

Rule suspension under sub. (2) (d) does not violate the separation of powers doctrine.

Martinez v. DILHR, 165 Wis. 2d 687, 487 N.W.2d 582 (1992).

A collective bargaining agreement between the regents and the teaching assistants currently employs the various forms of notice available that best fit the particular circumstances.


In giving notice of public hearings held under sub. (2), the committee should currently employ the various forms of notice available that best fit the particular circumstances.


If an administrative rule is properly adopted and is within the power of the legislature to delegate there is no material difference between it and a law. No law, including a valid rule can be revoked by a joint resolution of the legislature as such a resolution deprives the executive its power to veto an act of the legislature. 63 Atty. Gen. 159.


227.265 Repeal or modification of rules. If a bill to repeal or modify a rule is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply. Instead, the legislative reference bureau shall publish the repeal or modification in the Wisconsin administrative code and register as required under s. 35.93, and the repeal or modification shall take effect as provided in s. 227.22.


227.27 Construction of administrative rules. (1) In construing rules, ss. 990.001, 990.01, 990.03 (1), (2) and (4), 990.04 and 990.06 apply in the same manner in which they apply to statutes, except that ss. 990.001 and 990.01 do not apply if the construction would produce a result that is inconsistent with the manifest intent of the agency.

(2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau under s. 227.20 or modified under s. 227.265, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.


227.30 Review of administrative rules or guidelines. (1) The small business regulatory review board may review the rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules and to the agency.

(2) When reviewing the report, the joint committee for review of administrative rules shall consider all of the following:

(a) The continued need for the rule or guideline.

(b) The nature of the complaints and comments received from the public regarding the rule or guideline.

(c) The complexity of the rule or guideline.

(d) The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.

(e) The length of time since the rule or guideline has been evaluated.

(f) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.

(3) The joint committee for review of administrative rules may refer the report regarding the rule or guideline to the presiding officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. 227.26.


SUBCHAPTER III

ADMINISTRATIVE ACTIONS AND JUDICIAL REVIEW

Cross-reference: See also ch. NR 2, Wis. adm. code.

227.40 Declaratory judgment proceedings. (1) Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The time or other agency whose rule is involved shall be the party defendant. The summons in the action shall be served as provided in s. 801.11 (3) and by delivering a copy to that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency. The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question.

(2) The validity of a rule may be determined in any of the following judicial proceedings when material therein:

(a) Any civil proceeding by the state or any officer or agency thereof to enjoin a statute or to recover thereunder, provided such proceeding is not based upon a matter as to which the opposing party is accorded an administrative review or a judicial review by other provisions of the statutes and such opposing party has failed to exercise such right to review so accorded.
shall publish a notice of that determination in the Wisconsin administrative register under s. 35.93 (2) and insert an annotation of that determination in the Wisconsin administrative code under s. 13.92 (4) (a).


The plaintiff could not bring a declaratory judgment action under sub. (1) since it could not establish the validity of a rule, an action brought against the plaintiff under sub. (2).

Phillips Plastics Corp. v. DNR, 98 Wis. 2d 524, 297 N.W.2d 69 (Ct. App. 1980).

Pleading requirements for challenging administrative rules are established. The record for judicial review and the scope of judicial review are discussed. Liberty Homes, Inc. v. DILHR, 136 Wis. 2d 368, 401 N.W.2d 805 (1987).

A failure to comply with this section prevented the trial court from acquiring jurisdiction. Harris v. Revitz, 142 Wis. 2d 82, 417 N.W.2d 30 (Ct. App. 1987).

Under sub. (5), the plaintiff must serve JCRAR within 60 days of filing, pursuant to s. 893.02. Richards v. Young, 150 Wis. 2d 549, 441 N.W.2d 742 (1989).

A challenge to a policy on the basis that it is actually a rule is to be construed as a challenge to a validity of a rule, and the requirements of this section do apply. Because the challenge falls under this section, the petitioner was required to serve the Joint Committee for Review of Administrative Rules with a copy of her petition. Petitioner failed to do so, the court lacked competency to review the issue. Mata v. Department of Children and Families, 2014 WI App 69, 354 Wis. 2d 486, 849 N.W.2d 908, 13–2013.

Even without the statutory presumption in s. 227.20 (3), the party challenging the validity of the rules has the burden of proving the invalidity of the rules. Wisconsin Realtors Association v. Public Service Commission of Wisconsin, 2015 WI 63, 363 Wis. 2d 430, 867 N.W.2d 364 13–1407.


The standard of review of administrative rules in Wisconsin. Zabrowski. 1982 WLR 691.

227.41 Declaratory rulings. (1) Except as provided in sub. (5), any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. Full opportunity for hearing shall be afforded to interested parties. A declaratory ruling shall bind the agency and all parties to the proceedings on the statement of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions.

(2) Petitions for declaratory rulings shall conform to the following requirements:

(a) The petition shall be in writing and its caption shall include the name of the agency and a reference to the nature of the petition.

(b) The petition shall contain a reference to the rule or statute with respect to which the declaratory ruling is requested, a concise statement of facts describing the situation as to which the declaratory ruling is requested, the reasons for the requested ruling, and the names and addresses of persons other than the petitioner, if any, upon whom it is sought to make the declaratory ruling binding.

(c) The petition shall be signed by one or more persons, with each signer’s address set forth opposite the signer’s name, and shall be verified by at least one of the signers. If a person signs on behalf of a corporation, limited liability company or association, that fact also shall be indicated opposite that person’s name.

(3) Except as provided in sub. (5) (b), the petition shall be filed with the administrative head of the agency or with a member of the agency’s policy board.

(4) Except as provided in sub. (5) (c), within a reasonable time after receipt of a petition pursuant to this section, an agency shall either deny the petition in writing or schedule the matter for hear-
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This section does not provide a method for review of a determination already made by the agency, but only a method for requesting an agency to make a determination. Therefore, this section could not be used by prisoners to challenge the department of corrections' dismissal of their complaint under the inmate complaint review system. Aiello v. Litscher, 104 F. Supp. 2d 1068 (2000).

227.42 Right to hearing. (1) In addition to any other right provided by law, any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:

(a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;

(b) There is no evidence of legislative intent that the interest is not to be protected;

(c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and

(d) There is a dispute of material fact.

(2) Any denial of a request for a hearing shall be in writing, shall state the reasons for denial, and is an order reviewable under this chapter. If the agency does not enter an order disposing of the request for hearing within 20 days from the date of filing, the request shall be deemed denied as of the end of the 20–day period.

(3) This section does not apply to rule–making proceedings or rehearings, or to actions where hearings at the discretion of the agency are expressly authorized by law.

(4) This section does not apply if a hearing on the matter was conducted as a part of a hearing under s. 293.43.

(5) Except as provided under s. 289.27 (1), this section does not apply to any part of the process for approving a feasibility report, plan of operation or license under subch. III of ch. 289 or ch. 374; s. 289.23, 291.25, 291.29 or 291.31, any decision by the department of natural resources relating to the environmental impact of a proposed action under ch. 289 or ss. 292.31 and 292.35, or any part of the process of negotiation and arbitration under s. 289.33.

