

PC 1, 2, 4, 5, 7
DWD 218, 224, 225

**Emergency Rule
PC 1, 2, 4, 5, and 7;
DWD 218, 224 and 225**

**JCRAR Hearing
December 16, 2003
10:00 a.m.
Room 300 Southeast**

Jim Doyle
Governor

Roberta Gassman
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY

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December 2, 2003

The Honorable Joseph Leibham
JCRAR Senate Co-Chair
Room 409 South, State Capitol
Madison, WI

The Honorable Glenn Grothman
JCRAR Assembly Co-Chair
Room 15 North, State Capitol
Madison, WI

Dear Senator Leibham and Representative Grothman:

The Department of Workforce Development requests a 60-day extension of emergency rules adopted repealing chs. PC 1, 2, 4, 5, and 7; revising chs. DWD 218 and 225; and creating ch. DWD 224, relating to the transfer of Personnel Commission responsibilities to the Equal Rights Division. The rules were adopted on August 5, 2003, and will expire on January 2, 2004, unless an extension is granted.

2003 Wisconsin Act 33 abolished the Personnel Commission and transferred responsibility for processing certain employment-related discrimination complaints filed against state respondents to the DWD Equal Rights Division effective immediately upon publication of Act 33. These emergency rules are necessary to ensure that a clear, logical, and fair process is in place for processing these claims until the proposed permanent rules are effective.

A public hearing on the proposed permanent rules was held on October 27, 2003. No comments were received. The department expects to submit the proposed rules to the legislature within the next week. The earliest date the permanent rules could be effective is April 1, 2004.

Thank you for your consideration of this request. If you have any questions about substantive provisions in this rule, please contact Leanna Ware, Director of the Bureau of Civil Rights within the Equal Rights Division, at 266-1997.

Sincerely,

A handwritten signature in black ink that reads 'Elaine S. Pridgen'. The signature is written in a cursive, flowing style.

Elaine S. Pridgen
DWD Rules Coordinator

**State of Wisconsin
Department of Workforce Development**

EMERGENCY RULE

**Transfer of Personnel Commission Responsibilities
to the Equal Rights Division**

The Wisconsin Department of Workforce Development orders the repeal of chapters PC 1, 2, 4, 5, and 7; the amendment of ss. DWD 218.02(9), 218.15(1), 225.01(1)(L), 225.10, and 225.16(1); and the creation of s. DWD 218.02(2m), s. DWD 218.24, ch. DWD 224, and s. DWD 225.23, relating to the transfer of personnel commission responsibilities to the equal rights division.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2003 Wisconsin Act 33 transfers the responsibility for processing certain employment-related complaints against state respondents from the Personnel Commission (PC) to the Equal Rights Division (ERD) effective upon publication of 2003 Wisconsin Act 33. The ERD needs rules governing the procedures for processing these complaints effective immediately to ensure that service is not seriously delayed by this administrative change. The PC expects to transfer approximately 200 pending cases to ERD immediately.

2003 Wisconsin Act 33 transfers responsibility from the PC to ERD for 9 different types of employment-related complaints against state respondents. The ERD has had responsibility for processing complaints against nonstate respondents for 8 of the 9 types of complaints. This order makes minor amendments to existing rules to include state respondents and creates a new rule chapter on whistleblower protection for state employees, which is the one issue that ERD has not previously handled because the law does not apply to nonstate respondents. The newly-created whistleblower rules are similar to the existing fair employment rules.

A nonstatutory provision of 2003 Wisconsin Act 33 transfers existing PC rules to ERD. This order repeals those rules. Adopting the PC rules would result in different procedures for cases against state respondents and nonstate respondents for no logical reason. The dual system would be difficult to administer and confusing to complainants,

many of whom are pro se. Even if ERD adopted the PC rules, an emergency rule would be necessary to remove confusing irrelevant and obsolete information.

This order repeals the PC rules and revises ERD rules by emergency rule to ensure that a clear, logical, and fair process is in place for handling the newly-transferred responsibilities for protecting Wisconsin's workforce from discrimination and retaliation.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 111.375(1) and 230.89(1), Stats., as affected by 2003 Wisconsin Act 33; s. 230.45(1e)(d), Stats., as created by 2003 Wisconsin Act 33; and ss. 103.005(1) and 227.11, Stats.

Statutes interpreted: Subchapter II of ch. 111 and subch. III of ch. 230, Stats., as affected by 2003 Wisconsin Act 33; ss. 16.009(5), 21.80(7)(b)1. or 2., 46.90(4)(b), 50.07(3)(b), 101.055(8), 103.10, and 146.997, Stats., as affected by 2003 Wisconsin Act 33; s. 230.45(1e), Stats., as created by 2003 Wisconsin Act 33; and s. 106.54, Stats.

2003 Wisconsin Act 33 abolishes the Personnel Commission and transfers some of its duties to the Wisconsin Employment Relations Commission (WERC) and some of its duties to the Equal Rights Division (ERD) in the Department of Workforce Development. Duties transferred to WERC include appeal of various personnel decisions affecting state employees, arbitration of state employee grievances, and appeals under the county merit system rules. Duties transferred to ERD include processing complaints based on the following:

- Employment discrimination against state employees based on a protected class.
- Violation of the family and medical leave law affecting state employees.
- Retaliation or discrimination against state employees who provide information on conditions in a long-term care facility to the Board on Aging, information on elder abuse to a county agency or state official, or information related to licensing care and service residential facilities to a state official.
- Discrimination against state employees exercising their rights relating to occupational health and safety.
- Retaliatory discipline against state employee health care workers who report a violation of law or a quality of care standard to a supervisor, officer or director of the health care facility, or professionally-recognized accrediting or standard-setting body.
- Violation of reemployment rights of state employees after national guard, state defense force, or public health emergency service.
- Retaliatory discipline against state employee whistleblowers.

The ERD's duties have previously included processing complaints by nonstate employees for all of the issues listed in the above bullet points except whistleblower

protection, which only applies to state employees. Before 2003 Wisconsin Act 33, there was a dual system whereby the Personnel Commission processed complaints on these issues by state employees and the ERD processed complaints by nonstate employees. 2003 Wisconsin Act 33 puts sole responsibility for processing complaints by state employees and nonstate employees in the ERD. The ERD has existing procedures for processing the complaints on the issues that have been within its authority:

- Chapter DWD 218 applies to employment discrimination based on a protected class.
- Chapter DWD 225 applies to violations of the family and medical leave law.
- Pursuant to the statutory authorizations for the complaint process on the other issues, they are handled in the same manner as employment discrimination based on a protected class, and the procedures in Chapter DWD 218 are followed.

2003 Wisconsin Act 33, section 9139, transfers to ERD existing Personnel Commission (PC) rules on duties transferred to ERD and transfers to WERC existing PC rules on duties transferred to WERC. There are 7 PC rules. PC 3, relating to filing appeals, and PC 6, relating to the arbitration option for classification appeals, apply to duties transferred to WERC. PC 2, relating to filing and processing complaints, applies to duties transferred to ERD. PC 1, relating to authorization and general provisions; PC 4, relating to prehearing practice and discovery; PC 5, relating to hearings, decisions, and review; and PC 7, relating to Personnel Commission meetings and records, contain information that applies to duties transferred to both WERC and ERD. This seems to mean that PC 1, 4, 5, and 7 are to be transferred to both WERC and ERD, although these rules also contain information that is relevant only to one agency and not the other.

The department does not believe that adopting the PC rules for duties transferred from the PC is the best way to handle these new responsibilities. The department has well-established procedures for processing complaints against nonstate employers on these same issues (except for whistleblower protection). The department's existing rules can be amended with minor modifications to include complaints filed against state respondents. Adopting the PC rules would result in different procedures for state and nonstate respondents for no logical reason. This dual system would be more difficult to administer and would be confusing to complainants, many of whom are pro se. Adopting the PC rules would also require significant revising to remove irrelevant language on duties that have been transferred to WERC and obsolete language that relates only to the Personnel Commission. The department's existing rules can be modified to include state respondents much more simply. The department does not believe that repealing the PC rules will harm complainants who have a pending complaint against a state respondent. The differences between the ERD and PC rules do not affect substantive rights; they are all procedural. Confusion resulting in failure to comply with proper procedures would be more likely to affect substantive rights.

The department is repealing the PC rules affecting duties within ERD, amending the existing fair employment rules and family and medical leave rules to include state respondents, and creating new whistleblower protection rules. The fair employment and family and medical leave rules are amended to add a definition of agency; add agencies

to the definition of respondent; and provide that state employee parties and witnesses who are interviewed or who appear at pre-hearing conferences, conciliation sessions, or hearings receive their full pay and travel expenses in accordance with the state reimbursement schedule. Witnesses summoned by a subpoena who are not state employees receive witness and mileage fees set forth in s. 814.67 (1)(a) and (c), Stats., paid by the person issuing the subpoena. A new rule chapter is created to govern complaints filed under the whistleblower law. The new chapter is similar to the procedures used for fair employment, except department orders under the whistleblower law are not appealable to the Labor and Industry Review Commission. Department findings and orders under the whistleblower law are subject to judicial review under chapter 227, Stats.

The major differences between the old PC procedure and the existing and new ERD procedures include the following:

- Answer. Under the ERD rules, respondents respond in writing to the complaint within a time period set by the department or the department issues an initial determination based solely on information supplied by the complainant. A formal answer is required within 21 days after the notice of hearing on the merits following an initial determination of probable cause. Under the PC rules, a formal answer was required within 20 days after service of the complaint.
- Investigation. Under the ERD rules, the department has the power to subpoena persons or documents and seeks cooperation on obtaining other information while investigating. The PC had full discovery authority under chapter 804, Stats., and a party had 30 days to respond.
- State employee investigation waiver. Under s. 230.45 (1m), Stats., a state employee complainant could waive the PC investigation and proceed to hearing. 2003 Wisconsin Act 33 does not affect this provision. The “commission” language in s. 230.45 (1m), Stats., now refers to WERC. Even though s. 230.45 (1m), Stats., now applies to WERC, it still specifically mentions s. 103.10 (12)(b), Stats., relating to the family and medical leave law, which is under the jurisdiction of ERD. The ERD rules allow a state employee to waive the investigation for complaints filed under the family and medical leave law but not any of the other duties transferred from the PC.
- Appeal of initial determination of no probable cause. Under the PC rule and ERD’s fair employment and whistleblower rules, the deadline for appealing an initial determination of no probable cause is 30 days. Under ERD’s family and medical leave rule, the deadline is 10 days.
- Discovery. Under ERD’s fair employment and whistleblower rules, a party seeking discovery directed at a party not represented by legal counsel must notify the party who is not represented and the chief of the hearing section or ALJ at least 10 days before conducting the discovery. All copies of demands for discovery must be filed with the department at the time they are served, and copies of responses and the original transcript of a deposition must be filed with the department. Under ERD’s family and medical leave rule, a party must obtain written consent from the ALJ to conduct discovery directed to a complainant not

represented by legal counsel. The PC had no special provisions affecting discovery directed to a party not represented by legal counsel.

