

## 2011 DRAFTING REQUEST

### Assembly Substitute Amendment (ASA-AB491)

Received: 02/02/2012

Received By: emueller

Wanted: As time permits

Companion to LRB:

For: Jerry Petrowski (608) 266-1182

By/Representing: Tim Fiocchi

May Contact: DOT

Drafter: emueller

Subject: Drunk Driving - other  
Transportation - driver licenses

Addl. Drafters:

Extra Copies: PJH, ARG

Submit via email: YES

Requester's email: Rep.Petrowski@legis.wisconsin.gov

Carbon copy (CC:) to: Vicki.Harkins@dot.wi.gov  
Steven.Krieser@dot.wi.gov

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Administrative suspension hearings.

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#### Instructions:

See attached

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 02/03/2012	wjackson 02/03/2012		_____			
/1			jmurphy 02/03/2012	_____	sbasford 02/03/2012	sbasford 02/03/2012	

FE Sent For:

<END>

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1?	emueller	1/1 WLJ 2/3	pm 2/3	<u>Do 2/3</u> <u>pm</u>			
1/1	EJM 2/3/12						

FE Sent For:

<END>

## Mueller, Eric

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**From:** Fiocchi, Tim  
**Sent:** Wednesday, February 01, 2012 11:45 AM  
**To:** Mueller, Eric  
**Cc:** Krieser, Steven - DOT; Harkins, Vicki - DOT; Sieg, Tricia  
**Subject:** FW: SB 398 / AB 491

**Importance:** High

**Attachments:** SB 398.pdf; Administrative Suspensions.docx

Hi Eric,

There was some miscommunication in the drafting process for this bill. If you could please work with Vicki and Steve to draft a substitute amendment to more fully accomplish their intent we would like to move forward with it.

Thank you,

Tim

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**From:** Krieser, Steven - DOT [<mailto:Steven.Krieser@dot.wi.gov>]  
**Sent:** Friday, January 27, 2012 3:24 PM  
**To:** Fiocchi, Tim  
**Subject:** FW: SB 398  
**Importance:** High

As we discussed.

**Steve Krieser**  
Executive Assistant  
Wisconsin Department of Transportation  
Phone: 608-266-1114

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**From:** Sobotik, John - DOT  
**Sent:** Friday, January 27, 2012 10:07 AM  
**To:** Harkins, Vicki - DOT  
**Cc:** Boardman, Kristina - DOT; Schwartz, Darlene - DOT; Brown-Martin, Donna - DOT; Nilsen, Paul - DOT  
**Subject:** RE: SB 398



SB 398.pdf (30 KB) Administrative  
Suspensions.doc...

I do not believe SB398 comports with the request made in the attached LEGISLATIVE BUDGET/NON-BUDGET PROPOSAL. The drafting request asks that the statutes be amended to allow hearings to be conducted in writing or telephone from central office or any location. This draft requires telephonic and written hearings to be conducted in the county where the offense occurred or at the nearest DMV office to that location. The request also suggests that officer convenience should be accommodated in the new law. This does not appear to be addressed in the draft.

As I understand the current program, DMV offers drivers the option of appearing in person at a field station where it conducts administrative reviews OR of having a telephonic hearing conducted by hearing examiners in Madison, or having a written review conducted by a hearing examiner in Madison. This draft would eliminate the option of having staff in Madison conduct telephonic or written review hearings. Instead, this bill draft requires that hearings be conducted in the field, and gives the appellants the option of attending field hearings by telephone. This would require telephonic hearing equipment be installed in every field station and would eliminate conduct of hearings at Hill Farms. I do not believe this is what DMV had in mind.

I am not sure whether DMV wants to make administrative suspensions available only by telephone or to make telephonic hearings an option for the driver to select. I have expressed the opinion to DMV in prior opinions that the right to confrontation is basic in American jurisprudence and that when evaluation of witnesses is needed, the courts believe in-person hearings provide a fact finder with the best chance of divining the truth. Accordingly, forcing appellants to have any hearing conducted telephonically may not withstand a constitutional challenge. Allowing subpoenaed officers to appear only telephonically may present the same difficulty.

It is also unclear to me why DMV would limit the conduct of hearings to telephonic and written mechanisms. Today, video conferencing is possible with tools such as Skype and gotomeeting.com. It seems entirely possible that DMV might wish to use such tools at some point, or might want to require their use, and I would suggest the bill be drafted to accommodate other electronic communication systems.