(6) This section does not apply to a decision issued or a hearing conducted under s. 291.87.

History:


A person who satisfies the conditions under sub. (1) is entitled to a hearing whether or not that person has any “other right provided by law.” Milwaukee Metropolitan Sewerage District v. DNR, 126 Wis. 2d 649, 375 N.W.2d 649 (1985).

An applicant denied a racetrack license had a right to a contested case hearing. Metropolitan Greyhound Management Corp. v. Wisconsin Racing Board, 157 Wis. 2d 233, 458 N.W.2d 602 (Ct. App. 1990).

Sub. (1) does not grant the right to a contested case hearing regarding the need for an environmental impact statement. North Lake Management District v. DNR, 182 Wis. 2d 500, 513 N.W.2d 703 (Ct. App. 1993).

Sub. (1) (d) provides authority for agencies to develop appropriate summary disposition procedures if there are no disputes of material fact. Balee v. Wisconsin Personnel Commission, 223 Wis. 2d 739, 589 N.W.2d 418 (Ct. App. 1998), 98–1432.

When an AJ’s decision did not provide notice of the 30–day time period under s. 227.53 (1) (a) 2. for petitioning for judicial review in a contested case, the 6–month default limitation adopted under Hedrich v. Board of Regents, 2003 WI App. 228, applied. Habermehl Electric, Inc. v. DOT, 2003 WI App 39, 260 Wis. 2d 466, 659 N.W.2d 463, 02–1573.

Sub. (3) does not provide that a single factual dispute related to one issue entitles the party to a contested case hearing on every issue raised by the party. The only reasonable interpretation of sub. (1) is that a petitioner is entitled to a contested case hearing only on those specific issues that involve disputes of material fact. Hause–Hardie v. Department of Natural Resources, 2014 WI App 103, 357 Wis. 2d 442, 855 N.W.2d 443, 13–2827.

Milwaukee Metropolitan Sewerage District v. DNR: Expanding the scope of state agency actions covered by contested case hearings. 1986 WLR 963.

227.43 Division of hearings and appeals. (1) The administrator of the division of hearings and appeals in the department of administration shall:

(a) Serve as the appointing authority of all hearing examiners under s. 230.06.

(b) Assign a hearing examiner to preside over any hearing of a contested case which is required to be conducted by the department of natural resources and which is not conducted by the secretary of natural resources.
(bd) Assign a hearing examiner to preside over any hearing of a contested case which is referred by the state superintendent under s. 118.134 (1).

(bg) Assign a hearing examiner to preside over any hearing or review under ss. 84.30 (18), 84.305, 84.31 (6) (a), 85.013 (1), 86.073 (3), 86.16 (5), 86.195 (9) (b), 86.32 (1), 101.935 (2) (b), 101.951 (7) (a) and (b), 114.134 (4) (b), 114.135 (9), 114.20 (19), 175.05 (4) (b), 194.145 (1), 194.46, 218.0114 (7) (d) and (12) (b), 218.0116 (2), (4), (7) (a), (8) (a) and (d), 194.181 (3), 218.117 (7) (a) and (b), 218.22 (4) (a) and (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a) and (b), 341.09 (2m) (d), 342.26, 343.69, 348.105 (5) (h), and 348.25 (9).

(bm) Assign a hearing examiner to preside over any hearing or review of a worker’s compensation claim or other dispute under ch. 102.

(br) Assign a hearing examiner to preside over any hearing of a contested case that is required to be conducted by the department of health services and that is not conducted by the secretary of health services.

(bu) Assign a hearing examiner to preside over any hearing of a contested case that is required to be conducted by the department of children and families under ch. 48 or subch. III of ch. 49 and that is not conducted by the secretary of children and families.

(b) The department of transportation shall notify the division of hearings and appeals of every pending hearing to which the administrator of the division is required to assign a hearing examiner under sub. (1) (bd) after the department of children and families is notified that a hearing on the matter is required.

(3) (a) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of natural resources by a hearing examiner under this section. The fee shall cover the total cost of the services.

(b) The department of transportation of hearings and appeals may set the fees to be charged for any services rendered to the department of transportation by a hearing examiner under this section. The fee shall cover the total cost of the services.

(bm) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of public instruction by a hearing examiner under this section. The fee shall cover the total cost of the services.

(br) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of health services by a hearing examiner under this section in a manner consistent with a federally approved allocation methodology. The fees shall cover the total cost of the services.

(d) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of children and families by a hearing examiner under this section in a manner consistent with a federally approved allocation methodology. The fees shall cover the total cost of the services.

(c) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of workforce development by a hearing examiner under this section. The fees shall cover the total cost of the services.

(e) The agency contracting out for contested case hearing services under sub. (1m) shall pay all costs of the services of a hearing examiner assigned to the department under sub. (1) (b) according to the fees set under sub. (3) (b).

(f) The agency contracting out for contested case hearing services under sub. (1m) shall pay all costs of the services of a hearing examiner assigned to the department under sub. (1) (b) according to the fees set under sub. (3) (b).

(g) The department of children and families shall pay all costs of the services of a hearing examiner, including support services, assigned under sub. (1) (bd), according to the fees set under sub. (3) (d).

(h) The agency contracting out for contested case hearing services under sub. (1m) shall pay all costs of the services of a hearing examiner, including support services, assigned under sub. (1m), according to the fees set under sub. (3) (e).

Cross-reference: See also HA, Wis. adm. code.
of an emergency, reasonable notice shall consist of mailing notice to known interested parties at least 10 days prior to the hearing.

(2) The notice shall include:

(a) A statement of the time, place, and nature of the hearing, including whether the case is a class 1, 2 or 3 proceeding.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held, and, in the case of a class 2 proceeding, a reference to the particular statutes and rules involved.

(c) A short and plain statement of the matters asserted. If the matters cannot be stated with specificity at the time the notice is served, the notice may be limited to a statement of the issues involved.

(d) If the subject of the hearing is a decision of the department of natural resources or the department of transportation, the name and title of the person who will conduct the hearing.

(2m) Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person’s request, be admitted as a party.

(3) Opportunity shall be afforded all parties to present evidence and to rebut or offer countervailing evidence.

(4) (a) In any action to be set for hearing, the agency or hearing examiner may direct the parties to appear before it for a conference to consider:

1. The clarification of issues.

2. The necessity or desirability of amendments to the pleadings.

3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

4. The limitation of the number of witnesses.

5. Such other matters as may aid in the disposition of the action.

(b) The agency or hearing examiner presiding at a conference under this subsection shall make a memorandum for the record which summarizes the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of the parties. Such memorandum shall control the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. In any proceeding in which a hearing is required by law, if there is no such hearing, the agency or hearing examiner shall record in writing the reason why no such hearing was held, and shall make copies available to interested persons.

(6) The record in a contested case shall include:

(a) All applications, pleadings, motions, intermediate rulings and exhibits and appendices thereto.

(b) Evidence received or considered, stipulations and admissions.

(c) A statement of matters officially noticed.

(d) Questions and offers of proof, objections, and rulings thereon.

(e) Any proposed findings or decisions and exceptions.