- State employee witnesses. The PC rules allowed an ALJ to issue a letter to compel the attendance of a state employee witness or the production of documents from a state employee. Under the ERD rules, a subpoena is required.
- Exchange of exhibits and witness lists. Under the PC rules, witness lists and copies of exhibits had to be exchanged at least 3 days before the hearing. Under the ERD rules, they must be exchanged at least 10 days before the hearing.
- Place of hearing. The PC had discretion on the location of the hearing. In fair employment and whistleblower cases, the ERD must hold the hearing in the county where the alleged act of discrimination occurred or another location with the consent of the parties. In family and medical leave cases, the ERD hearing is either in the county of the respondent's principal place of business or the county in which the action prohibited by the law appears to have occurred.
- Proposed decisions. The PC hearing examiners issued proposed decisions with the opportunity for parties to file written objections. The final decision was issued by the Personnel Commissioners. The ERD hearing examiners do not issue proposed decisions.
- Appeal. Orders of the Personnel Commission were subject to judicial review under ch. 227, Stats. Orders of the ERD may be appealed to the Labor and Industrial Review Commission(LIRC) and then circuit court, except family and medical leave cases and whistleblower cases, which are appealable directly to circuit court and not LIRC.

SECTION 1. DWD 218.02 (2m) is created to read:

DWD 218.02 (2m) “Agency” means an association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law.

SECTION 2. DWD 218.02 (9) and 218.15 (1) are amended to read:

DWD 218.02 (9) “Respondent” means the person or state agency alleged to have committed an action prohibited by the act.

DWD 218.15 (1) SUBPOENAS. The department or a party’s attorney of record may issue a subpoena to compel the attendance of a witness or the production of documents. A subpoena issued by an attorney shall be in substantially the same form as provided in s. 805.07 (4), Stats., and shall be served in the manner provided in s. 805.07 (5), Stats. Witnesses summoned by a subpoena who are not state civil service employees shall be entitled to the witness and mileage fees set forth in s. 814.67 (1) (a) and (c), Stats. The cost of service, witness and mileage fees shall be paid by the person issuing the subpoena. Subpoenas may be enforced pursuant to s. 885.11, Stats.

SECTION 3. DWD 218.24 is created to read:

DWD 218.24 Pay status and witness fees for state employee parties and state employee witnesses. (1) PAY STATUS OF STATE EMPLOYEE PARTIES. State civil service employees who, as parties, are interviewed as part of investigations or who appear at pre-hearing conferences, conciliation sessions, or hearings, whether held in person or via telephone, shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats.

(2) PAY STATUS OF STATE EMPLOYEE WITNESSES. State civil service employees who are interviewed as part of investigations or who attend hearings as witnesses, whether held in person or via telephone, shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats, unless the administrative law judge determines that their testimony was or would have been irrelevant, immaterial, or unduly repetitious.

(3) WITNESS FEES FOR STATE CIVIL SERVICE EMPLOYEES. State civil service employees who attend hearings as witnesses are entitled only to that compensation specified in sub. (2).

SECTION 4. Chapter DWD 224 is created to read:

Chapter DWD 224

WHISTLEBLOWER PROTECTION

DWD 224.01 Purpose. The purpose of this chapter is to implement the law relating to complaints filed against the state as an employer under subch. III of ch. 230, Stats., commonly referred to as the “whistleblower” law.

DWD 224.02 Definitions. When used in this chapter:

(1) “Administrative law judge” means the examiner appointed to conduct hearings under subch. III of ch. 230, Stats.

(2) “Agency” means an association, authority, board, commission, department, independent agency, institution, office, society, or other body in state government created or authorized to be created by the constitution or any law.

(3) “Complainant” means the person who files a complaint alleging that an action prohibited by subch. III of ch. 230, Stats., has been committed.

(4) “Day” means a calendar day, except that if the last day of the time period is a Saturday, Sunday, or legal holiday, the last day shall be the next business day.

(5) “Department” means the department of workforce development.

(6) “Division” means the equal rights division of the department of workforce development.

(7) “Filing” means the physical receipt of a document.

(8) “Person” includes, but is not limited to, one or more individuals, partnerships, associations, corporations, joint stock companies, trusts, unincorporated organizations, trustees, or trustees or receivers in bankruptcy.

(9) "Probable cause" means a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe, that a violation of subch. III of ch. 230, Stats., probably has been or is being committed.

(10) "Respondent" means the person or state agency alleged to have committed an action prohibited by subch. III of ch. 230, Stats.

(11) "Retaliatory action" has the meaning given in s. 230.80 (8), Stats.

Note: Section 230.80 (8), Stats., provides that "Retaliatory action" means a disciplinary action taken because of any of the following:

- (a) The employee lawfully disclosed information under s. 230.81 or filed a complaint under s. 230.85 (1).
- (b) The employee testified or assisted or will testify or assist in any action or proceeding relating to the lawful disclosure of information under s. 230.81 by another employee.
- (c) The appointing authority, agent of an appointing authority or supervisor believes the employee engaged in any activity described in par. (a) or (b)."

(12) "Service of the complaint upon the respondent" under s. 230.85 (2), Stats, means mailing of the complaint to the respondent.

(13) "Unanimous vote" as it is used in s. 230.85 (3)(b), Stats, means the decision of the administrative law judge.

DWD 224.03 Complaints. (1) WHO MAY FILE COMPLAINTS. A complaint may be filed by any person or by the person's duly authorized representative. A complaint filed by a representative shall state that the representative is authorized to file the complaint.

(2) WHERE TO FILE COMPLAINTS. A complaint may be filed in person with any division office, or it may be mailed to one of the following division offices:

- (a) Equal Rights Division, 201 East Washington Avenue, Madison, Wisconsin 53702.
- (b) Equal Rights Division, 819 North Sixth Street, Milwaukee, Wisconsin 53203.

(3) FORM AND CONTENT OF COMPLAINT. A complaint shall be written on a form which is available at any division office or on any form acceptable to the department. Each complaint shall be signed by the person filing the complaint or by the person's duly authorized representative. The signature constitutes an acknowledgment that the party or the representative has read the complaint; that to the best of that person's knowledge, information and belief the complaint is true and correct; and that the complaint is not being used for any improper purpose, such as to harass the party against

whom the complaint is filed. Each complaint shall contain all of the following information:

- (a) The name and address of the complainant.
- (b) The name and address of the respondent.
- (c) A concise statement of the facts, including pertinent dates, constituting the alleged retaliatory action.

Note: A complaint form is also available on the department's web site at <http://www.dwd.state.wi.us/> by following the link to Equal Rights.

(4) ASSISTANCE BY THE DEPARTMENT. The department shall, upon request, provide appropriate assistance in completing and filing complaints.

(5) AMENDMENT OF COMPLAINT. A complaint may be amended, subject to the approval of the department, except that a complaint may not be amended less than 20 days before hearing unless good cause is shown for the failure to amend the complaint prior to that time. If the complaint is amended prior to the issuance of an initial determination, the department shall investigate the allegations of the amended complaint. If the complaint is amended after the case has been certified to hearing, the chief of the hearing section or the administrative law judge may remand the complaint to the investigation section to conduct an investigation and issue an initial determination as to whether probable cause exists to believe that the respondent took retaliatory action as alleged in the amended complaint. An amended complaint shall be dismissed if it does not meet the requirements of s. DWD 224.06 (1).

(6) WITHDRAWAL OF COMPLAINT. A complaint may be withdrawn at any time. A request for withdrawal shall be in writing and shall be signed by the complainant or by the complainant's duly authorized representative. Upon the filing of a request for withdrawal, the department shall dismiss the complaint by written order. Such dismissal shall be with prejudice unless otherwise expressly stated in the order.

DWD 224.04 Notification of respondent. (1) WHEN NOTICE IS TO BE SENT. The department shall serve a copy of a complaint that meets the requirements of s. DWD 224.03 upon each respondent prior to the commencement of any investigation.

(2) CONTENT OF NOTICE. The notice shall include a copy of the complaint, which shall indicate on its face the date the complaint was filed. The notice shall direct the

respondent to respond in writing to the allegations of the complaint within a time period specified by the department. The notice shall further state that, if the respondent fails to answer the complaint in writing, the department may make an initial determination as to whether retaliatory action has occurred based only on the department's investigation and the information supplied by the complainant.

DWD 224.05 Complainant's duty to respond to correspondence from the department. The department may dismiss the complaint if the complainant fails to respond to the department within 20 days from the date of mailing of any correspondence from the department concerning the complaint, provided that correspondence was sent by certified mail, return receipt requested, to the last known address of the complainant.

DWD 224.06 Preliminary review of complaints. (1) REVIEW OF COMPLAINT. The department shall review every complaint filed to determine all of the following:

- (a) Whether the complainant is protected by subch. III of ch. 230, Stats.
- (b) Whether the respondent is subject to subch. III of ch. 230, Stats.
- (c) Whether the complaint states a claim for relief under subch. III of ch. 230, Stats.
- (d) Whether the complaint was filed within the time period set forth in subch. III of ch. 230, Stats., if that issue is raised in writing by the respondent.

(2) PRELIMINARY DETERMINATION DISMISSING COMPLAINT. The department shall issue a preliminary determination dismissing any complaint or any portion of a complaint that fails to meet the requirements of sub. (1). The order of dismissal shall be sent by first class mail to the last known address of each party and to their attorneys of record.

(3) APPEAL OF PRELIMINARY DETERMINATION. A complainant may appeal from an order dismissing a complaint under sub. (2) by filing a written appeal with the department. The appeal shall be filed within 20 days of the date of the order and shall state specifically the grounds upon which it is based. If a timely appeal is filed, the department shall serve a copy of the appeal upon all other parties. The matter shall be referred to the hearing section of the division for review by an administrative law judge. The administrative law judge shall issue a decision which shall either affirm, reverse, modify, or set aside the preliminary determination. The decision of the administrative law

judge shall be served upon the parties. If the decision reverses or sets aside the preliminary determination, the complaint shall be remanded for investigation. If the decision affirms the preliminary determination, the complainant may seek judicial review if it is a final decision and order as defined in s. DWD 224.22 (1).

