CHAPTER 227

ADMINISTRATIVE PROCEDURE AND REVIEW

SUBCHAPTER I

GENERAL PROVISIONS

227.01 Definitions. In this chapter:

(1) “Agency” means a board, commission, committee, department or officer in the state government, except the governor, a district attorney or a military or judicial officer.

(2) “Code,” when used without further modification, means the Wisconsin administrative code under s. 35.93.

(3) “Contested case” means an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order. There are 3 classes of contested cases as follows:

(a) A “class 1 proceeding” is a proceeding in which an agency acts under standards conferring substantial discretionary authority upon it. “Class 1 proceedings” include rate making, price setting, the granting of a certificate of convenience and necessity, the making, review or equalization of tax assessments and the granting or denial of a license.

(b) A “class 2 proceeding” is a proceeding in which an agency determines whether to impose a sanction or penalty against a party. “Class 2 proceedings” include the suspension or revocation of or refusal to renew a license because of an alleged violation of law. Any proceeding which could be construed to be both a class 1 and a class 2 proceeding shall be treated as a class 2 proceeding.

(c) A “class 3 proceeding” is any contested case not included in class 1 or class 2.

(3m) (a) “Guidance document” means, except as provided in par. (b), any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that does any of the following:

1. Explains the agency’s implementation of a statute or rule enforced or administered by the agency, including the current or proposed operating procedure of the agency.

2. Provides guidance or advice with respect to how the agency is likely to apply a statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.

(b) “Guidance document” does not include any of the following:

1. A rule that has been promulgated and that is currently in effect or a proposed rule that is in the process of being promulgated.

2. A standard adopted, or a statement of policy or interpretation made, whether preliminary or final, in the decision of a contested case, in a private letter ruling under s. 73.035, or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts.

3. Any document or activity described in sub. (13) (a) to (zz), except that “guidance document” includes a pamphlet or other explanatory material described under sub. (13) (r) that otherwise satisfies the definition of “guidance document” under par. (a).

4. Any document that any statute specifically provides is not required to be promulgated as a rule.

5. A declaratory ruling issued under s. 227.41.

6. A pleading or brief filed in court by the state, an agency, or an agency official.
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7. A letter or written legal advice of the department of justice or a formal or informal opinion of the attorney general, including an opinion issued under s. 165.015 (1).

8. Any document or communication for which a procedure for public input, other than that provided under s. 227.112 (1), is provided by law.

9. Any document or communication that is not subject to the right of inspection and copying under s. 19.35 (1).

4. “Hearing examiner” means a person designated under s. 227.43 or 227.46 (1) to preside over a contested case.

5. “License” includes all or any part of an agency permit, certificate, approval, registration, charter or similar form of permission required by law, except a motor vehicle operator’s license issued under ch. 343, a vehicle registration certificate issued under ch. 341, a license required primarily for revenue purposes, a hunting or fishing approval or a similar license where issuance is merely a ministerial act.

6. Licensing means an agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

7. “Official of the agency” means a secretary, commissioner or member of a board of an agency.

8. “Party” means a person or agency named or admitted as a party in a contested case.

8m. “Permanent rule” means a rule other than a rule promulgated under s. 227.24.

9. “Person aggrieved” means a person or agency whose substantial interests are adversely affected by a determination of an agency.

10. “Proposed rule” means all or any part of an agency’s proposal to promulgate a rule.

11. “Register” means the Wisconsin administrative register under s. 35.93.

13. “Rule” means a regulation, standard, statement of policy, or general order of general application that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. “Rule” includes a modification of a rule under s. 227.265. “Rule” does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, that:

(a) Concerns the internal management of an agency and does not affect private rights or interests.

(b) Is a decision or order in a contested case.

(c) Is an order directed to a specifically named person or to a group of specifically named persons that does not constitute a general class, and which is served on the person or persons to whom it is directed by the appropriate means applicable to the order. The fact that a named person serves a group of unnamed persons that will also be affected does not make an order a rule.

(d) Relates to the use of highways and is made known to the public by means of signs or signals.

(e) Relates to the construction or maintenance of highways or bridges, except as provided in ss. 84.11 (1r) and 83.025.

(f) Relates to the curriculum of, admission to or graduation from a public educational institution, as determined by each institution.

(g) Relates to the use of facilities of a public library.

(h) Prorates or establishes priority schedules for state payments under s. 16.53 (10) (a) or temporarily reallocates state monies under s. 20.002 (11).

(i) Relates to military or naval affairs.

(j) Relates to the form and content of reports, records or accounts of a state, county or municipal officer, institution or agency.

(k) Relates to expenditures by a state agency, the purchase of materials, equipment or supplies by or for a state agency, or printing or duplicating of materials for a state agency.

(km) Establishes policies for information technology development projects as required under s. 16.971 (2) (Lg).

(kr) Establishes policies for information technology development projects as required under s. 36.59 (1) (c).

(L) Establishes personnel standards, job classifications or salary ranges for state, county or municipal employees in the classified civil service.

(Lm) Relates to the personnel systems developed under s. 36.115.

(Lr) Determines what constitutes high-demand fields for purposes of s. 38.28 (2) (be) 1. b.

(m) Determines water levels.

(n) Fixes or approves rates, prices or charges, unless a statute specifically requires them to be fixed or approved by rule.

(o) Determines the valuation of securities held by an insurer.

(p) Is a statistical plan relating to the administration of rate regulation laws under ch. 625 or 626.

(pm) Relates to setting fees under s. 655.27 (3) for the injured patients and families compensation fund or setting fees under s. 655.61 for the mediation fund.

(pt) Creates an annual schedule of fees under s. 299.11 (9).

(q) Is a form the content or substantive requirements of which are prescribed by a rule or a statute.

(r) Is a pamphlet or other explanatory material that is not intended or designed as interpretation of legislation enforced or administered by an agency, but which is merely informational in nature.

(rm) Is a form prescribed by the attorney general for an accounting under s. 846.40 (8) (b) 2.

(rs) Relates to any form prescribed by the department of transportation under s. 348.03 (1) or 348.27 (19) (d) 1. or procedure prescribed under s. 348.27 (19) (d) 2.

(rt) Is a general permit issued under s. 30.206 or 30.2065.

(ru) Is a wetland general permit issued under s. 281.36 (3p).

(s) Prescribes or relates to a uniform system of accounts for any person, including a municipality, that is regulated by the office of the commissioner of railroads or the public service commission.

(u) Relates to computing or publishing the number of nursing home beds to be added in each health planning area under s. 150.33 (1).

(um) Lists over-the-counter drugs covered by Medical Assistance under s. 49.471 (1) (a).

(v) Establishes procedures used for the determination of allocations as charges to agencies under s. 20.865 (1) (fm).

(w) Establishes rates for the use of a personal automobile under s. 20.916 (4) (a).

(x) Establishes rental policies for state-owned housing under s. 16.004 (8).

(xm) Establishes camping fees within the fee limits specified under s. 27.01 (10) (d) 1. or 2.

(y) Prescribes measures to minimize the adverse environmental impact of bridge and highway construction and maintenance.

(yc) Adjusts the total cost threshold for highway projects under s. 84.013 (2m) and 84.0145 (4).

(yd) Relates to any form prescribed by the department of transportation under s. 218.0171 (8).

(yg) Relates to standards for memorial highway designations authorized under s. 84.1045.

(yj) Relates to standards for memorial highway designations authorized under s. 84.1042.

(yk) Relates to standards for memorial highway designations authorized under s. 84.1038.

Updated 2021–22 Wis. Stats. Published and certified under s. 35.18. January 1, 2023.
3  Updated 21–22 Wis. Stats.

(ym) Establishes conditions for a waiver to allow the burning of brush or other woody material under s. 287.07 (7) (e).

(yo) Establishes procedures under s. 39.86 (3) (c) or fees under s. 39.86 (5).

(yp) Lists exempt institutions under s. 39.87 (2).

(yz) Adjusts, under s. 551.206, the amounts specified in s. 551.202 (26) (c) 1. a. and b. and (27) (c) 1. a. and b.

(14) “Working day” means any day except Saturday, Sunday and holidays designated in s. 230.35 (4) (a).


227.31 Proceeding for the incorporation of a village is not a “contested case” under sub. (3).

Westring v. James, 71 Wis. 2d 462, 238 N.W.2d 695 (1976).

A flood plain zoning ordinance adopted by the Department of Natural Resources under s.273.10 (1) (b) was a “rule” under this section. Citizens for Sensible Zoning, Inc. v. DNR, 90 Wis. 2d 804, 280 N.W.2d 702 (1979).