Other policy considerations that could be considered in an amendment to this statutory subdivision include:

- Whether the option to have a written or telephonic hearing be left to the appellant's option.
- Whether to eliminate the requirement to hold hearings at DMV offices. Hearings could be held at other locations, such as Division of Highways, DNR, State Patrol, county or city offices if the requirement to hold hearing at DMV offices were eliminated. The hearing process might be able to be farmed out on a consultant basis in smaller counties as well. That flexibility may be desired at some point in the future. The requirement to hold the hearing in a DMV office may prove inflexible.
- Whether to eliminate the right to a hearing in the county of the offense if DMV has an office in that county. For example, the right to an in-person hearing might not specify any location for the hearing to be conducted, or might limit hearings locations to counties where DMV conducts hearings. Another alternative would be to limit hearing locations to offices that are open every day every week, so that DMV isn't required to hold hearings in DMV stations that are only periodically opened by travel teams.
- Whether to provide that officers may not be subpoenaed to telephonic or other not-in-person hearings.
- Whether to specifically provide that a hearing may be dismissed if a appellant doesn't appear or isn't available by phone.

For example, one possible redraft incorporating a number of these proposals would result in a statute looking something like this:

343.305(8)(b)1. Within 10 days after the notification under par. (a), or, if the notification is by mail, within 13 days, excluding Saturdays, Sundays and holidays, after the date of the mailing, the person may request, in writing, that the department review the administrative suspension. The review procedure is not subject to ch. 227. The department shall hold the hearing on the matter in the county in which the offense allegedly occurred or at the nearest office of the location at which the department conducts hearings under this subdivision if the offense allegedly occurred in a county in which the department does not maintain an office, except that upon request of the appellant, DMV may conduct the hearing via telephone, video conferencing or other communications mechanism, or may review the suspension order based solely on the record submitted by the officer and written arguments. Telephonic hearings, reviews of the written record, or other hearings where the appellant's attendance is not required may be conducted by DMV without regard to the location of the hearing officer. The department shall hold a hearing regarding the administrative suspension within 30 days after the

date of notification under par. (a). The person may present evidence and may be represented by counsel. The arresting officer need not appear at a telephonic hearing or other hearing where personal attendance of the appellant is not required, and need not appear at an the in-person administrative hearing unless subpoenaed under s. 805.07, but he or she must submit a copy of his or her report and the results of the chemical test to the hearing examiner. A person's failure to appear at any type of hearing shall be grounds for dismissal of the hearing.

It is unclear to me from the drafting request exactly how DMV prefers to accommodate officers. What I drafted would excuse officers from having to attend telephonic or video-conference hearings (hearings the appellant doesn't have to personally attend).

Proposals regarding the location of the hearing are probably the most politically sensitive. To that end, it may be preferable to leave the business about the county where the accident occurred unchanged, so that the sentence reads along these lines:

The review procedure is not subject to ch. 227. The department shall hold the hearing on the matter in the county in which the offense allegedly occurred or at the nearest office of the department if the offense allegedly occurred in a county in which the department does not maintain an office, except that upon request of the appellant, DMV may conduct the hearing via telephone, video conferencing or other communications mechanism, or may review the suspension order based solely on the record submitted by the officer and written arguments. Telephonic hearings, reviews of the written record, or other hearings where the appellant's attendance is not required may be conducted by DMV without regard to the location of the hearing officer.

What is important is that the DMV specify that non-face-to-face hearing are not subject to the "county of the offense" requirement AND how the non-face-to-face hearing process is triggered (by DMV or by the appellant).

I would be happy to discuss the proposal further with you if you like.

- John Sobotik

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**From:** Harkins, Vicki - DOT  
**Sent:** Wednesday, January 25, 2012 4:06 PM  
**To:** Sobotik, John - DOT  
**Cc:** Boardman, Kristina - DOT  
**Subject:** SB 398  
**Importance:** High

Hi John,  
I am working on a fiscal estimate for SB 398 which amends 343.305 (8) (b) 1 of the statutes to allow DOT to accept a written objection or an appearance by phone for an administrative suspension review hearing. Our intent in requesting this change in legislation was so we could offer the option of a written (by mail) or by telephone appearance at these hearings instead of in-person only, and that we would provide these two additional options out of central office. Can you confirm if the law as written in the attached bill matches our intent?