(f) Any decision, opinion or report by the agency or hearing examiner.

(7) All staff memoranda and staff data, not admitted as evidence in a contested case, which are submitted to the hearing examiner or officials of the agency in connection with their consideration of the case, are not part of the official record but shall be made a part of the file and shall be served on all parties. Any party may, within 10 days of service of such memorandum or data, submit comments thereon to the hearing examiner or officials and such comments shall also be served on all parties and placed in the file.

(8) A stenographic, electronic or other record of oral proceedings shall be made in any class 2 or class 3 proceeding and in any class 1 proceeding when requested by a party. Each agency may establish rules relating to the transcription of the record into a written transcript and the providing of free copies of the written transcript. Rules may require a purpose for transcription which is deemed by the agency to be reasonable, such as appeal, and if this test is met to the satisfaction of the agency, the record shall be transcribed at the agency’s expense, except that in preparing the record for judicial review of a decision that was made in an appeal under s. 227.47 (2) or in an arbitration proceeding under s. 292.63 (6h) or 230.44 (4) (b) the record shall be transcribed at the expense of the party petitioning for judicial review. Rules may require a showing of impeachability or financial need as a basis for providing a free copy of the transcript, otherwise a reasonable compensatory fee may be charged. If any agency does not promulgate such rules, then it must transcribe the record and provide free copies of written transcripts upon request. In any event, an agency shall not refuse to provide a written transcript if the person making the request pays a reasonable compensatory fee for the transcription and for the copy. This subsection does not apply where a transcript fee is specifically provided by law.

(9) The factual basis of the decision shall be solely the evidence and matters officially noticed.


Cross-reference: See also ch. HA 1, Wis. adm. code.
be afforded adequate opportunity to rebut or offer countervailing evidence.

(3) An agency or hearing examiner may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.

(4) An agency or hearing examiner shall take official notice of all rules which have been published in the Wisconsin administrative code or register.

(5) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(6) A party may conduct cross-examinations reasonably required for a full and true disclosure of the facts.

(6m) A party’s attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding.

(7) In any class 2 proceeding, each party shall have the right, prior to the date set for hearing, to take and preserve evidence as provided in ch. 804. Upon motion by a party or by the person from whom discovery is sought in any class 2 proceeding, and for good cause shown, the hearing examiner may make any order in accordance with s. 804.01 which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. In any class 1 or class 3 proceeding, an agency may by rule permit the taking and preservation of evidence, but in every such proceeding the taking and preservation of evidence shall be permitted with respect to a witness:

(a) Who is beyond reach of the subpoena of the agency or hearing examiner;

(b) Who is about to go out of the state, not intending to return in time for the hearing;

(c) Who is so sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing; or

(d) Who is a member of the legislature, if any committee of the same or the house of which the witness is a member is in session, provided the witness waives his or her privilege.


If there is evidence that a rule promulgated by an administrative agency is founded on a particular source, it is reasonable to resort to the source to interpret the rule, but it is the course of reliance on the source in the uniform administrative interpretation of the rule that gives the interpretation validity and not the source itself. Employers Mutual Liability Insurance Co. v. DILHR, 62 Wis. 2d 327, 214 N.W.2d 587 (1974).

Admission of evidence by an administrative agency is a matter of discretion. Stein v. WI Psychology Examining Board, 2003 WI App 147, 265 Wis. 2d 781, 668 N.W.2d 112, 2007-327.

This section requires very relaxed rules of evidence. A similar relaxation of the statutory rules of evidence is required as to documents. Sub. (5) does not require certified copies of medical records. Rutherford v. Labor & Industry Review Commission, 2008 WI App 66, 309 Wis. 2d 498, 752 N.W.2d 897, 06-3110.

227.46 Hearing examiners; examination of evidence by agency. (1) Except as provided under s. 227.43 (1), an agency may designate an official of the agency or an employee on its staff or borrowed from another agency under s. 20.901 or 230.047 as a hearing examiner to preside over any contested case. Subject to rules of the agency, examiners presiding at hearings may:

(a) Administer oaths and affirmations.

(b) Issue subpoenas authorized by law and enforce subpoenas under s. 885.12.

(c) Rule on offers of proof and receive relevant evidence.

(d) Take depositions or have depositions taken when permitted by law.

(e) Regulate the course of the hearing.

(f) Hold conferences for the settlement or simplification of the issues by consent of the parties.

(g) Dispose of procedural requests or similar matters.

(h) Make or recommend findings of fact, conclusions of law and decisions to the extent permitted by law.

(i) Take other action authorized by agency rule consistent with this chapter.

(2) Except as provided in sub. (2m) and s. 227.47 (2), in any contested case which is a class 2 or class 3 proceeding, where a majority of the officials of the agency who are to render the final decision are not present for the hearing, the hearing examiner presiding at the hearing shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case. The proposed decision shall be a part of the record and shall be served by the agency on all parties. Each party adversely affected by the proposed decision shall be given an opportunity to file objections to the proposed decision, briefly stating the reasons and authorities for each objection, and to argue with respect to them before the officials who are to participate in the decision. The agency may direct whether such argument shall be written or oral. If an agency’s decision varies in any respect from the decision of the hearing examiner, the agency’s decision shall include an explanation of the basis for each variance.

(2m) In any hearing or review assigned to a hearing examiner under s. 227.43 (1) (bg), the hearing examiner presiding at the hearing shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case. The proposed decision shall be a part of the record and shall be served by the division of hearings and appeals in the department of administration on all parties. Each party adversely affected by the proposed decision shall be given an opportunity to file objections to the proposed decision within 15 days, briefly stating the reasons and authorities for each objection, and to argue with respect to them before the administrator of the division of hearings and appeals. The administrator of the division of hearings and appeals may direct whether such argument shall be written or oral. If the decision of the administrator of the division of hearings and appeals varies in any respect from the decision of the hearing examiner, the decision of the administrator of the division of hearings and appeals shall include an explanation of the basis for each variance. The decision of the administrator of the division of hearings and appeals is a final decision of the agency subject to judicial review under s. 227.52. The department of transportation may petition for judicial review.

(3) With respect to contested cases except a hearing or review assigned to a hearing examiner under s. 227.43 (1) (bg), an agency may by rule or in a particular case may by order:

(a) Direct that the hearing examiner’s decision be the final decision of the agency;

(b) Except as provided in sub. (2) or (4), direct that the record be certified to it without an intervening proposed decision; or

(c) Direct that the procedure in sub. (2) be followed, except that in a class 1 proceeding both written and oral argument may be limited.

(4) Notwithstanding any other provision of this section, in any contested case, if a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposed decision is served upon the parties and an opportunity is afforded to each party adversely affected by the proposed decision to file objections and present briefs or oral argument to the officials who are to render the decision. Except as provided in s. 227.47 (2), the proposed decision shall contain a statement of the reasons therefor and of each issue of fact
or law necessary to the proposed decision, prepared by the hearing examiner or a person who has read the record. The parties by written stipulation may waive compliance with this subsection.

