

**2013 DRAFTING REQUEST**

**Bill**

Received:	<b>4/23/2013</b>	Received By:	<b>mkunkel</b>
Wanted:	<b>As time permits</b>	Same as LRB:	<b>-2271</b>
For:	<b>Paul Farrow (608) 266-9174</b>	By/Representing:	<b>Gus</b>
May Contact:		Drafter:	<b>mkunkel</b>
Subject:	<b>Public Util. - misc.</b>	Addl. Drafters:	
		Extra Copies:	<b>EVM</b>

Submit via email: **YES**  
 Requester's email: **Sen.Farrow@legis.wisconsin.gov**  
 Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Public Service Commission ex parte communications

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 4/25/2013			_____			
/P1	mkunkel 4/29/2013	jdyer 4/25/2013	rschluet 4/25/2013	_____	srose 4/25/2013		
/1		jdyer 4/30/2013	jfrantze 4/30/2013	_____	sbasford 4/30/2013	mbarman 5/2/2013	

FE Sent For:

*None  
needed*

<END>

**2013 DRAFTING REQUEST**

**Bill**

Received:	<b>4/23/2013</b>	Received By:	<b>mkunkel</b>
Wanted:	<b>As time permits</b>	Same as LRB:	<b>-2271</b>
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/P1	mkunkel 4/29/2013	jdyer 4/25/2013	rschluet 4/25/2013	_____	srose 4/25/2013		
/1		jdyer 4/30/2013	jfrantze 4/30/2013	_____	sbasford 4/30/2013		

FE Sent For:

**<END>**

## 2013 DRAFTING REQUEST

### Bill

Received: 4/23/2013 Received By: mkunkel  
Wanted: As time permits Same as LRB:  
For: Paul Farrow (608) 266-9174 By/Representing: Gus  
May Contact: Drafter: mkunkel  
Subject: Public Util. - misc. Addl. Drafters:  
Extra Copies: EVM

Submit via email: YES  
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Carbon copy (CC) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Public Service Commission ex parte communications

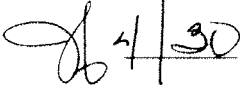
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### Instructions:

See attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 4/25/2013	1 <sup>4</sup> / <sub>30</sub> jld		 4/30			
/P1	mkunkel	jdyer 4/25/2013	rschluet 4/25/2013		srose 4/25/2013		

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Bill**

Received: **4/23/2013** Received By: **mkunkel**  
Wanted: **As time permits** Same as LRB:  
For: **Robert Cowles (608) 266-0484** By/Representing: **Ryan Smith**  
May Contact: Drafter: **mkunkel**  
Subject: **Public Util. - misc.** Addl. Drafters:  
Extra Copies: **EVM**

Submit via email: **YES**  
Requester's email: **Sen.Cowles@legis.wisconsin.gov**  
Carbon copy (CC) to:

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**Pre Topic:**

No specific pre topic given

---

**Topic:**

Public Service Commission ex parte communications

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 4/25/2013			_____			
/P1		jdyer 4/25/2013	rschluet 4/25/2013	_____	rose 4/25/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 4/23/2013 Received By: mkunkel  
 Wanted: As time permits Same as LRB:  
 For: Robert Cowles (608) 266-0484 By/Representing: Ryan Smith  
 May Contact: Drafter: mkunkel  
 Subject: Public Util. - misc. Addl. Drafters:  
 Extra Copies: EVM

Submit via email: YES  
 Requester's email: Sen.Cowles@legis.wisconsin.gov  
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Public Service Commission ex parte communications

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	mkunkel	P1 4/25 jld		==			
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FE Sent For:

4/25/13  
 <END>

## Kunkel, Mark

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**From:** Smith, Ryan  
**Sent:** Tuesday, April 23, 2013 9:03 AM  
**To:** Kunkel, Mark  
**Subject:** Draft Request

Mark,

Here's the language for the draft. Give me a call if you have any questions.

Thanks!

SECTION # 227.50(1)(a) is amended to read:

**227.50(1)(a)** In a contested case, except as provided in sub. (3), no ex parte communication relative to the merits or a threat or offer of reward shall be made, before a decision is rendered, to the hearing examiner or any other official or employee of the agency who is involved in the decision-making process, by:

1. An official of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter; or

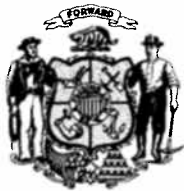
227.50(1)(a)2. 2. A party to the proceeding, or any person who directly or indirectly would have a substantial interest in the proposed agency action or an authorized representative or counsel.