A rule: 1) is a regulation, standard, statement of policy, or general order; 2) is to general application; 3) has the effect of law; 4) has been issued by an agency; 5) is to implement, interpret, or make specific legislation administered by the agency. The terms “rule” and “order” are mutually exclusive. Wisconsin Electric Power Co. v. DNR, 93 Wis. 2d 227, 287 N.W.2d 113 (1980). See also Cholvyn v. Department of Health & Family Services, 2008 WI App 127, 313 Wis. 2d 749, 758 N.W.2d 118, 17−1350.


School boards are not “boards” under sub. (1). Racine Unified School District v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 (Cl. App. 1982).

A rule is a fundamental and well-defined public policy is evidenced by a rule, a discharge from employment for refusal to violate that rule is actionable. Winkelman v. Department of Health Services, 2012 WI App 205, 331 Wis. 2d 696, 800 N.W.2d 334 (2012).

If an administrative rule is properly adopted and is within the power of the legislature, the rule is not appealable. Wisconsin Land Conservancy, Inc. v. Village of Hartland, 2004 WI App 346, 275 Wis. 2d 553, 685 N.W.2d 273, 30−2460.

An emergency order issued by the secretary of the Department of Health Services under s. 254.39 (2) was a general order of general application under the meaning of sub. (13). Wisconsin Legislative Council v. Palm, 2007 WI 62, 391 Wis. 2d 497, 942 N.W.2d 900, 20−0765. See also Tavern League of Wisconsin, Inc. v. Palm, 2001 WI 33, 396 Wis. 2d 244, 957 N.W.2d 261, 20−1742.

If an administrative rule is properly adopted and is within the power of the legislature to delegate, there is no material difference between it and a law. 63 Atty. Gen. 159.

Agencies are subject to rule−making procedures in making discretionary choices even if those choices are based on opinions of the attorney general. Rule−making procedures do not apply if the opinion describes what a law mandates. 68 Atty. Gen. 363.


227.02 Compliance with other statutes. Compliance with this chapter does not eliminate the necessity of complying with a procedure required by another statute.

History: 1985 a. 182.

This chapter contemplates the limited use of civil procedure statutes that do not conflict with this chapter. Wagner v. State Medical Examining Board, 181 Wis. 2d 633, 511 N.W.2d 874 (1994).

227.03 Application of this chapter. (1) This chapter applies to cases arising under s. 76.38, 1993 stats., and ss. 76.39 and 76.48.

(2) Except as provided in s. 108.105, only the provisions of this chapter relating to rules are applicable to matters arising out of s. 66.191, 1981 stats., ss. 40.65 (2), 289.33, 303.07 (7) or 303.21 or subch. II of ch. 107 or ch. 102, 108 or 949.

(3) Any provision of s. 227.42, 227.44 or 227.49 that is inconsistent with a requirement of title 45 of the code of federal regulations does not apply to hearings held under ch. 49.

(3m) (a) This chapter does not apply to proceedings before the department of workforce development relating to housing discrimination under s. 106.50, except as provided in s. 106.50 (6).

(b) Only the provisions of this chapter relating to rules are applicable to matters arising out of protection against discrimination in a public place of accommodation or amusement under s. 106.52.

(4) The provisions of this chapter relating to contested cases do not apply to proceedings involving the revocation of community supervision or aftercare supervision under s. 938.357 (5), the revocation of parole, extended supervision, or probation, or the grant of probation, prison discipline, mandatory release under s. 302.11,
or any other proceeding involving the care and treatment of a resident or an inmate of a correctional institution.

(4m) Subchapter III does not apply to any decision of an agency to suspend or restrict or not issue or renew a license if the agency suspends or restricts or does not issue or renew the license pursuant to a memorandum of understanding entered into under s. 49.857.

(5) This chapter does not apply to proceedings of the claims board, except as provided in ss. 775.05 (5), 775.06 (7) and 775.11 (2).

(6) Orders of the elections commission under s. 5.06 (6) are not subject to this chapter.

(7) Except as provided in s. 230.44 (4) (bm), this chapter does not apply to proceedings before the employment relations commission in matters that are arbitrated in accordance with s. 230.44 (4) (bm).

(7m) Except as provided in s. 292.63 (6s), this chapter does not apply to proceedings in matters that are arbitrated under s. 292.63 (6s).

(8) This chapter does not apply to determinations made by the secretary of administration or the secretary of revenue under s. 229.50 (1).


227.04 Considerations for small business. (1) In this section:

(a) “Minor violation” means a rule violation that does not cause serious harm to the public, is committed by a small business, and the violation is not willful, the violation is not likely to be repeated, there is a history of compliance by the violator, or the small business has voluntarily disclosed the violation.

(b) “Small business” has the meaning given in s. 227.114 (1).

(2m) (a) Each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules against a small business that has committed a minor violation. The rule promulgated under this subsection may include the reduction or waiver of penalties for a voluntary disclosure, by a small business, of actual or potential violations of rules.

(b) The rule promulgated under this subsection shall specify the situations in which the agency will allow discretion in the enforcement of a rule against a small business that has committed a minor violation. The rule shall consider the following criteria for allowing discretion in the enforcement of the rule and the assessment of a penalty, including a forfeiture, fine, or interest:

1. The difficulty and cost of compliance with the rule by the small business.
2. The financial capacity of the small business, including the ability of the small business to pay the amount of any penalty that may be imposed.
3. The compliance options available, including options for achieving voluntary compliance with the rule.
4. The level of public interest and concern.
5. The opportunities available to the small business to understand and comply with the rule.
6. Fairness to the small business and to other persons, including competitors and the public.

(c) The rule promulgated under this subsection shall specify the situations in which the agency will not allow discretion in the enforcement of a rule against small businesses that have committed minor violations and shall include all of the following situations in which discretion is not allowed:

1. The violation results in a substantial economic advantage for the small business.
2. The small business has violated the same rule or guideline more than 3 times in the past 5 years.
3. The violation may result in an imminent endangerment to the environment, or to public health or safety.

(d) A rule promulgated under this subsection applies to minor violations committed after the effective date of the rule.

(3) Consistent with the requirements under sub. (2m) and, to the extent possible, each agency shall do all of the following:

(a) Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.

(b) In deciding whether to impose a fine against a small business found to be in violation of a rule, consider the appropriateness of a written warning, reduced fine, or alternative penalty if all of the following apply:

1. The small business has made a good faith effort to comply with the rule.
2. The rule violation does not pose a threat to public health, safety, or welfare.

2. The rule violation does not pose a threat to public health, safety, or welfare.

(d) Establish methods to encourage the participation of small businesses in rule making under s. 227.114 (4).

(4) Each agency shall fully document the instance in which it made the decision to utilize discretion in penalizing businesses as provided in this section, including the reasons for its decision, and shall keep records of those instances on file for no fewer than 5 years.

History: 2011 a. 46; 2013 a. 296 ss. 1 to 7g, 9, 11, 12g, 13.

Cross-reference: See also chs. DPH−Gen 2 and DHS 19 and ss. ATCP 1.40, SPS 306.02, Tax 1.15, and Tax 61.25 Wis. adm. code.

227.05 Agency publications. An agency, other than the Board of Regents of the University of Wisconsin System, the Technical College System Board, or the department of employee trust funds, shall identify the applicable provision of federal law or the applicable state statutory or administrative code provision that supports any statement or interpretation of law that the agency makes in any publication, whether in print or on the agency’s Internet site, including guidance documents, forms, pamphlets, or other informational materials, regarding the laws the agency administers.

History: 2017 a. 369.

NOTE: In Service Employees International Union (SEIU), Local 1 v. Voc. 2020 WI 67, the Wisconsin Supreme Court held that this section is facially unconstitutional to the extent that it addresses guidance documents.

227.10 Statements of policy and interpretations of law; discrimination prohibited. (1) Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule.

(2) No agency may promulgate a rule which conflicts with state law.

(2g) No agency may seek deference in any proceeding based on the agency’s interpretation of any law.

(2m) No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or
threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter, except as provided in s. 186.118 (2) (c) and (3) (b) 3. The governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with this subchapter.

(2p) No agency may promulgate a rule or take any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

(3) (a) No rule, either by its terms or in its application, may discriminate for or against any person by reason of sex, race, creed, color, sexual orientation, national origin or ancestry.