(5) In any class 2 proceeding, if the decision to file a complaint or otherwise commence a proceeding to impose a sanction or penalty is made by one or more of the officials of the agency, the hearing examiner shall not be an official of the agency and the procedure described in sub. (2) shall be followed.

(6) The functions of persons presiding at a hearing or participating in proposed or final decisions shall be performed in an impartial manner. A hearing examiner or agency official may at any time disqualify himself or herself. In class 2 and 3 proceedings, on the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a hearing examiner or official, the agency or hearing examiner shall determine the matter as part of the record and decision in the case.

(7) (a) Notwithstanding any other provision of law, the hearing examiner presiding at a hearing may order such protective measures as are necessary to protect the trade secrets of parties to the hearing.

(b) In this subsection, “trade secret” has the meaning specified in s. 134.90 (1) (c).

(8) If the hearing examiner assigned under s. 227.43 (1) (b) renders the final decision in a contested case and the decision is subject to judicial review under s. 227.52, the department of natural resources may petition for judicial review. If the hearing examiner assigned under s. 227.43 (1) (br) renders the final decision in a contested case and the decision is subject to judicial review under s. 227.52, the department of transportation may petition for judicial review.

History:
1973 c. 94 s. 3; 1975 c. 414; 1977 c. 196 s. 111; 1977 c. 277, 418, 447; 1979 c. 208; 1983 s. 189 s. 329 (2) 1985 s. 298; 1986 s. 182 ss. 33g, 57; 1985 s. 226; 1987 s. 227-46; 1987 a. 365; 1993 a. 16; 2007 a. 1.

An agency’s decision not to accept a hearing examiner’s order on grounds that alternate dispositions justified by the “seriousness of the facts” was insufficient. Henne v. Chiropractic Examining Board, 167 Wis. 2d 187, 481 N.W.2d 638 (Ct. App. 1992).

The agency, not the hearing examiner, is responsible for credibility determinations. When the agency reverses the examiner, the agency must state the basis for rejecting the findings and give the reason why it made its independent finding. It is a denial of due process if the agency makes a determination without benefit of the examiner’s findings, conclusions, and impressions of the testimony. Hakes v. LIRC, 187 Wis. 2d 582, 523 N.W.2d 155 (Ct. App. 1994).

An agency’s alteration of a hearing examiner’s finding of facts without conferring with the hearing examiner violated sub. (2) and rendered the decision procedurally defective. The altered findings, implicitly addressing the issue of the subject’s credibility, were inappropriate and did not fit the overall tentative opinion of the examiner. Henne v. Chiropractic Examining Board, 167 Wis. 2d 187, 481 N.W.2d 638 (Ct. App. 1992).

Under sub. (2), if the decision of the administrative agency varies in any respect from the examiner’s findings or conclusions, the agency is required to provide an explanation of the basis for each variance, but there is no requirement that the agency indulge in the elaborate procedures described in sub. (3). Each party has the opportunity to file objections to the proposed decision. The agency may direct whether such argument shall be written or oral. Daniels v. Chiropractic Examining Board, 2008 WI App 59, 309 Wis. 2d 485, 750 N.W.2d 951, 07-1072.

Sub. (5) requires the use of a hearing examiner if an examining board member participates in the decision to commence a proceeding against a licensee, but does not require such use if a board member is involved only in the investigation. 68 Atty. Gen. 52.

Discussion of circumstances under which hearing examiner has power to entertain motions to dismiss proceedings, 68 Atty. Gen. 30.

A witness subpoenaed under sub. (1) must attend a continued or postponed hearing and remain in attendance until excused. 68 Atty. Gen. 251.

227.47 Decisions. (1) Except as provided in sub. (2), every proposed or final decision of an agency or hearing examiner following a hearing and every final decision of an agency shall be in writing accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise and separate statement of the ultimate conclusions upon each material issue of fact without recital of evidence. Every proposed or final decision shall include a list of the names and addresses of all persons who appeared before the agency in the proceeding who are considered parties for purposes of review under s. 227.53. The agency shall by rule establish a procedure for determination of parties.

(2) Except as otherwise provided in this subsection, a proposed or final decision of the employment relations commission, hearing examiner or arbitrator concerning an appeal of the decision of the administrator of the division of personnel management in the department of administration made under s. 230.09 (2) (a) or (d) shall not be accompanied by findings of fact or conclusions of law. If within 30 days after the commission issues a decision in such an appeal either party files a petition for judicial review of the decision under s. 227.53 and files a written notice with the commission that the party has filed such a petition, the commission shall issue written findings of fact and conclusions of law within 90 days after receipt of the notice. The court shall stay the proceedings pending receipt of the findings and conclusions.

History:
1975 c. 414 s. 15; 1977 c. 418; 1979 c. 208; 1985 a. 182 ss. 33g, 57; Stats. 1985 s. 227-47; 1993 a. 16; 1991 c. 33 ss. 2376, 2377; 1996 a. 35.

Although its procedures are not subject to ch. 227, the finding of the City of Milwaukee Board of Fire and Police Commissioners was insufficient in failing to specify what particular wrongful acts the officers performed or why those acts constituted conduct unbecoming an officer under the circumstances, and in failing to make separate findings as to each officer, because in making its determination the board is required to state specific findings of fact and conclusions of law in the manner required of state agencies under this section. State ex rel. Hefferman v. Board, 247 Wis. 77, is overruled. Edmonds v. Board of Fire & Police Commrs. 66 Wis. 2d 337, 224 N.W.2d 875 (1975).

227.48 Service of decision. (1) Except as provided in s. 196.40, when a decision when made, signed, and filed, shall be served forthwith by personal delivery or mailing of a copy to each party to the proceedings or to the party’s attorney of record.

(2) Each decision shall include notice of any right of the parties to petition for rehearing and administrative or judicial review of adverse decisions, the time allowed for filing each petition and identification of the party to be named as respondent. No time period specified under s. 227.49 (1) for filing a petition for rehearing, under s. 227.53 (1) (a) for filing a petition for judicial review, or under any other section permitting administrative review of an agency decision begins to run until the agency has complied with this subsection.

History:
1975 c. 94 s. 3; 1975 c. 414 ss. 13, 17; Stats. 1975 s. 227-11; 1981 c. 378; 1985 a. 182 ss. 33m, 57; Stats. 1985 s. 227-48; 2011 a. 155.

Service of a decision is complete on the date of its mailing regardless of its receipt by the addressee. In re Proposed Incorporation of Pewaukee, 72 Wis. 2d 593, 241 N.W.2d 603 (1976).

 Formal notice under sub. (2) of the right to judicial review need be given only with a decision arising out of a contested case proceeding. Collins v. Policano, 231 Wis. 2d 420, 605 N.W.2d 260 (Ct. App. 1999), 99-0255.

227.483 Costs upon frivolous claims. (1) If a hearing examiner or the tax appeals commission finds, at any time during the proceeding, that an administrative hearing commenced or continued by a petitioner or a claim or defense used by a party is frivolous, the hearing examiner or the tax appeals commission shall award the successful party the costs and reasonable attorney fees that are directly attributable to responding to the frivolous petition, claim, or defense.

