

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 7/21/99

BILL NO. PL 99-063

OF Ed H Capital

SUBJECT Capital

(NAME) BARBARA THOM

(Street Address or Route Number) 5900 Monona Dr

(City and Zip Code) Madison 53716

(Representing) UWALe

Speaking in Favor:

Speaking Against:

Registering in Favor:  but not speaking:

Registering Against:  but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O.Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 7/21-99

BILL NO. 99-063

OF Ed. J. ...

SUBJECT ...

(NAME) Bob Kelleman

(Street Address or Route Number) 3601 Memorial Dr.

(City and Zip Code) Madison 53704

(Representing) ...

Speaking in Favor:

Speaking Against:

Registering in Favor:  but not speaking:

Registering Against:  but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O.Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: July 21/99

BILL NO. \_\_\_\_\_

OF \_\_\_\_\_

SUBJECT Program

(NAME) Dan Witt

(Street Address or Route Number) 51 B. Dwin St

(City and Zip Code) Wilton 53094

(Representing) New Hope Center Inc.

Speaking in Favor:

Speaking Against:

Registering in Favor:  but not speaking:

Registering Against:  but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O.Box 7882  
Madison, WI 53707-7882

---

---

# ROGER BRESKE

---

---

STATE SENATOR

12th District

Capitol Address:  
State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882  
(608) 266-2509

Legislative Hotline:  
1 (800) 362-9472

Home Address:  
8800 Hwy. 29  
Eland, WI 54427  
(715) 454-6575



## MEMORANDUM

July 2, 1999

TO: Senate Committee on Insurance, Tourism  
Transportation & Corrections  
FR: Senator Roger Breske, Chair  
RE: Proposed Administrative Rules

---

Below, please find the description of a proposed administrative rule recently referred to the Senate Committee on Insurance, Tourism, Transportation & Corrections. For your reference, I have included a brief summary of the rule, prepared by the department. If you would like a copy of this rule, or if you would like to request a hearing, please contact Vaughn in my office before **July 17**.

**CLEARINGHOUSE RULE 99-063**; *relating to the establishment of Chapter Trans 2. Chapter Trans 2 elderly and the disabled transportation capital assistance program. Chapter Trans 2 establishes the Department's administration of assistance under the federal sec. 5310 program (formerly sec. 16), and prescribes administrative policies and procedures for implementing the elderly and disabled transportation capital assistance program authorized under s. 85.22, Stats. The purpose of this rule making is to clarify existing provisions of the rule as well as incorporate changes to reflect current program policy and conditions and improve program administrative procedures.*

*Also, attached please find a copy of a letter sent to me by Representative Johnnie Morris-Tatum for your review. In addition to this letter, Representative Morris-Tatum has forwarded a number of related articles for reference. If you would like to review these articles, please feel free to contact my office.*



## Johnnie Morris-Tatum



STATE REPRESENTATIVE • 11TH ASSEMBLY DISTRICT

June 16, 1999

Senator Roger Breske  
Room 18 S  
State Capitol

Dear Senator Breske:

The purpose of this missive is to insure that the "driving while black" provision is included in the graduated drivers license legislation. Alone the bill will better prepare our young drivers for the road, but there are other problems that some drivers are confronted with once they get on the road.

Many drivers throughout the country are being stopped for being Black. Law enforcement officials have termed this act as racial profiling and claim it is used as a tool to combat crime. This problem must be examined. Studies of traffic stops and race have found the following:

- Milwaukee – Statistics show that African Americans are more likely to get ticketed for minor traffic violations.
- Ohio – Blacks received traffic citations at a rate 1.5 times their portion of the population.
- New Jersey – New Jersey Turnpike: African Americans are 13.5 percent of the traffic, but 46 percent of those pulled over.
- Florida – I-95: Seventy percent of motorists stopped are Black, but only ten percent of motorists are Black.
- Maryland – I-95 (just north of Baltimore): Of the 17.5 percent of traffic violators, 70 percent of those searched by MD State Police were Black.