DWD 224.07 Investigations. (1) CONDUCT OF INVESTIGATION. Except as provided in sub. (3), the division shall investigate all complaints that satisfy the review under s. DWD 224.06. In conducting investigations under this chapter, the department may seek the cooperation of all persons to provide requested materials to the department; to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take statements of persons reasonably necessary for the furtherance of the investigation. In scheduling interviews with state employees, the division may consider the programmatic needs of the appointing authority. The department may subpoena persons or documents for the purpose of the investigation. Subpoenas may be enforced pursuant to s. 885.11, Stats.

(2) ADVISING COMPLAINANT TO AMEND COMPLAINT. If, during an investigation, it appears that the respondent has engaged in retaliatory action against the complainant that is not alleged in the complaint, the department may advise the complainant that the complaint should be amended.

(3) DISMISSAL OF COMPLAINT PRIOR TO COMPLETION OF INVESTIGATION. (a) The department may dismiss a complaint prior to completion of an investigation under the following circumstances:

1. The complainant has failed to respond to correspondence from the department concerning the complaint within 20 days after the correspondence was sent by certified mail to the last-known address of the person filing the complaint.

2. The complainant signed a valid waiver and release of claims arising out of the complainant's employment with the respondent which would preclude the department from finding that the respondent has violated subch. III of ch. 230, Stats.

3. The allegations in the complaint have been previously dismissed by the department.

(b) A complainant may appeal from an order dismissing a complaint under this subsection by filing a written appeal with the department. The appeal shall be filed within 20 days of the date of the order and shall state specifically the grounds upon which it is based. If a timely appeal is filed, the department shall serve a copy of the appeal upon all other parties. The matter shall be referred to the hearing section of the division for review by an administrative law judge. The administrative law judge shall issue a decision that shall either affirm, reverse, modify or set aside the dismissal of the complaint. The decision of the administrative law judge shall be served upon the parties. If the decision reverses or sets aside the dismissal, the complaint shall be remanded for further investigation. If the decision affirms the dismissal of the complaint, it is subject to judicial review under ch. 227, Stats., if it is a final decision and order as defined in s. DWD 224.22 (1).

DWD 224.08 Initial determination. (1) GENERAL. At the conclusion of the investigation, the department shall issue a written initial determination which shall state whether or not there is probable cause to believe that retaliatory action occurred as alleged in the complaint. This initial determination shall set forth the facts upon which its conclusion is based and shall be served upon the parties.

(2) INITIAL DETERMINATION OF PROBABLE CAUSE. If the department initially determines that there is probable cause to believe that any retaliatory action occurred as alleged in the complaint, it shall certify the case to hearing. A hearing on the merits shall thereafter be noticed and conducted in accordance with the provisions of ss. DWD 224.12 to 224.21.

(3) INITIAL DETERMINATION OF NO PROBABLE CAUSE. If the department initially determines that there is no probable cause to believe that retaliatory action occurred as alleged in the complaint, it may dismiss those allegations. The department shall, by a notice to be incorporated in the initial determination, notify the parties and their attorneys of record of the complainant's right to appeal as provided in s. DWD 224.09.

DWD 224.09 Appeal of initial determination of no probable cause. (1) WHEN FILED. Within 30 days after the date of an initial determination finding that there is no

probable cause, a complainant may file a written request for a hearing on the issue of probable cause. The request for hearing shall state specifically the grounds upon which the appeal is based. The department shall notify the respondent that an appeal has been filed within 10 days of receiving the appeal.

(2) **DISMISSAL FINAL IF NO APPEAL FILED.** If no timely written request for a hearing is filed, the initial determination's order of dismissal shall be the final determination of the department.

(3) **CERTIFICATION TO HEARING ON ISSUE OF PROBABLE CAUSE; RIGHT TO STIPULATE THAT CASE BE DECIDED ON MERITS.** If a timely appeal is filed, the division shall issue a notice certifying the matter to hearing. A hearing on the issue of probable cause shall be noticed and conducted in accordance with the provisions of ss. DWD 224.12 to 224.21, except that the parties may stipulate prior to the hearing that the administrative law judge may decide the case on the merits. If a hearing on the issue of probable cause is requested in a case in which the initial determination also found probable cause with respect to one or more issues the department may, with the consent of the parties, consolidate the hearing on probable cause and the hearing on the merits.

DWD 224.10 Private settlement and conciliation. The parties may enter into an agreement to settle the complaint at any time during the proceedings, with or without assistance by the department. The department may assist the parties to reach a settlement agreement. The parties shall notify the department immediately upon reaching a settlement.

DWD 224.11 Dismissal of complaint for lack of jurisdiction or other procedural basis following certification to hearing. A complaint may be dismissed based upon the conditions set forth in s. DWD 224.06 (1) or for any other procedural basis after the case is certified to hearing under either s. DWD 224.08 (2) or 224.09 (3). In determining whether to dismiss the complaint, the administrative law judge may consider documents and affidavits presented by any party and may hold a hearing to allow the parties to establish facts which may have a bearing on whether the complaint should be dismissed. If the administrative law judge issues an order dismissing the complaint under this

section, a certified copy of the order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record.

DWD 224.12 Notice of hearing. (1) CONTENT. In any matter which has been certified to hearing following an initial determination of probable cause under s. DWD 224.08 (2) or an appeal of an initial determination of no probable cause under s. DWD 224.09 (3), the department shall advise the parties and their representatives and attorneys of record in writing by first-class mail, of the specific time, date, and place established for the hearing. The notice of hearing shall fully identify the parties and the case number. It shall specify a time and date for hearing not less than 30 days after the date of mailing of the notice of hearing. The notice of hearing shall specify the nature of the retaliatory action that is alleged to have occurred and shall state the legal authority on which the hearing is based. A copy of the complaint shall be attached to the notice of hearing.

(2) PLACE OF HEARING. The hearing shall be held in the county where the alleged retaliatory action occurred or at another location with the consent of the parties. For purposes of this subsection, the county where the alleged retaliatory action occurred is the county where the complainant was employed at the time.

DWD 224.13 Answer. (1) WHEN REQUIRED. Within 21 days after the date of a notice of hearing on the merits, each respondent shall file with the hearing section of the division an answer to the allegations of the complaint upon which there is a finding of probable cause, along with a certification that a copy of the answer has been mailed to all other parties.

(2) CONTENT OF ANSWER. The answer shall contain the address of the respondent and the name and address of the respondent's legal counsel or other representative. It shall also contain a specific admission, denial, or explanation of each allegation of the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this shall have the effect of a denial. Admissions or denials may be to all or part of an allegation, but shall fairly meet the substance of the allegation. Any affirmative defense relied upon, including without limitation the statute of limitations, shall be raised in the answer unless it has previously been raised by a motion in writing. Failure to raise an affirmative defense in

the answer may, in the absence of good cause, be held to constitute a waiver of such a defense.

DWD 224.14 Pre-hearing conference. In any case which has been certified to hearing, a pre-hearing conference may be held in accordance with the provisions of s. 227.44 (4), Stats.

DWD 224.15 Pre-hearing discovery. (1) WHEN DISCOVERY MAY BEGIN. Discovery may not be used prior to the time that a matter is certified to hearing, except that the taking and preservation of evidence shall be permitted prior to certification to hearing under the circumstances set forth in s. 227.45 (7), Stats.

(2) DISCOVERY DIRECTED TO A PARTY NOT REPRESENTED BY LEGAL COUNSEL. In the case of discovery directed to a party who is not represented by legal counsel, the party seeking that discovery must, not less than 10 days prior to conducting such discovery, state in writing that it intends to seek discovery. The party seeking discovery shall send this notice to the party who is not represented by legal counsel and to the chief of the hearing section or the administrative law judge, if one has been assigned to the case. All copies of demands for discovery and notices of depositions shall be filed with the department at the time they are served upon the party from whom the discovery is sought. Copies of responses to discovery by an unrepresented party and the original transcript of any deposition of an unrepresented party shall be filed with the department by the party which instituted those discovery requests as soon as practicable after the discovery has been taken.

(3) SCOPE, METHOD, AND USE OF DISCOVERY. The scope of discovery, the methods of discovery, and the use of discovery at hearing shall be the same as set forth in ch. 804, Stats.

(4) FAILURE TO COMPLY WITH DISCOVERY REQUESTS; DUTY TO CONSULT WITH OPPOSING PARTY. The administrative law judge has the same authority to compel discovery, to issue protective orders, and to impose sanctions as the court has under ch. 804, Stats. All motions to compel discovery or motions for protective orders must be accompanied by a statement in writing by the party making the motion that, after consultation in person or by telephone with the opposing party and sincere

attempts to resolve their differences, the parties are unable to reach agreement. The statement shall state the date and place of such consultation and the names of all parties participating in the consultation.

(5) FILING WITH DEPARTMENT. Copies of discovery requests and responses to discovery requests need not be filed with the division, except as required under sub. (2).

DWD 224.17 Subpoenas and motions. (1) SUBPOENAS. The department or a party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of documents. A subpoena issued by an attorney shall be in substantially the same form as provided in s. 805.07 (4), Stats., and shall be served in the manner provided in s. 805.07 (5), Stats. Witnesses summoned by a subpoena who are not state civil service employees shall be entitled to the witness and mileage fees set forth in s. 814.67 (1) (a) and (c), Stats. The cost of service, witness, and mileage fees shall be paid by the person issuing the subpoena. Subpoenas may be enforced pursuant to s. 885.11, Stats.

(2) MOTIONS. Motions made during a hearing may be stated orally and shall, with the ruling of the administrative law judge, be included in the record of the hearing. All other motions shall be in writing and shall state briefly the relief requested and the grounds upon which the moving party is entitled to relief. All written motions shall be filed with the administrative law judge assigned to the case. Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion. Any party opposing the motion may file a written response. All written motions shall be decided without further argument unless requested by the administrative law judge.

DWD 224.17 Disqualification of the administrative law judge. Upon the administrative law judge's own motion, or upon a timely and sufficient affidavit filed by any party, the administrative law judge shall determine whether to disqualify himself or herself because of personal bias or other reason. The administrative law judge's determination shall be made a part of the record and decision in the case.

DWD 224.18 Exchange of names of witnesses and copies of exhibits. By no later than the tenth day prior to the day of hearing, the parties shall file with the division and serve upon all other parties a written list of the names of witnesses and copies of exhibits which the parties intend to use at the hearing. For purposes of this section only, service is complete on mailing rather than on receipt. The administrative law judge shall exclude witnesses and exhibits not identified in a timely fashion pursuant to this section, unless good cause is shown for the failure to identify the names of the witnesses and provide copies of the exhibits in a timely fashion. This section does not apply to witnesses and exhibits offered in rebuttal that the party could not have reasonably anticipated using prior to the hearing.

