

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4398/1dn  
GMM:jlj:jf

February 2, 2000

Joyce:

In addition to various minor language changes made in ss. 48.685 (5) (a), (5d) (c) and (7) (bm) and 50.065 (5), (5d) (c) and (7) (bm) for the sake of verbal economy and clarity, this draft provides a *standard* for DHFS to follow in determining whether to grant a tribe the authority to conduct rehabilitation reviews of off-reservation tribal entities. This draft adds such a standard to preserve the constitutionality of the draft. Specifically, in *J. F. Ahern Co. v. Building Commission*, 114 Wis. 2d 69, 88-91 (Ct. App. 1983), the court held that a delegation of legislative powers to an administrative agency is valid only if the delegation is accompanied by an adequate standard to control the exercise of the delegated power. The standard may be broad so long as it is ascertainable and sufficient to protect against "arbitrary, unreasonable or oppressive conduct by the agency." *Id.*, at 90. WLCS-0238/1 requires DHFS to evaluate the application and consider certain factors, but then permits DHFS to authorize the tribe to conduct the review without supplying any standard for granting that authority. Accordingly, this draft supplies such a standard, *i.e.*, DHFS may grant that authority if DHFS determines that the conduct of the review by the tribe is rationally related to the protection of clients. See ss. 48.685 (5d) (b) and 50.065 (5d) (b), as created by 1999 Wisconsin Act 9, for a similar standard.

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