Other states have enacted (or have pending) similar legislation to study racial profiling. Even Congress has made an effort to investigate this horrendous practice (thanks in part to our own, Senator Russ Feingold, who co-sponsored the legislation). President Clinton has also ordered federal law enforcement agencies to collect data on the race and



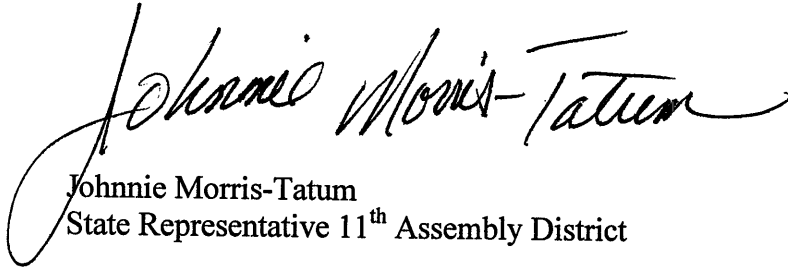
STATE CAPITOL: P.O. BOX 8953, MADISON, WI 53708-8953 • (608) 266-3756  
HOME: 3711 WEST DOUGLAS AVENUE, MILWAUKEE, WI 53209 • (414) 464-4677  
TOLL-FREE: 1-888-534-0011 • FAX: (608) 266-7038



ethnicity of people they question, search or arrest and has urged state and local officials to do the same.

It is very disturbing that citizens are being subjected to this level of harassment. In order to protect the rights of our constituents it is essential that a "driving while black" provision be included in the graduated drivers license legislation.

Sincerely,



Johnnie Morris-Tatum  
State Representative 11<sup>th</sup> Assembly District

JMT/nmr  
Enclosures

cc: Senator Roger Breske  
Senator Chuck Chvala  
Senator Gary George  
Senator Gwendolynne Moore

---

# ROGER BRESKE

---

STATE SENATOR

12th District

Capitol Address:  
State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882  
(608) 266-2509



Home Address:  
8800 Hwy. 29  
Eland, WI 54427  
(715) 454-6575

Legislative Hotline:  
1 (800) 362-9472

July 26, 1999

Mr. Charles H. Thompson, Secretary  
Wisconsin Department of Transportation  
4802 Sheboygan Avenue  
P.O. Box 7910  
**VIA INTER-DEPARTMENTAL MAIL**

RE: Clearinghouse Rule 99-063  
Chapter Trans 2, Wisconsin Administrative Code, Relating to Elderly and Disabled  
Transpiration Assistance Program

Dear Secretary Thompson:

Following a public hearing on July 21, 1999 on the above-captioned rule, the Senate Committee on Insurance, Tourism, Transportation and Corrections recommended that the Committee request that the Department of Transportation consider modifications to the rule under s. 227.19 (4) (b) 2., Stats.

Specifically, the Committee requests that the department consider modifications and clarifications in the following areas:

1. The intended actions by the department with regard to the rule if the current Biennial Budget is approved with the increased reimbursement for accessible vehicles included. Specifically, the Committee would like clarification of the department's plans relating to allowing reimbursement of accessibility features on vehicles at a 90% level rather than the current 80% level.
2. An indication of how client needs are taken into account with regard to accessibility requirements and the department's conclusion as to whether an amendment to the rule is necessary to ensure that such determinations are taken into account in the application process.
3. With regard to the contested case issue, a clarification as to the specific decisions that are covered by the provision and which decisions are not covered by the provision. Also, a more complete explanation is requested of the department with regard to the statutory authority

Secretary Charles Thompson  
July 26, 1999  
Page 2

The committee is not requesting that the department modify the rule with regard to any of these provisions, but rather that the department consider modification and clarification of these provisions. Agreement by the department will permit some additional time for review of these important provisions by both the department and the committee.

