

2015 DRAFTING REQUEST

Bill

Received: 12/9/2014 Received By: mduchek
Wanted: As time permits Same as LRB:
For: Administration-Budget By/Representing: Bong
May Contact: Drafter: mduchek
Subject: Administrative Law Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email:
Carbon copy (CC) to: sbostatlanguage@webapps.wi.gov

Pre Topic:

DOA:.....Bong, BB0285 -

Topic:

Allow Division of Hearings and Appeals to provide digital records instead of paper

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>
/?	mduchek 12/12/2014	evinz 12/15/2014		_____			
/P1			rschluet 12/15/2014	_____	sbasford 12/15/2014		State

FE Sent For:

<END>

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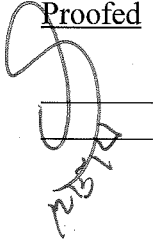
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/?	mduchek	1pl eev 12/13/14	1pl eev 12/13/14				
FE Sent For:							

<END>

Champagne, Rick

From: Hanaman, Cathlene
Sent: Tuesday, December 09, 2014 2:52 PM
To: Champagne, Rick; Hanaman, Cathlene
Subject: FW: Statutory Language Drafting Request - BB0285
Attachments: Statutory Language Requiring Transcription of Hearings.pdf

From: SashaE.Bong@wisconsin.gov [mailto:SashaE.Bong@wisconsin.gov]
Sent: Tuesday, December 09, 2014 2:01 PM
To: Hanaman, Cathlene
Cc: Kraus, Jennifer - DOA; Bong, Sasha E - DOA; Connor, Christopher B - DOA
Subject: Statutory Language Drafting Request - BB0285

Biennial Budget: 2015-17

Topic: Division of Hearings and Appeals Digital Records

Tracking Code: BB0285

SBO Team: GGCF

SBO Analyst: Bong, Sasha - DOA
Phone: (608) 266-5468
E-mail: SashaE.Bong@wisconsin.gov

Agency Acronym: DOA

Agency Number: 505

Priority: High

Intent:

Modify current law to allow DOA's Division of Hearings and Appeals to provide a digital record rather than a typewritten/printed record for Chapter 227 hearings.

Attachments: True

Please send completed drafts to SBOSatlanguage@webapps.wi.gov

WISCONSIN DEPARTMENT OF ADMINISTRATION
2005-17 Biennial Budget Development
White Paper
Statutory Language Requiring Transcription of Hearings

1. Issue

The Division of Hearings and Appeals (DHA) is seeking a statutory revision to authorize the provision of digital record rather than a typewritten/printed (paper) record. Similar to transcripts for Corrections hearings, paper records could still be requested, but would not initially be required for all hearings. This approach would save both paper and transcription costs.

Currently, DHA is required to provide a record within 30 days upon receipt of a petition for review of a Chapter 227 proceeding from a court. Putting the record together usually takes longer than 30 days for DHA. Extensions are requested and usually granted by the court. The delay usually rests in the requirement to provide a "typewritten or printed" record as the exhibits have been collected and only need to be packaged and sent. The requirement to provide a record that is typewritten or printed requires transcription of the audio to a written transcript. This activity is labor intensive.

Five years ago, DHA began supplying a digital recording for its non-Chapter 227 cases – usually the appeals for confinement in corrections cases; a paper record was completed if the court requested it. Corrections cases do not have the statutory requirement to produce a record in paper. Today, about half of the courts request a written record in corrections cases; others accept a CD audio recording. This saves DHA the cost of transcription, speeds up transcription production and makes for a more efficient circuit court docket.

A written record, depending upon the length of the Chapter 227 hearing, can take as long as ten weeks to produce; an audio recording can be delivered via email or by USPS the next day. DHA is beginning to invest in video technology to record the longer hearings; these would also be available immediately upon request.

2. Costs in 2015-17

The current rate for transcription services is \$4.00 a page. In FY14, DHA was required to produce transcripts totaling about 3,070 pages at an estimated cost of \$12,280. A one-hour hearing would typically take support staff three to four weeks to produce. It generally takes around an hour of support staff time to type 15 minutes of testimony. Many of Ch. 227 hearings are far longer than one hour. The average length of hearing for the 2013/2014 fiscal year was about two hours. Consequently, DHA often needs to request an extension to produce a written transcript. This requires time and effort on the part of the AAG representing us to prepare and file the request, as well as the court's time in reviewing and granting or denying the request.

Additionally, there are costs associated with handling and mailing the transcripts to the courts and the parties. These costs can be avoided by removing the requirement that the record be written or printed. By reducing the reliance on a written record when not necessary, the 30-day record production requirement would more likely be kept. Cases will move with more alacrity.

It is anticipated that there will be savings associated with reduced transcription and paper costs. There will be some additional charges associated with the recording/production, shipping (as needed), storage and back-up of the digital files, which will offset some of the anticipated savings. The larger savings will occur through the more efficient deployment of staff resources away from transcriptions.

