

# Wisconsin Assembly



## MANUAL ON COMMITTEE PROCEDURES AND POWERS

State Capitol  
Madison, Wisconsin

January 1999

State of Wisconsin



Wisconsin Legislature  
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TO: ASSEMBLY COMMITTEE CHAIRPERSONS

FROM: SPEAKER SCOTT R. JENSEN

Legislative committees perform a central function in the legislative process. They develop, review and refine legislation, facilitate compromise and serve as an access point for citizen involvement in their government.

Committee success depends on the adherence to time-tested procedures and on the wise and effective use of the powers given to committees. This *Manual on Committee Procedures and Powers*, written principally for use by chairpersons of Assembly committees:

1. Sets out the powers vested in committee chairpersons.
2. Explains the procedures governing committee deliberations.

Since the powers of committees and committee chairpersons are derived in large part from the statutes and rules of legislative procedure, citations to relevant statutes and rules are used throughout this *Manual*. [Citation format: "AR" — Assembly Rules; "JR" — Joint Rules; "Stats." — Wisconsin Statutes.] In addition, the full text of all statutes and rules cited within a particular chapter are set out at the end of that chapter.

A handwritten signature in black ink, appearing to read "Scott R. Jensen".

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**Chapter 1**  
OVERVIEW--ROLE OF COMMITTEES AND CHAIRPERSONS

**A. Role of Committees**

Standing committees of the Assembly engage in several distinct activities set out below. Review of legislation and of administrative rules are the principal responsibilities of committees. The other activities are undertaken at the discretion of the chairperson.

1. *Review Proposed Legislation.* Review bills, joint resolutions and resolutions referred to the committee and make recommendations to the Assembly on disposition of these proposals.

2. *Review Administrative Rules.* Review proposed administrative rules referred to the committee pursuant to the procedure under s. 227.19, Stats.

3. *Conduct Studies, Investigations and Reviews.* Inquire into or conduct hearings on matters within the customary subject matter jurisdiction of the committee.

4. *Prepare Budget Recommendations.* Review relevant parts of the Governor's budget recommendations and formulate recommendations to the Joint Committee on Finance.

Special committees of the Assembly may also be created, by resolution (a temporary special committee may be created by written order of the Speaker). A special committee is created to deal with a specific issue or subject area.

AR 10 (1m), (2), 95 (82)

**B. Responsibilities of Chairpersons**

The responsibilities of Assembly committee chairpersons include the following:

1. Schedule the work of the committee.
2. Schedule public hearings and executive sessions on matters before the committee; schedule reporting of committee recommendations on proposals.
3. Establish the agenda for all committee meetings.
4. Ensure that proper public notice is given of all committee meetings.
5. Notify committee members of all meetings of the committee.
6. Ensure that fiscal estimates and bills are available before any public hearing.
7. Preside at meetings.
8. Supervise the committee clerk to ensure that all committee actions are properly handled and reported to the Assembly.
9. Maintain custody of all bills, papers and other documents in the possession of the committee.
10. Appoint subcommittees and subcommittee chairpersons to take up matters within the committee's jurisdiction or before it. (The Speaker is to be notified whenever a subcommittee is appointed.)

11. Establish and maintain liaison with executive branch agencies having responsibility for programs within the committee's jurisdictional area.

12. Schedule joint hearings with Senate committees having similar jurisdictional responsibilities.

13. Conduct studies and investigations of any subject matter within the jurisdiction of the committee.

**C. Statutes and Rules Cited**

**ASSEMBLY RULE 10. Special committees. (1m)** Special committees may be created by the speaker by written order and may be created by resolution. Any such committee shall cease to exist:

(a) When its final report has been made to the assembly;

(b) When the objective for which the committee was established has been accomplished; or

(c) When the termination date established by the action creating the committee has arrived.

(2) The speaker may create a temporary special committee by written order.

**ASSEMBLY RULE 95. (82) SPECIAL COMMITTEE:** A committee created by resolution to investigate specific matters during a session or committee work period and report to the assembly.

## Chapter 2 COMMITTEE PROCEDURE--BILLS

This Chapter sets forth the role of the committee and the duties of the chairperson relating to consideration of bills, resolutions and joint resolutions referred to a standing committee. It is organized according to the usual sequence of committee consideration of bills, resolutions and joint resolutions.

### A. Referral

At the time a proposal is introduced, or received from the Senate, it is given its first reading and is usually referred to a standing committee by the Speaker. The Speaker is required to refer a proposal within seven working days after the Chief Clerk receives the proposal for introduction. Within five days after initial referral, the Speaker, with the consent of the chairperson, may withdraw the proposal and refer it to another standing committee. Proposals are also referred to committees by action of the Assembly. Once a proposal is reported out of a committee, the Speaker may rerefer the proposal to a committee. Upon receipt of a proposal, the committee clerk starts a committee record on the proposal.

AR 13 (1), 39 (4) (c), 42 (1) (a), (3) (c), 45 (1), (5)

### B. Initial Handling of Bills

1. The chairperson must decide if, and when, proposals will be taken up by the committee.

2. The chairperson decides if a proposal will receive a public hearing. If a public hearing will be held, the chairperson decides when to hold it, and whether similar bills will be grouped for purposes of public hearing.

AR 11 (3), (9), 14 (1)

### C. Selecting a Hearing Date; Hearings Outside Madison

1. Hearings are to be scheduled for the committee's assigned meeting day.

2. Committees may not meet while the Assembly is in session.

3. Since copies of proposals must be available to the public, and fiscal estimates prepared, *before* a proposal can receive a public hearing, chairpersons should schedule hearings accordingly.

4. Hearings must be preceded by public notice complying with the Open Meetings Law. (See sec. D., immediately below.)

5. Hearings (or any other committee meeting) held in this state outside Madison: always require the approval of the Speaker; also require approval of the Minority Leader if (a) held during the period July 1 through the general election day in an even-numbered year or (b) held during the period from the call of a special election through the holding of the election within the legislative district in which the election is called (not including Madison).

ss. 13.093 (2) (a), 13.123 (3) (a), Stats.; AR 11 (3), (11), 12, 14 (3); JR 49 (2)

#### D. Giving Notice of Public Hearings

The Assembly's procedures for giving notice of public hearings, set out below, are designed to comply with the Open Meetings Law.

1. An Assembly public hearing notice form is completed, setting out the name of the committee, the date, time and place of the hearing and the subject which will be taken up at the hearing. If legislative proposals are to be heard, the number, relating clause and author of each proposal is listed. If an executive session is to immediately follow the hearing, that fact, and the numbers of the bills to be taken up, must be listed. (See sec. G., below, for the procedure for giving notice of an executive session not held in conjunction with a public hearing.) The notice form must be completed before Monday noon for hearings to be held the following week.

2. Copies of the notice are posted on the Assembly bulletin board and filed with the Chief Clerk by Monday noon, for publication in the Weekly Schedule of Committee Activities.

3. If a hearing is held on short notice, and notice cannot be given in the Weekly Schedule of Committee Activities, the Open Meetings Law requires that the notice must be posted at least 24 hours before the committee meets. If the chairperson determines, for good cause, that the 24-hour notice is impractical or impossible, the Open Meetings Law allows a shorter period of notice, but not less than two hours under any circumstances. If notice is not given in the Weekly Schedule of Committee Activities, distribution of the hearing notice is as follows:

- a. If the notice is distributed 26 hours or more before the meeting: Post on Assembly and Senate bulletin boards and provide a copy to the Chief Clerk for further distribution. (The additional two hours is necessary for the Chief Clerk to take care of the distribution required for the 24-hour notice.)
- b. If the notice is distributed less than 26 hours before the meeting: (1) Post on Assembly and Senate bulletin boards; (2) copy to press room mail box of official state newspaper (currently, WISCONSIN STATE JOURNAL); and (3) copies to news media which have filed a written request for such notice (check office of the Chief Clerk).

4. The chairperson is responsible for notifying all committee members of committee meetings.

5. It is customary for the chairperson to notify primary authors when their bills have been scheduled for hearing. As a courtesy, some chairpersons attempt to arrange with the primary author a mutually agreeable time for the hearing.

6. The Legislative Council Staff attorney or analyst assigned to the committee is notified of all committee hearings (and other committee meetings).

s. 19.84 (1), (2), (3), Stats.; AR 11 (10), 14 (2)

#### E. Reasonable Accommodation

1. The Weekly Schedule of Committee Activities contains a notice that any person who requires reasonable accommodation, including materials prepared in

Call  
PAGE  
Basement  
Senate  
Assembly

Press  
Room

an alternative format, as provided under the Americans With Disabilities Act (ADA), should contact the Legislative Hotline. If questions arise about accommodating persons under the ADA at committee hearings, contact the Chief Clerk's office.

2. Under the Open Meetings Law, reasonable effort must be made to accommodate any person desiring to record, film or photograph a public hearing (or any other committee meeting held in open session). (The Open Meetings Law does *not* permit recording, filming or photographing in a manner that interferes with the conduct of the meeting or the rights of the participants.) Ordinarily, this accommodation requirement under the Open Meetings Law is routinely met at public hearings. If questions on meeting the requirement do, however, arise, contact the Assembly Sergeant at Arms' office or the Chief Clerk's office.

s. 19.90

#### F. Conducting Hearings

1. *Calling to Order.* Hearings should be called to order at the scheduled time, especially if a quorum is present (although there is no requirement that a quorum be present in order to conduct a public hearing). If a quorum is not present, some chairpersons permit a short delay (e.g., up to 10 minutes) to allow members to arrive.

2. *Roll Call.* The call of the roll is the first item of business. If a quorum is not present, or if the chairperson so directs, the roll can be ordered left open and members accounted for as they arrive. (Note that the Assembly Rules provide: "A member who is connected to a committee meeting by means of a 2-way, audio-visual transmission shall be considered present for all purposes and to the same extent as a member who is attending the meeting in person.")