In order to assure continuing jurisdiction of the Senate Committee, please provide your response to this request by August 6, 1999. Under the statutes, if the department agrees to consider these modifications the review period for both the Senate and Assembly is extended to either the 10th day following the receipt of the committee's modified proposed rules or the expiration of the statutory review period, whichever is later.

I appreciate the willingness of the department to work with the Committee to work on these important issues. If you have any questions regarding these matters, please feel free to contact me or my staff directly at my legislative office.

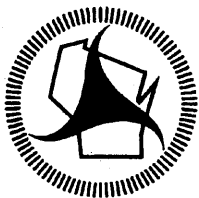
Sincerely,



Senator Roger Breske  
Chair, Senate Committee on Insurance,  
Tourism, Transportation & Corrections

RB:vlv

cc: Representative David Brandemuehl  
Ron Morse, Department of Transportation



# Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

Office of General Counsel  
4802 Sheboygan Ave., Rm. 115B  
P.O. Box 7910  
Madison, WI 53707-7910

Telephone: 608-266-8810  
FAX: 608-267-6734  
E-Mail: [ogc.exec@dot.state.wi.us](mailto:ogc.exec@dot.state.wi.us)

August 6, 1999

Senator Roger Breske  
State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

Re: Clearinghouse Rule 99-063  
Chapter Trans 2, Wisconsin Administrative Code, relating to  
elderly and disabled transportation assistance program

Dear Senator Breske:

This is in response to your July 26, 1999 letter, which asks the Department of Transportation to consider modifying portions of this proposed rule. I note that you have not specifically requested that the proposed rule be modified. The topics you have asked DOT to consider are:

1. Whether DOT has any plans to raise the assistance level from 80% to 90%, if section 85.22, Stats., is amended to authorize reimbursement at the higher level.
2. Whether additional criteria should be added to the proposed rule to ensure that requirements for accessibility to persons using wheelchairs are adequately considered when ranking applications for assistance.
3. Whether section 12 of the proposed rule should be amended to clarify the specific types of decisions covered by the informal review process.

Chapter Trans 2 implements a program administered by the Federal Transit Administration (FTA) and the Department of Transportation (DOT). FTA provides federal funds to DOT. DOT uses the federal funds, supplemented with state funds, to purchase vehicles to serve the transportation needs of elderly persons and persons with disabilities when public transportation is unavailable or inadequate.

DOT provides these vehicles to private nonprofit corporations or to local governments in areas where there are no private nonprofit corporations which provide transportation services to elderly persons and persons with disabilities. DOT uses federal and state funds to cover 80% of the cost of purchasing vehicles for elderly and disabled persons. The private nonprofit corporations or local governments applying for assistance pay the remaining 20%.

This assistance program is established in section 85.22, Stats., which requires DOT to:

1. Establish an annual application cycle for the program;
2. Establish criteria for evaluating all applications and for ranking them in statewide priority;
3. Provide financial assistance to applicants based upon the statewide priority ranking and the availability of state and federal funds.

#### Assistance Level

The Legislature recently amended the statutory rulemaking process by requiring agencies to prepare and publish notice of a statement of the scope of any rule that it plans to promulgate. A statement of scope must contain a description of the objective of the proposed rule, a description of existing policies relevant to the proposed rule, a description of the new policies to be included in the proposed rule, and the statutory authority for the proposed rule. Section 227.135, Stats. DOT prepared and published a detailed statement of scope for this proposed rule. At the time the statement of scope was prepared, the relevant statutory authority, section 85.22(4), Stats., limited federal and state aid for this program to 80% of capital costs. The statement of scope did not include a description of a proposed new policy to raise the assistance level from 80% to 90%. It is DOT's position that it cannot consider raising the assistance level from 80% to 90% in this proposed rule because existing statutory authority limits assistance to 80%, and because the possibility of raising the assistance level above 80% was not included in the statement of scope.