(2) If the costs and fees awarded under sub. (1) are awarded against the party other than a public agency, those costs may be assessed fully against either the party or the attorney representing the party or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(3) To find a petition for a hearing or a claim or defense to be frivolous under sub. (1), the hearing examiner must find at least one of the following:

(a) That the petition, claim, or defense was commenced, used, or continued in bad faith, solely for purposes of harassing or maliciously injuries another.

(b) That the party or the party’s attorney knew, or should have known, that the petition, claim, or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

(c) If the proceeding relates to mining for ferrous minerals, as defined in s. 295.41 (18), that the petition, claim, or defense was commenced, used, or continued primarily for the purpose of caus-
ing delay to an activity authorized under a license that is the sub-
ject of the hearing.


227.485 Costs to certain prevailing parties. (1) The legis-
lature intends that hearing examiners and courts in this state, when interpreting this section, be guided by federal case law, as of November 20, 1985, interpreting substantially similar provi-
sions under the federal equal access to justice act, 5 USC 504.

(2) In this section:

(a) “Hearing examiner” means the agency or hearing examiner
conducting the hearing.

(b) “Nonprofit corporation” has the meaning designated in s.
181.0103 (17).

(c) "Small business" means a business entity, including its
affiliates, which is independently owned and operated, and which
employs 25 or fewer full-time employees or which has gross
annual sales of less than $5,000,000.

(d) “Small nonprofit corporation” means a nonprofit corpora-
tion which employs fewer than 25 full-time employees.

(e) “State agency” does not include the citizens utility board.

(f) “Substantially justified” means having a reasonable basis
in law and fact.

(3) In any contested case in which an individual, a small non-
profit corporation or a small business is the prevailing party and
submits a motion for costs under this section, the hearing exam-
iner shall award the prevailing party the costs incurred in con-
nection with the contested case, unless the hearing examiner finds that
the state agency which is the losing party was substantially justi-
fi ed in taking its position or that special circumstances exist that
would make the award unjust.

(4) In determining the prevailing party in cases in which more
than one issue is contested, the examiner shall take into account
the relative importance of each issue. The examiner shall provide
for partial awards of costs under this section based on determina-
tions made under this subsection.

(5) If the hearing examiner awards costs under sub. (3), he or
she shall determine the costs under this subsection, except as mod-
ified under sub. (4). The decision on the merits of the case shall
be placed in a proposed decision and submitted under ss. 227.47
and 227.48. The prevailing party shall submit, within 30 days
after service of the proposed decision, to the hearing examiner and
to the state agency which is the losing party an itemized applica-
tion for fees and other expenses, including an itemized statement
from any attorney or expert witness representing or appearing on
behalf of the party stating the actual time expended and the rate at
which fees and other expenses were computed. The state agency
which is the losing party has 15 working days from the date of
receipt of the application to respond in writing to the hearing
examiner. The hearing examiner shall determine the amount of
costs using the criteria specified in s. 814.245 (5) and include an
order for payment of costs in the final decision.

(6) A final decision under sub. (5) is subject to judicial review
under s. 227.52. If the individual, small nonprofit corporation or
small business is the prevailing party in the proceeding for judicial
review, the court shall make the findings applicable under s.
814.245 and, if appropriate, award costs related to that proceeding
under s. 814.245, regardless of who petitions for judicial review.

(7) An individual is not eligible to recover costs under this sec-
tion if the person’s properly reported federal adjusted gross
income was $150,000 or more in each of the 3 calendar years or
covering fiscal years immediately prior to the commence-
ment of the case. This subsection applies whether the person files
the tax return individually or in combination with a spouse.

(8) If a state agency is ordered to pay costs under this section,
the costs shall be paid from the applicable appropriation under s.
20.865 (1) (a), (g) or (q).

(9) Each state agency that is ordered to pay costs under this
section or that recovers costs under sub. (10) shall submit a report
annually, as soon as is practicable after June 30, to the chief clerk
each house of the legislature, for distribution to the appropriate
standing committees under s. 13.172 (3), the number, nature and
amounts of the claims paid, the claims involved in the contested
case in which the costs were incurred, the costs recovered under
sub. (10) and any other relevant information to aid the legislature
in evaluating the effect of this section.

(10) If the examiner finds that the motion under sub. (3) is
frivolous, the examiner may award the state agency all reasonable
costs in responding to the motion. In order to find a motion to be
frivolous, the examiner must find one or more of the following:

(a) The motion was submitted in bad faith, solely for purposes
of harassing or maliciously injuring the state agency.

(b) The party or the party’s attorney knew, or should have
known, that the motion was without any reasonable basis in law
or equity and could not be supported by a good faith argument
for an extension, modification or reversal of existing law.

History: 1985 a. 52; Stats. 1985 s. 227.115; 1985 a. 182 ss. 33s, 57; 1985 a. 332
s. 253a; Stats. 1985 s. 227.485; 1987 a. 186 s. 27, 27s; 1997 a. 277; 2003 a. 145.

That the state loses a case does not justify the automatic imposition of costs and
fees. An award depends upon whether the state’s position had arguable merit.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or
review. Any person aggrieved by a final order may, within 20
days after service of the order, file a written petition for rehearing
which shall specify in detail the grounds for the relief sought and
supporting authorities. An agency may order a rehearing on its
own motion within 20 days after service of a final order. This
section does not apply to s. 17.025 (3) (e). No agency is required
to conduct more than one rehearing based on a petition for rehear-
ing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or
delay the effective date of the order, and the order shall take effect
on the date fixed by the agency and shall continue in effect unless
the petition is granted or until the order is superseded, modified,
or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to
reverse or modify the order, and which could not have been pre-
viously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all par-
ties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with
reference to the petition without a hearing, and shall dispose of
the petition within 30 days after it is filed. If the agency does not enter
an order disposing of the petition within the 30–day period, the
petition shall be deemed to have been denied as of the expiration
of the 30–day period.

(6) Upon granting a rehearing, the agency shall set the matter
for further proceedings as soon as practicable. Proceedings upon
rehearing shall conform as nearly may be to the proceedings in an
original hearing except as the agency may otherwise direct. If in
the agency’s judgment, after such rehearing it appears that the
original decision, order or determination is in any respect unlaw-
ful or unreasonable, the agency may reverse, change, modify or
suspend the same accordingly. Any decision, order or determina-
tion made after such rehearing reversing, changing, modifying or
suspending the original determination shall have the same force
and effect as an original decision, order or determination.

History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 139; 1979 c. 208; 1985 a. 182 s. 33t;
Stats. 1985 a. 227.49.

2015–16 Wisconsin Statutes updated through all Supreme Court and Controlled Substances Board Orders effective on or
before January 18, 2017. Published and certified under s. 35.18. Changes effective after January 18, 2017 are designated by
NOTES. (Published 1–18–17)
227.49 ADMINISTRATIVE PROCEDURE

This section does not require service of a petition for rehearing within 20 days of service of the order, only filing. DOR v. Hogan, 198 Wis. 2d 792, 542 N.W.2d 148 (Ct. App. 1995), 95–0438.

Filing of a petition for rehearing under sub. (1) is not accomplished upon its mailing. A petition is filed when it is physically delivered to and received by the relevant authority. Currier v. Wisconsin Department of Revenue, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520, 05–0622.

