

1975 Assembly Bill 282

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## CHAPTER 295, Laws of 1975

AN ACT to renumber 68.01 to 68.11; to amend chapter 69 (title) and 69.55; to repeal and recreate chapter 68 (title); and to create 68.001 to 68.16 and chapter 69, subchapters I and II (titles) of the statutes, relating to municipal administrative procedure and review.

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

SECTION 1. Title IX is redesignated to precede chapter 69 of the statutes.

SECTION 2. Chapter 68 (title) of the statutes is repealed and recreated to read:

### CHAPTER 68

#### MUNICIPAL ADMINISTRATIVE PROCEDURE

SECTION 3. 68.01 to 68.11 of the statutes are renumbered 69.60 to 69.69, respectively.

SECTION 4. 68.001 to 68.16 of the statutes are created to read:

**68.001 Legislative purpose.** The purpose of this chapter is to afford a constitutionally sufficient, fair and orderly administrative procedure and review in connection with determinations by municipal authorities which involve constitutionally protected rights of specific persons which are entitled to due process protection under the 14th amendment to the U.S. constitution.

**68.01 Review of administrative determinations.** Any person having a substantial interest which is adversely affected by an administrative determination of a governing body, board, commission, committee, agency, officer or employe of a municipality or agent acting on behalf of a municipality as set forth in s. 68.02, may have such determination reviewed as provided in this chapter. The remedies under this chapter shall not be exclusive. No department, board, commission, agency, officer or employe of a municipality who is aggrieved may initiate review under this chapter of a determination of any other department, board, commission, agency, officer or employe of the same municipality, but may respond or intervene in a review proceeding under this chapter initiated by another.

**68.02 Determinations reviewable.** The following determinations are reviewable under this chapter:

(1) The grant or denial in whole or in part after application of an initial permit, license, right, privilege, or authority, except a fermented malt beverage or intoxicating liquor license.

(2) The suspension, revocation or nonrenewal of an existing permit, license, right, privilege, or authority, except as provided in s. 68.03 (5).

(3) The denial of a grant of money or other thing of substantial value under a statute or ordinance prescribing conditions of eligibility for such grant.

(4) The imposition of a penalty or sanction upon any person except a municipal employe or officer, other than by a court.

**68.03 Determinations not subject to review.** Except as provided in s. 68.02, the following determinations are not reviewable under this chapter:

(1) A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the governing body of a municipality.

(2) Any action subject to administrative or judicial review procedures under other statutes.

(3) The denial of a tort or contract claim for money, required to be filed with the municipality pursuant to statutory procedures for the filing of such claims.

(4) The suspension, removal or disciplining or nonrenewal of a contract of a municipal employe or officer.

(5) The grant, denial, suspension or revocation of a fermented malt beverage license under s. 66.054 (13) (b) or intoxicating liquor license under s. 176.11 or 176.12.

(6) Judgments and orders of a court.

(7) Determinations made during municipal labor negotiations.

(8) Any action which is subject to administrative review procedures under an ordinance providing such procedures as defined in s. 68.16.

(9) Notwithstanding any other provision of this chapter, any action or determination of a municipal authority which does not involve the constitutionally protected right of a specific person or persons to due process in connection with the action or determination.

**68.04 Municipalities included.** "Municipality", as used in this chapter, includes any county, city, village, town, vocational, technical and adult education district, special purpose district or board or commission thereof, and any public or quasi-public corporation or board or commission created pursuant to statute, ordinance or resolution, but does not include the state, a state agency, a corporation chartered by the state or a school district as defined in s. 115.01 (3).

**68.05 Municipal authority defined.** "Municipal authority" includes every municipality and governing body, board, commission, committee, agency, officer, employe, or agent thereof making a determination under s. 68.01, and every person, committee or agency of a municipality appointed to make an independent review under s. 68.09 (2).

**68.06 Persons aggrieved.** A person aggrieved includes any individual, partnership, corporation, association, public or private organization, officer, department, board, commission or agency of the municipality, whose rights, duties or privileges are adversely affected by a determination of a municipal authority.