DWD 224.19 Hearings. (1) PROCEDURE. Hearings shall be conducted in conformity with subch. III of ch. 230, Stats., and the provisions of ch. 227, Stats.

(2) POSTPONEMENTS AND CONTINUANCES. All requests for postponements shall be filed with the administrative law judge within 10 days after the notice of hearing, except where emergency circumstances arise after the notice is issued but prior to the hearing. The party requesting a postponement shall mail a copy of the request to all other parties at the time the request is filed with the division. Postponements and continuances may be granted only for good cause shown and shall not be granted solely for the convenience of the parties or their attorneys.

(3) APPEARANCE OF PARTIES. Parties may appear at the hearing in person and by counsel or other representative.

(4) FAILURE TO APPEAR AT HEARING. If the complainant fails to appear at the hearing, either in person or by a representative authorized to proceed on behalf of the complainant, the administrative law judge shall dismiss the complaint. If the respondent fails to appear at the hearing, the hearing shall proceed as scheduled. If, within 10 days after the date of hearing, any party who failed to appear shows good cause in writing for the failure to appear, the administrative law judge may reopen the hearing.

DWD 224.20 Record of hearing. (1) METHOD OF RECORDING HEARING. A stenographic, electronic, or other record of oral proceedings shall be made at all hearings conducted under subch. III of ch. 230, Stats. Any party wishing to have a court reporter

present to transcribe the proceedings shall be permitted to do so at their own expense. If the hearing is tape-recorded, the original tapes shall remain in the division for 5 years following the hearing, after which they may be discarded.

(2) **REQUIREMENTS FOR PREPARATION OF TRANSCRIPTS.** Any party may file a transcript of the hearing with the division. The transcript shall be prepared by an independent, reputable court reporter or transcriptionist. The transcript shall include a certification by the transcriptionist that it is an original verbatim transcript of the proceedings.

(3) **COST FOR TRANSCRIPTION OF RECORD.** Transcription of the record for purposes other than judicial review shall be at the expense of any party who requests the transcription. For the purpose of judicial review, the department shall prepare at its own expense and provide to the court a transcript of the record, unless a transcript has already been prepared at the expense of the parties. Where a transcript has been provided to the court for the purpose of judicial review, the department shall provide a copy of the transcript at no cost to any party that submits a sworn affidavit of indigency and the inability to obtain funds to pay for a transcript.

DWD 224.21 Decision and order. (1) GENERAL. After the close of the hearing, including any briefs which may be allowed by the administrative law judge, the administrative law judge shall prepare a formal written decision that shall include findings of fact, conclusions of law and an order, and which may be accompanied by an opinion.

(2) **DECISION AND ORDER AFTER HEARING ON THE ISSUE OF PROBABLE CAUSE.** After a hearing on the issue of probable cause, the administrative law judge shall issue a decision and order that dismisses the allegations of the complaint or which orders that the case be certified for a hearing on the merits of the complaint, depending upon the administrative law judge's findings and conclusions on the issue of probable cause. If, after a hearing on the issue of probable cause, the administrative law judge concludes that probable cause does not exist, the administrative law judge shall issue a decision and order that dismisses the allegations of the complaint and which shall be the

final order of the department appealable to circuit court. If the administrative law judge concludes that probable cause exists, the matter will proceed to a hearing on the merits.

(3) DECISION AND ORDER AFTER HEARING ON THE MERITS. After a hearing on the merits, the administrative law judge shall issue a decision and an order that shall either dismiss the allegations of the complaint or shall order such action by the respondent as shall effectuate the purposes of subch. III of ch. 230, Stats., depending upon the administrative law judge's findings and conclusions on the merits of the complaint. The division shall serve a certified copy of the findings and order on the respondent and, if the respondent is a natural person, upon the respondent's appointing authority. The decision of the administrative law judge shall be the final decision of the division and the department for purposes of judicial review under s. 227.52, Stats.

(4) COMPUTATION OF INTEREST. Interest on any award made pursuant to this chapter shall be added to that award and computed at an annual rate of 12% simple interest. Interest shall be computed by calendar quarter.

DWD 224.22 Appeals. (1) APPEALS LIMITED TO FINAL DECISIONS AND ORDERS. Any party may seek judicial review of a final decision and order of the administrative law judge as provided in s. 230.87, Stats. Only final decisions and orders of the administrative law judge are appealable. A final decision is one that disposes of the entire complaint and leaves no further proceedings on that complaint pending before the division.

(2) NOTICE OF APPEAL RIGHTS. Every decision and order of an administrative law judge under s. DWD 224.21 shall be accompanied by a separate notice advising the parties of their rights to seek judicial review of the decision pursuant to s. 230.87, Stats.

DWD 224.23 Pay status and witness fees for state employee parties and state employee witnesses. (1) PAY STATUS OF STATE EMPLOYEE PARTIES. State civil service employees who, as parties, are interviewed as part of investigations or who appear at pre-hearing conferences, conciliation sessions, or hearings, whether held in person or via telephone, shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats.

(2) **PAY STATUS OF STATE EMPLOYEE WITNESSES.** State civil service employees who are interviewed as part of investigations or who attend hearings as witnesses, whether held in person or via telephone, shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats, unless the administrative law judge determines that their testimony was or would have been irrelevant, immaterial, or unduly repetitious.

(3) **WITNESS FEES FOR STATE CIVIL SERVICE EMPLOYEES.** State civil service employees who attend hearings as witnesses are entitled only to that compensation specified in sub. (2).

DWD 224.24 Posting requirement. Every employer, employment agency, labor organization, and licensing agency subject to subch. III of ch. 230, Stats., shall post in conspicuous places upon its premises a poster prepared and made available by the department relating to the provisions of subch. III of ch. 230, Stats., and this chapter.

SECTION 5. DWD 225.01 (1)(L) is amended to read:

DWD 225.01 (1)(L) "Respondent" means the person or state agency alleged in a complaint to have committed an act prohibited by s. 103.10 (11), Stats.

SECTION 6. DWD 225.10 is amended to read:

DWD 225.10 Investigation and conciliation. (1) The division shall investigate all complaints which satisfy the review under s. DWD 225.09, except that if the complainant is a state employee, the division will waive the investigation and determination of probable cause at the complainant's request. If the division waives the complaint and probable cause determination, the division shall proceed with a hearing on the complaint, pursuant to s. 230.45 (1m), Stats. and The division may subpoena persons or documents when related to an investigation. Subpoenas may be enforced pursuant to s. 885.12, Stats.

SECTION 7. DWD 225.16 (1) is amended to read:

DWD 225.16 (1) SUBPOENAS. The administrative law judge may issue subpoenas whenever necessary to compel the attendance of witnesses or the production of documents either on the administrative law judge's own motion or on the proper application by any party. Service of subpoenas shall be made in the manner prescribed by law. Witnesses summoned by a subpoena who are not state civil service employees shall be entitled to the witness and mileage fees set forth in s. 814.67 (1) (a) and (c), Stats. Subpoenas may be enforced pursuant to s. 885.12, Stats.

SECTION 8. DWD 225.23 is created to read:

DWD 225.23 Pay status and witness fees for state employee parties and state employee witnesses. (1) PAY STATUS OF STATE EMPLOYEE PARTIES. State civil service employees who, as parties, are interviewed as part of investigations or who appear at pre-hearing conferences, conciliation sessions, or hearings, whether held in person or via telephone, shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats.

(2) PAY STATUS OF STATE EMPLOYEE WITNESSES. State civil service employees who are interviewed as part of investigations or who attend hearings as witnesses, whether held in person or via telephone, shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats, unless the administrative law judge determines that their testimony was or would have been irrelevant, immaterial, or unduly repetitious.

(3) WITNESS FEES FOR STATE CIVIL SERVICE EMPLOYEES. State civil service employees who attend hearings as witnesses are entitled only to that compensation specified in sub. (2).

SECTION 9. PC 1, 2, 4, 5, and 7 are repealed as applied to programs under the authority of the Department of Workforce Development.



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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

February 19, 2004
Room 300 Southeast
State Capitol

Moved by GROTHMAN, Seconded by Welch

THAT, pursuant to s. 227.24(2)(a), stats. the Joint Committee for Review of Administrative Rules extends PC 1, 2, 4, 5 & 7; DWD 218, 224, and 225 at the request of the Department of Workforce Development by 30 days.

+ DWD 59 for 27 days.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator LEIBHAM	✓		
2. Senator WELCH	✓		
3. Senator LAZICH	✓		
4. Senator ROBSON	✓		
5. Senator COGGS	✓	4/4/04	
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative BLACK	✓		
10. Representative HEBL	✓		
Totals			

Motion Carried

Motion Failed

SENATOR JOSEPH LEIBHAM
Co-Chair



REPRESENTATIVE GLENN GROTHMAN
Co-Chair

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

February 20, 2004

Roberta Gassman, Secretary
Department of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946

Dear Secretary Gassman:

The Joint Committee for the Review of Administrative Rules met in Executive Session on February 19, 2004 and adopted the following motion:

Emergency Rule PC 1, 2, 4, 5, and 7; DWD 218, 224, and 225, Relating to the transfer of personnel commission responsibilities to the equal rights division. Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends PC 1,2,4,5, and 7; DWD 218,224 and 225 at the request of the Department of Workforce Development by 30 days.
Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:pvs

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson

END



END

ERC
1.06

**Emergency Rule ERC 1.06(1)(2)(3), 10.21
(1)(2)(3)(4)(5) and
20.21 (1)(2)(3) (4)**

Relating to increased filing fees. The Wisconsin Employment Relations Commission requests an extension of the effective period of this emergency rule for 60 days. First Consideration.

wp
Judith Neumann
Chair
Paul Gordon
Commissioner
Susan J. M. Bauman
Commissioner



Mailing Address
18 South Thornton Avenue
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Telephone: (608) 266-1381
Fax: (608) 266-6930

Writer's direct line: 266-2993
e-mail: peter.davis@werc.state.wi.us

**State of Wisconsin
Wisconsin Employment Relations Commission**

January 2, 2004

Senator Joseph Leibham
Room 409 South
State Capitol
Madison, WI 53707

Representative Glenn Grothman
Room 15 North
State Capitol
Madison, WI 53707

Re: Sec. 227.24(2), Stats. Extension Request

Dear Senator Leibham and Representative Grothman:

The attached emergency administrative rules promulgated by the Wisconsin Employment Relations Commission became effective on September 15, 2003. The rules remain in effect through February 11, 2004.