If the Legislature were to amend section 85.22(4), Stats., to authorize assistance at a level higher than 80%, separate rulemaking would have to be initiated, preceded by a new statement of scope which would notify interested parties of the proposed new policy.



DOT is not certain that interested parties would support raising the assistance level to 90%. Although the amount of assistance per vehicle purchased would be increased, there would necessarily be a corresponding reduction in the number of vehicles that could be purchased. Various interested parties have also expressed concerns about the loss of seating capacity and higher operating costs, which would result in fewer people being served.

### Wheelchair Accessibility

DOT does not believe it is necessary to amend the proposed rule to include additional criteria addressing wheelchair accessibility because DOT already has a number of ways in which wheelchair accessibility is considered in the application process.

Applications for assistance are evaluated under the criteria established in section Trans 2.06. These criteria have been in effect since the beginning of the program in 1978. The proposed rule amends these criteria, including those addressing wheelchair accessibility requirements. Section 15 of the proposed rule, amending section Trans 2.06(2)(c), requires that DOT consider the percentage of the elderly and disabled population in need of service, and assigns a maximum of 15 points to this factor. Section 16 of the proposed rule, amending section Trans 2.06(2)(c), requires that DOT consider the percentage of the elderly and disabled population which the applicant proposes to serve, and assigns a maximum of 15 points to this factor. Section 17 of the proposed rule, amending section Trans 2.06(2)(c), requires that DOT consider how the applicant's proposed service will meet the needs of the elderly and disabled population, and assigns a maximum of 30 points to this factor. In addition, section Trans 2.06(2)(b), allows DOT to award applicants up to 75 points for demonstrating service to the general elderly and disabled population. These criteria allow DOT to consider the needs of persons using wheelchairs and an applicant's ability to meet that need.

Further, DOT requires applicants requesting vehicles that are not wheelchair accessible to explain and justify the request. DOT's application scoring team specifically reviews wheelchair accessibility within an applicant's entire fleet of vehicles to determine whether a wheelchair accessible vehicle is necessary to meet the needs of elderly and disabled persons in the applicant's service area. Approximately 80% of the vehicles purchased under this program are accessible to persons using wheelchairs, which demonstrates that DOT already devotes adequate consideration to ensuring that vehicles purchased under this program are wheelchair accessible.

### Contested Case/Informal Review

Some private transportation businesses routinely object to applications for assistance submitted by private nonprofit corporations. This is because the private transportation businesses want to provide transportation services for the applicant in lieu of the applicant seeking DOT assistance in purchasing vehicles for elderly and disabled persons.

Section 12 of the proposed rule creates section Trans 2.055, which describes the procedure used by DOT when reviewing an objection to an application for DOT assistance in purchasing vehicles for elderly and disabled persons.

The Department's review is limited to considering whether a private transportation company or other party has been adversely affected by a private nonprofit corporation's or local government's failure to satisfy DOT's procedural requirements for applying for assistance to obtain vehicles for elderly and disabled persons.

The proposed revision establishes a fast, informal review procedure rather than the cumbersome, expensive, time consuming contested case and judicial review process established in Chapter 227, Stats. The Department has chosen a fast informal review process to ensure that it can continue to provide assistance to private nonprofit corporations and local governments providing transportation services to elderly and disabled persons without unnecessary delay. It is noteworthy that no one objected to this informal review procedure at the public hearings or in written comments submitted to the Department after the hearings.

Chapter 227, Stats., does not require that formal contested case procedures be used in all circumstances. J.F. Ahern Co. v. Wisconsin State Building Commission, 114 Wis. 2d 69, 92-95 (Ct. App. 1983), review denied 114 Wis. 2d 601; Gleason v. Department of Transportation, 61 Wis. 2d 562 (1973). A person is entitled to a formal contested case hearing only if a "substantial interest" is injured by agency action or inaction. Milwaukee Metropolitan Sewerage District v. Department of Natural Resources, 126 Wis. 2d 63, 74 (1985); section 227.42, Stats; Kathleen S. Donius, Milwaukee Metropolitan Sewerage District v. DNR: Expanding the Scope of State Agency Actions Covered by Contested Case Hearings, 1986 Wis. L. Rev. 963.