**68.07 Reducing determination to writing.** If a determination subject to this chapter is made orally or, if in writing, does not state the reasons therefor, the municipal authority making such determination shall, upon written request of any person aggrieved by such determination made within 10 days of notice of such determination, reduce the determination and the reasons therefor to writing and mail or deliver such determination and reasons to the person making the request. The determination shall be dated, and shall advise such person of his right to have such determination reviewed, the time within which such review may be obtained, and the office or person to whom a request for review shall be addressed.

**68.08 Request for review of determination.** Any person aggrieved may have a written or oral determination reviewed by written request mailed or delivered to the municipal authority which made such determination within 30 days of notice to such person of such determination. The request for review shall state the ground or grounds upon which the person aggrieved contends that the decision should be modified or reversed. A request for review shall be made to the officer, employe, agent, agency, committee, board, commission or body who made the determination but failure to

make such request to the proper party shall not preclude the person aggrieved from review unless such failure has caused prejudice to the municipal authority.

**68.09 Review of determination.** (1) INITIAL DETERMINATION. If a request for review is made under s. 68.08, the determination to be reviewed shall be termed an initial determination.

(2) WHO SHALL MAKE REVIEW. A review under this section may be made by the officer, employe, agent, agency, committee, board, commission or body who made the initial determination. However, an independent review of such initial determination by another person, committee or agency of the municipality may be provided by the municipality.

(3) WHEN TO MAKE REVIEW. The municipal authority shall review the initial determination within 15 days of receipt of a request for review. The time for review may be extended by agreement with the person aggrieved.

(4) RIGHT TO PRESENT EVIDENCE AND ARGUMENT. The person aggrieved may file with his request for review or within the time agreed with the municipal authority written evidence and argument in support of his position with respect to the initial determination.

(5) DECISION ON REVIEW. The municipal authority may affirm, reverse or modify the initial determination and shall mail or deliver to the person aggrieved a copy of the municipal authority's decision on review, which shall state the reasons for such decision. The decision shall advise the person aggrieved of his right to appeal the decision, the time within which appeal shall be taken and the office or person with whom notice of appeal shall be filed.

**68.10 Administrative appeal.** (1) FROM INITIAL DETERMINATION OR DECISION ON REVIEW. (a) If the person aggrieved did not have a hearing substantially in compliance with s. 68.11 when the initial determination was made, he may appeal under this section from the decision on review and shall follow the procedures set forth in ss. 68.08 and 68.09.

(b) If the person aggrieved had a hearing substantially in compliance with s. 68.11 when the initial determination was made, he may elect to follow the procedures provided in ss. 68.08 and 68.09, but is not entitled to appeal under this section unless granted by the municipal authority. He may, however, seek review under s. 68.13.

(2) TIME WITHIN WHICH APPEAL MAY BE TAKEN UNDER THIS SECTION. Appeal from a decision on review under s. 68.09 shall be taken within 30 days of notice of such decision.

(3) HOW APPEAL MAY BE TAKEN. An appeal under this section may be taken by filing with or mailing to the office or person designated in the municipal authority's decision on review, written notice of appeal.

**68.11 Hearing on administrative appeal.** (1) TIME OF HEARING. The municipality shall provide the appellant a hearing on an appeal under s. 68.10 within 15 days of receipt of the notice of appeal filed or mailed under s. 68.10 and shall serve the appellant with notice of such hearing by mail or personal service at least 10 days before such hearing.

(2) CONDUCT OF HEARING. At the hearing, the appellant and the municipal authority may be represented by counsel and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Such witnesses shall be sworn by the person conducting the hearing. The municipality shall provide an impartial decision maker, who may be an officer, committee, board, commission or the governing body who did not participate in making or reviewing the initial determination, who shall make the decision on administrative appeal. The decision

maker may issue subpoenas. The hearing may, however, be conducted by an impartial person, committee, board or commission designated to conduct the hearing and report to the decision maker.

(3) **RECORD OF HEARING.** The person conducting the hearing or a person employed for that purpose shall take notes of the testimony and shall mark and preserve all exhibits. The person conducting the hearing may, and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the municipality.