The Commission has been proceeding diligently through the process of promulgating permanent administrative rules. As part of that process, the Commission today submitted its Notice and Report to the Legislature that the proposed permanent rules are in final draft form. However, even assuming no action is taken by the Legislature during the 30-day review period, March 1, 2004, is the earliest date the permanent rules could take effect.

The emergency rules provide the Wisconsin Employment Relations Commission with revenue necessary to protect labor peace in Wisconsin. Extension of the period the emergency rules are in effect will avoid a threat to labor peace.

Therefore, pursuant to Sec. 227.24(2), Stats. the Wisconsin Employment Relations Commission respectfully requests that the Joint Committee for Review of Administrative Rules extend the effective period of the attached emergency rules for 60 days.

Very truly yours,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis
General Counsel

PGD/rb
123003.5
Enclosure
cc: Speaker Gard
President Lasee

FINDING OF EMERGENCY

The Employment Relations Commission finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

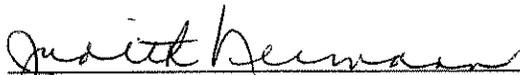
1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.
2. Effective July 26, 2003, 2003 Wisconsin Act 33 reduced the Employment Relations Commission's annual budget by \$400,000 in General Program Revenue (GPR) and eliminated 4.0 GPR supported positions. These reductions lowered the Employment Relations Commission's annual base GPR funding level and the number of GPR supported positions by more than 16%.

Act 33 also abolished the Personnel Commission and transferred certain of the Personnel Commission's dispute resolution responsibilities to the Employment Relations Commission.

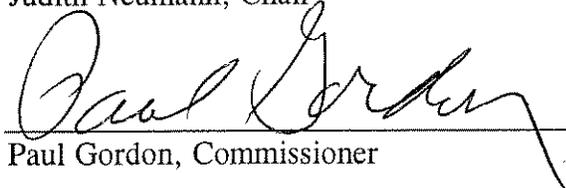
3. 2003 Wisconsin Act 33 increased the Employment Relations Commission's Program Revenue (PR) funding and positions by \$237,800 and 2.0 PR positions respectively. The revenue to support these increases will be provided by increasing existing filing fees for certain dispute resolution services.
4. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 2.0 PR positions, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of August, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



Judith Neumann, Chair



Paul Gordon, Commissioner



Susan J. M. Bauman, Commissioner

**ORDER OF THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION
PROMULGATING EMERGENCY ADMINISTRATIVE RULES**

The Wisconsin Employment Relations Commission hereby makes an order to promulgate emergency administrative rules to amend ERC 1.06 (1)(2) and (3), 10.21 (1)(2)(3)(4) and (5), and 20.21 (1)(2)(3) and (4) relating to increased filing fees.

The emergency rules increase existing filing fees for Commission dispute resolution services in amounts necessary to fund 2.0 Program Revenue positions as authorized by 2003 Wisconsin Act 33.

Sections 111.09, 111.71, 111.94, 227.11 and 227.24., Stats., authorize promulgation of these emergency rules.

SECTION 1. ERC 1.06 (1)(2) and (3), are amended to read:

ERC 1.06 Fees. (1) COMPLAINTS. At the time a complaint is received alleging that an unfair labor practice has been committed under s. 111.06, Stats., the complaining party or parties shall pay the commission a filing fee of ~~\$40.~~ \$80. The complaint is not filed until the fee is paid.

(2) GRIEVANCE ARBITRATION. At the time a request is received asking that the commission or its staff act as a grievance arbitrator under s. 111.10, Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$125.~~ \$250.

(3) MEDIATION. At the time a request is received asking the commission or its staff to act as a mediator under s. 111.11, Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$125.~~ \$250.

SECTION 2. ERC 10.21 (1)(2)(3)(4) and (5) are amended to read:

ERC 10.21 Fees. (1) COMPLAINTS. At the time a complaint is received alleging that a prohibited practice has been committed under s. 111.70(3), Stats., the complaining party or parties shall pay the commission a filing fee of ~~\$40.~~ \$80. The complaint is not filed until the fee is paid.

(2) GRIEVANCE ARBITRATION. At the time a request is received asking that the commission or its staff act as a grievance arbitrator under s. 111.70 (4) (c) 2., or (cm) 4., Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$125.~~ \$250.

(3) MEDIATION. At the time a request is received asking the commission or its staff to act as a mediator under s. 111.70(4)(c)1. or (cm)3., Stats., the parties to the dispute shall each pay the commission a filing fee or ~~\$125.~~ \$250.

(4) FACT-FINDING. At the time a request is received asking the commission to initiate fact-finding under s. 111.70 (4) (c) 3., Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$125.~~ \$250., except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid.

(5) INTEREST ARBITRATION. At the time a request is received asking

(5) INTEREST ARBITRATION. At the time a request is received asking the commission to initiate interest arbitration under s. 111.70 (4)(cm)6., (4)(jm) or 111.77(3), Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$125~~, \$250, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid.

SECTION 3. ERC 20.21 (1)(2)(3) and (4) are amended to read:

ERC 20.21 Fees. (1) COMPLAINTS. At the time a complaint is received alleging that an unfair labor practice has been committed under s. 111.84, Stats., the complaining party or parties shall pay the commission a filing fee of ~~\$40~~, \$80. The complaint is not filed until the fee is paid.

(2) GRIEVANCE ARBITRATION. At the time a request is received asking that the commission or its staff act as a grievance arbitrator under s. 111.86, Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$125~~, \$250.

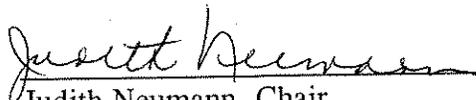
(3) MEDIATION. At the time a request is received asking the commission or its staff to act as a mediator under s. 111.87, Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$125~~, \$250.

(4) FACT-FINDING. At the time a request is received asking the commission to initiate fact-finding under s. 111.88, Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$125~~, \$250, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid.

These emergency rules will take effect September 15, 2003.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of August, 2003.

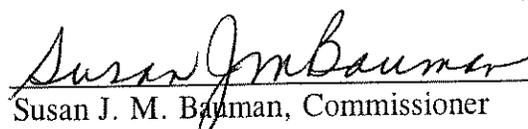
WISCONSIN EMPLOYMENT RELATIONS COMMISSION



Judith Neumann, Chair



Paul Gordon, Commissioner



Susan J. M. Bauman, Commissioner

FISCAL ESTIMATE

EMERGENCY ADMINISTRATIVE RULE
INCREASING FILING FEES

PROMULGATED BY THE WISCONSIN
EMPLOYMENT RELATIONS COMMISSION
AUGUST 21, 2003 AND PUBLISHED
AUGUST 25, 2003

During the last four fiscal years, WERC has averaged \$225,000 in filing fee revenue.

WERC estimates that doubling the existing filing fee levels will produce some reduction in the requests for WERC fee-related services but produce an additional \$200,000 in fee revenues annually.

Because the vast majority of filing fee revenue is derived from services for which the union and employer each pay 50% of the fee and because the vast majority of the WERC's fee-related services are provided to public sector employers and the unions representing their employees, WERC anticipates that doubling the existing fees will increase the costs of public sector employers by \$100,000 annually.

09/04/03



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 29, 2004

Judith Neumann, Chair
Attn: Peter Davis
Wisconsin Employment Relations Commission
18 South Thornton Avenue
Madison, WI 53707-7870

Dear Chair Neumann:

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 28, 2004 and adopted the following motion:

Moved by Representative Grothman and seconded by Representative Gunderson, that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends ERC 1.06 at the request of Employment Relation Commission by 60 days.

Motion Carried

10 Ayes, 0 Noes

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd



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APR 02 2004 (608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

March 31, 2004

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 31, 2004 and adopted the following motions:

**Emergency Rule ERC 1.06(1)(2) Relating to increased filing fees.
(3), 10.21 (1)(2)(3)(4) and (5)
and 20.21 (1)(2)(3) and (4)**

That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends ERC 1.06 at the request of Employment Relation Commission by 19 days.

NR 10 Relating to baiting and feeding.

That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends NR 10 at the request of Department of Natural Resources by 60 days.

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

SENATOR JOSEPH LEIBHAM
CO-CHAIR



APR 02 2004

REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

March 31, 2004

Judith Neumann, Chair
Attn: Peter Davis
Wisconsin Employment Relations Commission
18 South Thornton Avenue
Madison, WI 53707-7870

Dear Chair Neumann:

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 31, 2004 and adopted the following motion:

Emergency Rule ERC 1.06(1)(2) Relating to increased filing fees.
and (3), 10.21 (1)(2)(3)(4) and (5)
and 20.21 (1)(2)(3) and (4)

That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends ERC 1.06 at the request of Employment Relation Commission by 19 days.
Motion Carried

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Emergency Rule Extension Motion Form

March 31, 2004
State Capitol

Moved by GROTHMAN, Seconded by BUNDERSON

THAT, pursuant to s. 227.24(2)(a), stats. the Joint Committee for Review of Administrative Rules extends the effective period of emergency rule NR 10 for 60 days and ERC 1.06 for 19 days at the requests of the Department of Natural Resources and the Employment Relations Commission.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator LEIBHAM	✓		
2. Senator WELCH			
3. Senator LAZICH	✓		
4. Senator ROBSON	✓		
5. Senator COGGS			
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative BLACK	✓		
10. Representative HEBL			
Totals			

Motion Carried

Motion Failed

END



END

Game
23.02

Emergency Rule

Game 23.02(2)

Relating to purses paid to greyhound owners who are residents of the State of Wisconsin.

DOA requests a 60-day extension.

ORDER ADOPTING EMERGENCY RULE

The Department of Administration repeals s. Game 23.02(2) of the Wisconsin Administrative Code.

FINDING OF EMERGENCY

The Wisconsin Department of Administration finds that an emergency exists and that a rule is necessary in order to repeal an existing rule for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Section Game 23.02(2) was created in the Department's rulemaking order (03-070). The Department is repealing this section due to the unforeseen hardship that it has created on the Wisconsin racetracks. This financial hardship presents itself in multiple ways. The racetracks rely on an outside vendor to compute the purses earned by all individuals. The vendor produces a similar system for most greyhound racetracks in the country. The purses are generated by the amount of money wagered on all races over a period of time. The current system does not provide for bonus purses to be paid out based upon the residency of certain owners. The current system would have to be reprogrammed at a significant cost to the racetracks. Although the bonus purses could be calculated and paid without a computer, it would create excessive clerical work that would also be costly to the racetracks.