3. *Announcements.* The chairperson should welcome those in attendance, and may wish to introduce the members of the committee or ask them to introduce themselves. At this time, the chairperson should announce any procedural items, such as:

- a. Explain what *Assembly hearing slips* are for, and how they are filled out.
- b. Explain that if someone wishes to *speak early*, in order to be able to make another commitment, that should be noted on the hearing slip.
- c. Announce *time limits* on testimony, if they appear to be necessary in order for all to have an opportunity to speak. Also, urge that speakers *avoid repetition*.
- d. Explain that only members of the committee may *question speakers*, and that questions by members are asked only after the chairperson recognizes the committee member having the question. Emphasize that questions from the audience are not appropriate. It may be necessary, either at the beginning of or during the hearing, to announce that it is customary to not permit public demonstrations of support

for or opposition against testimony (e.g., applause or booing), out of respect for speakers and the necessity to maintain order.

- e. State the *order of business*, especially if it is different than the order set out in the public hearing notice.

4. *First Item of Business.* The chairperson announces the first bill to be taken up and calls the first speaker (who is usually the primary author). Upon completion of the testimony, and any questions, all other persons wishing to testify on that bill are called.

Note: Chairpersons have several options in calling up speakers:

- a. All proponents, then all opponents, then persons appearing for information only;
- b. Alternating proponents and opponents, followed by persons appearing for information;
- c. Alternating groups of proponents and opponents; or
- d. Alternating time blocks; e.g., 15 minutes for proponents, then 15 minutes for opponents, then more proponents, etc.

5. *Subsequent Items of Business.* Following completion of testimony on the first bill, the remaining bills are taken up in turn.

6. *Temporary Chairperson.* In the absence of the chairperson, the vice chairperson presides, followed by members of the committee in the order in which they were appointed.

7. *Attendance Slips.* At the conclusion of the hearing, the committee clerk is responsible for taking a copy of the attendance record, plus any blue attendance slips submitted by other Legislators, to the Chief Clerk's office.

8. *Record of Hearing.* The committee clerk is responsible for compiling and maintaining a record of each committee meeting. That record includes, for each bill heard: (a) the relating clause of the bill; (b) the date, place and time of the hearing; (c) the committee members present; (d) persons appearing for the bill; (e) persons appearing against the bill; (f) persons appearing for information only; (g) persons registering for the bill; and (h) persons registering against the bill. In addition, the jackets of all bills which were heard must be taken to the Assembly Records Office to have that fact recorded on them.

AR 5 (1) (intro.), (c), 11 (1), (3m), (7)

#### **G. Executive Sessions**

1. Executive sessions are for the purpose of taking committee action on matters before the committee. They may be held separately or as part of a committee meeting held to conduct a public hearing.

2. Executive sessions are scheduled at the discretion of the chairperson, and the business to be taken up is determined by the chairperson.

3. Executive action may be taken on any proposal in the committee, regardless of whether it has received a public hearing.

4. Notice of an executive session must comply with the Open Meetings Law. Public notice must be given in *writing* (usually on the chairperson's

stationery) and set forth the *date, place, time and specific bills or other business* to be taken up. Notice must be distributed *in advance* of the meeting. If notice of the executive session is given in conjunction with the notice of a public hearing, then the procedure described in sec. D., above, should be followed. If notice of the executive session is given separately, the following distribution procedure should be followed:

- a. Distribution *26 hours or more before the meeting*: Post on Assembly and Senate bulletin boards and provide a copy to the Chief Clerk for further distribution.
  - b. Distribution *less than 26 hours before the meeting*: (1) Post on Assembly and Senate bulletin boards; (2) copy to press room mail box of official state newspaper (currently, WISCONSIN STATE JOURNAL); and (3) copies to news media which have filed a written request for such notice (check office of Chief Clerk).
5. In all cases, notice must be given *at least two hours* before the committee meets, under the Open Meetings Law (but, as noted previously, the "two-hour" notice may be used only if giving notice at least 24 hours in advance is, for good cause, impractical or impossible).
6. The chairperson is responsible for notifying committee members of all executive sessions of the committee.
7. The Legislative Council Staff attorney or analyst assigned to the committee is notified of all executive sessions.
8. *Convening* the executive session:
- a. Call to order and roll call. A *quorum must be present* to conduct business.
  - b. Proposals are taken up as called by the chairperson.
  - c. Insofar as possible, rules of the Assembly apply to the procedures within standing committees.
9. *Voting*:
- a. All motions must receive a second in order to be placed before the committee for a vote.
  - b. *All committee votes must be taken on a roll call vote in the presence of the committee.*
  - c. A member must be present in order to be recorded as voting. The voting roll may be held open until the adjournment of the executive session, in order to permit absent members to vote. However, absent members must return, and vote in the presence of the committee, in order for the vote to be recorded. If an absent member is unable to vote during the executive session upon timely request, the absent member may have the committee report show how the member would have voted if he or she had been present.
  - d. Every committee member who is present *must* vote.
  - e. Members vote in the order in which named to the committee.

- f. A committee may reconsider any action taken on a proposal up until the time that the proposal is reported out to the Assembly.
10. *Amendments:*
- a. The order of considering simple and substitute amendments is governed by Assembly Rule 55.
  - b. Amendments may be drafted and offered in committee, using the preprinted forms provided by the Chief Clerk for that purpose.
  - c. Committees may offer amendments only to proposals currently before the committee.
  - d. The matter of germaneness of amendments is resolved by the Speaker and the Assembly. Points of order on the germaneness of amendments are *not in order* within the committee. (If the question is raised, the chairperson should advise the proponent that the point of order can be raised on the floor of the Assembly, and the committee should continue deliberation on the amendment in question.)
  - e. If an amendment before a committee is not adopted, it is not reported out of committee. The amendment may later be "revived" by majority vote of the Assembly.
11. Motions on *introduction* of proposals. The following motions are in order during an executive session:
- a. Bills, resolutions and joint resolutions.
    - i. Introduction.
  - b. Amendments (simple and substitutes).
    - i. Introduction only.
    - ii. Introduction, and then a subsequent motion on adoption. (It is an improper motion to move introduction *and* adoption.)
    - iii. Only *adopted* amendments are reported out.
  - c. Bills or amendments received during executive session (i.e., which are not already introduced) must be offered by the committee (not an individual member).
12. Motions on Assembly proposals *already introduced*. The following motions are in order during an executive session:
- a. Bills.
    - i. Passage.
    - ii. Indefinite postponement.
  - b. Amendments (simple and substitutes).
    - i. Adoption.
    - ii. Rejection.
    - iii. Only *adopted* amendments are reported out.
  - c. Bills, with amendments.
    - i. Passage, as amended.
    - ii. Indefinite postponement, as amended.

13. Motions on Assembly *resolutions* and *joint resolutions already introduced*. The following motions are in order during an executive session:
  - a. Resolutions and joint resolutions.
    - i. Adoption.
    - ii. Rejection.
  - b. Amendments (simple and substitutes).
    - i. Adoption.
    - ii. Rejection.
    - iii. Only *adopted* amendments are reported out.
  - c. Resolutions and joint resolutions, with amendments.
    - i. Adoption, as amended.
    - ii. Rejection, as amended.
14. Motions on *Senate bills and joint resolutions*. The following motions are in order during an executive session:
  - a. Bills.
    - i. Concurrence.
    - ii. Nonconcurrence.
  - b. Joint resolutions.
    - i. Concurrence.
    - ii. Nonconcurrence.
  - c. Assembly amendments to Senate proposals (simple and substitutes).
    - i. Adoption.
    - ii. Rejection.
    - iii. Only *adopted* amendments are reported out.
  - d. Senate proposals with Assembly amendments.
    - i. Concurrence, as amended.
    - ii. Nonconcurrence, as amended.
15. Report *without recommendation*:
  - a. Motion to that effect is *not in order*.
  - b. *Generally can result* only if:
    - i. Vote for passage, adoption or concurrence is a *tie*; or
    - ii. *Successive* motions for indefinite postponement, rejection or nonconcurrence and passage, adoption or concurrence *fail*.
  - c. Bills introduced by the Joint Committee for Review of Administrative Rules under s. 227.19 (5) (e) or 227.26 (2) (f), Stats., are recorded as reported without recommendation *if* withdrawn, prior to committee vote, under Assembly Rule 15 (6).
16. *Motions to Table*. Motions to table a bill to a time later than the adjournment of the meeting are *not in order*, since the motion does not form the basis for a recommendation to the Assembly for final action and conflicts with the authority of the chairperson to decide when a proposal shall receive committee action. Further, if a proposal were allowed to be tabled in committee, the proposal could not be taken off the table at a later meeting and considered by the committee unless

notice to that effect were given in compliance with the Open Meetings Law (i.e., the proposal could not spontaneously be taken off the table). (A chairperson may, at any time, withdraw a proposal from consideration.)

17. *Post-Adjournment Actions.* Following completion of an executive session and adjournment, the chairperson should ensure that:

- a. Any jacketed bills or amendments in Legislative Reference Bureau (LRB) form, which were introduced by the committee, are taken to the Assembly Records Office for numbering and printing.
- b. Any amendments introduced on the preprinted form are taken to the Assembly Records Office for numbering, and then to the LRB for drafting. Once drafted, they are picked up by the committee clerk and turned in to the Assembly Records Office for printing.
- c. The committee clerk prepares the record of the committee meeting.

18. *Committee Reports:*

- a. The chairperson must report a proposal to the Assembly within seven working days after executive action if the committee recommends that the proposal be adopted, passed or concurred in. Otherwise, the chairperson decides when committee actions are reported to the Assembly. (Under Assembly Rule 11 (8), before a proposal is reported, a committee may *reconsider* any action taken on the proposal.)
- b. Committee reports follow the form set out in Assembly Rules 18 and 19.
- c. Only those amendments recommended for adoption are reported out of committee.

s. 19.84 (1), (2), (3), Stats.; AR 11, 12, 17m, 18, 19, 39 (1), 53 (2), (3), 55, 77

#### **H. Statutes and Rules Cited**

**13.093 Reference of bills to joint committee on finance.** (2) (a) Any bill making an appropriation and any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues shall, before any vote is taken thereon by either house of the legislature if the bill is not referred to a standing committee, or before any public hearing is held before any standing committee or, if no public hearing is held, before any vote is taken by the committee, incorporate a reliable estimate of the anticipated change in appropriation authority or state or general local government fiscal liability or revenues under the bill, including to the extent possible a projection of such changes in future biennia. For purposes of this paragraph, a bill increasing or decreasing the liability or revenues of the unemployment reserve fund is considered to increase or decrease state fiscal liability or revenues. Except as otherwise provided by joint rules of the legislature, such estimates shall be made by the department or agency administering the appropriation or fund or collecting the revenue. The joint survey committee on retirement systems shall prepare the fiscal estimate with respect to the provi-

sions of any bill referred to it which create or modify any system for, or make any provision for, the retirement of or payment of pensions to public officers or employees. When a fiscal estimate is prepared after the bill has been introduced, it shall be printed and distributed as are amendments.