227.50 Ex parte communications in contested cases.

(1) Except as provided in par. (am), in a contested case, no ex parte communication relative to the merits or a threat or offer of reward shall be made, before a decision is rendered, to the hearing examiner or any other official or employee of the agency who is involved in the decision-making process, by any of the following:

1m. An official of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter. This subdivision does not apply to an advisory staff which does not participate in the proceeding.

2. A party to the proceeding, or any person who directly or indirectly would have a substantial interest in the proposed agency action or an authorized representative or counsel.

3. Any communication made to an agency in response to a request by the agency for information required in the ordinary course of its regulatory functions by any of the agencies.

4. In a contested case before the public service commission, an ex parte communication by or to any official or employee of the commission other than the hearing examiner, the chairperson, or a commissioner.

(2) A hearing examiner or other agency official or employee involved in the decision-making process who receives an ex parte communication in violation of sub. (1) shall place on the record of the pending matter the communication, if written, a memorandum stating the substance of the communication, if oral, all written responses to the communication and a memorandum stating the substance of all oral responses made, and also shall advise all parties that the material has been placed on the record; however, any writing or memorandum which would not be admissible into the record if presented at the hearing shall not be placed in the record, but notice of the substance or nature of the communication shall be given to all parties. Any party desiring to rebut the communication shall be allowed to do so, if the party requests the opportunity for rebuttal within 10 days after notice of the communication. The hearing examiner or agency official or employee may, if deeming it necessary to eliminate the effect of an ex parte communication received, withdraw from the proceeding, in which case a successor shall be assigned.

History: 1975 c. 25 s. 94; 1975 c. 414; 1977 c. 418; 1981 c. 79, 96, 391; 1983 a. 27, 122, 183, 538; 1985 a. 182 s. 33; Stats. 1985 s. 227.30; 2013 a. 28; 2015 a. 55.

The failure to notify the parties of the receipt of an ex parte communication was harmless error. Seebach v. PSC, 97 Wis. 2d 712, 295 N.W.2d 753 (Ct. App. 1980).

227.51 Licenses.

(1) When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally acted upon by the agency, and, if the application is denied or the terms of the new license are limited, until the last day for seeking review of the agency decision or a later date fixed by order of the reviewing court.

(3) Except as otherwise specifically provided by law, no revocation, suspension, amendment or withdrawal of any license is lawful unless the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. If an agency finds that public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined.

History: 1975 c. 414; 1985 a. 182 s. 33; Stats. 1985 s. 227.51.

Cross-reference: See also chs. SPS 1 and 2, Wis. adm. code.

An applicant denied a racetrack license had a right to a contested case hearing. Magnificent Greyhound Management Corp. v. Wisconsin Racing Board, 157 Wis. 2d 678, 460 N.W.2d 802 (Ct. App. 1990).

A change to the statutes or rules that might negatively affect a permit holder does not itself constitute a revocation for the purpose of this section. LeClair v. Natural Resources Board, 168 Wis. 2d 227, 483 N.W.2d 278 (1992).

Summary suspension of occupational licenses is discussed. 76 Atty. Gen. 110.

227.52 Judicial review; decisions reviewable.

Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided by law except as otherwise provided by law and except for the following:

1. Decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125.

2. Decisions of the department of employee trust funds.

3. Those decisions of the division of banking that are subject to review, prior to any judicial review, by the banking review board, and decisions of the division of banking relating to savings banks or savings and loan associations, but no other institutions subject to the jurisdiction of the division of banking.

4. Decisions of the office of credit unions.

5. Decisions of the chairperson of the elections commission or the chairperson’s designee.

6. Those decisions of the department of workforce development which are subject to review, prior to any judicial review, by the labor and industry review commission.


Cross-reference: See s. 50.03 (11) for review under subchapter I of chapter 50.

An order of the tax appeals commission refusing to dismiss proceedings for lack of jurisdiction was not appealable because the merits of the case were still pending. Patch v. DOR, 58 Wis. 2d 346, 306 N.W.2d 157 (1973).

1. Paragraphs (am) 1, 2, 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 27, 28, and 29 of s. 227.52 (am) (1) for standing to seek review of an administrative decision do not create separate and independent criteria, but both sections essentially require that to be a person aggrieved for standing purposes, one must have an interest recognized by law in the subject matter that is injuriously affected by the decision. Wisconsin’s Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1, 230 N.W.2d 243 (1975).

An order of the employment relations commission directing an election and determining the bargaining unit under s. 111.70 (4) (d) is not reviewable. West Allis v. WERC, 72 Wis. 2d 268, 240 N.W.2d 416 (1976).

An unconditional interim order by the public service commission fixing utility rates pending final determination was reviewable when no provision was made in the subject matter for the available remedies under ch. 227. Turkow v. DNR, 197 Wis. 2d 712, 545 N.W.2d 299 (1997).

The decision of the PSC not to investigate under ss. 196.28 and 196.29 (now ss. 227.52 and 227.53 (1) for standing to seek review of an administrative decision do not create separate and independent criteria, but both sections essentially require that to be a person aggrieved for standing purposes, one must have an interest recognized by law in the subject matter that is injuriously affected by the decision. Wisconsin’s Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1, 230 N.W.2d 243 (1975).

The division of hearings and appeals is not a line agency charged with the administration and enforcement of the statutes involved and does not have experience administering the underlying program. Unless the line agency has adopted DHA’s interpretation as its own, de novo review of a DHA decision is inappropriate. Baetner v. DHFS, 2003 WI App 90, 2003 WI App 90, 267 Wis. 2d 737 (1980).

A court order setting aside an administrative order and remanding the case to the administrative agency was appealable as of right. Bears v. DLHFR, 102 Wis. 2d 70, 306 N.W.2d 22 (1981).

Because an appointment to office was an administrative decision, a challenge of an appointment could only be made under this chapter. State ex rel. Frederick v. Cox, 111 Wis. 2d 646, 335 N.W.2d 603 (Ct. App. 1982).

A declaratory judgment action was improper when the plaintiff did not pursue any available remedies under ch. 227. Turkow v. DNR, 216 Wis. 2d 273, 576 N.W.2d 288 (Ct. App. 1998), 97–1149.

The division of hearings and appeals is not a line agency charged with the administration and enforcement of the statutes involved and does not have experience administering the underlying program. Unless the line agency has adopted DHA’s interpretation as its own, de novo review of a DHA decision is inappropriate. Baetner v. DHFS, 2003 WI App 90, 2003 WI App 90, 267 Wis. 2d 700, 603 N.W.2d 282, 01–0982.

Unlike factual questions, or questions with legal issues intertwined with factual determination, neither party bears any burden when the issue before the court is whether an administrative agency exceeded the scope of its powers in promulgating a regulation. The court examines the entire statute de novo to ascertain whether the statute grants express or implied authorization for the rule. Any reasonable doubt pertaining to an agency’s implied powers are resolved against the agency. Wisconsin
227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in ss. 108.227, 2003 a. 33, or 1979 c. 90, or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, any party desiring judicial review under this subdivision shall serve a copy of the petition for review of the decision as provided in this chapter and subject to the jurisdiction of the court to which the parties desire to transfer the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party’s attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency’s decision under s. 227.47 or the person’s attorney of record.