**68.12 Final determination.** (1) Within 20 days of completion of the hearing conducted under s. 68.11 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant its written determination stating the reasons therefor. Such determination shall be a final determination.

(2) A determination following a hearing substantially meeting the requirements of s. 68.11 or a decision on review under s. 68.09 following such hearing shall also be a final determination.

**68.13 Judicial review.** (1) Any party to a proceeding resulting in a final determination may seek review thereof by writ of certiorari within 30 days of receipt of the final determination. The court may affirm or reverse the final determination, or remand to the decision maker for further proceedings consistent with the court's decision.

(2) If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at his expense. If the person seeking review establishes impecuniousness to the satisfaction of the reviewing court, the court may order the proceedings transcribed at the expense of the municipality and the person seeking review shall be furnished a free copy of the transcript. By stipulation, the court may order a synopsis of the proceedings in lieu of a transcript. The court may otherwise limit the requirement for a transcript.

**68.14 Legislative review.** (1) The seeking of a review pursuant to s. 68.10 or 68.13 does not preclude a person aggrieved from seeking relief from the governing body of the municipality or any of its boards, commissions, committees, or agencies which may have jurisdiction.

(2) If in the course of legislative review under this section, a determination is modified, such modification and any evidence adduced before the governing body, board, commission, committee or agency shall be made part of the record on review under s. 68.13.

(3) The governing body, board, commission, committee or agency conducting a legislative review under this section need not conduct the type of hearing required under s. 68.11.

**68.15 Availability of methods of resolving disputes.** This chapter does not preclude any municipality and person aggrieved from employing arbitration, mediation or other methods of resolving disputes, and does not supersede contractual provisions for that purpose.

**68.16 Election not to be governed by this chapter.** The governing body of any municipality may elect not to be governed by this chapter in whole or in part by an ordinance or resolution which provides procedures for administrative review of municipal determinations.

SECTION 5. Chapter 69 (title) of the statutes is amended to read:

**CHAPTER 69  
COLLECTION OF VITAL STATISTICS**

SECTION 6. Chapter 69, subchapters I and II (titles) of the statutes are created to read:

**CHAPTER 69**  
**SUBCHAPTER I**  
**VITAL STATISTICS**  
(to precede s. 69.01)  
**SUBCHAPTER II**  
**GENERAL STATISTICS**  
(to precede s. 69.60, as renumbered)

SECTION 7. 69.55 of the statutes is amended to read:

**69.55 (title) Penalties for violating this subchapter.** Any person who shall wilfully violate any of the provisions of chapter 69 violates this subchapter, or who shall neglect or refuse neglects or refuses to perform any duty or do any act imposed upon him as required by said chapter this subchapter, or who shall neglect or refuse neglects or refuses to make any certificate required by said sections this subchapter to be made, or falsely make makes any such certificate, or knowingly make makes any false statement in any such certificate, or who shall alter alters any certificate or report provided for as required by said chapter this subchapter shall be punished by a fine of fined not less than \$20 or nor more than \$200 for each offense, or by imprisonment in the county jail for a period of imprisoned not less than 30 days or more than 60 days, or by both such fine and imprisonment.

SECTION 8. **Word change.** Wherever the word "chapter" appears in sections 69.02 (1), (3) (a) to (c) and (4) (e), 69.03, 69.04, 69.05, 69.07 (1) and (3), 69.09, 69.11, 69.13, 69.24 (1), 69.30 (1), 69.49 and 69.69, as renumbered, of the statutes, the word "subchapter" is substituted.

SECTION 9. **Cross reference changes.** In the statute sections listed in column A, the cross references shown in column B are changed to the cross references in column C.

A Statute section	B Old cross reference	C New cross reference
14.361	68.10	69.68
15.131 (intro.)	68.07	69.66
15.431	68.02 to 68.06	69.61 to 69.65
69.61, as renumbered	68.03	69.62
69.62, as renumbered	68.02	69.61
69.64, as renumbered	68.04	69.63
69.67, as renumbered	68.01	69.60
	68.07	69.66
70.55	68.09	69.67