

No. 423, S.]

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CHAPTER 511.

AN ACT to repeal 227.27; to renumber 227.19 to be 227.19 (1); to amend 49.03 (8a) (c), 66.06 (22) (1), 73.015 (2), 85.06 (4), 87.06, 87.07 (5), 101.13, 101.17 (2), 144.07 (3) (b), 144.10, 189.22 (4), 189.25, 195.06, 196.43, 227.01 (3), 227.12, 227.14, 227.15, 227.16, 227.17, 227.18 and 227.25; and to create 227.19 (2) and (3) of the statutes, relating to procedure before administrative agencies and the judicial review of their decisions.

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

SECTION 1. 49.03 (8a) (c) of the statutes is amended to read:
49.03 (8a) (c) Such order shall be subject to review in the manner provided in chapter 227, except that * * * *such review shall be * * * instituted in any one of the following circuit courts in the following counties: (1) Douglas, (2) Eau Claire, (3) Marathon, (4) Brown, (5) La Crosse, (6) Dane, (7) Milwaukee, and may be heard at a regular or special term in any one of such circuit courts.*

SECTION 2. 66.06 (22) (1) of the statutes is amended to read:
66.06 (22) (1) * * * *Judicial review of the determination of the public service commission may be had by any person aggrieved in the manner prescribed in chapter 227.*

SECTION 3. 73.015 (2) of the statutes is amended to read:
73.015 (2) Determinations of the board shall be subject to review in the manner provided in chapter 227, except that * * * *proceedings therefor involving taxes of persons other than corporations shall be * * * instituted in the circuit court of the county where the taxpayer resides, and * * * proceedings involving taxes of nonresident individuals or fiduciaries shall be * * * instituted in the circuit court of the county which includes the situs of the property or income assessed, or if there be more than one such county, to the circuit court of any one of such counties. If the circuit court construes a statute adversely to the contention of the department of taxation, the department shall be deemed to acquiesce in the construction so adopted unless an appeal to the supreme court is taken, and the construction so acquiesced in shall thereafter be followed by the department.*

SECTION 4. 85.06 (4) of the statutes is amended to read:

85.06 (4) The motor vehicle department shall investigate, ascertain, determine and fix such reasonable standards of lighting equipment and reflective signals for motor vehicles, trailers and semitrailers, and for the adjustment and use of such equipment, not inconsistent with this section, as to make the use of the highways by such vehicles safe for all the public. The said department may issue general or special orders prohibiting the use of any highway by any motor vehicle not conforming to such standards. Such investigations, standards and orders shall be made as provided in sections 101.01 to 101.28. Every order of the department shall have the same force and effect as orders issued pursuant to sections 101.01 to 101.28 and any * * * *judicial review thereof* shall be * * * *instituted* as provided in chapter 227.

SECTION 5. 87.06 of the statutes is amended to read:

87.06 An order dismissing the petition shall be subject to review in the manner provided in chapter 227. An order directing the hearing to proceed shall not be subject to review except upon * * * *review of the final order made pursuant to section 87.07.*

SECTION 6. 87.07 (5) of the statutes is amended to read:

87.07 (5) Any such order may be reviewed in the manner provided in chapter 227, except that if any finding as to the amount of benefit to any property shall be challenged upon such * * * *review the * * * petitioner shall be entitled to a trial by jury upon demand.*

SECTION 7. 101.13 of the statutes is amended to read:

101.13 All orders of the industrial commission in conformity with law shall be in force, and shall be prima facie lawful; and all such orders shall be valid and in force, and prima facie reasonable and lawful until they are found otherwise upon * * * *judicial review thereof* pursuant to chapter 227 or until altered or revoked by the commission.

SECTION 8. 101.17 (2) of the statutes is amended to read:

101.17 (2) Every order of the commission shall, in every prosecution for violation thereof, be conclusively presumed to be just, reasonable and lawful, unless prior to the institution of prosecution for such violation * * * *a proceeding for judicial review of such order shall have been * * * instituted,* as provided in chapter 227.

SECTION 9. 144.07 (3) (b) of the statutes is amended to read:

144.07 (3) (b) * * * *Institute a proceeding for judicial review* in the manner provided in chapter 227, except that the place of appeal shall be the circuit court of the county of the municipality furnishing the service.