Chapter 227, Stats., does not require that all agency actions be subject to judicial review. A person is entitled to judicial review only if a "substantial interest" is injured by agency action or inaction. Department of Revenue v. Hogan, 198 Wis. 2d 792, 803 (Ct. App. 1995); Madison Landfills, Inc. v. Department of Natural Resources, 180 Wis. 2d 129 (Ct. App. 1993); section 227.52, Stats.

Section 12 of the proposed rule (section Trans 2.055) addresses objections made by a private transportation company or other party to a private nonprofit corporation's or local government's application for assistance. It does not address objections or appeals made by an unsuccessful applicant for assistance. DOT wishes to make clear that private nonprofit corporations and local governments who unsuccessfully apply for assistance under this program are not entitled to a contested case hearing or judicial review concerning the denial or ranking of an application. This has been DOT's practice since at least 1982.

The section 227.42, Stats., right to hearing does not apply when there is evidence of legislative intent that a particular interest is not protected. DOT believes that section 85.22, Stats., provides clear evidence of legislative intent that there is no right to a contested case hearing, either for an unsuccessful applicant for assistance, or for a private transportation company or other party challenging an applicant's compliance with DOT's procedural requirements for applying for assistance.

As noted above, section 85.22, Stats., requires DOT to:

1. Establish an annual application cycle for the program;
2. Establish criteria for evaluating all applications and for ranking them in statewide priority;
3. Provide financial assistance to applicants based upon the statewide priority ranking and the availability of state and federal funds.

Further, state and federal funds are made available to DOT on a fiscal year basis. Federal funds, which comprise about 60% of the available funds for this program, must be obligated within the federal fiscal year in which they have been made available, or they are lost.

By establishing statutory requirements that DOT must implement an annual application cycle, that uniform criteria for evaluating applications must be developed, that all applications must be ranked in statewide priority, and that applications must be approved on the basis of the statewide priority ranking, the legislature has expressed an intent that contested case hearings are not required. Formal contested case hearings typically take more than a year to complete, especially if judicial review is mandated. Also, the appeal process would remain open-ended because subsequent appeals could follow upon initial appeals as the statewide priority ranking of applications is revised after the conclusion of contested case hearings and judicial review.

DOT cannot effectively administer this program on an annual application cycle and provide financial assistance to applicants based on statewide priority ranking within the federal and state fiscal years, if DOT is required to provide formal contested case hearings followed by judicial review to unsuccessful applicants. Federal funds could not be obligated within the federal fiscal year and would lapse. It is impractical for DOT to conduct a series of individual formal contested case hearings for unsuccessful applicants to determine whether the decision to allocate funds to various applicants or programs was correct.

The Department's informal review is appropriate because a private transportation company has no "substantial interest" in a private nonprofit corporation's or local government's compliance with DOT's procedural requirements for applying for assistance to obtain vehicles for elderly and disabled persons.

Unsuccessful applicants for assistance are not entitled to a contested case hearing under section 227.42, Stats., because section 85.22, Stats., provides evidence of legislative intent that this interest is not to be protected through the mechanism of appeal through formal contested case hearings.

The Department must ensure that federal and state funds available under the elderly and disabled transportation assistance program are obligated in accordance with statutory requirements. DOT must also ensure that these funds are obligated within the federal fiscal year, before they are lost. The Department is satisfied that an informal review process is more appropriate than the formal contested case and judicial review in chapter 227, Stats.

Respectfully,



Charles M. Kernats  
Assistant General Counsel

cc: Representative Brandemuehl  
Secretary Charles Thompson  
Joe Maassen, Deputy General Counsel  
Robert Cook, Executive Assistant  
Ron Morse, DTIM Bureau of Transit and Local Roads