(b) A rule may discriminate for or against a person by reason of physical condition or development or mental disability as defined in s. 51.01 (5) only if it is strictly necessary to a function of the agency and is supported by data demonstrating that necessity.

(c) Each person affected by a rule is entitled to the same benefits and is subject to the same obligations as any other person under the same or similar circumstances.

(d) No rule may use any term removed from the statute by chapter 83, laws of 1977.

(e) Nothing in this subsection prohibits the director of the bureau of merit recruitment and selection in the department of administration from promulgating rules relating to expanded certification under s. 230.25 (1n).

History:
1985 s. 182; 1987 a. 399; 2003 a. 33 ss. 2368, 9160; 2011 a. 21; 2013 A. 3677 s. 67, 369.

Guidelines promulgated outside the context of one particular contested case do not qualify for exception to the requirement that all rules must be filed under s. 227.02 (3) before failure to file the guidelines as a rule did not deprive the Department of Industry, Labor and Human Relations of the authority to decide contested cases dealing with pregnancy leaves under the sex discrimination statute. Wisconsin Telephone Co. v. DLHR, 68 Wis. 2d 345, 228 N.W.2d 649 (1975).

When a party files an application for a license with an administrative agency and the agency points to some announced agency policy of general application as a reason for rejecting the application, such announced policy constitutes a rule, the validity of which the applicant is entitled to have tested in a declaratory action. Schoolway Transportation Co. v. Division of Motor Vehicles, 72 Wis. 2d 223, 240 N.W.2d 403 (1976).

When the Department of Transportation (DOT) revised its application of a statute to bring DOT’s practices into conformity with the plain meaning of the statutes, DOT followed a course it was obliged to pursue when confronted with its error. This is not

227.11 Agency rule-making authority. (1) Except as expressly provided, this chapter does not confer rule-making authority upon or augment the rule-making authority of any agency.

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency’s rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency’s general powers or duties does not confer rule-making authority on the agency or augment the agency’s rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with any statute enforced or administered by an agency.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow only until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of such statute but prior to the statute’s effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

(3) (a) A plan that is submitted to the federal government for the purpose of complying with a requirement of federal law does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. No agency may agree to promulgate a rule as a component of a compliance plan unless the agency has explicit statutory authority to promulgate the rule at the time the compliance plan is submitted.

2021–22 Wisconsin Statutes updated through all Supreme Court and Controlled Substances Board Orders filed before and in effect on January 1, 2023. Published and certified under s. 35.18, Changes effective after January 1, 2023, are designated by NOTES. (Published 1–1–23)
(b) A settlement agreement, consent decree, or court order does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. No agency may agree to promulgate a rule as a term in any settlement agreement, consent decree, or stipulated order of a court unless the agency has explicit statutory authority to promulgate the rule at the time the settlement agreement, consent decree, or stipulated order of a court is executed.


To expressly authorize a rule, the enabling statute need not spell out every detail of the rule. If it did, no rule would be necessary. Accordingly, whether the exact words used in an administrative rule appear in the statute is not the question. This principle has been characterized in the case law as the “elemental approach.” Under the elemental approach, the reviewing court should identify the elements of the enabling statute and match the rule against those elements. If the rule matches the statutory elements, then the statute expressly authorizes the rule. Wisconsin Ass’n of State Prosecutors v. WERC, 2018 WI 17, 380 Wis. 2d 1, 975 N.W.2d 235, 15–2223.

When administrative agencies promulgate rules, they are exercising legislative power that the legislature has chosen to delegate to them by statute. Stated otherwise, agencies have no inherent constitutional authority to make rules, and their rule-making powers can be characterized as broad or “general.”

The plain language of sub. (2) (a) 2. does not alter explicit grants of rulemaking authority, regardless of whether the language of the provision in which the authority is granted could be characterized as broad or “general.” OAG 4–20.

The plain language of sub. (2) (a) 3. does not alter explicit grants of rulemaking authority, regardless of whether the language of the provision in which the authority is granted could be characterized as broad or “general.” OAG 4–20.


227.111 Rule-making authority of certain agencies. (1) In this section, “restricted agency” means an affiliated credentialing board, as defined in s. 15.01 (1g), a board, as defined in s. 15.01 (1r), a commission, as defined in s. 15.01 (2), or an examining board, as defined in s. 15.01 (7), that has not taken any action under this subchapter with respect to the promulgation of a rule in 10 years or more.

(2) Notwithstanding ss. 227.10 and 227.11 and any other provision authorizing or requiring a restricted agency to promulgate rules, a restricted agency may not take any action with respect to the promulgation of a rule unless a subsequent law specifically authorizes such action.

History: 2017 a. 158.

227.112 Guidance documents. (1) Before adopting a guidance document, an agency shall submit to the legislative reference bureau the proposed guidance document with a notice of a public comment period on the proposed guidance document under par. (b), in a format approved by the legislative reference bureau, for publication in the register. The notice shall specify the place where comments should be submitted and the deadline for submitting those comments.

(b) The agency shall provide for a period for public comment on a proposed guidance document submitted under par. (a), during which any person may submit written comments to the agency with respect to the proposed guidance document. Except as provided in par. (c), the period for public comment shall end no sooner than the 21st day after the date on which the proposed guidance document is published in the register under s. 35.93 (2) (b) 3. im. The agency may not adopt the proposed guidance document until the comment period has concluded and the agency has complied with par. (d).

(c) An agency may hold a public comment period shorter than 21 days with the approval of the governor.

(d) An agency shall retain all written comments submitted during the public comment period under par. (b) and shall consider those comments in determining whether to adopt the guidance document as originally proposed, modify the proposed guidance document, or take any other action.

(2) An agency shall post each guidance document that the agency has adopted on the agency’s Internet site and shall permit continuing public comment on the guidance document. The agency shall ensure that each guidance document that the agency has adopted remains on the agency’s Internet site as provided in this subsection until the guidance document is no longer in effect, is no longer valid, or is superseded or until the agency otherwise rescinds its adoption of the guidance document.

(3) A guidance document does not have the force of law and does not provide the authority for implementing or enforcing a standard, requirement, or threshold, including as a term or condition of any license. An agency that proposes to rely on a guidance document to the detriment of a person in any proceeding shall afford the person an adequate opportunity to contest the legality or wisdom of a position taken in the guidance document. An agency may not use a guidance document to foreclose consideration of any issue raised in the guidance document.

(4) If an agency proposes to act in any proceeding at variance with a position expressed in a guidance document, it shall provide a reasonable explanation for the variance. If an affected person in any proceeding may have relied reasonably on the agency’s position, the explanation must include a reasonable justification for the agency’s conclusion that the need for the variance outweighs the affected person’s reliance interest.

(5) Persons that qualify under s. 227.12 to petition an agency to promulgate a rule may, as provided in s. 227.12, petition an agency to promulgate a rule in place of a guidance document.

(6) Any guidance document shall be signed by the secretary or head of the agency below the following certification: “I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.”

(7) (a) This section does not apply to guidance documents adopted before July 1, 2019, but on that date any guidance document that has not been adopted in accordance with sub. (1) or that does not contain the certification required under sub. (6) shall be considered rescinded.

(b) This section does not apply to guidance documents or proposed guidance documents of the Board of Regents of the University of Wisconsin System, the Technical College System Board, or the department of employee trust funds.

(8) The legislative council staff shall provide agencies with assistance in determining whether documents and communications are guidance documents that are subject to the requirements under this section.

History: 2017 a. 369.

NOTE: In Service Employees International Union (SEIU), Local 1 v. Vos, 2020 WI 67, the Wisconsin Supreme Court held that this section is facially unconstitutional.

The legislature may enact the laws the executive is duty-bound to execute, but it may not control his knowledge or intentions about those laws. Nor may it mute or modulate the communication of his knowledge or intentions to the public. Because there was no set of facts pursuant to which this section and s. 227.05, to the extent it applies to guidance documents, would not impermissibly interfere with the executive’s exercise of his core constitutional power, they were in that respect facially unconstitutional. Service Employees International Union (SEIU), Local 1 v. Vos, 2020 WI 67, 393 Wis. 2d 38, 946 N.W.2d 35, 19–0614.

227.113 Incorporation of local, comprehensive planning goals. Each agency, where applicable and consistent with the laws that it administers, is encouraged to design the rules pro-
mulated by the agency to reflect a balance between the mission of the agency and the goals specified in s. 1.13 (2).

History: 1999 a. 9.

227.114 Rule making; considerations for small business. (1) In this section, “small business” means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, which employs 25 or fewer full-time employees or which has gross annual sales of less than $5,000,000.