Thanks,  
Vicki

Vicki Harkins, Legislative Liaison

Drivers-Division of Motor Vehicles  
WI Department of Transportation

[vicki.harkins@dot.wi.gov](mailto:vicki.harkins@dot.wi.gov)

608-266-1449

<< File: SB 398.pdf >>

# LEGISLATIVE BUDGET/NON-BUDGET PROPOSAL

Wisconsin Department of Transportation

## 2011-2013 BIENNIUM

DT1586 6/2010

**Instructions:** Complete this form for any budget/non-budget legislative initiative for which a Division requests the Secretary's Office (SO) approval. Check the budget box only if the proposal has a fiscal impact on department expenditures or revenue. This form must be signed by the Division Administrator(s). Include this form with your budget submittal materials or return one completed copy to the Office of Policy, Budget & Finance (OPBF), Attention: Paul Hammer. The form is available in the department forms catalog on dotnet.

Short Title of Topic Changes to the method for providing administrative suspension hearings.			
Type of Proposal <input type="checkbox"/> Budget <input checked="" type="checkbox"/> Non-Budget		OGC OFFICE USE ONLY "T" Number Assigned                      "B" Number Assigned                      "NB" Number Assigned	
Date Submitted 07-08-2010		Division(s) Motor Vehicles	
OPBF Contact Person Anna Richter		Area Code - Telephone Number 608-267-7304	
Lead Division Contact Person Richard Kleist		Area Code - Telephone Number 60-266-1449	
OGC Contact Person Paul Nilsen		Area Code - Telephone Number 608-261-0126	
Define Problem Precisely s. 343.305(8)(b) requires that hearings for administrative suspension due to a blood alcohol concentration offense occur in the county where the offense occurred, or at the nearest office if the offense occurred in a county in which the department does not maintain an office.			
Description of Proposed Change Amend s. 343.305 (8)(b) to allow DMV to conduct these hearings either by phone or by mail, if the offender agrees.			
Justification for Change Current law requires offenders to attend administrative hearings in the county where the offense occurred. This creates situations where an offender, who is under administrative suspension, is forced to travel, sometimes across great distances (ex. a Milwaukee County resident who receives an OWI in Ashland County). This requirement also causes law enforcement officers called to testify at the hearing to have to travel to appear in person which is very time consuming and of great inconvenience to the officer.  Currently administrative hearings are conducted by DMV Field Services staff. In circumstances where offenders choose the phone or mail hearing it can be conducted by a central office staffperson, allowing Field Services to focus on customers in their station.			
Describe any legislative history and related statutory language n/a			

\_\_\_\_\_  
(Division Administrator Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Division Administrator Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Division Administrator Signature)

\_\_\_\_\_  
(Date)

7/2 Vicki Harkin & John Sabatik

- DOT treats record review as hearing ~~at least~~

- record review should be w/in 30 days like other hearings

- add "Record review" at la 6, la 18

- add Stan Kueger, Vicki Harkin to distrib. list

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1. need not be in CO. that offense occurred if hearing by phone or record rev.

2. include other remote communication methods

3. Law enforcement doesn't have to attend if remote or record rev.



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBs 0307/1  
EVM: jld:jf

0309/1

FWLj

RMNR

ASSEMBLY SUBSTITUTE AMENDMENT ,  
TO 2011 ASSEMBLY BILL 491

1^ 2/3/12

Today

Regen

1 AN ACT to amend 343.305 (8) (b) 1. of the statutes; relating to: hearings  
2 regarding administrative suspension of operating privilege.

**Analysis by the Legislative Reference Bureau**

Current law prohibits a person from driving or operating a motor vehicle with a prohibited concentration of alcohol or a detectable amount of a controlled substance or while under the influence of an intoxicant (OWI). If a chemical test given to the person on suspicion of, or subsequent to arrest for, OWI indicates that the person has committed OWI, the law enforcement officer seizes the driver's license of the person, informs the person that his or her operating privilege is administratively suspended for six months, and provides the person with a written explanation of his or her right to request a review of the administrative suspension.

The person may, within ten days, submit a written request for the Department of Transportation (DOT) to review his or her administrative suspension. If a hearing is requested, DOT must hold the review hearing in the county where the alleged offense took place within 30 days of the date on which the person received the written explanation of his or her right to review. A person is allowed to present evidence and be represented by counsel at a review hearing. Unless subpoenaed, the arresting officer need not appear at the review hearing, but must provide a copy of his or her report and the results of the chemical test.

This substitute amendment allows DOT, upon request by the person seeking review, to conduct a review hearing by telephone, video conference, or other remote

communication mechanism <sup>or</sup> ~~to~~ <sup>by</sup> review ~~the suspension based solely on~~ <sup>of</sup> the record submitted by the arresting officer and written arguments. If a review hearing is by remote communication mechanism, DOT need not hold the hearing in the county in which the offense allegedly took place. The substitute amendment also provides that the arresting officer need not appear in person at a hearing conducted by remote communication mechanism.