SECTION # 227.50(3) of the statutes is created to read:

**227.50(3)** Notwithstanding any other provision of this section, in any contested case before the public service commission, sub. (1)(a) and (2) shall only apply to commissioners of the public service commission or to the hearing examiner.

Ryan Smith  
Chief of Staff  
Office of Sen. Robert Cowles  
800-334-1465





State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-2232/P1

MDK: ^:....

jld

O-note

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

By Fri  
4-26  
IN 4-25

Gen

1 AN ACT ...; relating to: ex parte communications in contested cases before the

2

public service commission.

***Analysis by the Legislative Reference Bureau***

Current law prohibits certain ex parte communications<sup>✓</sup> in contested cases, which are state agency proceedings that affect the substantial interest of a party. An ex parte communication is one that is made without the knowledge of all of the parties. An ex parte communication in a contested case<sup>✓</sup> is subject to the prohibition if it is made before a decision is rendered and it is either: 1) relative to the merits; or 2) a threat or offer of reward. If the prohibition applies, the following are prohibited from making an ex parte communication to either the hearing examiner or any other official or employee of the state agency who is involved in the decision-making process:<sup>✓</sup> 1) a state agency official or any other public employee or official engaged in prosecution or advocacy regarding the matter or a related matter; 2) a party to the proceeding; 3) any person with a substantial interest in the proposed agency action; and 4) an authorized representative or counsel. Current law specifies several exceptions to the prohibition.

This bill creates an additional exception to the prohibition that applies only in contested cases before the Public Service Commission (PSC).<sup>✓</sup> In such contested cases, the bill provides that the prohibition does not apply to an ex parte

communication by or to any PSC<sup>✓</sup> official or employee other than the hearing examiner or the PSC commissioners.

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

1           SECTION 1. 227.50 (1) (a) (intro.)<sup>✓</sup> of the statutes is amended to read:

2           227.50 (1) (a) (intro.) In Except as provided in par. (am)<sup>✓</sup>, in a contested case,  
3 no ex parte communication relative to the merits or a threat or offer of reward shall  
4 be made, before a decision is rendered, to the hearing examiner or any other official  
5 or employee of the agency who is involved in the decision-making process, by any of  
6 the following:<sup>✓</sup>

7 History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 418; 1985 a. 182 s. 33; Stats. 1985 s. 227.50.

8           SECTION 2. 227.50 (1) (a) 1. and (b) of the statutes are consolidated, renumbered  
9 227.50 (1) (a) 1m.<sup>✓</sup> and amended to read:

10           227.50 (1) (a) 1m.<sup>✓</sup> An official of the agency or any other public employee or  
11 official engaged in prosecution or advocacy in connection with the matter under  
12 consideration or a factually related matter; ~~or (b) Paragraph (a) 1.~~<sup>✓</sup> This subdivision<sup>✓</sup>  
~~does not apply to an advisory staff which does not participate in the proceeding.~~  
*strike → (b) score*

13 History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 418; 1985 a. 182 s. 33; Stats. 1985 s. 227.50.

14           SECTION 3. 227.50 (1) (am) 4. of the statutes is created to read:

15           227.50 (1) (am) 4. In a contested case before the public service commission, an  
16 ex parte communication by or to any official or employee of the commission other  
17 than the hearing examiner or a commissioner.<sup>✓</sup>

18           SECTION 4. 227.50 (1) (c)<sup>✓</sup> of the statutes is renumbered 227.50 (1) (am) (intro.)  
19 and amended to read:

20           227.50 (1) (am) <sup>(intro.)</sup> This subsection Paragraph (a)<sup>✓</sup> does not apply to an any of the  
following:

1            1. An ex parte communication which is authorized or required by statute.

2            History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 418; 1985 a. 182 s. ~~34~~; Stats. 1985 s. 227.50.

3            **SECTION 5.** 227.50 (1) (d) of the statutes is renumbered 227.50 (1) (am) 2. and  
4            amended to read:

5            227.50 (1) (am) 2. ~~This subsection does not apply to an~~ An ex parte  
6            communication by an official or employee of an agency which is conducting a class  
7            proceeding.

8            History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 418; 1985 a. 182 s. ~~34~~; Stats. 1985 s. 227.50.

9            **SECTION 6.** 227.50 (1) (e) of the statutes is renumbered 227.50 (1) (am) 3. and  
10            amended to read:

11            227.50 (1) (am) 3. ~~This subsection does not apply to any~~ Any communication  
12            made to an agency in response to a request by the agency for information required  
13            in the ordinary course of its regulatory functions by rule of the agency.

14            History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 418; 1985 a. 182 s. 33t; Stats. 1985 s. 227.50.