**13.123 Legislators' expenses.** (3) ATTENDANCE AT MEETINGS. (a) Any senator authorized by the committee on senate organization to attend a meeting outside the state capital, any representative to the assembly authorized by the committee on assembly organization to attend an out-of-state meeting or authorized by the speaker to attend a meeting within this state outside the state capital, and all members of the legislature required by law, legislative rule, resolution or joint resolution to attend such meetings, shall be paid no additional compensation for such services but shall be reimbursed for actual and necessary expenses from the appropriation under s. 20.765 (1) (a) or (b), but no legislator may be reimbursed under this subsection for expenses on any day for which the legislator submits a claim under sub. (1). Any expenses incurred by a legislator under s. 14.82 shall be reimbursed from the appropriation under s. 20.315 (1) (q).

**19.84 Public notice.** (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

**19.90 Use of equipment in open session.** Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

**ASSEMBLY RULE 5. Chief clerk's duties.** (1) The assembly chief clerk shall:

(c) Supervise the official recording of all assembly actions and the making of all required entries in the history file for proposals.

**ASSEMBLY RULE 11. Committee procedures.** Insofar as applicable, the rules of the assembly apply to the procedures of standing committees and special committees.

(1) A majority of any committee constitutes a quorum for the transaction of business.

(2) Committee chairpersons may appoint subcommittees to consider specified subjects and report to the parent committee. Committee chairpersons may appoint subcommittee chairpersons, who may be members of any political party.

(3) A committee shall meet upon the call of its chairperson within the times and places assigned by the speaker. If anticipated public attendance so warrants, arrangements may be made through the sergeant at arms to hold a committee meeting in quarters larger than the regularly assigned committee room.

(3m) A member who is connected to a committee meeting by means of a 2-way, audiovisual transmission shall be considered present for all purposes and to the same extent as a member who is attending the meeting in person.

(4) All committee votes shall be taken in the presence of the committee. A member shall not be recorded as voting unless the member was present at the committee session when the vote was taken.

(5) (a) Any vote may be held open until the adjournment of the committee session to permit an absent member to vote. Any such vote shall only be recorded if the member votes in the presence of the committee in session.

(b) If an absent member makes a timely request, a committee report may indicate how the member would have voted had he or she been present.

(6) Members of a committee shall vote in the order in which named to the committee.

(7) In the absence of the chairperson and the vice chairperson, committee members shall succeed to the chair in the order in which named to the committee.

(8) Before a proposal is reported to the assembly, a committee may reconsider any action taken on the proposal.

(9) The chairperson shall determine when proposals or other business will be scheduled for public hearing or executive action, and, subject to rule 17m, when committee actions shall be reported to the assembly.

(10) The chairperson is responsible for notifying committee members of all committee meetings.

**ASSEMBLY RULE 12. Committees not to meet during daily session.** Except for conference committees, no committee may meet while the assembly is in session.

**ASSEMBLY RULE 13. Business referred to committee.** (1) Any business to be decided by the assembly may be referred to a committee:

(a) Upon introduction (see rule 42).

(am) By the speaker, after a committee reports it, as provided in rule 45.

(b) While under debate by the assembly (see rule 65 (2) (d) and (e)).

(c) By a motion, offered under the 8th order of business, while such business is pending on any reproduced calendar awaiting assembly action. Any such motion requires a majority vote for adoption.

**ASSEMBLY RULE 14. Public hearings.** (1) Any proposal referred to a committee, and any other business relevant to its title, may at the discretion of the chairperson be scheduled for public hearing.

(2) On or before Monday noon of each week or on or before Friday noon of the first week of the biennial session, the chairperson of each standing committee shall post on the assembly bulletin board and file with the chief clerk a list of the public hearings which will be held before such committee during the following week. The announcement of any hearing shall give the day, hour, place and nature of the business, or number, author and relating clause of any proposal, to be considered. These lists shall be reproduced in the weekly schedule of committee activities.

(3) No hearing shall be held until copies of any of the legislation scheduled for hearing are available to the public.

**ASSEMBLY RULE 17m. Committee reports; time limits.** A committee chairperson shall report a proposal to the assembly within 7 working days after the committee takes executive action on the proposal if the committee recommends that the proposal be adopted, passed or concurred in.

**ASSEMBLY RULE 18. Committee report with recommendations.** When the committee to which a proposal was referred makes recommendations, the chairperson shall report in concise form the executive action of the committee. The report shall be signed by the chairperson.

(1) The committee report shall indicate the actual numerical vote on the motion on which the recommendation is based; and the form of such report shall be as illustrated in the following example:

The committee on..... reports and recommends:

Assembly Resolution 10

A resolution relating to, etc.

Adoption: Ayes, 7; Noes, 1; Absent, 1.

Assembly Joint Resolution 50

A joint resolution relating to, etc.

Rejection: Ayes, 10; Noes, 1.

Assembly Bill 25

AN ACT (relating clause)

Passage: Ayes, 7; Noes, 3; Absent, 1.

Assembly Bill 30

AN ACT (relating clause)

Assembly amendment 1, adoption: Ayes, 11; Noes, 0.

Passage as amended: Ayes, 8; Noes, 3.

Assembly Bill 40

AN ACT (relating clause)

Assembly substitute amendment 1, adoption: Ayes, 6; Noes, 5.

Passage as amended: Ayes, 6; Noes, 5.

Assembly Bill 50

AN ACT (relating clause)

Indefinite postponement: Ayes, 8; Noes, 1.

Senate Bill 10

AN ACT (relating clause)

Concurrence: Ayes, 9; Noes, 0.

Senate Bill 20

AN ACT (relating clause)

Assembly substitute amendment 1, adoption: Ayes, 9; Noes, 1;  
Absent, 1.

Concurrence as amended: Ayes, 9; Noes, 2.

Senate Bill 30

AN ACT (relating clause)

Nonconcurrence: Ayes, 9; Noes, 0.

.....  
Chairperson

(2) A committee may accept or offer a simple amendment or a substitute amendment and recommend its adoption.

(3) Any amendment referred to a standing committee shall be reported out of committee only if adoption is recommended. An amendment not reported may, upon motion and a majority vote of those present, be revived by the assembly while the proposal is in an amendable stage.

(4) The report of the committee shall be reproduced in the journal.

(5) Whenever a committee offers a proposal for introduction, it shall include in the bill jacket a report in the following form, and shall deposit the jacket with the chief clerk:

Assembly Bill..... (LRB-..... / ....)

AN ACT (relating clause)

Introduction: Ayes,.... ; Noes,.... .

**ASSEMBLY RULE 19. Committee report without recommendation.** (1) A committee may report a proposal without recommendation only:

(a) If a vote for passage or concurrence is a tie; or

(b) If successive motions for indefinite postponement or nonconcurrence, and passage or concurrence fail.

(2) When no recommendation is made, the committee shall report as illustrated in the following example:

The committee on..... reports:

Assembly Resolution 40

A resolution relating, etc.

Without recommendation [rule 19].  
 Assembly Bill 90  
 AN ACT (relating clause)  
 Without recommendation [rule 19].  
 Senate Bill 50  
 AN ACT (relating clause)  
 Substitute amendment 1, adoption: Ayes, 11; Noes, 0.  
 Without recommendation [rule 19].

.....  
 Chairperson

(3) The report of the committee shall be reproduced in the journal. Notwithstanding subs. (1) and (2), the chief clerk shall record in the journal that a bill is reported without recommendation whenever the bill is withdrawn from committee under rule 15 (6) prior to the committee's vote on the bill.

**ASSEMBLY RULE 39. Introduction of proposals.** (1) Except as otherwise provided in joint rule 83 (2), any member or standing committee may offer proposals for introduction in the assembly on any day of the biennial legislative session.

**ASSEMBLY RULE 42. First reading and reference of proposals.** (1) Upon the introduction of any proposal in the assembly, or the initial receipt of a senate proposal for consideration in the assembly, such proposal shall be read for the first time.

(a) Any proposal that requires 2 or more readings shall be referred by the presiding officer to committee, or to the calendar for the 2nd legislative day following the referral, or to the committee on rules.

**ASSEMBLY RULE 45. Subsequent reference of proposals.** (1) Whenever a committee reports on a proposal referred to that committee, the speaker shall refer or rerefer the proposal, except as otherwise provided in subs. (2) and (3), to the calendar for the 2nd legislative day thereafter for 2nd reading or to the committee on rules for calendar scheduling or to another standing or special committee, unless it is his or her judgment that reference of the proposal to the joint committee on finance is required by law or rule and the speaker refers the proposal to that committee. On any legislative day when a committee report, showing the speaker's subsequent referrals, has been provided to the members prior to the 3rd order of business, such report shall not be read by the chief clerk to the members, but the content of the committee report and the speaker's referrals and rereferrals shall be reproduced in the journal.

(5) Beginning on inauguration day and on any day of the regular biennial session period, proposals may be reported by one committee and referred by the speaker to another committee or to the calendar if such action is not in conflict with any limitations imposed by the session schedule or otherwise agreed to by both houses. Whenever such referral of a proposal occurs on a day on which the assembly does not meet, the chief clerk shall record in the journal the appropriate information concerning the referral.

**ASSEMBLY RULE 53. Drafting of amendments.** (2) When a proposal is under active consideration by an assembly committee or by the assembly on 2nd reading, floor amendments may be drafted by members as provided by the chief clerk.

(3) Whenever a floor amendment on a form is adopted in committee, the chairperson shall forward a copy to the legislative reference bureau for review and redrafting. When the version of the amendment drafted by the legislative reference bureau is in satisfactory form, the chairperson shall deposit it in the chief clerk's office and the clerk shall substitute it for the original version.

**ASSEMBLY RULE 55. Sequence of considering amendments.** (1) Before a proposal is ordered engrossed and read the 3rd time, amendments to that proposal shall be considered in the following sequence:

(a) Substitute amendments offered prior to the present consideration of the proposal shall be considered beginning with the substitute amendment most recently received.