(2) When an agency proposes or revises a rule that may have an effect on small businesses, the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

(a) The establishment of less stringent compliance or reporting requirements for small businesses.

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

(c) The establishment of performance standards for small businesses.

(d) The establishment of less stringent compliance or reporting requirements for small businesses.

(3) The agency shall incorporate into the proposed rule any of the methods specified under sub. (2) which it finds to be feasible, unless doing so would be contrary to the statutory objectives which are the basis for the proposed rule.

(4) In addition to the requirements under s. 227.17, the agency shall provide an opportunity for small businesses to participate in the rule-making process, using one or more of the following methods:

(a) The inclusion in the notice under s. 227.17 of a statement that the rule may have an impact on small businesses.

(b) The direct notification of any small business that may be affected by the rule.

(c) The conduct of public hearings concerning the impact of the rule on small businesses.

(d) The use of special hearing procedures to reduce the cost or complexity of participation in the rule-making process by small businesses.

(6) When an agency, under s. 227.20 (1), files with the legislative reference bureau a rule that is subject to this section, the agency shall include with the rule a summary of the analysis prepared under s. 227.19 (3) (e) and a summary of the comments of the legislative standing committees, if any. If, under s. 227.19 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the agency shall include with the rule a statement of the reason for the small business regulatory review board’s determination that the rule will not have a significant economic impact on a substantial number of small businesses. The legislative reference bureau shall publish the summaries or the statement in the register with the rule.

(6m) (a) Notwithstanding sub. (1), in this subsection, “small business” does not include an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c).

(b) A small business may commence an action against an agency for injunctive relief to prevent the imposition of a penalty if the small business is subject to the penalty as the result of any of the following:

1. The small business acted or failed to act due to the failure by the agency’s employee, officer, or agent with regulatory responsibility for that legal requirement to respond to a specific question in a reasonable time.

2. The small business acted or failed to act in response to inaccurate advice given to the small business by the agency’s employee, officer, or agent with regulatory responsibility for that legal requirement.

(c) The small business may commence the action in the circuit court for the county where the property affected is located or, if no property is affected, in the circuit court for the county where the dispute arose.

(d) The circuit court may issue an order enjoining the imposition of the penalty if the court determines that par. (b) 1. or 2. applies.

(7m) Each agency shall designate at least one employee to serve as the small business regulatory coordinator for the agency, and shall publicize that employee’s electronic mail address and telephone number. The small business regulatory coordinator shall act as a contact person for small business regulatory issues for the agency.

(8) This section does not apply to:

(a) Rules promulgated under s. 227.24.

(b) Rules that do not affect small businesses directly, including, but not limited to, rules relating to county or municipal administration of state and federal programs.


227.115 Review of rules affecting housing. (1) Definition. In this section, “state housing strategy plan” means the plan developed under s. 16.302.

(2) Analysis of rules affecting housing. (a) If a proposed rule may increase or decrease, either directly or indirectly, the cost of the development, construction, financing, purchasing, sale, ownership, or availability of housing in this state, the agency promulgating the proposed rule shall prepare a housing impact analysis for the proposed rule before it is submitted to the legislative council staff under s. 227.15. The agency may request any information from other state agencies, local governments, or individuals or organizations that is reasonably necessary for the agency to prepare the analysis.

(b) On the same day that the agency submits the housing impact analysis to the legislative council staff under s. 227.15 (1), the agency shall also submit that analysis to the department of administration, to the governor, and to the chief clerks of each house of the legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, as designated by those presiding officers, and to the cochairpersons of the joint committee for review of administrative rules. If a proposed rule is modified after the housing impact analysis is submitted under this paragraph so that the housing impact of the proposed rule is significantly changed, the agency shall prepare a revised housing impact analysis for the proposed rule as modified. A revised housing impact analysis shall be prepared and submitted in the same manner as an original housing impact analysis is prepared and submitted.

(3) Findings to be contained in housing impact analysis. (a) A housing impact analysis shall contain information about the effect of the proposed rule on housing in this state, including information on the effect of the proposed rule on all of the following:

1. The policies, strategies and recommendations of the state housing strategy plan.

2. The cost of developing, constructing, rehabilitating, improving, maintaining, or owning single-family or multifamily dwellings.

3. The purchase price of new homes or the fair market value of existing homes.

4. The cost and availability of financing to purchase or develop housing.

5. Housing costs, as defined in s. 16.301 (3) (a) and (b).

6. The density, location, setback, size, or height of development on a lot, parcel, land division, or subdivision.
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(b) A housing impact analysis shall analyze the relative impact of the effects of the proposed rule on low- and moderate-income households.

c (1) Except as provided in subd. 2., a housing impact analysis shall provide reasonable estimates of the information under pars. (a) and (b) expressed as dollar figures and shall include descriptions of the immediate effect and, if ascertainable, the long-term effect. The agency shall include a brief summary or worksheet of computations used in determining any such dollar figures.

2. If, after careful consideration, the agency determines that it is not possible to make an estimate expressed as dollar figures as provided in subd. 1., the analysis shall instead contain a statement to that effect setting forth the reasons for that determination.

d Except as otherwise specified in pat. (a), a housing impact analysis shall be prepared on the basis of a median-priced single-family residence but may include estimates for larger developments as an analysis of the long-term effect of the proposed rule.

(4) APPLICABILITY. This section does not apply to emergency rules promulgated under s. 227.24.


Sub. (2) requires a report on a effect of a proposed rule on housing if the “rule directly affects development, construction, cost, or availability of housing in this state.” The use of the phrase “directly or substantially” demonstrates that not just any effect will trigger the housing impact report requirement. A housing impact report is not required simply because the subject matter of a proposed rule relates to housing or because the rule tangentially affects housing in some way. Wisconsin Realtors Ass’n v. PSC, 2015 WI 63, 363 Wis. 2d 430, 867 N.W.2d 364, 13-1407.

The absence of an explicit, on-the-record determination regarding whether a housing impact report is required is not dispositive and does not mean rules were promulgated without compliance with statutory requirements.

NOTE: The above annotated materials cite to the pre-2017 Wisconsin Act 68 version of s. 227.115.

227.116 Rules to include time period. (1g) In this section, “permit” means any approval of an agency required as a condition of operating a business in this state.

(1r) Each proposed rule submitted to the legislative council staff under s. 227.15 that includes a requirement for a business to obtain a permit shall specify the number of business days, calculated beginning on the day a permit application is received, within which the agency will review and make a determination on a permit application.

(2) If any existing rule does not comply with sub. (1r), the agency that promulgated the rule shall submit to the legislative council staff a proposed revision of the rule that will bring the rule into compliance with sub. (1r). The legislative council staff’s review of the proposed revision is limited to determining whether or not the agency has complied with this subsection.

(3) Subsections (1r) and (2) do not apply to a rule if the rule, or a law under which the rule was promulgated, effective prior to November 17, 1983, contains a specification of a time period for review and determination on a permit application.

(4) If an agency fails to review and make a determination on a permit application within the time period specified in a rule or a law, for each such failure the agency shall prepare a report and submit it to the department of safety and professional services within 5 business days of the last day of the time period specified, setting forth all of the following:

(a) The name of the person who submitted the permit application and the business activity for which the permit is required.

(b) Why the review and determination were not completed within the specified time period and a specification of the revised time period within which the review and determination will be completed.

(c) How the agency intends to avoid such failures in the future.

(5) If an agency fails to review and make a determination on a permit application within the time period specified in a rule or law, upon completion of the review and determination for that application, the agency shall notify the department of safety and professional services.

(6) (a) An agency’s failure to review and make a determination on a permit application within the time period specified in a rule or law does not relieve any person from the obligation to secure a required permit or affect in any way the agency’s authority to interpret the requirements of or grant or deny permits.

(b) If a court finds that an agency failed to review and make a determination on a permit application within the time period specified in a rule or law, that finding shall not constitute grounds for declaring the agency’s determination invalid.


227.117 Review of rules impacting energy availability.

(1) The public service commission shall prepare an energy impact report on any proposed rule if, not later than 30 days after the public hearing under s. 227.18, the chairperson or ranking minority member of a standing committee, the speaker of the assembly, or the presiding officer of the senate requests in writing that the commission determine the rule’s impact on the cost or reliability of electricity generation, transmission, or distribution or of fuels used in generating electricity. The energy impact report shall include an evaluation and related findings and conclusions on the probable impact of the proposed rule on the cost or reliability of electricity generation, transmission, or distribution or of fuels used in generating electricity.