Additionally, Geneva Lakes Greyhound Track committed to paying a minimum payout of purses to the greyhound and kennel owners that race in Delavan. Geneva Lakes Greyhound Track will supplement out of their own money any purse amount that does not exceed the minimum payout. As a result of paying the bonus purse to Wisconsin owned greyhounds, the variance between the actual purse and the minimum purse is increased and the financial liability to the racetrack is increased. Since this supplement is voluntary, the racetrack has indicated that it will probably have to cease the supplemental purses to the participants. This would result in reduced payments to the vast majority of the kennel owners and greyhound owners participating at the racetrack.

In creating this rule, the Department did not intend to create the disadvantages caused by this rule.

This rule shall take effect upon publication in the official state newspaper pursuant to s. 227.24, Stats.

Analysis prepared by the Department of Administration:

Statutory Authority: Sections 16.004(1), 227.11(2)(a), 562.02(1)(a), and 562.065, Stats.

Statutes Interpreted: Sections 562.02 and 562.065, Stats.

The Department is repealing s. Game 23.02(2) due to the unforeseen hardship that it has created on the Wisconsin racetracks.

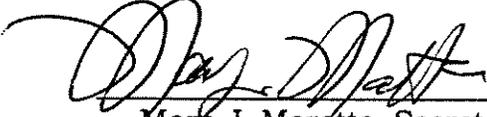
Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small business. The Department does not foresee any additional bookkeeping, clerical, professional or administrative requirements to maintain compliance with this rule amendment.

TEXT OF RULE:

Section 1: Section Game 23.02(2) is repealed.

Adopted at Madison, Wisconsin
this 8th day of January, 2004.



Marc J. Marotta, Secretary
Department of Administration

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Game 23.03(2)

Subject

Repeal of Administrative Rule that pertains to paying a bonus purse to greyhound owners that reside in the state of Wisconsin.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

- Yes No

Decrease Costs

Local: No Local Government Costs

- | | |
|--|---|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The repeal of the rule will not have any fiscal impact on any governmental entity.

Long-Range Fiscal Implications

There are no long term fiscal implications on state or local government.

Prepared By: Daniel J. Subach	Telephone No. 608-270-2539	Agency DOA - GAMING
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

JIM DOYLE
GOVERNOR

MARC J. MAROTTA
SECRETARY

Office of the Secretary
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1741
Fax (608) 267-3842
TTY (608) 267-9629

April 27, 2004

Senator Joseph Leibham, Co-Chair
Joint Committee for Review of
Administrative Rules
409 South, State Capitol
Madison, WI 53702

Representative Glenn Grothman, Co-Chair
Joint Committee for Review of
Administrative Rules
15 North, State Capitol
Madison, WI 53702

RE: Clearinghouse Rule No. 04-019 – Game 23.02(2), relating to purses paid to greyhound owners who are residents of the State of Wisconsin

Dear Senator Leibham and Representative Grothman:

On January 8, 2004, the Department adopted a rule repealing s. Game 23.02(2), of the Wisconsin Administrative Code, as an emergency rule pursuant to ss. 16.004(7), 227.11(2)(a), 562.02(1)(a) and 562.065, Stats.

The Department is repealing this section due to the unforeseen hardship that it has created on the Wisconsin racetracks. The racetracks rely on an outside vendor to compute the purses earned by all individuals. The vendor produces a similar system for most greyhound racetracks in the country. The purses are generated by the amount of money wagered on all races over a period of time. The current system does not provide for bonus purses to be paid out based upon the residency of certain greyhound owners, and would have to be reprogrammed at a significant cost to the racetracks. Although the bonus purses could be calculated and paid without the assistance of a computer, it would create excessive clerical work that would also be costly to the racetracks.

On February 12, 2004, the Department submitted the proposed permanent rule to the Legislative Rules Clearinghouse. On March 2, 2004, the Legislative Council issued a report with no comments relating to the proposed rule. The Department held a public hearing on both the emergency rule and proposed permanent rule on March 16, 2004. At that hearing, one individual testified in favor of the rule. No one testified in opposition. On April 7, 2004, the Department submitted the proposed rule to the Legislature in final draft form

April 27, 2004
Page 2

as provided in s. 227.19, Stats. The proposed rule was referred to the Assembly Committee on State Affairs on April 15, 2004 and to the Senate Committee on Homeland Security, Veterans and Military Affairs and Government on April 14, 2004.

Emergency rule s. Game 23.02(2) will expire on June 6, 2004. To ensure that there will be no gap in rule coverage, we hereby request an extension of the effective period of the above-referenced emergency rule for 60 additional days under s. 227.24(2)(a), Stats.

Thank you for your consideration in this matter. If you have any questions, please contact me at 266-9810.

Sincerely,

A handwritten signature in cursive script that reads "Mark Saunders". The signature is written in black ink and is positioned above the printed name and title.

Mark Saunders
Deputy Legal Counsel



State of Wisconsin • DEPARTMENT OF REVENUE

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PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Jim Doyle
Governor

Michael L. Morgan
Secretary of Revenue

Taxation of Gambling Winnings

Joint Committee for Review of Administrative Rules, May 27, 2004

Summary of Current Wisconsin Law

Under current law, Wisconsin taxes all gambling winnings without reduction of any gambling losses. Up until 1999, Wisconsin allowed gambling losses claimed as a federal miscellaneous itemized deduction to be considered in the calculation of the state itemized deduction credit. Income tax reform included in 1999 Wisconsin Act 9 disallowed gambling losses for purposes of this credit beginning in tax year 2000.

Federal and State Statutes

Wisconsin law defines income subject to individual income tax by reference to the federal Internal Revenue Code (IRC). Further, Wisconsin allows an itemized deductions credit for itemized deductions allowed under the IRC, with exceptions. Wisconsin's statutory reliance on federal law means it follows rules and interpretations made for federal tax purposes.

Under federal law, all gambling winnings are included in gross income. Further, losses from gambling are not deductible in the determination of federal adjusted gross income (FAGI) except by a taxpayer who is in the trade or business of gambling (Revenue Ruling 54-339). Thus, FAGI includes gambling winnings with no reduction for gambling losses.

As a side note, federal IRS publication 529 provides detailed instructions to taxpayers regarding the requirement to maintain an accurate diary or similar record of gambling winnings and losses.

Under sec. 71.01 (13), Wis. Stats., Wisconsin adjusted gross income (WAGI) equals FAGI as modified under sec. 71.05 (6) to (12), (19) and (20). There are no modifications relating to gambling losses in these subsections of sec. 71.05. Thus, WAGI includes income from gambling that is included in FAGI – winnings with no reduction for losses.

Under federal law, gambling losses may be claimed as an itemized deduction, limited to the amount of gains from gambling (sec 165(d), Internal Revenue Code and Reg sec 1.165-10). Gambling losses are part of miscellaneous itemized deductions. Miscellaneous itemized deductions are not eligible for the Wisconsin itemized deductions credit, as a result of 1999 Wisconsin Act 9, which created sec. 71.07 (5)(a)7. This newly created section provides that "miscellaneous itemized deductions under the Internal Revenue Code" be omitted from the calculation of the itemized deductions credit.

Aside from gambling losses, this change also eliminated the ability for Wisconsin residents to include numerous other miscellaneous expenses in calculation of the itemized deduction credit.

Some examples include unreimbursed employee expenses, hobby expenses when the income from the hobby has been reported, home office expenses, union dues, tools used in work, tax preparation fees, etc.

Legislative History

Documents available to legislators prior to their votes on Assembly Bill 133 (which became 1999 Act 9, the 1999-2001 biennial budget) clearly indicate that gambling losses were among the miscellaneous itemized deductions that would no longer be eligible for the itemized deduction credit.

- Legislative Fiscal Bureau Summary of Governor's Biennial Budget (1999 AB 133), March 1999, "General Fund Taxes," page 24.

***Itemized Deduction Credit.** Eliminate miscellaneous itemized deductions as eligible expenses under the state's itemized deduction credit. This modification would first apply to tax years beginning on January 1, 2000. Miscellaneous itemized deductions allowed under federal law include unreimbursed employee expenses, tax preparation fees, safe deposit box rent, gambling losses (to the extent of gambling winnings), casualty and theft losses from income-producing property and other amounts paid to produce or collect taxable income and manage or protect property held for earning income. Under the IRC, certain miscellaneous itemized deductions can only be deducted to the extent that they exceed 2% of the taxpayer's AGI.*

- "1999-01 Biennial Budget: Individual Income Tax Modifications," a memorandum to members of the Joint Committee on Finance from Bob Lang, director of the Legislative Fiscal Bureau, May 11, 1999, indicated: "The bill would eliminate miscellaneous itemized deductions as eligible expenses under the state's itemized deduction credit. Miscellaneous itemized deductions allowed under federal law include unreimbursed employee expenses, tax preparation fees, safe deposit box rent, gambling losses (to the extent of gambling winnings), casualty and theft losses from income-producing property and other amounts paid to produce or collect taxable income and manage or protect property held for earning income."
- "Individual Income Tax Modifications: Miscellaneous Itemized Deductions," Legislative Fiscal Bureau Paper #106, June 7, 1999. This document indicates that the Governor's proposal, which was adopted by both the Joint Committee on Finance and the full Legislature, would "eliminate miscellaneous itemized deductions as eligible expenses under the state's itemized deduction credit." The text also points out that "gambling losses (up to the amount of gambling winnings)" would be one of the things eliminated as an eligible expense from miscellaneous itemized deductions for purposes of Wisconsin's credit. (See copy attached)
- "1999-2001 Wisconsin State Budget, Comparative Summary of Budget Provisions, Wisconsin Acts 9 and 10," Legislative Fiscal Bureau, January 2000. This document reviews the legislative activity on the biennial budget bill, starting with the Governor's introduction through the conference committee and finally any Governor's vetoes.

Pages 72 – 80 summarize the individual income tax modifications made as part of the tax reform package passed in Act 9. This summary indicates that the change to eliminate gambling losses from items eligible in calculation of the itemized deduction credit was part of the budget package proposed at all stages of the process except the Senate version of the budget. The budget conference committee subsequently restored the change to the itemized deduction credit, including eliminating gambling losses from consideration.

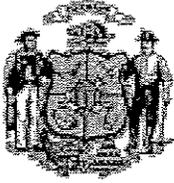
Interpretation of Law, Legislative Intent

The Department of Revenue does not have the discretion to change the state's current tax treatment of gambling winnings. Wisconsin statutes are unambiguous, as is legislative intent.