(b) If the first substitute amendment is offered during the consideration of simple amendments to the proposal, the substitute amendment shall be considered before the next simple amendment to the proposal is taken up.

(c) Substitute amendments offered during the consideration of a substitute amendment to the proposal shall be considered in the sequence in which received, but only if no other substitute amendment has been adopted.

(d) Simple amendments shall be considered in numerical sequence.

(2) (a) Whenever a substitute amendment is before the assembly, simple amendments to it shall be considered in numerical sequence prior to action on the substitute amendment.

(b) Whenever a simple amendment is before the assembly, amendments to it shall be considered in numerical sequence prior to action on the simple amendment.

(3) The adoption of one substitute amendment precludes consideration of any other substitute amendment to the proposal.

**ASSEMBLY RULE 77. Voting mandatory; exceptions.** When a question is put every member present shall vote either "aye" or "no" unless paired with another member who is absent with leave, or unless the assembly for special cause excuses the member from voting.

**JOINT RULE 49. Bills not conforming.** (2) Bills requiring fiscal estimates shall not be voted on by either house, and shall receive neither a public hearing nor be voted on by a standing committee, prior to the receipt of the original fiscal estimate for the bill.

**Chapter 3**  
COMMITTEE PROCEDURE--ADMINISTRATIVE RULES

**A. Referral**

1. Proposed administrative rules must be submitted to the Legislature for committee review before they become effective. Committee review is initiated when a rule, in final draft form, with an accompanying report and enclosed in a unique rule jacket, is submitted to the Speaker.

2. Within seven working days, the Speaker must refer the rule to one standing committee or joint committee created by law. (During the same time period, the identical rule is also referred to a standing committee or joint committee by the Senate.) Within three working days after initial referral, the Speaker, with the consent of the chairperson, may withdraw the rule and rerefer it to another standing committee.

3. During the period of committee review, the agency may not proceed with promulgation of the rule.

s. 227.19 (2), (3), (3m), (4) (c), Stats.; AR 3 (1) (r), 13 (2)

**B. Committee Review Period**

1. The committee review period, during which time the committee has jurisdiction over the rule, initially is *30 calendar days* from the date of referral.

2. If, during the committee review period, the committee chairperson requests the agency proposing the rule to meet with the committee regarding the rule, or the chairperson publishes or posts notice that the committee will hold a hearing or meeting to review the proposed rule, the committee review period is *extended* for 30 days from the *date of request, publication or posting*. (See sec. D., below, on how to make a request.)

3. A committee may meet and vote to waive its jurisdiction over a rule, prior to the expiration of the committee review period. If that action is taken (and a similar action is taken by the Senate committee with jurisdiction over the rule), the agency is free to proceed with the rule.

4. If a committee's review period straddles the end and beginning of legislative biennial sessions, the statutes provide for continuation of the review period in the new session.

s. 227.19 (4) (b), (c), Stats.

**C. Committee Action Following Referral**

Upon referral of a rule to a committee, the chairperson *shall notify*, in writing, *each committee member* of the referral. A committee to which a rule has been referred initially has three options:

1. Do nothing, in which case the committee review period terminates on the 30th day after referral.

2. Meet with the agency, or hold a hearing, to review the proposed rule.

3. Waive its jurisdiction over the rule.

(Under the governing statutes, committees also have a fourth option at this point--to object to the rule, in whole or in part. However, in practice, committees precede this action with a meeting with the agency or a public hearing on the proposed rule. The remainder of this chapter assumes that such a course of action is routinely followed.)

s. 227.19 (4) (a), Stats.

**D. Meeting With Agency**

1. The chairperson determines whether the committee and the agency will meet for purposes of reviewing the rule.

2. The chairperson decides whether the form of the meeting will be a public hearing or a meeting between the committee and representatives of the agency.

3. If a meeting is scheduled, the agency should be notified by letter. (At a minimum, if a public hearing is scheduled, a copy of the notice must be sent to the head of the agency.) *Action to schedule a meeting or public hearing must take place within the initial 30-day committee review period.* An interim report of action to schedule a meeting is filed with the Assembly Records Office, following the form in Assembly Rule 20.

4. If a meeting or public hearing is scheduled, it *must* be held during the 30-day period following the scheduling of the meeting with the agency or of the notice of the public hearing.

s. 227.19 (4) (am), (b) 1, Stats.; AR 11 (3), 20 (1)

**E. Giving Notice of a Meeting to Review Administrative Rules**

1. If a public hearing is scheduled, give public notice in the same manner as if a bill was being heard. (See Chapter 2, sec. D.)

2. If the meeting is between the committee and agency representatives, give public notice in the same manner as for an executive session. (See Chapter 2, sec. G.)

3. The chairperson is responsible for notifying committee members of all committee hearings, including meetings on proposed administrative rules.

AR 11 (10)

**F. Conduct of the Meeting**

1. *Prior* to the date of the meeting, contact the agency proposing the rule and find out who from the agency will be attending the meeting.

2. If the meeting is a *public hearing*, it is conducted in the same manner as a hearing on bills. (See Chapter 2, sec. F.) Agency personnel should be called to testify first, and asked to explain the proposed rule to the committee and those members of the public in attendance. They should be followed by persons who have filed a request to speak. If necessary, agency personnel should be asked to reappear at the end of public testimony, to answer any questions which may have been raised.

3. If the meeting involves committee members and agency representatives only, it should be convened in the same manner as an executive session. Following the roll call, discussion of the proposed rule is in order.

**G. Committee Options Following Meeting With Agency or Hearing**

A standing committee which has had a meeting with an agency or a hearing on a proposed rule has the following four options regarding the rule:

1. Do nothing, in which case the committee review period terminates on the 30th day after the date the meeting was originally requested or noticed.

2. Waive its jurisdiction over the rule, which has the effect of ending the committee review period.

3. Recommend modification of the rule. (See sec. J. for a complete description of rule modification procedures.) (This option is used if there are objectionable parts of the rule which would be acceptable if changed.)

4. Object to the rule, in whole or in part. (This option is used if the standing committee disagrees with all or part of the rule and the agency is unwilling to modify or withdraw the rule or the objectionable portion.)

Standing committees do *not* "approve" rules by an affirmative motion. The statutes limit committee powers to those options set out above.

s. 227.19 (4) (b) 2, (c), (d), Stats.

**H. Executive Sessions on Rules**

1. Holding an executive session on a proposed administrative rule is within the discretion of the chairperson. An executive session *must* be held to waive committee jurisdiction over a proposed administrative rule or to recommend modification of a rule or to object to a rule.

2. Executive sessions *must be held during* the 30-day period following the scheduling of the hearing or meeting with the agency.

3. An executive session on a rule may be held in conjunction with a public hearing, or as part of an executive session on bills or other matters before the committee, but notice of the executive session must be included in the public hearing or executive session notice.

4. If a separate executive session is held, it must be preceded by notice complying with the Open Meetings Law. (See Chapter 2, sec. G.)

5. Executive sessions on rules are conducted in the same manner as executive sessions on bills.

s. 227.19 (4) (b), (c), (d), Stats.

**I. Motions on Administrative Rules**

1. A motion may be made in executive session that the committee *waive its jurisdiction over the rule*. If this motion is adopted, the committee, in effect, ends its review period. The rule jacket should immediately be returned to the Assembly Records Office, accompanied by the report of the committee's action. Notice of waiver must be sent, in writing, to the Joint Committee for Review of Administrative Rules within two working days following the action. The chairperson should

also send a letter to the head of the agency proposing the rule, informing the agency head of the committee's action.

2. A motion may be made in executive session that the committee recommends specific *modifications in the rule*, to be made by the proposing agency. This action is taken if the committee wishes to see specified changes made in the rule before it becomes effective. The agency can either agree with the committee to make the modifications or refuse to do so.

If the agency is willing to modify the rule, an interim report to that effect is filed with the Assembly Records Office, following the form in Assembly Rule 20. An agreement by the agency to modify the rule may also extend the committee review period, as discussed in sec. J., below.

If the committee believes that the agency may refuse to modify the rule, it may wish to adopt, *as part of its motion recommending modification*, a provision that if the agency does not respond positively to the recommendation by a specified date, the rule will be considered objected to as of that date. If this provision is included in the motion, the specified deadline date must be a date which occurs *before the expiration of the committee review period*.

3. A motion may be made in executive session that the committee *objects to the rule*, in whole or in part. The governing statute provides six reasons for objection. The specific reason or reasons relied upon *must be specified* in the motion. The reasons for objecting to all or part of a proposed rule are:

- a. An absence of statutory authority.
- b. An emergency relating to public health, safety or welfare.
- c. A failure to comply with legislative intent.
- d. A conflict with state law.
- e. A change in circumstances since enactment of the earliest law upon which the proposed rule is based.
- f. Arbitrariness and capriciousness, or imposition of an undue hardship.

If a motion to object is adopted, the rule jacket, and committee report under Assembly Rule 20, should be immediately filed with the Assembly Records Office. In addition, notification of objection must immediately be given to the chairpersons or cochairpersons having jurisdiction of the rule in the other house. Upon such notification, that committee's review period immediately ceases and the committee can take no further action, other than also objecting to the rule. If a rule is objected to in part, the agency is free to promulgate the remainder of the rule.

4. If a rule, or part of a rule, is objected to, the law requires that the rule be immediately referred to the Joint Committee for Review of Administrative Rules (JCRAR). The JCRAR must review the rule and either uphold or reverse the committee objection. The JCRAR uses the same six reasons for objecting that are used by the original reviewing committee.

s. 227.19 (4) (b), (c), (d) (e), Stats.

#### **J. Rule Modification**

1. Unless the presiding officers in both the Assembly and the Senate refer a proposed rule to the same statutorily-created joint committee, submittal of a proposed rule for legislative review results in referrals to two separate committees (one in each house). Therefore, *two separate committee review periods* are created.

2. There is *no limit* on the number of modifications which may be initiated during the committee review period. Both the committees having review jurisdiction over the rule and the agency proposing the rule may initiate modifications.

3. If a standing committee recommends a modification and the agency agrees to make the modification, the committee review period is extended to the *10th working day following receipt* of the modification (unless the expiration of the "normal" committee review period is a later date). A modification initiated by a standing committee in one house triggers a similar extension of the committee review period of the committee having jurisdiction over the rule in the other house. During this 10-day period, that committee can take any of the actions described above under sec. G.