(2) Within 30 days after the written request is submitted to the public service commission, the commission shall submit a copy of any energy impact report prepared under sub. (1) to the agency that proposed the rule that resulted in the report.

(3) An agency that receives an energy impact report under sub. (2), shall consider the energy impact report before submitting the notification and report to the legislature under s. 227.19 (2) and (3).

History: 2003 a. 277.

227.12 Petition for rules. (1) Unless the right to petition for a rule is restricted by statute to a designated group or unless the form of procedure for a petition is otherwise prescribed by statute, a municipality, an association which is representative of a farm, labor, business or professional group, or any 5 or more persons having an interest in a rule may petition an agency requesting it to promulgate a rule.

(2) A petition shall state clearly and concisely:

(a) The substance or nature of the rule making requested.

(b) The reason for the request and the petitioners’ interest in the requested rule.

(c) A reference to the agency’s authority to promulgate the requested rule.

(3) Except as provided in sub. (4), within a reasonable period of time after the receipt of a petition under this section, an agency shall either: deny the petition in writing or proceed with the requested rule making. If the agency denies the petition, it shall promptly notify the petitioner of the denial, including a brief statement of the reason for the denial. If the agency proceeds with the requested rule making, it shall follow the procedures prescribed in this subchapter.

(4) If a petition to the department of revenue establishes that the department has established a standard by which it is construing a state tax statute, but has not promulgated a rule to adopt the standard or published the standard in a manner that is available to the public, the department shall, as provided under s. 227.135, submit a statement of the scope of the proposed rule to the department of administration no later than 90 days after receiving the petition. No later than 270 days after the statement is approved by the governor, the department shall submit the proposed rule in final draft form to the governor for the governor’s approval, as provided under s. 227.185. At the department’s request, the governor or the department of administration may, at any time prior to the expiration of any deadline specified in this subsection, extend the time for submitting the statement or proposed rule in draft form for any
period not to exceed 60 days. The governor or the department of administration may grant more than one extension under this subsection, but the total period for all such extensions may not exceed 120 days. The rule need not adhere to the standard established by the department, but shall address the same circumstances as the standard addresses. If the department fails to comply with this subsection, any of the petitioners may commence an action in circuit court to compel the department's compliance. If an action is commenced under this subsection, the court may compel the department to provide information to the court related to the degree to which the department is enforcing the standard, except that the information provided by the department shall not disclose the identity of any person who is not a party to the action.

History: 1985 a. 182; 2011 a. 68; 2017 a. 57.

227.13 Advisory committees and informal consultations. An agency may use informal conferences and consultations to obtain the viewpoint and advice of interested persons with respect to contemplated rule making. An agency may also appoint a committee of experts, interested persons or representatives of the public to advise it with respect to any contemplated rule making. Such a committee shall have advisory powers only. Whenever an agency appoints a committee under this section, the agency shall submit a list of the members of the committee to the joint committee for review of administrative rules.

History: 1985 a. 182; 2017 a. 369.

227.135 Statements of scope of proposed rules. (1) An agency shall prepare a statement of the scope of any rule that it plans to promulgate. The statement shall include all of the following:

(a) A description of the objective of the rule.

(b) A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

(c) The statutory authority for the rule.

(d) Estimates of the amount of time that state employees will need to spend to develop the rule and of other resources necessary to develop the rule.

(e) A description of all of the entities that may be affected by the rule.

(f) A summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

(2) An agency that has prepared a statement of the scope of the proposed rule shall present the statement to the department of administration, which shall make a determination as to whether the agency has the explicit authority to promulgate the rule as proposed in the statement of scope and shall report the statement of scope and its determination to the governor who, in his or her discretion, may approve or reject the statement of scope. The agency may not send the statement to the legislative reference bureau until the governor issues a written notice of approval of the statement. The agency shall also present the statement to the individual or body with policy-making powers over the subject matter of the proposed rule for approval. The individual or body with policy-making powers may not approve the statement until at least 10 days after publication of the statement under sub. (3) and, if a preliminary public hearing and comment period are held by the agency under s. 227.136, until the individual or body has received and reviewed any public comments and feedback received from the agency under s. 227.136 (5). No state employee or official may perform any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of the scope of the proposed rule until the governor and the individual or body with policy-making powers over the subject matter of the proposed rule approve the statement. This subsection does not prohibit an agency from performing an activity necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

(3) If the governor approves a statement of the scope of a proposed rule under sub. (2), the agency shall send an electronic copy of the statement to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. On the same day that the agency sends the statement to the legislative reference bureau, the agency shall send a copy of the statement to the secretary of administration and to the chief clerks of each house of the legislature, who shall distribute the statement to the cochairs of the joint committee for review of administrative rules. The agency shall include with any statement of scope sent to the legislative reference bureau the date of the governor's approval of the statement of scope. The legislative reference bureau shall assign a discrete identifying number to each statement of scope and shall include that number and the date of the governor's approval in the publication of the statement of scope in the register.

(4) If at any time after a statement of the scope of a proposed rule is approved under sub. (2) the agency changes the scope of the proposed rule in any meaningful or measurable way, including changing the scope of the proposed rule so as to include in the scope any activity, business, material, or product not specifically included in the original scope of the proposed rule, the agency shall prepare and obtain approval of a revised statement of the scope of the proposed rule in the same manner as the original statement was prepared and approved under subs. (1) and (2). No state employee or official may perform any activity in connection with the drafting of the proposed rule except for an activity necessary to prepare the revised statement of the scope of the proposed rule until the revised statement is so approved.

(5) A statement of scope shall expire on the date that is 30 months after the date on which it is published in the register. After a statement of scope expires, an agency may not submit a proposed rule based upon that statement of scope to the legislature for review under s. 227.19 (2), and any such rule that has not been submitted to the legislature for review before that date shall be considered withdrawn on that date as provided in s. 227.14 (6) (c) 1. a. For purposes of this subsection, a revised statement of scope prepared under sub. (4) shall expire on the date that is 30 months after the date on which the revised statement is published in the register.


The requirement that agencies receive gubernatorial approval under sub. (2) prior to adopting a proposed rule, and agencies under s. 227.185 before submitting the rule to the legislative reference bureau, is constitutional as applied to the state superintendent of public instruction and the Department of Public Instruction. Koschkee v. Taylor, 2019 WI 70, 390 Wis. 2d 552, 940 N.W.2d 725, 18-2389.

Reversed on other grounds.


227.136 Preliminary public hearing and comment period. (1) Within 10 days after publication of a statement of the scope of a proposed rule under s. 227.135 (3), either cochairperson of the joint committee for the review of administrative rules may submit a written directive to the agency that prepared the statement for the agency to hold a preliminary public hearing and comment period on the statement of scope as provided in this section.

(2) If the agency is directed to hold a preliminary public hearing and comment period on a statement of scope as provided in sub. (1) or if the agency otherwise opts to do so on its own initiative, the agency shall submit to the legislative reference bureau, in a format approved by the legislative reference bureau, a notice of a preliminary public hearing and comment period to allow for public comment and feedback on the statement of scope. The agency may also take any other action it considers necessary to

Updated 2021–22 Wis. Stats. Published and certified under s. 35.18. Changes effective after January 1, 2023, are designated by NOTES. (Published 1–1–23)
provide notice of the preliminary public hearing and comment period to other interested persons. The notice shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule and shall include all of the following:

(a) A statement of the date, time, and place of the preliminary public hearing.

(b) The place where comments on the statement of scope should be submitted and the deadline for submitting those comments.

(3) The agency shall hold the preliminary public hearing and comment period in accordance with the notice required under sub. (2), but may not hold the hearing sooner than the 3rd day after publication of the notice in the register.

(4) The agency shall conduct a hearing under this section in accordance with s. 227.18.

(5) The agency shall report all public comments and feedback on the statement of scope of the proposed rule that the agency receives at the preliminary public hearing and comment period to the individual or body with policy-making powers over the subject matter of the proposed rule.

(6) Failure of any person to receive notice of a preliminary public hearing as provided in this section is not grounds for invalidating any resulting rule if notice of the hearing was published in the register in accordance with s. 35.93 (2) (b) 3. bm.

(7) For the purpose of soliciting public comment, an agency may hold a hearing on the general subject matter of possible or anticipated rules before preparing a statement of scope for a proposed rule. A hearing held under this subsection does not relieve the agency from its obligation to comply with a directive under sub. (1) or the requirement to hold a hearing under s. 227.16.