15            **SECTION 7. Initial applicability.**

              (1) This act first applies to ex parte communications made on the effective date  
              of this subsection.✓

(END)

d-note  
↓

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

LRB-2232/P1dn

MDK:.....

date

Jld

Sen. Cowles:

Please note the following about this draft:

1. I restructured the language you provided to be consistent with the structure of s. 227.50 (1). Also, I made some changes to s. 227.50 (1) to eliminate the redundant "this subsection does not apply to" language at the beginning of s. 227.50 (1) (c), (d), and (e). To help you review the draft's changes, here is how the draft changes s. 227.50 (1):

"227.50 (1) (a) In Except as provided in par. (am), in a contested case, no ex parte communication relative to the merits or a threat or offer of reward shall be made, before a decision is rendered, to the hearing examiner or any other official or employee of the agency who is involved in the decision-making process, by any of the following:

1. 1m. An official of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter; ~~or (b) Paragraph (a)~~. This subdivision does not apply to an advisory staff which does not participate in the proceeding. \*

2. A party to the proceeding, or any person who directly or indirectly would have a substantial interest in the proposed agency action or an authorized representative or counsel.

~~(c) This subsection (am) Paragraph (a)~~ does not apply to an any of the following:

1. An ex parte communication which is authorized or required by statute.

~~(d) This subsection does not apply to an~~ 2. An ex parte communication by an official or employee of an agency which is conducting a class 1 proceeding.

~~(e) This subsection does not apply to any~~ 3. Any communication made to an agency in response to a request by the agency for information required in the ordinary course of its regulatory functions by rule of the agency.

4. In a contested case before the public service commission, an ex parte communication by or to any official or employee of the commission other than the hearing examiner or a commissioner.” ✓

2. The draft prohibits ex parte communications by or to PSC commissioners, but allows ex parte communications by or to other PSC staff, such as commissioner executive assistants and legal staff. Is that okay? ✓

3. I included an initial applicability provision that provides that the draft's changes first apply to ex parte communications made on or after the draft's effective date, ✓ which would include those made in contested case begun before the effective date. Is that okay, or should the draft apply only to contested cases begun on or after the effective date? Or do you prefer another approach to initial applicability? ✓

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

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

LRB-2232/P1dn  
MDK:jld:rs

April 25, 2013

Sen. Cowles:

Please note the following about this draft:

1. I restructured the language you provided to be consistent with the structure of s. 227.50 (1). Also, I made some changes to s. 227.50 (1) to eliminate the redundant "this subsection does not apply to" language at the beginning of s. 227.50 (1) (c), (d), and (e). To help you review the draft's changes, here is how the draft changes s. 227.50 (1):

"227.50 (1) (a) ~~In~~ Except as provided in par. (am), in a contested case, no ex parte communication relative to the merits or a threat or offer of reward shall be made, before a decision is rendered, to the hearing examiner or any other official or employee of the agency who is involved in the decision-making process, by any of the following:

1. 1m. An official of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter; ~~or (b) Paragraph (a) 1.~~ This subdivision does not apply to an advisory staff which does not participate in the proceeding.

2. A party to the proceeding, or any person who directly or indirectly would have a substantial interest in the proposed agency action or an authorized representative or counsel.

~~(c) This subsection (am) Paragraph (a) does not apply to an~~ any of the following:

1. An ex parte communication which is authorized or required by statute.

~~(d) This subsection does not apply to an~~ 2. An ex parte communication by an official or employee of an agency which is conducting a class 1 proceeding.

~~(e) This subsection does not apply to any~~ 3. Any communication made to an agency in response to a request by the agency for information required in the ordinary course of its regulatory functions by rule of the agency.

4. In a contested case before the public service commission, an ex parte communication by or to any official or employee of the commission other than the hearing examiner or a commissioner.”

2. The draft prohibits ex parte communications by or to PSC commissioners, but allows ex parte communications by or to other PSC staff, such as commissioner executive assistants and legal staff. Is that okay?

3. I included an initial applicability provision that provides that the draft's changes first apply to ex parte communications made on or after the draft's effective date, which would include those made in contested case begun before the effective date. Is that okay, or should the draft apply only to contested cases begun on or after the effective date? Or do you prefer another approach to initial applicability?

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)

## Kunkel, Mark

---

**From:** Gustafson, Andrew  
**Sent:** Monday, April 29, 2013 1:02 PM  
**To:** Kunkel, Mark  
**Cc:** Vick, Jason  
**Subject:** RE: Draft review: LRB -2232/P1 Topic: Public Service Commission ex parte communications

Mark:

Could you do this for Sen. Farrow? Thank you.