SECTION 10. 144.10 of the statutes is amended to read:

144.10 An owner may elect to arbitrate or may * * * *institute a proceeding for judicial review* in the manner provided in chapter 227 from any order of the board. The provisions of section 144.07 (3) shall apply including affirmation or modification, but excepting the 20-day limitation. Taxable costs shall be in the discretion of the court.

SECTION 11. 189.22 (4) of the statutes is amended to read:

189.22 (4) No * * * *proceeding for judicial review* of any order of the department shall be brought in any court unless the plaintiff within the time limited herein shall have made application to the department for rehearing and the department shall have acted or failed to act upon said application as provided for in this section.

SECTION 12. 189.25 of the statutes is amended to read:

189.25 (1) No injunction shall issue in any * * * *proceeding instituted* pursuant to section 189.22 (5) suspending or staying any order of the department, except upon application to the court or the presiding judge thereof, notice of which shall be given to the department and any other party to the * * * *proceeding*, and hearing; and no injunction shall issue in any other proceeding or action, in any court, which shall have the effect of delaying or preventing any order of the department from becoming effective, unless the parties to the proceeding before the department in which such order was made, are also parties to such proceeding or action.

(2) No injunction shall issue in any * * * *proceeding instituted* pursuant to section 189.22 (5) or in any other proceeding or action, in any court suspending or staying any order of the department or having the effect of delaying or preventing any order of the department from becoming effective, unless an undertaking shall be entered into on the part of the *petitioner* or plaintiff, with such surety or sureties and in such sum as the court or the presiding judge thereof shall direct or approve to the effect that the *petitioner* or plaintiff will pay all damages which any party may sustain by the suspension or stay of the order of

the department or the delay or prevention of such order from becoming effective, and to such other effect as such court or judge may direct, and no order or judgment in any such proceeding or action shall be stayed on appeal therefrom unless a like undertaking be entered into by the * * * *petitioner or plaintiff* in addition to the undertaking provided in section 274.11 (3).

SECTION 13. 195.06 of the statutes is amended to read:

195.06 All * * * *orders, determinations and decisions* made by the commission shall be in force *and effective 20 days after the same has been served as required by section 227.14 unless the commission shall specify a different date upon which the same shall be effective*, and shall be prima facie lawful, and all regulations, practices and service prescribed by the commission shall be in force and shall be prima facie *lawful and* reasonable, until finally found otherwise upon * * * *judicial review thereof instituted* pursuant to chapter 227.

SECTION 14. 196.43 of the statutes is amended to read:

196.43 (1) No injunction shall issue in any * * * *proceeding for review* under chapter 227 * * * *of an order of the commission, suspending or staying any such order except upon application to the circuit court or presiding judge thereof, notice to the commission and any other party, and hearing; and no injunction shall issue in any other proceeding or action, in any court, which shall have the effect of delaying or preventing any order of the commission from becoming effective, unless the parties to the proceeding before the commission in which such order was made are also parties to such proceeding or action.*

(2) No injunction shall issue in any such * * * *proceeding for review*, or in any other proceeding or action, suspending or staying any order of the commission, or having the effect of delaying or preventing any order of the commission from becoming effective, unless an undertaking shall be entered into on the part of the *petitioner or plaintiff*, by at least 2 sureties, in such sum as the court or the presiding judge thereof shall direct to the effect that the *petitioner or plaintiff* will pay all damages which the opposite party may sustain by the delay or prevention of the order of the commission from becoming effective, and to such further effect as such judge or court shall in discretion direct, and no order or judgment in any such proceeding or action shall be stayed * * * *upon judicial review thereof unless a like*

undertaking be entered into by the * * * *petitioner or plaintiff* in addition to the undertaking provided in section 274.11 (3).

SECTION 15. 227.01 (3) of the statutes is amended to read:

227.01 (3) "Contested case" means a proceeding in which, *after hearing required by law*, the legal rights, duties or privileges of * * * *any party to such proceeding* are * * * *determined or directly affected by a decision* * * * *or order* * * * *in such proceeding* * * * *and in which the assertion by one party of any such right, duty or privilege is denied or controverted by another party to such proceeding.*

SECTION 16. 227.12 of the statutes is amended to read:

227.12 Whenever in a contested case it is impracticable for the members of the agency who * * * participate in the decision to hear or read all the evidence, the final decision shall not be made until a * * * *summary of the evidence prepared by the person conducting the hearing, together with his recommendations as to the findings of fact and the decision in the proceeding* has been prepared and furnished to each party, and * * * *a reasonable opportunity has been afforded to each party to file written exceptions to such summary and proposed findings and decision and to argue with respect to them orally and in writing before all the members who are to participate in the decision. The agency's findings of fact may be made upon the basis of such summary and the filed exceptions thereto as herein provided.* The parties may by written stipulation waive compliance with this section.