4. Upon receipt of a modification, a report of receipt is filed with the Assembly Records Office, following the form in Assembly Rule 20.

5. If the agency proposing the rule submits a germane modification to the standing committee during the final 10 days of the committee review period, the review period for both committees (Assembly and Senate) is extended for 10 working days. If such a modification is submitted to a standing committee after the standing committee in the other house has concluded its jurisdiction over the proposed rule, the jurisdiction of the committee of the other house *is revived* for 10 working days.

6. An agency may modify a proposed rule following the termination of the committee review period, if the modification is germane to the rule. An agency pursuing such a course of action: (a) recalls the rule from the Chief Clerk of both houses; (b) modifies the rule; and (c) resubmits the rule to the presiding officers of each house. The presiding officers refer the rule to either a standing committee or a joint committee created by law and the entire committee review process and procedure begins anew.

s. 227.19 (4), Stats.; AR 20 (1)

#### **K. Concluding the Standing Committee Review Period**

At the expiration of the standing committee review period, the rule jacket and report of the committee are filed in the Assembly Records Office.

AR 20 (1)

#### **L. Statutes and Rules Cited**

**227.19 Legislative review prior to promulgation. (2) NOTIFICATION OF LEGISLATURE.** An agency shall submit a notice to the presiding officer of each house of the legislature when a proposed rule is in final draft form. The notice shall be

submitted in triplicate and shall be accompanied by a report in the form specified under sub. (3). A notice received under this subsection on or after November 1 of an even-numbered year shall be considered received on the first day of the next regular session of the legislature. Each presiding officer shall, within 7 working days following the day on which the notice and report are received, refer them to one committee, which may be either a standing committee or a joint legislative committee created by law, except the joint committee for review of administrative rules. The agency shall submit to the revisor for publication in the register a statement that a proposed rule has been submitted to the presiding officer of each house of the legislature. Each presiding officer shall enter a similar statement in the journal of his or her house.

(3) **FORM OF REPORT.** The report required under sub. (2) shall be in writing and shall include the proposed rule in the form specified in s. 227.14 (1), the material specified in s. 227.14 (2) to (4), a copy of any recommendations of the legislative council staff and an analysis. The analysis shall include:

- (a) A statement explaining the need for the proposed rule.
- (b) An explanation of any modification made in the proposed rule as a result of testimony received at a public hearing.
- (c) A list of the persons who appeared or registered for or against the proposed rule at a public hearing.
- (d) A response to the legislative council staff recommendations under s. 227.15 indicating:

- 1. Acceptance of the recommendations in whole or in part.
- 2. Rejection of the recommendations in whole or in part.
- 3. The specific reason for rejecting any recommendation.

(e) Except as provided under sub. (3m), for all proposed rules that will have an effect on small businesses, as defined under s. 227.114 (1), a final regulatory flexibility analysis, which shall contain as much information about the following as the agency can feasibly obtain and analyze with its existing staff and resources:

- 1. The agency's reason for including or failing to include in the proposed rule any of the methods specified under s. 227.114 (2) for reducing its impact on small businesses.
- 2. A summary of issues raised by small businesses during the hearings on the proposed rule, any changes in the proposed rule as a result of alternatives suggested by small businesses and the reasons for rejecting any alternatives suggested by small businesses.
- 3. The nature of any reports and the estimated cost of their preparation by small businesses that must comply with the rule.
- 4. The nature and estimated cost of other measures and investments that will be required of small businesses in complying with the rule.
- 5. The additional cost, if any, to the agency of administering or enforcing a rule which includes any of the methods specified under s. 227.114 (2).

6. The impact on public health, safety and welfare, if any, caused by including in the rule any of the methods specified under s. 227.114 (2).

(3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis specified under sub. (3) (e) is not required for any rule if the agency, after complying with s. 227.114 (1) to (5), determines that the rule will not have a significant economic impact on a substantial number of small businesses.

(4) COMMITTEE REVIEW. (a) *Notice of referral.* Upon receipt of notice that a proposed rule has been referred to a committee under sub. (2), the chairperson or chairpersons of the committee shall notify, in writing, each committee member of the referral.

(am) *Committee meeting.* A committee may be convened upon the call of its chairperson or cochairpersons to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice and report were referred. A committee may hold a public hearing to review a proposed rule.

(b) *Committee review period.* 1. Except as provided under subd. 5, the committee review period for each committee extends for 30 days after referral under sub. (2). If the chairperson or the cochairpersons of a committee take either of the following actions within the 30-day period, the committee review period for that committee is continued for 30 days from the date the first action is taken:

a. Request in writing that the agency meet with the committee to review the proposed rule. The continuation of the review period begins on the date the request is sent to the agency.

b. Publish or post notice that the committee will hold a meeting or hearing to review the proposed rule and immediately send a copy of the notice to the agency. The continuation of the review period begins on the date the notice is published or posted, whichever is earlier.

2. If a committee, by a majority vote of a quorum of the committee, recommends modifications in a proposed rule, and the agency, in writing, agrees to make modifications, the review period for both committees is extended either to the 10th working day following receipt by the committees of the modified proposed rule or to the expiration of the review period under subd. 1, whichever is later. There is no limit either on the number of modification agreements that may be entered into or on the time within which modifications may be made.

3. An agency may, on its own initiative, submit a germane modification to a proposed rule to a committee during its review period. If a germane modification is submitted within the final 10 days of a committee review period, the review period for both committees is extended for 10 working days. If a germane modification is submitted to a committee after the committee in the other house has concluded its jurisdiction over the proposed rule, the jurisdiction of the committee of the other house is revived for 10 working days. In this subdivision, an agency's proposal to delete part of a proposed rule under committee review shall be treated as a germane modification of the proposed rule.

4. An agency may modify a proposed rule following the committee review period if the modification is germane to the subject matter of the proposed rule. If a germane modification is made, the agency shall recall the proposed rule from the chief clerk of each house of the legislature. The proposed rule, with the germane modification, shall be resubmitted to the presiding officer in each house of the legislature as provided in sub. (2) and the committee review period shall begin again. Following the committee review period, an agency may not make any modification that is not germane to the subject matter of the proposed rule. In this subdivision, an agency's proposal to delete part of a proposed rule under committee review shall be treated as a germane modification of the proposed rule.

5. If a committee in one house votes to object to a proposed rule under par. (d), the chairperson or cochairpersons of the committee shall immediately notify the chairperson or cochairpersons of the committee to which the proposed rule was referred in the other house. Upon receipt of the notice, the review period for the committee in the other house immediately ceases and no further action on the proposed rule may be taken under this paragraph, but the committee may proceed under par. (d) to object to the proposed rule.

6. If a committee has not concluded its jurisdiction over a proposed rule before the day specified under s. 13.02 (1) for the next legislature to convene, that jurisdiction immediately ceases and, within 7 working days after that date, the presiding officer of the appropriate house shall refer the proposed rule to the appropriate standing committee or joint legislative committee created by law, except the joint committee for review of administrative rules, as provided under sub. (2). The committee review period that was interrupted by the loss of jurisdiction under this subdivision continues for the committee to which the proposed rule is referred under this subdivision beginning on the date of referral under this subdivision.

(c) *Agency not to promulgate rule during committee review.* An agency may not promulgate a proposed rule during the committee review period unless both committees waive jurisdiction over the proposed rule prior to the expiration of the review period. A committee may waive its jurisdiction by adopting, by a majority vote of a quorum of the committee, a motion waiving the committee's jurisdiction. The committee shall report its action in writing to the joint committee for review of administrative rules within 2 working days after the waiver action.

(d) *Committee action.* A committee, by a majority vote of a quorum of the committee during the review period under par. (b), may object to a proposed rule for one or more of the following reasons:

1. An absence of statutory authority.
2. An emergency relating to public health, safety or welfare.
3. A failure to comply with legislative intent.
4. A conflict with state law.
5. A change in circumstances since enactment of the earliest law upon which the proposed rule is based.

6. Arbitrariness and capriciousness, or imposition of an undue hardship.

(e) *Part of a proposed rule.* An agency may promulgate any part of a proposed rule which is not objected to by a committee.

**ASSEMBLY RULE 3. Duties of the speaker; speaker pro tempore.** (1) The speaker shall:

(r) Refer every notice and report concerning a proposed administrative rule received by him or her under section 227.19 of the statutes to the appropriate standing committee of the assembly within 7 working days following receipt, and provide notice to that committee whenever the speaker is informed that a proposed rule or portion thereof is being withdrawn. The speaker shall refer any report received from a standing committee which objects to a proposed rule or portion thereof to the joint committee for review of administrative rules.

**ASSEMBLY RULE 11. Committee procedures.** (3) A committee shall meet upon the call of its chairperson within the times and places assigned by the speaker. If anticipated public attendance so warrants, arrangements may be made through the sergeant at arms to hold a committee meeting in quarters larger than the regularly assigned committee room.

(10) The chairperson is responsible for notifying committee members of all committee meetings.

**ASSEMBLY RULE 13. Business referred to committee.** (2) (a) Each notice and report by an administrative agency concerning an administrative rule for review by a standing committee shall be referred by the speaker to the appropriate standing committee within 7 working days following receipt. The speaker shall provide notice to that committee whenever he or she is informed that a proposed rule or portion thereof is withdrawn by the administrative agency.

(b) Within 3 working days after initial referral by the speaker under rule 3 (1) (r), the speaker, with consent of the chairperson, may withdraw a proposed rule from the standing committee to which it is referred and rerefer it to another standing committee. Such action does not extend the standing committee review period.

**ASSEMBLY RULE 20. Committee reports concerning proposed rules.** Each committee to which a proposed administrative rule is referred under rule 3 (1) (r) shall submit a report within the review period specified in section 227.19 (4) (b) of the statutes in the form specified in this rule, authenticated by the personal signature of the chairperson or cochairpersons. The report of the committee shall be reproduced in the journal. Whenever a committee schedules a public hearing or meeting with an agency representative concerning a proposed rule, or whenever modifications to a proposed rule are agreed to be made or received, the committee shall submit an interim report. The form of the report shall be as follows:

(1) For standing committees:

The committee on ..... reports [and recommends]:

Clearinghouse Rule [year]-1

AN ORDER of the.... (name of agency) relating to rules concerning....