**From:** Smith, Ryan  
**Sent:** Friday, April 26, 2013 10:44 AM  
**To:** Kunkel, Mark  
**Cc:** Vick, Jason; Gustafson, Andrew  
**Subject:** FW: Draft review: LRB -2232/P1 Topic: Public Service Commission ex parte communications

Thanks for the quick turnaround on this, Mark. I think Sen. Farrow and Rep. Honadel are going to run with this one, so we're sharing the draft with them and Sen. Cowles authorizes you to communicate with them on this draft.

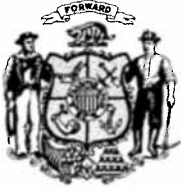
Thanks again for the help!

Ryan Smith  
Chief of Staff  
Office of Sen. Robert Cowles  
800-334-1465

**From:** LRB.Legal  
**Sent:** Thursday, April 25, 2013 10:05 AM  
**To:** Sen.Cowles  
**Subject:** Draft review: LRB -2232/P1 Topic: Public Service Commission ex parte communications

**Following is the PDF version of draft LRB -2232/P1 and drafter's note.**





State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-2232/Plg  
MDK:jld:rs

1

O-NOTE

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

pm has been paid

2013 BILL

COON  
12-11-2013

4

Regen

1 AN ACT to renumber and amend 227.50 (1) (c), 227.50 (1) (d) and 227.50 (1) (e);  
2 to consolidate, renumber and amend 227.50 (1) (a) 1. and (b); to amend  
3 227.50 (1) (a) (intro.); and to create 227.50 (1) (am) 4. of the statutes; relating  
4 to: ex parte communications in contested cases before the Public Service  
5 Commission.

*Analysis by the Legislative Reference Bureau*

Current law prohibits certain ex parte communications in contested cases, which are state agency proceedings that affect the substantial interest of a party. An ex parte communication is one that is made without the knowledge of all of the parties. An ex parte communication in a contested case is subject to the prohibition if it is made before a decision is rendered and it is either: 1) relative to the merits; or 2) a threat or offer of reward. If the prohibition applies, the following are prohibited from making an ex parte communication to either the hearing examiner or any other official or employee of the state agency who is involved in the decision-making process: 1) a state agency official or any other public employee or official engaged in prosecution or advocacy regarding the matter or a related matter; 2) a party to the proceeding; 3) any person with a substantial interest in the proposed agency action; and 4) an authorized representative or counsel. Current law specifies several exceptions to the prohibition.

This bill creates an additional exception to the prohibition that applies only in contested cases before the Public Service Commission (PSC). In such contested

cases, the bill provides that the prohibition does not apply to an ex parte communication by or to any PSC official or employee other than the hearing examiner or the PSC commissioners.

---

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

1           **SECTION 1.** 227.50 (1) (a) (intro.) of the statutes is amended to read:

2           227.50 (1) (a) (intro.) ~~In~~ Except as provided in par. (am), in a contested case,  
3 no ex parte communication relative to the merits or a threat or offer of reward shall  
4 be made, before a decision is rendered, to the hearing examiner or any other official  
5 or employee of the agency who is involved in the decision-making process, by any of  
6 the following:

7           **SECTION 2.** 227.50 (1) (a) 1. and (b) of the statutes are consolidated, renumbered  
8 227.50 (1) (a) 1m. and amended to read:

9           227.50 (1) (a) 1m. An official of the agency or any other public employee or  
10 official engaged in prosecution or advocacy in connection with the matter under  
11 consideration or a factually related matter; ~~or (b) Paragraph (a) 1.~~ This subdivision  
12 does not apply to an advisory staff which does not participate in the proceeding.

13           **SECTION 3.** 227.50 (1) (am) 4. of the statutes is created to read:

14           227.50 (1) (am) 4. In a contested case before the public service commission, an  
15 ex parte communication by or to any official or employee of the commission other  
16 than the hearing examiner or a commissioner.

17           **SECTION 4.** 227.50 (1) (c) of the statutes is renumbered 227.50 (1) (am) (intro.)  
18 and amended to read:

19           227.50 (1) (am) (intro.) ~~This subsection~~ Paragraph (a) does not apply to an any  
20 of the following:



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

LRB-2232/1dn

MDK:.....

date

jld

Sen. Farrow:

This version is identical to the previous version, except that it is introducible. If you need any changes or have questions, please contact me.✓

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

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

LRB-2232/1dn  
MDK:jld:jf

April 30, 2013

Sen. Farrow:

This version is identical to the previous version, except that it is introducible. If you need any changes or have questions, please contact me.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)

**Parisi, Lori**

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**From:** Gustafson, Andrew  
**Sent:** Wednesday, May 01, 2013 2:46 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -2232/1 Topic: Public Service Commission ex parte communications

Please Jacket LRB -2232/1 for the SENATE.