- Wisconsin's reliance on the federal definition of income in determining the state's definition of income makes it clear that gambling winnings can not be reduced by gambling losses for purposes of the itemized deduction credit.
- Legislative intent is clear as demonstrated in a variety of Legislative Fiscal Bureau documents: gambling losses were among the miscellaneous itemized deductions that would no longer be eligible for the itemized deduction credit under 1999 Wisconsin Act 9.

Fiscal Impact

2003 AB 787 (Rep. Underheim) proposed allowing individuals to include gambling losses to the extent of gambling income as a miscellaneous deduction for purposes of the state itemized deduction credit. Making this change would result in a loss of approximately \$5.5 million annually in Wisconsin income tax revenue. (copy of fiscal estimate attached)



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 7, 1999

Joint Committee on Finance

Paper #106

Individual Income Tax Modifications: Miscellaneous Itemized Deductions (General Fund Taxes -- Individual and Corporate Income Taxes)

[LFB 1999-01 Budget Summary: Page 20, #1]

CURRENT LAW

The itemized deduction credit is equal to 5% of the excess of allowable itemized deductions over the state's sliding scale standard deduction. State itemized deductions generally conform to the expenses permitted as federal itemized deductions and currently include charitable contributions; medical expenses exceeding 7.5% of federal adjusted gross income (AGI); interest expenses for a principal residence or a second home in Wisconsin; interest expenses for property sold on a land contract; other interest expenses, except personal interest; and miscellaneous itemized deductions.

GOVERNOR

Eliminate miscellaneous itemized deductions as eligible expenses under the state's itemized deduction credit. This modification would first apply to tax years beginning on January 1, 2000.

DISCUSSION POINTS

1. The itemized deductions allowed under the state credit generally conform to the federal itemized deductions with two exceptions. First, property taxes paid on a principal residence are claimed for purposes of the state's property tax/rent credit and long-term care insurance premiums are subtracted directly from income, rather than being claimed under the itemized deduction credit. Second, the following itemized deductions may not be claimed for Wisconsin tax purposes: (a) interest paid on a second home located outside of Wisconsin or on a residence that is a boat; (b) interest paid to purchase or hold U.S. Government securities; (c) state income taxes; (d) casualty and theft losses; and (e) moving expenses for moves out of state.

2. Miscellaneous itemized deductions allowed under federal and state law include unreimbursed employe expenses (such as business insurance premiums, travel expenses, professional dues, home office expenses, tools and supplies, and work clothes if not suitable for everyday use), tax preparation fees, repayments of income, safe deposit box rent and legal expenses to produce or collect taxable income. These expenses may be deducted to the extent that they exceed 2% of federal AGI. In addition, casualty and theft losses from income producing property, gambling losses (up to the amount of gambling winnings), unrecovered investments in a pension of a deceased taxpayer and impairment-related work expenses of disabled persons are also deductible as miscellaneous itemized deductions with no limit based on AGI.

3. Of the 43 states, plus the District of Columbia, that imposed an individual income tax in 1997, 10 states did not provide for itemized deductions. Of the remaining 34 states, four provided a different tax treatment of miscellaneous itemized deductions from federal law: California limited the amount of Legislators' travel expenses that could be deducted; Maine required an adjustment of expenses incurred in the production of Maine income; Massachusetts did not allow a deduction for gambling losses; and Oregon limited the deduction for gambling losses to the amount of gambling winnings that were taxable by the state (Oregon exempts state lottery winnings from taxation).

4. The following table provides information on the amount of itemized deductions claimed by Wisconsin taxpayers by type in 1997. This information is from 1997 aggregate data and reflects information reported on the state tax forms. The table shows that of all itemized deductions claimed in 1997, 8.6% was made up of miscellaneous itemized deductions. Of the 2.6 million taxpayers in 1997, approximately 147,100 taxpayers (5.7% of the total) claimed miscellaneous deductions subject to the 2% limit and 22,600 taxpayers (0.9% of the total) claimed miscellaneous deductions that are not subject to the limit. The itemized deduction credit was equal to \$271.9 million in 1997, which is 5% of the amount that allowable itemized deductions (\$7,040.3 million) exceeded the state's sliding scale standard deduction.

Itemized Deductions Claimed in Tax Year 1997

	<u>Count</u>	<u>Amount</u>	<u>% of Amount</u>
Medical and Dental	129,169	\$609,137,357	8.7%
Interest Expenses	734,503	4,033,100,239	57.3
Charitable Contributions	807,873	1,786,590,136	25.4
Misc. Deductions subject to 2% Limit	147,072	509,754,920	7.2
Other Miscellaneous Deductions	<u>22,629</u>	<u>101,702,998</u>	<u>1.4</u>
Total Itemized Deductions	938,786	\$7,040,285,650	100.0%

5. There is limited detailed information available on the types of miscellaneous itemized deductions claimed by Wisconsin taxpayers. According to the 1997 tax sample, 159,100 Wisconsin

taxpayers claimed a total of \$592.3 million in miscellaneous itemized deductions on the federal Schedule A. Of this amount, \$487.6 million (82.3%) were miscellaneous deductions subject to the 2% limit, which included unreimbursed employe expenses (\$351.6 million), tax preparation fees (\$27.9 million) and other deductions (\$108.1 million). A total of 138,500 taxpayers claimed deductions that were subject to the 2% limit.

There were 24,000 taxpayers who claimed \$104.7 million (17.7% of the total) in miscellaneous deductions that were not subject to the 2% limit. Of those individuals, 3,600 taxpayers claimed \$16.2 million in gambling expenses and the remaining \$88.5 million was made up of other miscellaneous deductions.

6. Attachments 1 and 2 to this paper provide distributional information from the 1997 Wisconsin tax sample on the Governor's income tax proposal for tax years 2000 and 2001, respectively, on taxpayers affected by the recommendation to delete miscellaneous itemized deductions. The information in the attachments shows the impact of all of the Governor's proposed income tax modifications, except the proposed homestead credit expansion.

7. The following table compares all taxpayers with a tax decrease or tax increase under the individual income tax modifications recommended by the Governor to only those who are impacted by the provision to eliminate miscellaneous itemized deductions. As shown in the table for the 2001 tax year, about 87% of all taxpayers would have a tax decrease under the bill and 13% would have a tax increase. In contrast, only 57.1% of taxpayers affected by the miscellaneous itemized deduction provision would have a tax decrease and 42.9% would pay more taxes. Taxpayers affected by the miscellaneous itemized deduction provision make up 23.4% of all taxpayers with a tax increase in 2001.

	Count of All Taxpayers Affected by the <u>Governor's Proposal</u>	Percent of <u>Total</u>	Count of Taxpayers Affected by Misc. Itemized <u>Deduction Provision</u>	Percent of <u>Total</u>	Percent of <u>All Taxpayers</u>
Tax Year 2000					
Tax Decrease	1,532,000	80.2%	53,400	39.2%	3.5%
Tax Increase	<u>378,400</u>	<u>19.8</u>	<u>82,700</u>	<u>60.8</u>	<u>21.9</u>
Total	1,910,400	100.0%	136,100	100.0%	7.1%
Tax Year 2001					
Tax Decrease	1,667,000	87.0%	77,500	57.1%	4.6%
Tax Increase	<u>248,300</u>	<u>13.0</u>	<u>58,200</u>	<u>42.9</u>	<u>23.4</u>
Total	1,915,300	100.0%	135,700	100.0%	7.1%

8. Retaining miscellaneous itemized deductions under the itemized deduction credit would reduce income tax revenues by \$25.0 million in tax year 2000 and \$24.5 million in tax year 2001 (in 2000 dollars) from the bill. It should be noted that due to the interaction of the various income tax modification provisions, the fiscal effect of this change would differ if other revisions were made to the Governor's proposal.

9. Since the bill's introduction, the Department of Revenue has requested that a

modification be made to this proposal that would allow repayments of income to be subtracted from federal AGI when calculating Wisconsin AGI. Currently, if an individual repays \$3,000 or less in income that was taxed in a prior year, the amount repaid can be claimed as a miscellaneous itemized deduction (subject to the 2% limit). Repayments of income in excess of \$3,000 are eligible for a state credit. This modification is expected to reduce revenues by a minimal amount.

ALTERNATIVES

1. Approve the Governor's recommendation to eliminate miscellaneous itemized deductions from the calculation of the itemized deduction credit. Provide that the amount claimed as a federal miscellaneous itemized deduction for repayment of income that was taxed in a prior year may be subtracted from federal AGI.

2. Delete the Governor's recommendation and continue to allow miscellaneous itemized deductions to be used on calculating the itemized deduction credit. Compared to the bill, this would reduce income tax revenues by \$25,000,000 in 2000-01 if the other income tax provisions recommended by the Governor are not modified.

<u>Alternative 2</u>	<u>GPR</u>
1999-01 REVENUE (Change to Bill)	-\$25,000,000

Prepared by: Kelsie Doty
Attachments

ATTACHMENT 1

**Distribution of Taxpayers Affected by the Elimination of Miscellaneous Itemized Deduction
With a Tax Increase or Decrease Under the Governor's Income Tax Proposal
Tax Year 2000**

Wisconsin Adjusted Gross Income	Taxpayers With a Tax Decrease				Taxpayers With a Tax Increase				
	Count	% of Count	Amount of Tax Decrease	% of Amount	Count	% of Count	Amount of Tax Increase	% of Amount	Average Increase
Under \$10,000	400	0.7%	-\$12,000	0.2%	1,800	2.2%	\$42,000	0.2%	\$23
10,000 to 20,000	600	1.1%	-24,000	0.4%	2,100	2.5%	223,000	1.2%	106
20,000 to 30,000	4,500	8.4%	-457,000	8.6%	4,700	5.7%	863,000	4.6%	184
30,000 to 40,000	7,300	13.7%	-943,000	17.6%	11,500	13.9%	2,277,000	12.2%	198
40,000 to 50,000	9,100	17.0%	-1,184,000	22.2%	11,900	14.4%	2,573,000	13.7%	216
50,000 to 60,000	10,000	18.7%	-1,110,000	20.8%	11,500	13.9%	2,147,000	11.5%	187
60,000 to 70,000	6,600	12.4%	-449,000	8.4%	11,100	13.4%	2,499,000	13.3%	225
70,000 to 80,000	4,200	7.9%	-284,000	5.3%	8,400	10.2%	1,379,000	7.4%	164
80,000 to 90,000	4,000	7.5%	-205,000	3.8%	5,900	7.1%	1,451,000	7.7%	246
90,000 to 100,000	1,700	3.2%	-134,000	2.5%	4,000	4.8%	1,073,000	5.7%	268
100,000 to 200,000	3,900	7.3%	-369,000	6.9%	8,000	9.7%	2,697,000	14.4%	337
200,000 to 300,000	600	1.1%	-89,000	1.7%	900	1.1%	577,000	3.1%	641
300,000 and Over	500	0.9%	-84,000	1.6%	900	1.1%	926,000	4.9%	1,029
TOTALS	53,400	100.0%	-\$5,344,000	100.0%	82,700	100.0%	\$18,727,000	100.0%	\$226

Comments:
This attachment shows the impact of all of the Governor's proposed income tax modifications, except the homestead credit expansion, on only those taxpayers affected by the provision to eliminate miscellaneous itemized deductions in tax year 2000.