- PUBLIC HEARING SCHEDULED.**  
(list date, time and place of public hearing)
- Clearinghouse Rule [year]-2**  
**AN ORDER of the.... (name of agency) relating to rules concerning....**  
**MEETING WITH AGENCY REPRESENTATIVE SCHEDULED.**  
(list date, time and place of meeting)
- Clearinghouse Rule [year]-3**  
**AN ORDER of the.... (name of agency) relating to rules concerning....**  
**MODIFICATIONS TO BE MADE BY AGENCY.**
- Clearinghouse Rule [year]-4**  
**AN ORDER of the.... (name of agency) relating to rules concerning....**  
**MODIFICATIONS RECEIVED FROM AGENCY.**
- Clearinghouse Rule [year]-5**  
**AN ORDER of the.... (name of agency) relating to rules concerning....**  
**NO ACTION TAKEN.**
- Clearinghouse Rule [year]-6**  
**AN ORDER of the.... (name of agency) relating to rules concerning....**  
**Objection: Ayes, 5; Noes, 1; Absent, 1.**
- Clearinghouse Rule [year]-7**  
**AN ORDER of the.... (name of agency) relating to rules concerning....**  
**No objection: Ayes, 6; Noes, 1.**

.....  
Chairperson

**Chapter 4**  
**FISCAL ESTIMATES**

**A. Requiring a Fiscal Estimate**

1. At the time a bill is drafted, the LRB decides if a fiscal estimate is necessary and so indicates in the LRB analysis.
2. If a fiscal estimate is required, the *jacket* of the bill is stamped "FE" at the time it is prepared.
3. Once the bill is introduced, the LRB and the Department of Administration are responsible for arranging for preparation of the fiscal estimate by one or more appropriate state agencies and printing of the fiscal estimate.  
s. 13.093 (2) (a), Stats.; JR 41 (1), 44 (1), (2) (a), 45

**B. No Hearing Before Fiscal Estimate Is Prepared**

1. No bill requiring a fiscal estimate may receive a public hearing or committee vote until the fiscal estimate is prepared and available.
2. If a chairperson schedules a bill for hearing before the estimate is printed, the chairperson is responsible for ensuring that copies of the estimate are available at the public hearing.  
s. 13.093 (2) (a), Stats.; JR 49 (2)

**C. Supplemental Fiscal Estimates**

1. The Joint Rules provide that the primary author of a bill may request preparation of a supplemental fiscal estimate by the Legislative Fiscal Bureau or the Department of Administration if the primary author disagrees with the estimate prepared by a state agency.
2. If there appears to be disagreement over the accuracy of a fiscal estimate at a public hearing, the chairperson may wish to remind the primary author that it is possible to have a supplemental fiscal estimate prepared.  
JR 48 (3)

**D. Statutes and Rules Cited**

**13.093 Reference of bills to joint committee on finance. (2) (a)** Any bill making an appropriation and any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues shall, before any vote is taken thereon by either house of the legislature if the bill is not referred to a standing committee, or before any public hearing is held before any standing committee or, if no public hearing is held, before any vote is taken by the committee, incorporate a reliable estimate of the anticipated change in appropriation authority or state or general local government fiscal liability or revenues under the bill, including to the extent possible a projection of such changes in future biennia. For purposes of this paragraph, a bill increasing or decreasing the liability or revenues of the unemployment reserve fund is considered to increase or decrease state fiscal liability or revenues. For purposes of this paragraph, a bill increasing or decreasing the liability or revenues of the unemployment reserve fund is considered

increase or decrease state fiscal liability or revenues. Except as otherwise provided by joint rules of the legislature, such estimates shall be made by the department or agency administering the appropriation or fund or collecting the revenue. The joint survey committee on retirement systems shall prepare the fiscal estimate with respect to the provisions of any bill referred to it which create or modify any system for, or make any provision for, the retirement of or payment of pensions to public officers or employees. When a fiscal estimate is prepared after the bill has been introduced, it shall be printed and distributed as are amendments.

**JOINT RULE 41. When fiscal estimates required or permitted.** (1) (a) All bills making an appropriation and any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues shall carry a fiscal estimate.

(b) An executive budget bill introduced under section 16.47 (1) of the statutes is exempt from the fiscal estimate requirement under par. (a) but may, if it contains a provision affecting a public retirement system or providing a tax exemption, be analyzed as to that provision by the appropriate joint survey committee.

**JOINT RULE 44. Bill jackets to be marked "FE".** (1) The jackets of all bills carrying a fiscal estimate shall have the initials "FE" prominently stamped or written on them.

(2) (a) The preliminary determination of whether the bill requires a fiscal estimate shall be made by the legislative reference bureau which shall indicate that the bill requires a fiscal estimate by stamping or writing the letters "FE" prominently on the jacket.

**JOINT RULE 45. Duties of legislative reference bureau.** (1) After a proposed bill has been drafted the legislative reference bureau shall inform the requester that a fiscal estimate is required when it submits the draft to the requester. If authorized by the requester, the bureau shall promptly submit such proposed bill to the department of administration for preparation of a fiscal estimate. The requester may introduce the bill without the fiscal estimate, but when such a bill is introduced the legislative reference bureau shall promptly submit a copy of the bill to the department of administration for preparation of a fiscal estimate. The legislative reference bureau shall keep a record of the date on which each bill is submitted and its number.

(2) If the fiscal estimate is procured before the bill is introduced the legislative reference bureau shall submit a copy of the estimate to the requester. If the requester desires to introduce the bill, the reference bureau shall attach the estimate and any work sheet to the camera-ready original of the bill, and prepare the bill for introduction. The fiscal estimate and any work sheet shall be printed at the end of the bill. If the fiscal estimate is procured after the bill has been introduced the legislative reference bureau shall submit a copy of the estimate and any work sheet to the primary author of the introduced bill as provided under joint rule 48.

(3) The chief clerk shall enter on the bill jacket the dates when a fiscal estimate on an original bill is requested and published, when a fiscal estimate on any bill as amended or as amended by any proposed amendment or substitute amendment is requested and published, when a supplemental fiscal estimate is requested and published and when a memorandum under joint rule 47 is inserted in the bill jacket.

**JOINT RULE 48. Review of agency prepared fiscal estimates.** (3) The primary author of an introduced bill may request that the legislative fiscal bureau or the department of administration prepare a supplemental fiscal estimate if the primary author disagrees with the fiscal estimate for the bill prepared by the state agency.

**JOINT RULE 49. Bills not conforming.** (2) Bills requiring fiscal estimates shall not be voted on by either house, and shall receive neither a public hearing nor be voted on by a standing committee, prior to the receipt of the original fiscal estimate for the bill.

## Chapter 5 OPEN MEETINGS LAW

### General Discussion

1. Wisconsin law requires that all meetings of governmental bodies be preceded by adequate public notice and held in open session. As interpreted by the Wisconsin Supreme Court, a "meeting" of a governmental body occurs when: (a) there is a purpose to engage in governmental business; and (b) the number of members present is sufficient to determine the governmental body's course of action. A meeting may occur under the Open Meetings Law under circumstances that do not immediately suggest that a meeting or violation of the Open Meetings Law is occurring. For example: (a) a telephone conference may constitute a meeting; and (b) "walking quorums" may violate the Open Meetings Law (a "walking quorum" is a series of gatherings, or telephone calls, among separate groups of members of a governmental body, each less than a quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum).

2. "Adequate public notice" means a notice in writing which sets forth the time, date, place and subject matter of the meeting, including the subject matter for consideration in any closed session. The notice must be given at least *24 hours advance* and must be given to news media requesting such notice and to the designated official newspaper (for the state, the WISCONSIN STATE JOURNAL). Other appropriate notice, such as by posting, should also be used.

3. If, for good cause, 24-hour notice is not possible or practical, shorter notice may be given. However, no notice may be given *less than two hours* prior to a meeting.

4. The Assembly procedures for giving notice of public hearings and meetings by standing committees, if followed, assure compliance with the requirements of the law. (See Chapter 2, secs. D. and G.)

ss. 19.82, 19.83, 19.84 (1), (2), (3), (4), 19.87, Stats.; JR 27

### Grounds for Meeting in Closed Session

Occasionally, although rarely in the case of legislative committees, it is necessary for public business to be conducted in closed session. The Open Meetings Law provides 13 grounds for closed sessions by "governmental bodies," which includes standing committees. Those grounds for closed sessions which are most likely to apply to standing committees are:

1. Deliberating or negotiating the purchase of public property, the investing of public funds or other public business whenever competitive or bargaining reasons require a closed session.

2. Considering financial, medical, social or personal histories, disciplinary matters of specific persons, and charges against and personnel problems involving specific persons, where discussion in public would likely have a substantial adverse impact on the reputations of the persons referred to or involved.

3. Conferring with legal counsel who is providing advice concerning strategies to be adopted in current or anticipated litigation involving the governmental body.

s. 19.85 (1), Stats.

#### **C. Procedure When Meeting in Closed Session**

1. *Prior Notice.* If a closed session is planned or anticipated, that fact, and the subject matter of the closed session, *must be included* as part of the information in the public notice of the meeting.

2. *Motion to Close.* A governmental body may convene in closed session only upon *adoption of a motion* to do so during open session. The motion:

a. Must be preceded by an announcement from the chairperson of the nature of the business to be conducted in the closed session and the specific exemption under which the closed session is authorized. *This announcement must be made part of the meeting record.*

b. Must be decided by a recorded roll call vote.

c. Must be adopted by majority vote.

3. *Closing the Session.* Following proper adoption of a motion to go into closed session, all persons not necessary for the business to be conducted in closed session should be asked to leave. Members of the Sergeant at Arms' staff can be asked to assist in clearing the room.

4. *Business in Closed Session.* The business taken up in closed session *must be restricted* to that described in the chairperson's announcement made prior to going into closed session.

5. *Action in Closed Session.* All motions on which a vote was taken in closed session, and the votes thereon, must be recorded and made available for public inspection, as are other records of the committee.