(3) The credit union review board, the office of credit unions.

(4) The savings institutions review board, the division of banking, except that if the petitioner is an agency, the proceedings shall be named respondent, as specified under par. (b) (d).

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party’s attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party’s attorney of record.

(d) Except in the case of the tax appeals commission, the banking review board, the credit union review board, and the savings institutions review board, the agency and all parties to the proceeding before it shall have the right to participate in the proceedings for review.

The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, any party desiring judicial review under this subdivision shall serve a copy of the petition for review of the decision as provided in this chapter and subject to the jurisdiction of the court to which the parties desire to transfer the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party’s attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency’s decision under s. 227.47 or the person’s attorney of record.

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Chapter 801 is inapplicable to judicial review proceedings. Oenemick v. DNR, 94 Wis. 2d 309, 287 N.W.2d 841 (Cl. App. 1979).

Service on a department rather than on a specific division within the department was insufficient notice under this section. Sunnysview Village v. DOA, 104 Wis. 2d 396, 311 N.W.2d 632 (1981).

When the petitioners lacked standing to seek review and the intervenors filed after the hearing, the intervenors could continue to press their claim. Fox v. DHSS, 112 Wis. 2d 514, 334 N.W.2d 532 (1983).

The test for determining whether a party has standing is: 1) whether the agency decision directly causes injury to the interest of the petitioner; and 2) whether the agency decision is recognized by law. Waste Management of Wisconsin v. DNR, 144 Wis. 2d 499, 424 N.W.2d 685 (1988).

Although it may not be able to state the case, a county has standing to bring a petition for injunctive relief, and the petition initiates a special proceeding rather than an action. Richland County v. DHSS, 146 Wis. 2d 271, 430 N.W.2d 374 (Cl. App. 1988).

Delivery of a petition to an agency attorney did not meet the requirements for service under sub. (1) (a) 1. Weissenel v. DHSS, 179 Wis. 2d 637, 508 N.W.2d 33 (Cl. App. 1993).

The time provisions under sub. (2) are mandatory, Wagner v. State Medical Examination Board, 181 Wis. 2d 633, 511 N.W.2d 874 (1994).

In the case of a ch. 227 petition for review, the petition commences the action rather than continuing it. As an attorney is not authorized to accept the service of process commencing an action, service of the petition general rather than the agency is insufficient to commence an action for review. Gimenez v. State Medical Examination Board, 229 Wis. 2d 312, 600 N.W.2d 28 (Cl. App. 1999), 98−1367.

Because parties to an agency proceeding have the right to participate in judicial review proceedings under the first sentence in sub. (1) (d), those parties are not part of the group referred to as “other interested persons” in the second sentence and therefore do not have standing to file a petition for permissive intervention. Under sub. (1) (d) the petition to intervene must be served on all parties to the judicial review at least 5 days before the hearing on the intervention petition. Citizens’ Utility Board v. PSC, 723 Wis. 2d 414, 671 N.W.2d 11−1831 (2004).

As a general matter, sub. (1) (a) 2. affords a petitioner 30 days from the date of service of the original adverse agency decision to file a petition for judicial review. The extension provided therein is a person aggrieved by the decision sought to be reviewed because it does not show the nature of the petitioner’s interest or state a ground for relief under s. 227.57 unless the petitioner has notice of the possibility of dismissal for the additional costs. The record may be typewritten or printed.

A Car, Inc. v. Department of Transportation, 2009 a. 28 05−3092, 715 N.W.2d 654 (Ct. App. 1979). Section 111.36 (3m) (c) [now s. 111.39 (5) (c)] shows a policy against opening Fair Employment proceedings more than one year after the commission’s final order; a court should not exceed 227.56 (7) (c) 3 to conform with that policy. Chicago & North Western Railroad v. LIRC, 91 Wis. 2d 462, 283 N.W.2d 603 (Cl. App. 1979).

A court may not find facts under sub. (1); the court may only receive evidence to determine whether to remand to the agency for further fact finding. State Public Intervenor v. DNR, 171 Wis. 2d 243, 490 N.W.2d 770 (Cl. App. 1992).

Substantial evidence is that quantity and quality of evidence that a reasonable person could accept as adequate to support a conclusion. Written hearsay medical reports are admissible as evidence. Properly admitted evidence may not necessarily constitute substantial evidence. Uncorroborated written hearsay medical reports alone that were controverted by in−person testimony did not constitute substantial evidence to support a board’s decision. Gehin v. Wisconsin Group Insurance Board, 2005 WI 16, 278 Wis. 2d 111, 692 N.W.2d 572, 03−0226.

Substantial evidence is the evidence which a court may find sufficient to support a jury’s verdict. Smith v. DHSS, 288 Wis. 2d 111, 725 N.W.2d 654, 05−2123.

The 30−day limitation period under sub. (1) (a) 2. is triggered only by s. 227.48 of the decision upon the parties, which occurs on the date the decision is mailed to the parties, not the various dates of receipt. Once the time limitation is triggered, strict compliance is required. Wisconsin Power & Light Co. v. PSC, 2006 WI App 221, 296 Wis. 2d 705, 725 N.W.2d 423, 05−3092.

227.54 Stay of proceedings. The institution of the proceeding for review shall not stay enforcement of the agency decision. The reviewing court may order a stay upon such terms as it deems proper, except as otherwise provided in ss. 196.43, 253.06, and 448.02 (9).

History: 1983 a. 27; 1985 a. 182 s. 39; Stats. 1985 s. 227.54; 1987 a. 5; 1997 a. 27, 311; 2007 a. 20, 196; 2009 a. 28.

227.55 Record on review. Within 30 days after service of the petition for review upon the agency, or within such further time as the agency may allow, the petition shall transmitt the reviewing court the original or a certified copy of the entire record of the proceedings in which the decision under review was made, including all pleadings, notices, testimony, exhibits, findings, decisions, orders and exceptions, therein; but by stipulation of all parties to the review proceedings the record may be shortened by eliminating any portion thereof. Any party, other than the agency, referring to the record in the petition to limit the record may be taxed by the court for the additional costs. The record may be typewritten or printed. The exhibits may be typewritten, photostated or otherwise reproduced, or, upon motion of any party, or by order of the court, the original exhibits shall accompany the record. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

History: 1985 a. 182 s. 41; Stats. 1985 s. 227.55.
law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

(6) If the agency’s action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency’s action depends on any finding of fact that is not supported by substantial evidence in the record.

(7) If the agency’s action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the action is a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency’s responsibility.

(8) The court shall reverse or remand the case to the agency if it finds that the agency’s exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(9) The court’s decision shall provide the agency with an appropriate and specific direction of the original form of the petition. If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(10) Subject to sub. (11), upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it.

(11) Upon review of an agency action or decision affecting a property owner’s use of the property owner’s property, the court shall accord no deference to the agency’s interpretation of law if the agency action or decision restricts the property owner’s free use of the property owner’s property.

