



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 161

Senate Substitute Amendment 1

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2013 Assembly Bill 161 relates to injunctions suspending or restraining the enforcement or execution of a statute of this state.

Current Law

Under current law, a final judgment or a final order of the circuit court may be appealed as a matter of right to the Court of Appeals, unless otherwise expressly provided by law. [s. 808.03 (1), Stats.]

A judgment or order that is not appealable as a matter of right may be appealed to the Court of Appeals in advance of a final judgment or order upon leave granted by the court if the court determines that an appeal will do any of the following:

- Materially advance the termination of the litigation or clarify further proceedings in the litigation.
- Protect the petitioner from substantial or irreparable injury.
- Clarify an issue of general importance in the administration of justice.

[s. 808.03 (2), Stats.]

A decision of the Court of Appeals is reviewable by the Supreme Court only if a petition for review is granted by the Supreme Court. [s. 808.10 (1), Stats.] The Supreme Court may also bypass the Court of Appeals in certain circumstances. [s. 808.05, Stats.]

The Bill

Under the bill, if a circuit court or the Court of Appeals enters an injunction, restraining order, or any other final or interlocutory order suspending or restraining the enforcement of any statute of this state, the injunction, restraining order, or other final or interlocutory order is immediately appealable as a matter of right.

The bill provides that any injunction, restraining order, or other final or interlocutory order that is appealable under this provision must be automatically stayed upon the filing of an expedited petition for interlocutory review with the Supreme Court or with the Court of Appeals. The bill permits the Supreme Court to take jurisdiction of the proceeding if it grants direct review upon an expedited petition for interlocutory review of an action pending in the Court of Appeals. In addition, the Supreme Court, under the bill, may take jurisdiction of a proceeding pending in a circuit court if it grants direct review of such a petition. A petition for interlocutory review filed no later than 10 days after the entry of the order suspending or restraining the enforcement of a state statute is an expedited petition for interlocutory review under this provision.

If an expedited petition for interlocutory review is filed, the automatic stay remains in effect until one of the following occurs:

- The Supreme Court or the appellate court with which the expedited petition for interlocutory review is filed grants the petition for interlocutory review and subsequently orders that the automatic stay be lifted.
- The Supreme Court or the appellate court with which the expedited petition for interlocutory review is filed denies the petition for interlocutory review and simultaneously orders that the automatic stay be lifted.
- Entry of a final and unappealable order disposing of the entire case.

The bill provides that a court may not otherwise modify or restore an injunction that is stayed as required in the bill during the pendency of an appeal.

Senate Substitute Amendment 1

Under the substitute amendment, if a circuit court or the Court of Appeals enters an injunction, restraining order, or any other final or interlocutory order suspending or restraining the enforcement of any statute of this state, the injunction, restraining order, or other final or interlocutory order is immediately appealable as a matter of right.

This provision would first apply to an injunction, restraining order, or other final or interlocutory order issued by a circuit court or by an appellate court on the effective date of the legislation.

BILL HISTORY

Senator Grothman offered Senate Substitute Amendment 1. On January 7, 2014, the Senate Committee on Judiciary and Labor unanimously adopted Senate Substitute Amendment 1 and recommended passage of the bill, as amended, on a vote of Ayes, 3; Noes, 2.

AS:ksm