History: 2017 a. 57 ss. 5, 17.

**227.136 ADMINISTRATIVE PROCEDURE**

**Economic impact analyses of proposed rules.**

(2) An agency shall prepare an economic impact analysis for a proposed rule before submitting the proposed rule to the legislative council staff under s. 227.15.

(3) An economic impact analysis of a proposed rule shall contain information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state’s economy as a whole. The agency or person preparing the analysis shall solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule. The agency or person shall prepare the economic impact analysis in coordination with local governmental units that may be affected by the proposed rule. The agency or person may also request information that is reasonably necessary for the preparation of an economic impact analysis from other businesses, associations, local governmental units, and individuals and from other agencies. The economic impact analysis shall include all of the following:

(a) An analysis and quantification of the policy problem that the proposed rule is intended to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem. If the approach chosen by the agency to address that policy problem is different from those approaches, an economic impact analysis prepared by an agency shall include a statement as to why the agency chose a different approach.

(b) An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule, specifically including all of the following:

1. An estimate of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, expressed as a single dollar figure. With respect to an independent economic impact analysis prepared under sub. (4m) or s. 227.19 (5) (b) 3., the person preparing the analysis shall provide a detailed explanation of any variance from the agency’s estimate under this subdivision.

2. A determination, for purposes of the requirement under s. 227.139, as to whether $10,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule.

(c) An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.

(d) An analysis of alternatives to the proposed rule, including the alternative of not promulgating the proposed rule.

(e) A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

(f) Except as provided in this paragraph, if the economic impact analysis relates to a proposed rule of the department of safety and professional services under s. 101.63 (1) establishing standards for the construction of a dwelling, as defined in s. 101.61 (1), an analysis of whether the proposed rule would increase the cost of constructing or remodeling such a dwelling by more than $1,000. This paragraph applies notwithstanding that the purpose of the one- and 2-family dwelling code under s. 101.60 includes promoting interstate uniformity in construction standards. This paragraph does not apply to a proposed rule whose promulgation has been authorized under s. 227.19 (5) (fm).

(g) An analysis of the ways in which and the extent to which the proposed rule would place any limitations on the free use of private property, including a discussion of alternatives to the proposed rule that would minimize any such limitations.

(4) On the same day that the agency submits the economic impact analysis to the legislative council staff under s. 227.15 (1), the agency shall also submit that analysis to the department of administration, to the governor, and to the chief clerks of each house of the legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, as designated by those presiding officers, and to the cochairpersons of the joint committee for review of administrative rules. If a proposed rule is modified after the economic impact analysis is submitted under this subsection so that the economic impact of the proposed rule is significantly changed, the agency shall prepare a revised economic impact analysis for the proposed rule as modified. A revised economic impact analysis shall be prepared and submitted in the same manner as an original economic impact analysis is prepared and submitted.

(4m) (a) After an agency submits an economic impact analysis for a proposed rule to the legislature under sub. (4), but before the agency submits the proposed rule for approval under s. 227.185, either cochairperson of the joint committee for review of administrative rules may request an independent economic impact analysis to be prepared for the proposed rule.

(am) 1. A request by the senate cochairperson of the joint committee for review of administrative rules for an independent economic impact analysis under par. (a) requires approval by the committee on senate organization.

2. A request by the assembly cochairperson of the joint committee for review of administrative rules for an independent economic impact analysis under par. (a) requires approval by the committee on assembly organization.

(b) 1. If a cochairperson of the joint committee for review of administrative rules requests an independent economic impact analysis under par. (a), the committee on senate organization may appoint an independent economic impact analysis committee, which shall be composed of 8 members. The committee members shall be appointed by the committee on senate organization. The committee shall consist of 1 member of the Senate and 1 member of each house of the Assembly, all of whom shall be nonpartisan. The members of the committee shall serve 2 years. The committee may not be reappointed. The committee may request the services of any government agency, administrative agency, or institutional body that has the expertise necessary to perform the analysis.

2. The committee shall make a report to the Senate and Assembly within 120 days after the request for the analysis is made. The committee shall not be bound by any opinion of the 参与者，因为：
analysis under par. (a), and the request is approved under par. (am), the cochairperson shall notify the agency proposing the proposed rule and shall contract with a person that is not an agency to prepare the independent economic impact analysis.

2. Costs of completing an independent economic impact analysis shall be paid as follows:

a. If the estimate in the independent economic impact analysis of total implementation and compliance costs under sub. (3) (b) 1. varies from the agency’s estimate by 15 percent or more or varies from the agency’s determination that there will be no implementation or compliance costs, the cochairperson shall assess the agency that is proposing the proposed rule for the costs of completing the independent economic impact analysis.

b. If the estimate in the independent economic impact analysis of total implementation and compliance costs under sub. (3) (b) 1. does not vary from the agency’s estimate by 15 percent or more or is in accord with the agency’s determination that there will be no implementation and compliance costs, the costs of completing the independent economic impact analysis shall be paid from the appropriation account that corresponds to his or her house of the legislature under s. 20.765 (1) (a) or (b).

c. Notwithstanding subd. 2. a. and b., if the maximum potential obligation under the contract for completing the independent economic impact analysis exceeds $50,000, the cochairperson of the joint committee for review of administrative rules who is proposing the proposed rule for the costs of completing the independent economic impact analysis, and the costs of completing the independent economic impact analysis shall be paid as provided by the joint committee on finance. If the joint committee on finance does not act to determine the funding source within 90 days, the costs of completing the independent economic impact analysis shall be paid as provided in subd. 2. a. and b.

d. A person preparing an independent economic impact analysis under par. (b) shall do all of the following:

1. Include in the analysis the information that is required under sub. (3).

2. Upon completion of the analysis, submit the analysis to the agency, to the department of administration, to the governor, and to the chief clerks of each house of the legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, as designated by those presiding officers, and to the cochairpersons of the joint committee for review of administrative rules.

3. Complete the independent economic impact analysis within 60 days after contracting to prepare the analysis.

(d) When an independent economic impact analysis is requested under par. (a), the agency may not submit the proposed rule for approval under s. 227.185 until the agency receives the completed independent economic impact analysis.

(5) This section does not apply to emergency rules promulgated under s. 227.24.

History:
2003 a. 118; 2005 a. 249; 2011 a. 21 ss. 7 to 18, 21 to 26; 2011 a. 32; 2013 a. 166 s. 76; 2015 a. 391; 2017 a. 57.

In this case, the plaintiff failed to establish undisputed facts from the record that would allow the court to assess to any degree of specificity whether the change in economic effects were significant due to the draft rule change so as to warrant the prepayment of a new economic impact statement under sub. (4). Applegate-Bader Farm, LLC v. DOR, 2020 WI App 7, 390 Wis. 2d 708, 940 N.W.2d 725, 18–1239.

Reversed on other grounds. 2021 WI 26, 396 Wis. 2d 69, 955 N.W.2d 793, 18–1239.


227.138 Retroactive economic impact analyses for rules. (1) The joint committee for review of administrative rules may direct an agency to prepare a retrospective economic impact analysis for any of an agency’s rules that are published in the code. The committee may identify one or more specific chapters, sections, or other subunits in the code that are administered by the agency as the rules that are to be the subject of the analysis and may specify a deadline for the preparation of the analysis. A retrospective economic impact analysis shall contain information on the economic effect of the rules on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state’s economy as a whole. When preparing the analysis, the agency shall solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that have been affected by the rules. The agency shall prepare the retrospective economic impact analysis in coordination with local governmental units that have been affected by the rules. The agency may request information that is reasonably necessary for the preparation of a retrospective economic impact analysis from other businesses, associations, local governmental units, and individuals and from other agencies. The retrospective economic impact analysis shall include all of the following:

(a) An analysis and quantification of the policy problem that the rules were intended to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem.

(b) An analysis and detailed quantification of the economic impact of the rules, including the implementation and compliance costs that have been incurred by or passed along to the businesses, local governmental units, and individuals that have been affected by the rules.

(c) An analysis of the actual and quantifiable benefits of the rules, including an assessment of how effective the rules have been in addressing the policy problem that the rules were intended to address.

(d) An analysis of alternatives to the rules, including the alternative of repealing the rules.

(e) A determination made in consultation with the businesses, local governmental units, and individuals that have been affected by the rules as to whether the rules have adversely affected in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

(f) An analysis of the ways in which and the extent to which the rules have placed limitations on the free use of private property, including a discussion of alternatives to the rules that would minimize any such limitations.