SECTION 17. 227.14 of the statutes is amended to read:

227.14 * * * *Every 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 his attorney of record.*

SECTION 18. 227.15 of the statutes is amended to read:

227.15 Administrative decisions * * * *which directly affect the legal rights, duties or privileges of any person*, whether affirmative or negative in form, except the decisions of the department of taxation and the banking commission, shall be subject to judicial review *as provided in this chapter*; but if specific statutory provisions require a petition for rehearing as a condition precedent, review shall be afforded only after such petition is filed and determined.

SECTION 19. 227.16 of the statutes is amended to read:

227.16 (1) Except as otherwise specifically provided by law, any person aggrieved by a decision * * * specified in section 227.15 and directly affected thereby shall be entitled to judicial review thereof * * * as provided in this chapter. Proceedings for review shall be instituted by serving a * * * petition therefor personally or by registered mail upon the agency or one of its members or upon its secretary or clerk, and by filing such * * * petition in the office of the clerk of the circuit court for Dane county (unless a different place of review is expressly provided by law), all within 30 days after the service of the decision of the agency upon all parties as provided in section 227.14 or in cases where a rehearing is requested within 30 days after service of the order * * * finally disposing of the application for such rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing * * *. The * * * petition shall state the nature of the * * * petitioner's interest, the facts showing that petitioner is aggrieved and directly affected by the decision, and the ground or grounds specified in section 227.20 upon which petitioner contends that the decision should be reversed or modified. * * * The petition may be amended, by leave of court, though the time for * * * serving the same has expired. The petition shall be entitled in the name of the person serving the same as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the board of tax appeals or of the banking review board the department of taxation or the banking commission shall be the named respondent. Copies of the * * * petition shall be served, personally or by registered mail, not later than 30 days after the institution of the * * * proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made; and for the purpose of such service the agency upon request shall certify to the * * * petitioner the names and addresses of all such parties as disclosed by its records, which certification shall be conclusive. The agency (except in the case of the board of tax appeals and the banking review board), and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court, in its discretion, may permit other interested persons to intervene.

(2). *Every person served with the petition for review as provided in this section and who desires to participate in the proceeding for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance stating his position with reference to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as herein provided or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.*

SECTION 20. 227.17 of the statutes is amended to read:

227.17 The * * * *institution of the proceeding for review shall not stay enforcement of the agency decision; but the reviewing court may order a stay upon such terms as it deems proper, except as otherwise provided in sections 189.25 and 196.43.*

SECTION 21. 227.18 of the statutes is amended to read:

227.18 Within 30 days after service of the * - * * *petition for review upon the agency, or within such further time as the court may allow, the agency shall transmit to 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, refusing to stipulate 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.*

SECTION 22. 227.19 of the statutes is renumbered to be 227.19

(1).

SECTION 23. 227.19 (2) and (3) of the statutes are created to read:

227.19 (2) Proceedings for review of administrative agency decisions as provided in this chapter may be brought on for trial or hearing at any time upon not less than 10 days' notice given after the expiration of the time for service of the notices provided in section 227.16 (2).

(3) Within 20 days after the time specified in section 227.16 for filing notices of appearance in any proceeding for review, any respondent who has served such notice may move to dismiss the petition as filed upon the ground that such petition, upon its face, does not state facts sufficient to show that the petitioner named therein is aggrieved and directly affected by the decision sought to be reviewed. Upon the hearing of such motion the court may grant the petitioner leave to amend the petition if the amendment as proposed shall have been served upon all respondents prior to such hearing. If so amended the court may consider and pass upon the validity of the amended petition without further or other motion to dismiss the same by any respondent.

SECTION 24. 227.25 of the statutes is amended to read:

227.25 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 action or appeal for the review of any order of the industrial commission which shall have been so instituted or taken and shall not have been called for trial or hearing within * * * 6 months after such * * * *proceeding* * * * or action *has been* instituted, and the trial or hearing of which shall not have been 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 such action or proceeding shall have the precedence over all ordinary civil actions. Unless written objection shall be filed within such 5-day period, the order certifying and transmitting such 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.

SECTION 25. 227.27 of the statutes is repealed.

Approved July 26, 1945.