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

SECTION 1. 343.305 (8) (b) 1. of the statutes is amended to read:

343.305 (8) (b) 1. Within 10 days after the notification under par. (a), or, if the notification is by mail, within 13 days, excluding Saturdays, Sundays and holidays, after the date of the mailing, the person may request, in writing, that the department review the administrative suspension. The review procedure is not subject to ch. 227.

~~The~~ <sup>or record review, the</sup> ~~Unless the hearing is by remote communication mechanism,~~ department shall hold the hearing on the matter in the county in which the offense allegedly occurred or at the nearest office of the department if the offense allegedly occurred in a county in which the department does not maintain an office. ~~The~~ <sup>re</sup> ~~Unless the person and the department agree to a record review,~~ the department shall hold a hearing regarding the administrative suspension within 30 days after the date of notification under par.

(a). <sup>Move</sup> The department, upon request of the person, may conduct a hearing under this <sup>paragraph</sup> ~~subdivision~~ by telephone, video conference, or other remote communication mechanism <sup>or</sup> ~~may~~ <sup>by</sup> review ~~the suspension based solely on~~ <sup>of only</sup> the record submitted by the arresting officer and written arguments. The person may present evidence and

may be represented by counsel. The arresting officer need not appear at the administrative hearing unless subpoenaed under s. 805.07 and need not appear in person at a hearing conducted by remote communication mechanism, <sup>or record</sup> ~~but he or she~~ <sup>review</sup>

or record review

Undo Strike  
||  
plain

Move

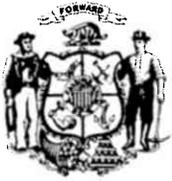
or record review

1 must submit a copy of his or her report and the results of the chemical test to the  
2 hearing examiner.

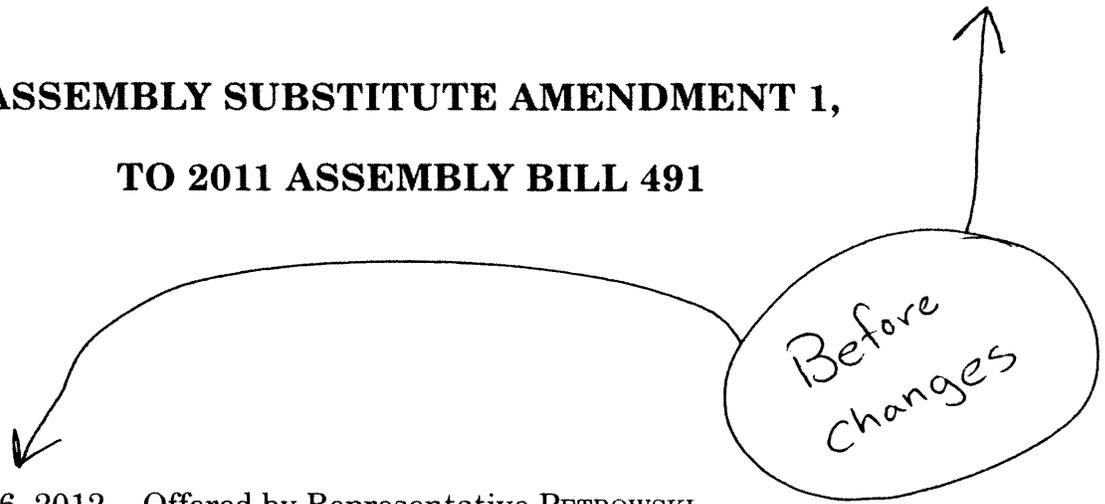
3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to a hearing requested on the effective date of this  
5 subsection.

6 (END)



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2011 ASSEMBLY BILL 491**



February 6, 2012 – Offered by Representative PETROWSKI.

1 **AN ACT to amend** 343.305 (8) (b) 1. of the statutes; **relating to:** hearings  
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***Analysis by the Legislative Reference Bureau***

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This substitute amendment allows DOT, upon request by the person seeking review, to conduct a review hearing by telephone, video conference, or other remote



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2011 ASSEMBLY BILL 491**

02-09-2012  
After changes  
made by  
WLJ

February 6, 2012 - Offered by Representative PETROWSKI.

- 1 **AN ACT to amend** 343.305 (8) (b) 1. of the statutes; **relating to:** hearings
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