Court could all request

3. Reallocation Opportunities

No resources have been identified for reallocation, though a redeployment of transcribing duties away from legal associates would be pursued. These staff would become available for other duties and initiatives.

4. Long-Term Costs

This change will improve efficiency, free some staff time, and provide for some modest cost savings. By using digital files and, eventually video files, a more complete record can be provided to the courts and to other agencies at a reduced cost, but more importantly, in more timely manner within the required 30-day period.

5. Positions

No additional positions or position reductions are anticipated.

6. Statutory Language

The requirement to provide a typewritten or printed record within 30-days is found in §227.55, Wis. Stat.

7. Impact of Denial

The required production of transcripts will continue to cause delay, cost duplication and inefficiency.

DRAFT

Duchek, Michael

From: Hayes, Brian - DOA <Brian.Hayes@wisconsin.gov>
Sent: Wednesday, December 10, 2014 2:10 PM
To: Bong, Sasha E - DOA; Duchek, Michael
Cc: Kraus, Jennifer - DOA
Subject: FW: BB0285

Sasha/Michael

Under sec. 227.43, Wis.Stats., DHA is compelled to do certain hearings for DOT, DNR, DHS, and DCF by statute. Chapter 949 also assigns Crime Victim hearings to DHA. These require DHA to forward a complete record, including a transcript, to the court. We do those. Sec. 227.55, Wis.Stats. says that the record must be produced within 30 days of service on DHA and "[t]he record may be typewritten or printed". Transcripts are usually produced for the parties, as well. The option of audio or video is not statutorily sanctioned.

I'd like to invest in video recording equipment as more of our hearings go to video. I think we can turn the record around quicker and cheaper by engaging in a conversation with courts as to "how" they want the record. Sometimes, it is just one witness that needs to be parsed. Credibility determinations are usually better viewing video than reading a written transcript.

DHA conducts probation, parole, extended supervision and other hearings for Corrections under sec. 301.035, Wis.Stats.; the statute gives DHA broad authority to conduct these hearings under its administrative rules. Under 227.03(4), Corrections hearings are exempt from Chapter 227; upon a request for transcript in these situations, we ask if the court (and only the court) can accept a recording. About half take a CD of the hearing – saving immeasurable amount of cost, time and headache. We turn a CD around within a couple of days; a transcript can take a few weeks, lengthening decision time and confinement.

DHA also conducts hearings for other agencies under MOUs agreed to under sec. 227.43(1m). These include DPI, DATCP, ETF, DSPS, DVR, DOA (energy assistance) and OCI hearings. In these cases, DHA is generally able to assign the court reporter and the transcription costs to the agency contracting the ALJ service. In these contracted situations, DHA tries to avoid keeping the record; we package everything up and shove it back to the agency. We merely perform a service.

We render decisions, preliminary decisions and proposed decisions; sometimes the ALJ will write a decision for his/her signature, sometimes for my signature or, alternatively, for the Secretary or authority of the agency. It depends upon the nature of the relationship with the agency and the basis for jurisdiction; much of the decision-making in this area arose out of the comfort and nature of the way the authority was given to DHA, it seems. The ALJ will issue his DNR decisions. Some DOT decisions are issued by me, the administrator, and others by the ALJ. The Group Insurance Board votes on our ETF ALJ decisions; the appropriate professional board votes on the ALJ's DSPS decisions. The IDEA decisions we do for DPI are done by the ALJ and appealable to federal court, as determined by federal law. We are a service agency – it's whatever the agency wants and the statutes dictate.

We produce a record upon a court order/request. So any party requests would have to go through the court. Occasionally, a party will bring its own court reporter or record a proceeding in order to have its own copy quickly.

Hope this helps.

Brian Hayes
Division Administrator
Division of Hearings and Appeals
608-266-8007

From: Bong, Sasha E - DOA
Sent: Wednesday, December 10, 2014 9:02 AM
To: Hayes, Brian - DOA
Cc: Kraus, Jennifer - DOA
Subject: FW: BB0285

Hi Brian,

The email below is from LRB in response to a drafting request submitted for DHA's request to modify statutory language requiring transcription of hearings. Ultimately, I would defer to DHA on Mike's questions, as I am not familiar enough with Chapter 227 to provide answers. I would be happy to coordinate communications between DHA and LRB if that's preferred. Otherwise, if someone from DHA contacts him directly to discuss, it would be greatly appreciated if he or she could let Jenny and me know of any clarifications for the draft, as this information is useful to us as well.

Thanks,

Sasha Bong
Executive Policy and Budget Analyst
Department of Administration, State Budget Office
(608) 266-5468
SashaE.Bong@wisconsin.gov

From: Duchek, Michael [<mailto:Michael.Duchek@legis.wisconsin.gov>]
Sent: Wednesday, December 10, 2014 8:33 AM
To: Bong, Sasha E - DOA
Subject: BB0285

Sasha,

I have an additional couple questions about this request: It is my understanding that in some cases, although DHA may conduct the hearing, it may be the agency itself (DOT, DNR, DHS, etc.) that renders the final decision. Is this correct? In that case, is DHA still the one preparing the transcript? The statute in question simply refers to the "agency" and I'm not sure if DHA would be preparing the transcript regardless of whether DHA ultimately renders the decision, or if DHA would only be preparing the transcript in cases where it renders the decision.