6. *No Going Back Into Open Session.* No meeting which commenced, and then convened in closed session, may subsequently reconvene in open session within *12 hours after completion of the closed session*, unless public notice of the subsequent open session was given at the same time and in the same manner as the notice of the meeting which convened prior to the closed session.

ss. 19.85 (1) (intro.), (2), 19.88, Stats.

#### **D. Statutes and Rules Cited**

**19.82 Definitions.** As used in this subchapter:

(1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a nonprofit corporation operating the Olympic ice training center under s. 42.11 (3); or a formally constituted subunit of any of the foregoing, but excludes any such body or com-

Committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV or V of ch. 111.

(2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter, any gathering of the members of a town board for the purpose specified in s. 60.50 (6), any gathering of the commissioners of a town sanitary district for the purpose specified in s. 60.77 (5) (k) or any gathering of the members of a drainage board created under s. 88.16, 1991 Stats., or under s. 88.17, for a purpose specified in s. 88.065 (5) (a).

(3) "Open session" means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental body, it means a meeting which is held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13 (1).

**19.83 Meetings of governmental bodies.** (1) Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.

(2) During a period of public comment under s. 19.84 (2), a governmental body may discuss any matter raised by the public.

**19.84 Public notice.** (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under s. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause

such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

**19.85 Exemptions.** (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employe or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employe or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employe or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employe over which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employe members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location of the site in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the ethics board under s. 19.46 (2), or from any county or municipal ethics board under s. 19.59 (5).

(i) Considering any and all matters related to acts by businesses under s. 50.15 which, if discussed in public, could adversely affect the business, its employees or former employees.

(j) Considering financial information relating to the support by a person, other than an authority, of a nonprofit corporation operating the Olympic ice training center under s. 42.11 (3), if the information is exempt from disclosure under s. 42.115 or would be so exempt were the information to be contained in a record. In this paragraph, "authority" and "record" have the meanings given under s. 19.32.

(2) No governmental body may commence a meeting, subsequently convene in a closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

**19.87 Legislative meetings.** This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

(4) Meetings of the senate or assembly committee on organization under s. 71.78 (4) (c) or 77.61 (5) (b) 3 shall be closed to the public.

**19.88 Ballots, votes and records.** (1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in subch. II of ch. 19.

**JOINT RULE 27. Committee hearings open to public.** Unless otherwise provided by law, every committee hearing, executive session or other meeting shall be open to the public. If time permits, advance notice of every regularly scheduled committee hearing, executive session or other meeting shall be published as provided in joint rule 75.

## Chapter 6 COMMITTEE INVESTIGATIONS

There are special requirements governing standing or special committee investigations, if it is believed that the committee should have the power to subpoena witnesses and documents.

### **General Power to Investigate**

1. Standing committees have power to investigate any subject matter customarily within the jurisdiction of the committee. The power to undertake such activity is inherent to the legislative process, and is recognized in case law and the Joint Rules of the Legislature.

2. The power to investigate is not absolute. It is generally limited to obtaining information on matters which fall within the proper field of legislative action, such as the administration of existing laws, the need for new laws or the survey of "defects in our social, economic or political system" for the purpose of remedying them.

3. In conducting an investigation, the committee must observe all provisions of the Constitution designed to protect individuals in their enjoyment of life, liberty, property and from inquisitions into private affairs.

JR 84 (3)

### **Specific Authorization to Investigate**

1. Under Wisconsin law, if a committee intends to or may intend to issue subpoenas, the committee must be *specifically authorized to investigate a particular matter*. Normally, authorization is by adoption of a resolution by the Assembly.

2. The authorizing resolution must define how broad the investigation can be, and the subject on which testimony can be compelled. The authorizing resolutions should define the subject of the investigation with sufficient clarity to afford witnesses appearing before the investigating committee a reasonable basis for judgment as to whether a particular question is pertinent to the subject matter under investigation.

s. 13.31, Stats.

### **Issuance of Subpoenas**

1. Subpoenas should be used as a *last resort* to produce testimony or documents desired by a committee engaged in an authorized investigation. In most circumstances, a request for the appearance of specific witnesses or the submitting of particular documents will be honored and should be made first. If a *refusal occurs*, subpoenas can then be used.

2. Subpoenas should refer to the authorizing resolution and state the nature of the investigation, and state where, when and before whom the witness is required to attend.

3. Subpoenas can be issued only if *signed by the Speaker and the Chief Clerk*, can be served by any person and are returned to the Chief Clerk. ss. 13.31, 13.32, 13.33, Stats.; AR 3 (1) (o), 5 (1) (j)

**D. Testimony From Witnesses**

1. A subpoenaed witness is *immune from criminal or forfeiture prosecution* regarding any compelled testimony or evidence, or evidence derived from that compelled testimony or evidence (except perjury regarding the witness's testimony).

2. To the extent possible, *questions* to be asked of particular witnesses should be prepared in writing, in advance. This will help ensure that the question is pertinent to the investigation.

3. If witnesses are put under oath, the *oath must be administered* by a Legislator who is a member of the investigating committee or by an attorney who is also a notary public.

4. If, subsequent to a proper request from an authorized investigatory committee, a witness refuses to appear or to testify, that person may be found in *contempt* by the Assembly. If a witness refuses to appear or testify, that fact is certified by the chairperson to the Assembly. The certification should state all facts surrounding the individual's refusal to attend or answer.

ss. 13.34, 13.35, 13.45 (6), 972.085, Stats.

**E. Statutes and Rules Cited**

**13.31 Witnesses; how subpoenaed.** The attendance of witnesses before any committee of the legislature, or of either house thereof, appointed to investigate any subject matter, may be procured by subpoenas signed by the presiding officer and chief clerk of the senate or assembly. Such subpoenas shall state when and where, and before whom, the witness is required to appear, and may require such attendance forthwith or on a future day named and the production of books, records, documents and papers therein to be designated, and may also require any officer of any corporation or limited liability company, or other person having the custody of the keys, books, records, documents or papers of any such business entity, to produce the same before such committee. Such subpoenas may be served by any person and shall be returned to the chief clerk of the house which issued the same as subpoenas from the circuit court are served and returned.

**13.32 Summary process; custody of witness.** (1) Upon the return of a subpoena issued under s. 13.31, duly served, and upon filing with the presiding officer of the house from which the subpoena issued a certificate of the chairperson of the committee certifying that any person named therein failed or neglected to appear before the committee in obedience to the mandate of such subpoena, summary process to compel the attendance of such person shall be issued.

(2) Such summary process shall be signed by the presiding officer and chief clerk of the house which issued the subpoena, and shall be directed to the sergeant at arms thereof commanding the sergeant at arms "in the name of the state of Wis-

onsin" to take the body of the person so failing to attend, naming that person, and bring the person forthwith before the house whose subpoena the person disobeyed. When so arrested the person shall be taken before the committee desiring to examine the person as a witness, or to obtain from the person books, records, documents or papers for their use as evidence, and when before such committee such person shall testify as to the matters concerning which the person is interrogated.

(3) When such person is not on examination before such committee the person shall remain in the custody of the sergeant at arms or in the custody of some person specially deputed for that purpose; and the officer having charge of the person shall from time to time take the person before such committee until the chairperson of the committee certifies that the committee does not wish to examine such person further. Thereupon such witness shall be taken before the house which issued the summary process and that house shall order the release of the witness, or may proceed to punish the witness for any contempt of such house in not complying with the requirement of this chapter or of any writ issued or served as herein provided.

**13.33 Service of process.** Either house ordering any summary process may also direct the sergeant at arms to specially depute some competent person to execute the same, and such deputation shall be indorsed on such process in writing over the signature of the sergeant at arms to whom the same is directed. The person so deputed shall have the same power as the sergeant at arms in respect thereto, and shall execute the same according to the mandate thereof, and for that purpose the sergeant at arms or the deputy may call to his or her aid the power of the county wherein such writ is to be executed the same as the sheriff of such county could do for the purpose of arresting a person charged with crime under process issued by a court of competent jurisdiction; and any sergeant at arms having any person in custody by virtue of any such summary process may depute any other person to have charge of the person so in custody, and the person so deputed shall have the same power over such person as is conferred upon the sergeant at arms.

**13.34 Refusal to testify.** Every refusal to testify or answer any question, or to produce keys, books, records, documents or papers before any committee included within s. 13.31 shall be forthwith certified to the proper house by the chairperson of such committee. Such certificate shall be transmitted, and the person so refusing taken, by the sergeant at arms or an assistant to the sergeant at arms, before such house to be dealt with according to law.

**13.35 Liability of witness.** (1) No person who is required to testify before either house of the legislature or a committee thereof, or joint committee of the houses, and is examined and so testifies, shall be held to answer criminally in any court or be subject to any penalty or forfeiture for any fact or act touching which the person is required to testify and as to which the person has been examined and has testified, and no testimony so given nor any paper, document or record produced by any such person before either house of the legislature or any such committee shall be competent testimony or be used in any trial or criminal

proceeding against such person in any court, except upon a prosecution for perjury committed in giving such testimony; and no witness shall be allowed to refuse to testify to any fact, or to produce any papers, documents or records touching which the person is examined before either house or any such committee, for the reason that the testimony touching such fact, or the production of such papers, documents or records may tend to disgrace the person or otherwise render the person infamous.

(2) The immunity provided under sub. (1) is subject to the restrictions under s. 972.085.

**13.45 General provisions on legislative committees.** (6) COMMITTEE MEMBERS MAY ADMINISTER OATHS. Any senator or representative to the assembly, while acting as a member of a legislative committee, may administer oaths to persons to be examined before such committee.

**972.085 Immunity; use standard.** Immunity from criminal or forfeiture prosecution under ss. 13.35, 17.16 (7), 77.61 (12), 93.17, 111.07 (2) (b), 128.16, 133.15, 139.20, 139.39 (5), 195.048, 196.48, 551.56 (3), 553.55 (3), 601.62 (5), 767.47 (4), 885.15, 885.24, 885.25 (2), 891.39 (2), 968.26, 972.08 (1) and 979.07 (1) and ch. 769, provides immunity only from the use of the compelled testimony or evidence in subsequent criminal or forfeiture proceedings, as well as immunity from the use of evidence derived from that compelled testimony or evidence.

**ASSEMBLY RULE 3. Duties of the speaker; speaker pro tempore.** (1) The speaker shall:

(o) Issue subpoenas, with the countersignature of the chief clerk, for the attendance of witnesses before any assembly committee, and issue summary process for the arrest of any witness disobeying the mandate of any such subpoena.

