

1989 Senate Bill 64

Date of enactment: **March 16, 1990**  
Date of publication\*: **March 30, 1990**

## 1989 WISCONSIN ACT 139

AN ACT to amend 49.037 (8) (b) and (c), 68.11 (2), 101.02 (14) (b), 101.22 (4) (d), 102.17 (2m) and 108.14 (2m); and to create 101.02 (14) (cm), 102.17 (2s) and 227.45 (6m) of the statutes, relating to: the issuance of subpoenas by attorneys in contested cases before state and local governmental agencies.

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

**SECTION 1e.** 49.037 (8) (b) and (c) of the statutes are amended to read:

49.037 (8) (b) Permit the petitioner to present his or her case personally or with the aid of others, including legal counsel an attorney.

(c) Permit the petitioner or a representative to subpoena witnesses and, if the petitioner is represented by an attorney, permit the attorney to 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 decision maker specified in par. (f).

**SECTION 1m.** 68.11 (2) of the statutes is amended to read:

68.11 (2) CONDUCT OF HEARING. At the hearing, the appellant and the municipal authority may be represented by counsel an attorney 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. An appellant'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 decision maker. 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.

**SECTION 1s.** 101.02 (14) (b) of the statutes is amended to read:

101.02 (14) (b) Each witness who appears before the department by its order shall receive for attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the secretary, and charged to the proper appropriation for the department. No witness subpoenaed at the instance of parties an attorney under par. (cm) or at the instance of a party other than the department is entitled to compensation from the state for attendance or travel unless the department certifies that the testimony was material to the matter investigated.

**SECTION 2.** 101.02 (14) (cm) of the statutes is created to read:

101.02 (14) (cm) 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.

**SECTION 3.** 101.22 (4) (d) of the statutes is amended to read:

101.22 (4) (d) If the department finds probable cause to believe that any discrimination has been or is being committed in violation of this section, it may endeavor to eliminate such discrimination by conference, conciliation and persuasion. If the department determines that such conference, conciliation and persuasion has not eliminated the alleged discrimination, the department shall issue and serve a written notice of hearing, specifying the nature and acts of discrimination which appear to have been committed, and requiring the person named, in this section called the “respondent”, to answer the complaint at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the complaint, and a place of hearing within the county in which the act of discrimination is alleged to have occurred. 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. The testimony at the hearing shall be recorded by the department. In all hearings before an examiner, except those for determining probable cause, the burden of proof is on the party alleging discrimination. If, after the hearing, the examiner finds by a fair preponderance of the evidence that the respondent has engaged in discrimination in violation of this section, the examiner shall make written findings and order such action by the respondent as will effectuate the purpose of this section. The department shall serve a certified copy of the examiner’s findings and order on the respondent and complainant, the order to have the same force as other orders of the department and be enforced as provided in this section except that the enforcement of the order is automatically stayed upon the filing of a petition for review with the commission. If the examiner finds that the respondent has not engaged in discrimination as alleged in the complaint, the department shall serve a certified copy of the examiner’s findings on the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

**SECTION 4.** 102.17 (2m) of the statutes is amended to read:

102.17 (2m) Any party, including the department, may require any person to produce books, papers and records at the hearing by personal service of a subpoena upon the person along with a tender of witness fees as provided in ss. 814.67 and 885.06. The Except as provided in sub. (2s), the subpoena shall be on a form provided by the department and shall give the name and address of the party requesting the subpoena.

**SECTION 5.** 102.17 (2s) of the statutes is created to read:

102.17 (2s) 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.

**SECTION 6.** 108.14 (2m) of the statutes is amended to read:

108.14 (2m) In the discharge of their duties under this chapter an appeal tribunal, commissioner or other authorized representative of the department or commission may administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas, served in the manner in which circuit court subpoenas are served, compel attendance of witnesses and the production of books, papers, documents and records necessary or convenient to be used by them in connection with any investigation, hearing or other proceeding under this chapter. 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. However, in any investigation, hearing or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and other expenses involved in proceedings under this chapter, including a party’s traveling expenses, may be allowed by the appeal tribunal or representative of the department at rates specified by department rules, and shall be paid from the administrative account.

**SECTION 7.** 227.45 (6m) of the statutes is created to read:

227.45 (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

**1989 Senate Bill 64**

ney 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.