(g) A comparison of the actual economic effect of the rules being analyzed to any economic impact analysis that analyzed the expected economic effect of those rules when they were proposed.

(h) Any other information requested by the committee related to the economic impact of the rules.

(2) An agency that prepares a retrospective economic impact analysis under sub. (1) shall submit that analysis to the department of administration, to the governor, and to the chief clerks of each house of the legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, as designated by those presiding officers, and to the cochairpersons of the joint committee for review of administrative rules. The agency shall also send an electronic copy of the analysis to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register.

History:
2017 a. 108.

227.139 Passage of bill required for certain rules. (1) If an economic impact analysis prepared under s. 227.137 (2), a revised economic impact analysis prepared under s. 227.137 (4), or an independent economic impact analysis prepared under s. 227.137 (4m) or 227.19 (5) (b) 3. indicates that $10,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule, the agency proposing the rule shall stop work on the proposed rule and may not continue promulgating the proposed rule notwithstanding any provision authorizing
or requiring the agency to promulgate the proposed rule, except as authorized under sub. (2).

(2) (a) Any member of the legislature may introduce a bill authorizing an agency to promulgate a rule that the agency is prohibited from promulgating under sub. (1). The agency may resume the rule-making process as provided in this subchapter upon enactment of a bill introduced under this paragraph. 

(b) If an agency is prohibited from promulgating a rule under sub. (1), the agency may modify the proposed rule, if the modification is germane to the subject matter of the proposed rule, to address the implementation and compliance costs of the proposed rule. If the agency modifies a proposed rule under this paragraph, the agency may prepare a revised economic impact analysis prepared under s. 227.137 (4). Following the modification, the agency may continue with the rule-making process as provided in this subchapter if the revised economic impact analysis prepared by the agency indicates, and any independent economic impact analysis prepared under s. 227.137 (4m) or 227.19 (5) (b) 3, subsequent to the agency’s modification also indicates, that $10,000,000 or more in implementation and compliance costs are not reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule.

(3) This section does not apply to rules promulgated under s. 227.24.

(4) (a) This section does not apply to a proposed rule of the department of natural resources relating to air quality if all of the following apply:

1. The rule is necessary to comply with an explicit call for a state implementation plan by the federal environmental protection agency under 42 USC 7410 (a) (1), 42 USC 7411 (c) (1) or (d) (1), or 42 USC 7412 (l) (1).

2. Any standard, requirement, or limitation proposed in the rule is consistent with and no more stringent in substance than what is required under the federal clean air act, 42 USC 7401 to 7671q, and regulations issued by the federal environmental protection agency under that act.

3. The rule proposes to regulate only those emissions or substances explicitly required to be regulated under a state implementation plan described in subd. 1.

(b) If the department of natural resources believes that par. (a) applies to a proposed rule, the department shall include a statement to that effect in any economic impact analysis prepared under s. 227.137 for the proposed rule.

History: 2017 a. 57.

227.14 Preparation of proposed rules. (1) FORM AND STYLE. In preparing a proposed rule, an agency shall adhere substantially to the form and style used by the legislative reference bureau in the preparation of bill drafts and the form and style specified in the manual prepared by the legislative council staff and the legislative reference bureau under s. 227.15 (7). To the greatest extent possible, an agency shall prepare proposed rules in plain language which can be easily understood.

(1m) EXCEPTION; PREPARATION OF CERTAIN ENVIRONMENTAL RULES BASED ON FEDERAL REGULATIONS. (a) Notwithstanding sub. (1), an agency may use the format of federal regulations published in the code of federal regulations in preparing a proposed rule for publication or distribution and in preparing a proposed rule for filing if the agency determines that all or part of a state environmental regulatory program is to be administered according to standards, requirements or methods which are similar to standards, requirements or methods specified for all or part of a federal environmental regulatory program.

(1s) EXCEPTION; PREPARATION OF CERTAIN RULES BASED ON FEDERAL FOOD CODE. Notwithstanding sub. (1), if the department of agriculture, trade and consumer protection or the department of health services prepares a proposed rule based on the model food code published by the federal food and drug administration, the proposed rule may be in the format of the model food code.

(2) ANALYSIS. (a) An agency shall prepare in plain language an analysis of each proposed rule, which shall be printed as a preface to the text of the proposed rule when it is published or distributed.

(b) If an agency is prohibited from promulgating under sub. (1), an agency may modify the proposed rule, if the modification is germane to the subject matter of the proposed rule, to address the implementation and compliance costs of the proposed rule. If the agency modifies a proposed rule under this paragraph, the agency may prepare a revised economic impact analysis prepared under s. 227.137 (4). Following the modification, the agency may continue with the rule-making process as provided in this subchapter if the revised economic impact analysis prepared by the agency indicates, and any independent economic impact analysis prepared under s. 227.137 (4m) or 227.19 (5) (b) 3, subsequent to the agency’s modification also indicates, that $10,000,000 or more in implementation and compliance costs are not reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule.

(3) This section does not apply to rules promulgated under s. 227.24.

(4) (a) This section does not apply to a proposed rule of the department of natural resources relating to air quality if all of the following apply:

1. The rule is necessary to comply with an explicit call for a state implementation plan by the federal environmental protection agency under 42 USC 7410 (a) (1), 42 USC 7411 (c) (1) or (d) (1), or 42 USC 7412 (l) (1).

2. Any standard, requirement, or limitation proposed in the rule is consistent with and no more stringent in substance than what is required under the federal clean air act, 42 USC 7401 to 7671q, and regulations issued by the federal environmental protection agency under that act.

3. The rule proposes to regulate only those emissions or substances explicitly required to be regulated under a state implementation plan described in subd. 1.

(b) If the department of natural resources believes that par. (a) applies to a proposed rule, the department shall include a statement to that effect in any economic impact analysis prepared under s. 227.137 for the proposed rule.

History: 2017 a. 57.
that the rule does not include an enforcement provision or that the agency failed to comply with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall notify the agency of that determination and ask the agency to comply with any of those requirements. If the board determines that the proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to the effect that the agency that sets forth the reason for the board’s decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule under sub. (6). In addition, the board may submit other suggested changes in the proposed rule to the agency, including proposals to reduce the use of cross-references in the rule. The board shall send a report of any suggested changes and of any notice of failure to include enforcement provisions or to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to the legislative council staff. The notification to the agency may include a request that the agency do any of the following:

(a) Verify that the proposed rule does not conflict with, overlap, or duplicate other rules or federal regulations.

(b) Require the inclusion of fee information and fee schedules in the analysis under sub. (2), including why fees are necessary and for what purpose the fees will be used.

(2m) QUALITY OF AGENCY DATA AND REDUCTION OF CROSS REFERENCES. Each agency shall, in cooperation with the department of administration, ensure the accuracy, integrity, objectivity, and consistency of the data that is used when preparing a proposed rule and when completing an analysis of the proposed rule under sub. (2). Each agency shall reduce the amount of cross-references to the statutes in proposed and final rules. A person affected by a proposed rule may submit comments to the agency regarding the accuracy, integrity, or consistency of that data.

(3) REFERENCE TO APPLICABLE FORMS. If a proposed rule requires a new or revised form, an agency shall include a reference to the form in a note to the proposed rule and shall attach to the proposed rule a copy of the form or a description of how a copy may be obtained. The legislative reference bureau shall insert the reference in the code as a note to the rule.

(4) FISCAL ESTIMATES. (a) An agency shall prepare a fiscal estimate for each proposed rule before it is submitted to the legislative council staff under s. 227.15.

(b) The fiscal estimate shall include the major assumptions used in its preparation and a reliable estimate of the fiscal impact of the proposed rule, including:

1. The anticipated effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues.

2. A projection of the anticipated state fiscal effect during the current biennium and a projection of the net annualized fiscal impact on state funds.

3. For rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule.

(c) If a proposed rule interpreting or implementing a statute has no independent fiscal effect, the fiscal estimate prepared under this paragraph shall be based on the fiscal effect of the statute.

(d) If a proposed rule is revised so that its fiscal effect is significantly changed prior to its issuance, an agency shall prepare a revised fiscal estimate before promulgating the rule. The agency shall give notice of a revised fiscal estimate in the same manner that notice of the original estimate is given.