**ASSEMBLY RULE 5. Chief clerk's duties.** (1) The assembly chief clerk shall:

(j) Countersign with the speaker documents which, by law or rule, require the personal signature of the chief clerk.

**JOINT RULE 84. Committees continue throughout biennium.** (3) STUDIES, INVESTIGATIONS AND REVIEWS. Conduct, on instruction by the appropriate house or on the motion of the chairperson with majority vote approval by the committee, studies, investigations and reviews, within the subject matter area customarily within the purview of the respective committee, regarding any matter which may then be appropriate to legislative inquiry. In case of duplication or of overlapping areas of original inquiry the committee on senate organization in the case of senate committees, the speaker in the case of assembly committees, or the joint committee on legislative organization in the case of joint committees, shall define and delineate the subject matter area assigned to each committee and determine the scope of the inquiry conducted by each committee.

**Chapter 7**  
ACCESS TO COMMITTEE RECORDS

This Chapter sets out the basic requirements of the Open Records Law as applied to records of standing committees.

**Chairperson as Custodian**

1. Each committee chairperson is the *legal custodian* of his or her committee's records, but may designate a staff person to act as the legal custodian of the committee records.

2. Committee records include such items as hearing notices, committee reports on bills, petitions, written statements and letters presented to the committee or the chairperson and so forth.

3. The legal custodian of the records is responsible for making decisions on access to records, pursuant to the specific requirements of the statutes. ss. 19.32 (2), 19.33 (1), (2), Stats.

**What Records Are Open to the Public**

Under the Open Records Law, *all records* are open to the public for inspection and copying, except in strictly limited circumstances.

ss. 19.35 (1) (a), Stats.

**Who May Have Access to Records**

1. Subject to 2., below, any member of the public (including representatives of the news media) has a right to inspect and copy public records that are open to the public.

2. A person who is incarcerated in a penal facility, or placed on probation with confinement a condition of placement, only has a right to inspect public records that contain specific references to that person or to the person's minor children if he or she has not been denied visitation rights to the children.

3. Requests to inspect and receive a copy of records do not have to be in writing. Oral requests should be honored.

4. A person requesting to inspect and copy records is not required to identify himself or herself (except when security reasons so require). While requesters usually will identify themselves voluntarily, they cannot be required to do so by the custodian, as a precondition to being given access to the particular records requested.

5. An individual requesting access to a record containing "personally identifiable information" pertaining to that individual may have a greater right of access than the general public to that record.

ss. 19.32 (1c), (1e), (3), 19.35 (1) (am), (b), (i), Stats.

**Denying Access**

1. The right to inspect public records is *not absolute*. There may be situations where the harm done to the public interest by inspection may outweigh the right of members of the public to have access to public records.

2. The custodian is required to *balance* the harmful effects to the public interest, if inspection is allowed, against the benefits gained by allowing inspection.

3. In weighing the competing interests, the custodian may use the exemptions to the Open Meetings Law as a guide to the types of interests which may be protected by nondisclosure. These exemptions may be used only if the custodian can make a specific demonstration that there is a need to deny access at the time the request is made. In addition, if information has been collected under a pledge of confidentiality, where that pledge was necessary to obtain the information, access to the information may be denied.

4. Any denial of access must be accompanied by a *specific explanation* of the reasons for the denial. Oral requests may be denied orally, unless a demand for a written statement of the reasons for the denial is made within five business days of the oral denial. Written requests, if denied, must be denied in writing.

5. Denial of access to a person seeking a record containing "personally identifiable information" pertaining to that person is not subject to the balancing test and access may be denied only for reasons specified by statute.

ss. 19.35 (1) (a), (am), (4), 19.85 (1), Stats.

#### **E. Partial Disclosure**

If certain portions of a record are required to be kept confidential, those portions must be *deleted* and the *remainder* of the record *disclosed*.

s. 19.36 (6), Stats.

#### **F. Opportunity for Subject of Record to Object to Release**

Under recent Wisconsin case law that is still evolving, the custodian of a record that might "implicate" the privacy and reputational interests of an individual, such as personnel records, must notify the individual of a pending release of the record in order to allow the individual to challenge the release in court. While many issues remain regarding the notice requirement, record custodians should be aware of its possible application, particularly when a records request involves records that contain personal information about an individual.

#### **G. Copying**

1. Any record which is subject to public inspection may also be copied.

2. A fee for copying, which does not exceed the actual, necessary and direct cost of reproduction, including labor, may be charged. Costs of mailing may also be charged. (Contact the Chief Clerk for suggestions on fees and procedure.)

s. 19.35 (1) (b), (3), Stats.

#### **H. Notice**

1. As custodian of the committee records, each chairperson is required to post a notice at his or her office (which is also the committee office), setting forth:

a. The committee name and the location of the office;

b. The committee records kept there;

c. The normal business hours of the office;

- d. The name of the custodian, to whom requests to inspect and copy records are to be directed; and
  - e. The costs, if any, for copying and mailing records.
2. Contact the Chief Clerk for a copy of a sample notice.
- s. 19.34 (1), Stats.

**Statutes Cited**

**19.32 Definitions.** (1c) "Incarcerated person" means a person who is incarcerated in a penal facility or who is placed on probation and given confinement under s. 973.09 (4) as a condition of placement, during the period of confinement or which the person has been sentenced.

(1e) "Penal facility" means a state prison under s. 302.01, county jail, county house of correction or other state, county or municipal correctional or detention facility.

(2) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the custodian is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

(3) "Requester" means any person who requests inspection or copies of a record, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under ch. 767, and the record is otherwise accessible to the person by law.

**19.33 Legal custodians.** (1) An elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employe of his or her staff to act as the legal custodian.

(2) The chairperson of a committee of elected officials, or the designee of the chairperson, is the legal custodian of the records of the committee.

**19.34 Procedural information.** (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records,

and the costs thereof. This subsection does not apply to members of the legislature or to members of any local governmental body.

**19.35 Access to records; fees. (1) RIGHT TO INSPECTION.** (a) Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.

(am) In addition to any right under par. (a), any requester who is an individual or person authorized by the individual, has a right to inspect any record containing personally identifiable information pertaining to the individual that is maintained by an authority and to make or receive a copy of any such information. The right to inspect or copy a record under this paragraph does not apply to any of the following:

1. Any record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding, or any such record that is collected or maintained in connection with such an action or proceeding.
2. Any record containing personally identifiable information that, if disclosed, would do any of the following:
  - a. Endanger an individual's life or safety.
  - b. Identify a confidential informant.
  - c. Endanger the security of any state correctional institution, as defined in s. 301.01 (4), jail, as defined in s. 165.85 (2) (bg), secured correctional facility, as defined in s. 48.02 (15m), mental health institute, as defined in s. 51.01 (12), center for the developmentally disabled, as defined in s. 51.01 (3), or the population or staff of any of these institutions, facilities or jails.
  - d. Compromise the rehabilitation of a person in the custody of the department of corrections or detained in a jail or facility identified in subd. 2. c.
3. Any record that is part of a records series, as defined in s. 19.62 (7), that is not indexed, arranged or automated in a way that the record can be retrieved by the authority maintaining the records series by use of an individual's name, address or other identifier.

(b) Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record which appears in written form. If a requester appears personally to request a copy of a record, the authority having custody of the record may, at its option, permit the requester to photocopy the record or provide the requester with a copy substantially as readable as the original.

(i) Except as authorized under this paragraph, no request under pars. (a) and b) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the request is received by mail, unless prepayment of a fee is required under sub. (3) (f). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(3) FEES. (a) An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law.

(b) Except as otherwise provided by law or as authorized to be prescribed by law an authority may impose a fee upon the requester of a copy of a record that does not exceed the actual, necessary and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.

(c) Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is \$50 or more.

(d) An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.

(e) An authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fees is in the public interest.

(f) An authority may require prepayment by a requester of any fee or fees imposed under this subsection if the total amount exceeds \$5. If the requester is a prisoner, as defined in s. 301.01 (2), or is a person confined in a federal correctional institution located in this state, and he or she has failed to pay any fee that was imposed by the authority for a request made previously by that requester, the authority may require prepayment both of the amount owed for the previous request and the amount owed for the current request.

(4) TIME FOR COMPLIANCE AND PROCEDURES. (a) Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor.

(b) If a request is made orally, the authority may deny the request orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request. Every written denial of a request by an authority shall inform the requester that if the request for

the record was made in writing, then the determination is subject to review by mandamus under s. 19.37 (1) or upon application to the attorney general or a district attorney.

(c) If an authority receives a request under sub. (1) (a) or (am) from an individual or person authorized by the individual who identifies himself or herself and states that the purpose of the request is to inspect or copy a record containing personally identifiable information pertaining to the individual that is maintained by the authority, the authority shall deny or grant the request in accordance with the following procedure:

1. The authority shall first determine if the requester has a right to inspect or copy the record under sub. (1) (a).

2. If the authority determines that the requester has a right to inspect or copy the record under sub. (1) (a), the authority shall grant the request.

3. If the authority determines that the requester does not have a right to inspect or copy the record under sub. (1) (a), the authority shall then determine if the requester has a right to inspect or copy the record under sub. (1) (am) and grant or deny the request accordingly.

**19.36 Limitations upon access and withholding.** (6) SEPARATION OF INFORMATION. If a record contains information that is subject to disclosure under s. 19.35 (1) (a) or (am) and information that is not subject to such disclosure, the authority having custody of the record shall provide the information that is subject to disclosure and delete the information that is not subject to disclosure from the record before release.

**19.85 Exemptions.** (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employe or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employe or person licensed is given

Actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employe or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employe over which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employe members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employe members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location of a public burial site would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the ethics board under s. 19.46 (2), or from any county or municipal ethics board under s. 9.59 (5).

(i) Considering any and all matters related to acts by businesses under s. 60.15 which, if discussed in public, could adversely affect the business, its employes or former employes.

(j) Considering financial information relating to the support by a person, other than an authority, of a nonprofit corporation operating the Olympic ice training center under s. 42.11 (3), if the information is exempt from disclosure under s. 42.115 or would be so exempt were the information to be contained in a record.

In this paragraph, "authority" and "record" have the meanings given under s. 19.32.