Approximately 136,100 taxpayers would be affected by this provision under the Governor's tax proposal.

Of all affected taxpayers with a tax change, 53,400 (39.2%) would have a tax decrease. The average decrease would be \$100.

Of all affected taxpayers with a tax increase, 82,700 (60.8%) would have a tax increase. The average increase would be \$226.

SOURCE: 1997 Wisconsin Tax Sample

Wisconsin Adjusted Gross Income	Taxpayers With a Tax Change			
	Count	% of Count	Amount of Tax Change	Average Change
Under \$10,000	2,200	1.6%	\$30,000	\$14
10,000 to 20,000	2,700	2.0%	199,000	74
20,000 to 30,000	9,200	6.8%	406,000	44
30,000 to 40,000	18,800	13.8%	1,334,000	71
40,000 to 50,000	21,000	15.4%	1,389,000	66
50,000 to 60,000	21,500	15.8%	1,037,000	48
60,000 to 70,000	17,700	13.0%	2,050,000	116
70,000 to 80,000	12,600	9.3%	1,095,000	87
80,000 to 90,000	9,900	7.3%	1,246,000	126
90,000 to 100,000	5,700	4.2%	939,000	165
100,000 to 200,000	11,900	8.7%	2,328,000	196
200,000 to 300,000	1,500	1.1%	488,000	325
300,000 and Over	1,400	1.0%	842,000	601
TOTALS	136,100	100.0%	\$13,383,000	\$98

ATTACHMENT 2

Distribution of Taxpayers Affected by the Elimination of Miscellaneous Itemized Deduction
With a Tax Increase or Decrease Under the Governor's Income Tax Proposal
Tax Year 2001

Wisconsin Adjusted Gross Income	Taxpayers With a Tax Decrease				Taxpayers With a Tax Increase					
	Count	% of Count	Amount of Tax Decrease	% of Amount	Average Decrease	Count	% of Count	Amount of Tax Increase	% of Amount	Average Increase
Under \$10,000	1,000	1.3%	-\$17,000	0.2%	-\$17	1,200	2.1%	\$30,000	0.2%	\$25
10,000 to 20,000	900	1.2%	-43,000	0.4%	-48	1,900	3.3%	176,000	1.2%	93
20,000 to 30,000	5,400	7.0%	-658,000	6.6%	-122	3,700	6.4%	715,000	5.0%	193
30,000 to 40,000	9,900	12.8%	-1,321,000	13.3%	-133	8,800	15.1%	1,817,000	12.8%	206
40,000 to 50,000	11,000	14.2%	-1,811,000	18.2%	-165	9,600	16.5%	1,974,000	13.9%	206
50,000 to 60,000	14,000	18.1%	-1,980,000	19.9%	-141	7,500	12.9%	1,563,000	11.0%	208
60,000 to 70,000	10,300	13.3%	-1,135,000	11.4%	-110	7,300	12.5%	1,843,000	12.9%	252
70,000 to 80,000	8,100	10.5%	-823,000	8.3%	-102	4,400	7.6%	899,000	6.3%	204
80,000 to 90,000	6,700	8.6%	-647,000	6.5%	-97	3,400	5.8%	1,068,000	7.5%	314
90,000 to 100,000	2,900	3.7%	-330,000	3.3%	-114	2,900	5.0%	801,000	5.6%	278
100,000 to 200,000	5,900	7.6%	-868,000	8.7%	-147	6,100	10.5%	2,028,000	14.2%	332
200,000 to 300,000	800	1.0%	-171,000	1.7%	-214	700	1.2%	493,000	3.5%	704
300,000 and Over	500	0.8%	-144,000	1.4%	-240	700	1.2%	843,000	5.9%	1,204
TOTALS	77,500	100.0%	-\$9,948,000	100.0%	-\$128	58,200	100.0%	\$14,250,000	100.0%	\$245

Comments:
This attachment shows the impact of all of the Governor's proposed income tax modifications, except the homestead credit expansion, on only those taxpayers affected by the provision to eliminate miscellaneous itemized deductions in tax year 2001.

Approximately 135,700 taxpayers would be affected by this provision under the Governor's tax proposal.

Of all affected taxpayers with a tax change, 77,500 (57.1%) would have a tax decrease. The average decrease would be \$128.

Of all affected taxpayers with a tax change, 58,200 (42.9%) would have a tax increase. The average increase would be \$245.

SOURCE: 1997 Wisconsin Tax Sample

Wisconsin Adjusted Gross Income	Taxpayers With a Tax Change				Average Change
	Count	% of Count	Amount of Tax Change	% of Amount	
Under \$10,000	2,200	1.6%	\$13,000	0.3%	\$6
10,000 to 20,000	2,800	2.1%	133,000	3.1%	48
20,000 to 30,000	9,100	6.7%	57,000	1.3%	6
30,000 to 40,000	18,700	13.8%	496,000	11.5%	27
40,000 to 50,000	20,600	15.2%	163,000	3.8%	8
50,000 to 60,000	21,500	15.8%	-417,000	-9.7%	-19
60,000 to 70,000	17,600	13.0%	708,000	16.5%	40
70,000 to 80,000	12,500	9.2%	76,000	1.8%	6
80,000 to 90,000	10,100	7.4%	421,000	9.8%	42
90,000 to 100,000	5,800	4.3%	471,000	10.9%	81
100,000 to 200,000	12,000	8.8%	1,160,000	27.0%	97
200,000 to 300,000	1,500	1.1%	322,000	7.5%	215
300,000 and Over	1,300	1.0%	999,000	16.2%	538
TOTALS	135,700	100.0%	\$4,302,000	100.0%	\$32



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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

May 27, 2004

JUN 01 2004

Secretary Marc Marotta
ATTN: Mark Saunders
Department of Administration
P.O. Box 7864
Madison, WI 53707-7864

Dear Attorney Saunders:

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 27, 2004 and adopted the following motion:

Game 23.02(2) Relating to purses paid to greyhound owners who are residents of the State of Wisconsin.

That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends Game 23.02(2) at the request of Department of Administration by 60 days.

Motion Carried 10 Ayes, 0 Noes

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph K. Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjd

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

May 27, 2004

JUN 01 2004

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 27, 2004 and adopted the following motions:

Game 23.02(2) Relating to purses paid to greyhound owners who are residents of the State of Wisconsin.

That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends Game 23.02(2) at the request of Department of Administration by 60 days.

Motion Carried 10 Ayes, 0 Noes

LRB 4533 and LRB 4534 Relating to an overtime exemption for companionship services.

That, pursuant to s. 227.19(5)(e), Stats., the Joint Committee for Review of Administrative Rules introduces LRB 4533 and 4534.

Motion Carried 6 Ayes, 4 Noes

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

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Legislators push to restore gambling-loss deduction

11:27 PM 5/26/04

Tom Sheehan Wisconsin State Journal

Peter Larson looks like a winner in the photo, posing next to a slot machine at the Majestic Pines Casino in Black River Falls. <

Casino operators took his picture and posted it on the casino Web site after the retired feed mill owner from Thorp won \$6,000 on a "Ten Times" electronic slot machine earlier this year. In the past, Larson said he's also hit a \$10,000 jackpot and a couple worth more than \$4,000 each. <

But on average, Larson said he loses money gambling. Yet he still has to pay state income taxes on payouts. <

Larson supports a proposal that would allow him to deduct his gambling losses from his winnings on his state taxes, and he has at least a couple of lawmakers on his side. <

A legislative committee hearing is scheduled today on a proposal by Rep. Glenn Grothman, R-West Bend, to bring back the state deduction. <

"I think ultimately (the Department of Revenue) will look foolish enough that they will want to have a bill introduced to change it," Grothman said. <

He said he's had complaints from accountants that the state is too aggressive in collecting the tax from gamblers who lose money. <

"If you win \$60,000 and lose \$70,000, you shouldn't have to pay taxes on that," he said. <

Grothman wants to at least allow gamblers to balance wins and losses that occur on the same day at one casino. <

Larson said on average, he loses \$1,000 a month, which he can deduct from his winnings on federal taxes but not on his state taxes ever since the state stopped offering the deduction with the 2000 tax year. In 1999, the Legislature passed a bill dropping the deductibility of gambling losses, said Eva Robelia, a spokeswoman for the state Department of Revenue. <

All payouts, no matter the amount, are supposed to be reported as "other income" on state tax forms, including lottery winnings as small as a few bucks, said Diane Hardt, tax administrator for the department. <

The Department of Revenue hadn't taken a formal position on the

proposed change as of Wednesday, but the state could lose about \$6 million a year in tax revenue if the proposal becomes law, Robelia said.

<

Rep. Gregg Underheim, R-Oshkosh, said he introduced a bill at the request of a constituent earlier this year that would have allowed the state deduction. But the proposal was introduced too late in the legislative session and never made it out of committee. <

Nationally, 1 million tax filers claimed gambling losses of \$11.6 billion as itemized deductions in 2001. Wisconsin gamblers reported losses of \$110.8 million on federal forms that year, the department found when it studied Underheim's bill. <

Gambling income includes, but is not limited to, money from raffles, horse and dog races and the fair market value of prizes such as cars, houses, trips or other non-cash prizes, according to the IRS. <

Some people may get away without reporting a small scratch-off lottery win that has no paper trail, Hardt said. But casinos must issue a federal "W-2G" form for reporting winnings of \$1,200 or more, and the state gets a copy. <

At casinos run by the Oneida Nation, one of 11 tribes that operate casinos in the state, anyone who wins \$1,200 or more is given a brochure explaining tax obligations, said Bobbi Webster, a spokeswoman for the tribe. <

Casino machines at Oneida Bingo & Casino in Green Bay automatically let operators know when a jackpot that meets the threshold has been won, she said. <

Contact Tom Sheehan at tsheehan@madison.com or 252-6198.

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