Also, could only the court request a paper record, or could one of the parties? Don't the parties themselves also generally get copies of transcripts? Would one of the parties be able to request a transcript be prepared?

Ch. 227 is a confusing chapter, and the issue of who is the "agency" in another provision was also at issue in a 2006 supreme court case where DHA rendered a decision in a DOT matter. The person served DOT instead of DHA, and the court noted that the statutes were ambiguous. So I'd like to avoid creating any further ambiguity here, and if it's possible I'd love to talk to someone at DHA to clear this up and understand how the process really plays out, not just for this but just in general to have a contact over there about this chapter. Let me know, thanks!

Mike Duchek

Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130



1n 12-12-14
State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-0840/P1
MED:.....
Leev

DOA:.....Bong, BB0285 – Allow Division of Hearings and Appeals to provide digital records instead of paper

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

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D-note

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

✓ COURTS AND PROCEDURE

✓ OTHER COURTS AND PROCEDURE

Under the general law that governs reviews of agency actions other than rulemaking, within 30 days after service on an agency of a petition for judicial review of an agency action, or within such further time as the court allows, the agency must transmit to the court the record of the agency's administrative proceeding. Current law only allows this record to be typewritten or printed. either

This bill provides that, in the case of a record of an administrative proceeding in the possession of the Division of Hearings and Appeals (DHA), if any portion of the record is in the form of an audio or video recording, DHA may transmit a copy of that recording in lieu of preparing a transcript, unless the court orders the preparation of a transcript.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 [✓]SECTION 1. 227.55 of the statutes is renumbered [✓]227.55 (1) and amended to
2 read:

3 227.55 (1) Within 30 days after service of the petition for review upon the
4 agency, or within such further time as the court ~~may allow~~ allows, the agency in
5 possession of the record for the decision under review shall transmit to the reviewing
6 court the original or a certified copy of the entire record ~~of the proceedings in which~~
7 ~~the decision under review was made~~, including all pleadings, notices, testimony,
8 exhibits, findings, decisions, orders, and exceptions, ~~therein~~; but except that by
9 stipulation of all parties to the review proceedings the record may be shortened by
10 eliminating any portion ~~thereof~~ of the record. Any party, other than the agency that
11 is a party, refusing to stipulate to limit the record may be taxed by the court for the
12 additional costs. The Except as provided in sub. (2), the record may be typewritten
13 or printed. The exhibits may be typewritten, ~~photostated~~ photocopied, or otherwise
14 reproduced, or, upon motion of any party, or by order of the court, the original exhibits
15 shall accompany the record. The court may require or permit subsequent corrections
16 or additions to the record when deemed desirable.

17 **History:** 1985 a. 182 s. 41; Stats. 1985 s. [✓]227.55.

17 [✓]SECTION 2. 227.55 (2) of the statutes is created to read:

18 227.55 (2) In the case of a record under sub. [✓](1) that is in the possession of the
19 division of hearings and appeals, if any portion of the record is in the form of an audio
20 or video recording, the division may transmit to the reviewing court a copy of that
21 recording in lieu of preparing a transcript, unless the court requests a transcript.

22 [✓]SECTION 9301. **Initial applicability; Administration.**

23 (1) DIVISION OF HEARINGS AND APPEALS; TRANSCRIPTS. The renumbering and
24 amendment of section 227.55 of the statutes [✓]and the creation of section 227.55 [✓](2) of

1 the statutes[✓] first applies to petitions for review submitted under section 227.53 of the[✓]
2 statutes on the effective date of this subsection[✓].

3 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0840/P1dn

MED:.....

leev

date

1. From talking to Brian Hayes, the Division of Hearings and Appeals (DHA) administrator, it is my understanding that there may be some cases where DHA conducts a hearing and remains in possession of the record, but does not actually render the ultimate or final decision that would be subject to review. I therefore simply referred to any case where DHA was in possession of the record, which I believe should cover all situations where DHA might need to provide a record to a court. Please review the language and let me know if it needs further modification.
2. As requested, I limited the scope of the request to DHA, but you may wish to allow other agencies that conduct ch. 227 proceedings to also provide digital or audio recordings.
3. I deleted an obsolete reference to "photostating" and substituted the more modern term "photocopying."

Michael Duchek
Legislative Attorney
(608) 266-0130
michael.duchek@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
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LRB-0840/P1dn
MED:eev:rs

December 15, 2014

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State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-0840/P1
MED:eev:rs

DOA:.....Bong, BB0285 – Allow Division of Hearings and Appeals to provide digital records instead of paper

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

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2 statutes on the effective date of this subsection.

3 (END)