

1979 Assembly Bill 813

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CHAPTER 208, Laws of 1979

AN ACT to repeal 227.12 (7); and to amend 227.08 (7) (intro.), 227.09 (1) (b), 227.10, 227.12 (1) and (5), 227.16 (1) (a), (c) and (d), 227.20 (1) and 227.22 (4) of the statutes, relating to revising miscellaneous statutes affecting state administrative procedures.

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

SECTION 1. 227.08 (7) (intro.) of the statutes is amended to read:

227.08 (7) (intro.) 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. ~~887 [ch. 804].~~ 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:

SECTION 2. 227.09 (1) (b) of the statutes is amended to read:

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

SECTION 3. 227.10 of the statutes is amended to read:

227.10 Decisions. 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. 227.16. The agency shall by rule establish a procedure for determination of parties.

SECTION 4. 227.12 (1) and (5) of the statutes are amended to read:

227.12 (1) A petition for rehearing shall not be a prerequisite for appeal or review. ~~Any party to a contested case who deems such party 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 subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(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 ~~20~~ 30 days after it is filed. If the agency does not enter an order disposing of the petition within the ~~20-day~~ 30-day period, the petition shall be deemed to have been denied as of the expiration of the ~~20-day~~ 30-day period.

SECTION 5. 227.12 (7) of the statutes is repealed.

SECTION 6. 227.16 (1) (a), (c) and (d) of the statutes are amended to read:

227.16 (1) (a) Proceedings for review shall be instituted by serving a petition therefor personally or by ~~registered~~ certified mail upon the agency or one of its officials, and by filing the petition in the office of the clerk of the circuit court for the county where the ~~trial is~~ judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties as provided in under s. 227.11 or, in cases where, if a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review 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 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court of for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court of for the county where the respondent resides. The proceedings shall be in the circuit court of for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceeding proceedings may be held in any circuit court the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(c) Copies 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 all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made. ~~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.~~

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) 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.

SECTION 7. 227.20 (1) of the statutes is amended to read:

227.20 (1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court and, if leave is granted to take such testimony, depositions and written interrogatories may be taken prior to the date set for hearing as provided in ch. ~~887~~ 804 if proper cause is shown therefor.

SECTION 8. 227.22 (4) of the statutes is amended to read:

227.22 (4) ~~This~~ The provisions of this chapter does relating to contested cases do not apply to proceedings involving revocation of parole or probation, grant of probation, or prison discipline or good time or other proceedings involving the care and treatment of particular inmates of correctional institutions.