NOTE: Sub. (11) was created as sub. (11) (a) by 2015 Wis. Act 391 and remodeled to sub. (11) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(12) The right of the appellant to challenge the constitutionality of any act or of its application to the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit, or privilege under such act.

History: 1973 c. 94 s. 3; 1975 c. 414; 1979 c. 208; 1985 a. 182 s. 41; Stats. 1985 s. 227.97 (5)., 13.92 (1) (bm) 2.

Under sub. (6), a finding of fact is supported if reasonable minds could arrive at the same conclusion. Westring v. James, 71 Wis 2d 462, 238 N.W.2d 695 (1976).

A reviewing court, in dealing with a determination or judgment that an administrative agency is alone authorized to make, must judge the propriety of the action solely on the grounds involved by the agency with sufficient clarity. Stas v. Milwaukee County Civil Service Commission 75 Wis 2d 465, 249 N.W.2d 764 (1977).

Summary judgment procedure is not authorized in proceedings for judicial review under this chapter. Wis. Environmental Decade v. PSC, 79 Wis 2d 161, 255 N.W.2d 917 (1977).

“Discretion” means a process of reasoning, not decision-making, based on facts in the record or reasonably inferred from the record, and a conclusion based on a logical rationale founded on proper legal standards. Reindinger v. Optometry Examining Board, 81 Wis 2d 266, 260 N.W.2d 270 (1977).

An agency determination that an environmental impact statement was adequately prepared is reviewed under s. 227.20 [now 227.57]. The trial court had no jurisdiction to hear an action by the owner seeking a declaration that structure was a permitted structure if all the necessary facts are of record and the issue is a legal one of great importance. Hortonville Dist. v. Hortonville Ed. Asso. 127 Wis. 2d 234, 493 N.W.2d 692 (1992).

A reviewing court, in dealing with a determination or judgment that an administrative agency has ruled on the precise, or even substantially similar, facts before, only the particular statutory scheme. ITW Deltar v. LIRC, 226 Wis. 2d 11, 593 N.W.2d 908 (App. 1999), 98–2919.

Default judgment is incompatible with the scope of review of a ch. 227 proceeding. Wagner v. State Medical Examining Board, 181 Wis. 2d 633, 511 N.W.2d 874 (1994).

A circuit judge has inherent authority to order briefs in a case under this section and to disqualify a party as a matter of law. Lee v. LIRC, 202 Wis. 2d 558, 550 N.W.2d 534 (App. 1996), 95–0797.

Due novio of an administrative decision is appropriate only if the issue is one of first impression or the agency’s position has been so inconsistent as to be of no assistance. An agency need not have considered identical or even substantially similar facts before, only the particular statutory scheme. ITW Deltar v. LIRC, 226 Wis. 2d 11, 593 N.W.2d 908 (App. 1999), 98–2919.

On review, there are three levels of deference that may be given to an administrative agency’s conclusions of law and statutory interpretations, depending on the agency’s experience, technical competence, and knowledge in regard to the question presented. Despite great weight, due weight, and de novo. Kolody v. County Commission, 172 Wis. 2d 234, 493 N.W.2d 692 (1992).

Stipulations enabling rule promulgation are strictly construed to preclude the exercise of any authority not expressly granted. In re promulgating a rule is reviewed de novo by a reviewing court. State Public Intervenor v. DNR, 177 Wis. 2d 666, 503 N.W.2d 305 (App. 1993).

Agency jurisdiction is a legal issue reviewed de novo by a reviewing court. An agency’s decision on the scope of its own powers is not reviewed de novo. W. Wisconsin Personnel Commission, 179 Wis. 2d 25, 505 N.W.2d 462 (App. 1993).

225.58 Appeals. Any party, including the agency, may secure a review of the final judgment of the circuit court by appeal to the court of appeals within the time period specified in s. 808.04 (1). History: 1977 c. 187 s. 134; 1983 a. 219; 1985 a. 182 s. 41; Stats. 1985 s. 227.58.}

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the manner of other civil appeals. Civil appeal procedures are governed by chs. 808 and 809. [Bill 151–S]

The court of appeals had no power to remand a case under s. 806.07 (1) (b) or (h); ch. 227 cannot be supplemented by statutory remedies pertaining to civil procedure. Chicago & North Western Railroad v. LIRC, 91 Wis. 2d 462, 283 N.W.2d 603 (Ct. App. 1979).

227.59 Certification of certain cases from the circuit court of Dane County to other circuits. Any action or proceeding for the review of any order of an administrative officer, commission, department or other administrative tribunal of the state required by law to be instituted in or taken to the circuit court of Dane County except an action or appeal for the review of any order of the department of workforce development or the department of safety and professional services or findings and orders of the labor and industry review commission which is instituted or taken and is not called for trial or hearing within 6 months after the proceeding or action is instituted, and the trial or hearing of which is not continued by stipulation of the parties or by order of the court for cause shown, shall on the application of either party on 5 days’ written notice to the other be certified and transmitted for trial to the circuit court of the county of the residence or principal place of business of the plaintiff or petitioner, where the action or proceeding shall be given preference. Unless written objection is filed within the 5–day period, the order certifying and transmitting the proceeding shall be entered without hearing. The plaintiff or petitioner shall pay to the clerk of the circuit court of Dane County a fee of $2 for transmitting the record.

History: 1977 c. 29; 1983 a. 219; 1985 a. 182 s. 47; Stats. 1985 s. 227.59; 1995 a. 27 ss. 6238, 9116 (5), 9130 (4); 1997 a. 3; 2011 a. 32.

227.60 Jurisdiction of state courts to determine validity of laws when attacked in federal court and to stay enforcement. Whenever a suit praying for an interlocutory injunction shall have been begun in a federal district court to restrain any department, board, commission or officer from enforcing or administering any statute or administrative order of this state, or to set aside or enjoin the suit or administrative order, the department, board, commission or officer, or the attorney general, may bring a suit to enforce the statute or order in the circuit court of Dane County at any time before the hearing on the application for an interlocutory injunction in the suit in the federal court. Jurisdiction is hereby conferred upon the circuit court of Dane County and on the court of appeals, on appeal, to entertain the suit with the powers granted in this section. The circuit court shall, when the suit is brought, grant a stay of proceedings by any state department, board, commission or officer under the statute or order pending the determination of the suit in the courts of the state. The circuit court of Dane County upon the bringing of the suit therein shall at once cause a notice thereof, together with a copy of the stay order by it granted, to be sent to the federal district court in which the action was originally begun. An appeal shall be taken within the time period specified in s. 808.04 (2). The appeal shall be given preference.

History: 1977 c. 187; 1983 a. 219; 1985 a. 182 s. 49; Stats. 1985 s. 227.60.

Judicial Council Note, 1983: This section is amended to replace the appeal deadline of 10 days after termination of the suit by the time provisions of s. 808.04 (2), for greater uniformity. Section 808.04 (2) provides that an appeal must be initiated within 15 days of entry of judgment or order appealed from. The provision requiring preferential court treatment is harmonized and standardized with similar provisions in the statutes. [Bill 151–S]