(4m) NOTICE OF SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. On the same day that an agency submits a proposed rule to the legislative council staff under s. 227.15, the agency shall prepare a written notice of the agency’s submittal to the legislative council staff. The notice shall include a statement of the date on which the proposed rule has been submitted to the legislative council staff for review, of the subject matter of the proposed rule, and of whether a public hearing on the proposed rule is required under s. 227.16, and shall identify the organizational unit within the agency that is primarily responsible for the promulgation of the rule. The notice shall also include a statement containing the identifying number of the statement of scope for the proposed rule assigned under s. 227.135 (3), the date of publication and issue number of the register in which the statement of scope is published, and the date of approval of the statement of scope by the individual or body with policy-making powers over the subject matter of the proposed rule under s. 227.135 (2). The notice shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule. The agency shall send an electronic copy of the notice to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. On the same day that the agency sends the notice to the legislative reference bureau, the agency shall send a copy of the notice to the secretary of administration.

(5) COPIES AVAILABLE TO THE PUBLIC AT NO COST. An agency, upon request, shall make available to the public at no cost a copy of any proposed rule, including the analysis, fiscal estimate and any related form.

(6) WITHDRAWAL OF A RULE. (a) Notwithstanding s. 227.01 (10), in this subsection, “proposed rule” means all of the agency’s proposal to promulgate a rule.

(b) An agency may withdraw a proposed rule at any time prior to filing under s. 227.20 by notifying the presiding officer of each house of the legislature and the legislative council staff of its intention not to promulgate the proposed rule.

(c) 1. A proposed rule shall be considered withdrawn on whichever of the following dates occurs first, unless it is withdrawn sooner by the agency under par. (b):

a. If the proposed rule is not submitted to the legislature for review under s. 227.19 (2) before the statement of the scope of the proposed rule expires as provided in s. 227.135 (5), on the date that statement of scope expires.

b. On December 31 of the 4th year after the year in which it is submitted to the legislative council staff under s. 227.13 (1), unless it has been filed with the legislative reference bureau under s. 227.20 (1) before that date.

2. No action by a legislative committee or by either house of the legislature under s. 227.19 delays the date of withdrawal of a proposed rule under this paragraph.

(d) If a proposed rule is withdrawn, the proposed rule may be promulgated only by commencing the rule-making procedure again with the preparation, under s. 227.135, of a statement of the scope of the proposed rule that the agency plans to promulgate.


227.15 Legislative council staff. (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing on a proposed rule required under s. 227.16 or, if no such public hearing is required, prior to notice under s. 227.19, an agency shall submit the proposed rule to the legislative council staff for review. The proposed rule shall be in the form required under s. 227.14 (1), and shall include the material required under s. 227.14 (2), (3), and (4), and housing impact analysis required under s. 227.115 (2) (a), any revised housing impact analysis required under s. 227.115 (2) (b), the economic impact analysis required under s. 227.137 (2), and any revised economic impact analysis required under s. 227.137 (4).

An agency may not hold a public hearing on a proposed rule or give notice under s. 227.19 until after it has received a written report of the legislative council staff review of the proposed rule or until after the initial review period of 20 working days under sub. (2) (intro.), whichever comes first. An agency may give notice of a public hearing prior to receipt of the legislative council staff review of the subject matter of the proposed rule, and of whether a public hearing on the proposed rule is required under s. 227.16, and shall identify the organizational unit within the agency that is primarily responsible for the promulgation of the rule. The notice shall also include a statement containing the identifying number of the statement of scope for the proposed rule assigned under s. 227.135 (3), the date of publication and issue number of the register in which the statement of scope is published, and the date of approval of the statement of scope by the individual or body with policy-making powers over the subject matter of the proposed rule under s. 227.135 (2). The notice shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule. The agency shall send an electronic copy of the notice to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. On the same day that the agency sends the notice to the legislative reference bureau, the agency shall send a copy of the notice to the secretary of administration.
227.15 ADMINISTRATIVE PROCEDURE

staff report. This subsection does not apply to rules promulgated under s. 227.24.

(1m) INTERNET ACCESS TO PROPOSED RULE. The legislative council staff shall create and maintain an Internet site that includes a copy of or link to each proposed rule received under sub. (1) in a format that allows searching using keywords. Each agency shall provide the legislative council staff with the proposed rules and other information needed to comply with this subsection in the format required by the legislative council staff. The Internet site shall identify or provide a link to a site that identifies proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet site shall also include or provide a link to all of the following:

(a) The electronic mail address and telephone number of an agency contact person for each proposed rule.
(b) The material required under s. 227.14 (2), (3), and (4).
(bm) The economic impact analysis required under s. 227.137 (2), any revised economic impact analysis required under s. 227.137 (4), and any independent economic impact analysis prepared under s. 227.137 (4m).
(c) Any report submitted to the legislative council staff under s. 227.14 (2g).
(d) The written report of the legislative council staff review of the proposed rule prepared under sub. (2) and any agency comments regarding that report.
(e) The time, date, and place of any public hearing specified in the notice in s. 227.17 as soon as that notice is submitted to the legislative reference bureau under s. 227.17 (1) (a).
(f) The place where comments on the proposed rule should be submitted and the deadline for submitting those comments.

(2) ROLE OF LEGISLATIVE COUNCIL STAFF. The legislative council staff shall, within 20 working days following receipt of a proposed rule, review the proposed rule in accordance with this subsection.

(a) Review proposed rules for form, style and placement in the code.
(b) Review proposed rules to avoid conflict with or duplication of existing rules.
(c) Review proposed rules for adequate references to related statutes, rules and forms.
(d) Review proposed rules for clarity, grammar, punctuation and use of plain language.
(e) Review proposed rules to determine potential conflicts and to make comparisons with related federal statutes and regulations.
(f) Review proposed rules for compliance with the requirements of s. 227.116.
(g) Streamline and simplify the rule-making process.

(3) ASSISTANCE TO COMMITTEES. The legislative council staff shall work with and assist the appropriate committees of the legislature during the rule-making process. The legislative council staff may include in its report recommendations concerning proposed rules which the agency shall submit with the notice required under s. 227.19 (2).

(4) NOTICE OF CHANGES IN RULE-MAKING AUTHORITY. Whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment or creation of a statute, by the interpretive decision of a court of competent jurisdiction or for any other reason, the legislative council staff shall notify the joint committee for review of administrative rules and the appropriate committees of each house of the legislature as determined by the presiding officer of each house. This subsection applies whether or not the rules of the agency are under review by the legislative council staff at the time of the change in rule-making authority.

(5) ANNUAL REPORT. The legislative council staff shall submit an annual report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), and to the governor summarizing any action taken and making recommendations to streamline the rule-making process and eliminate obsolete, duplicative and conflicting rules.

(6) PUBLIC LIASON. The legislative council staff shall assist the public in resolving problems related to rules. The assistance shall include but is not limited to providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing the location where a copy of a rule, proposed rule or form is available and encouraging and assisting participation in the rule-making process.

(7) RULES PROCEDURES MANUAL. The legislative council staff and the legislative reference bureau shall prepare a manual to provide agencies with information on drafting, promulgation and legislative review of rules.


227.16 When hearings required. (1) In addition to any preliminary public hearing and comment period held under s. 227.136, all rule making by an agency shall be preceded by notice and public hearing as provided in ss. 227.17 and 227.18, except as provided in sub. (2).

(2) Subsection (1) does not apply if any of the following conditions exist:

(b) The proposed rule brings an existing rule into conformity with a statute that has been changed or enacted or with a controlling judicial decision.

(c) The proposed rule is promulgated under s. 227.24, in which case the agency shall hold a hearing under s. 227.24 (4).

(d) The proposed rule is being promulgated at the direction of the joint committee for review of administrative rules under s. 227.26 (2) (b).

(e) The proposed rule, as submitted to the legislative council staff under s. 227.15 (1), is sent to the legislative reference bureau in an electronic format approved by the legislative reference bureau and published in the notice section of the register with a statement that the proposed rule will be promulgated without public hearing unless a petition is received by the agency within 30 days after publication of the notice, signed by any of the following:

1. Twenty-five natural persons who will be affected by the proposed rule.
2. A municipality that will be affected by the proposed rule.
3. An association which is representative of a farm, labor, business or professional group that will be affected by the proposed rule.

(3) If the agency receives a petition under sub. (2) (e), it may not proceed with the proposed rule until after it has given notice and held a public hearing under ss. 227.17 and 227.18.

(4) The exemptions in sub. (2) do not apply if another statute specifically requires the agency to hold a hearing prior to promulgating the proposed rule under consideration.

(5) If a hearing is not required because of an exemption under sub. (2), the agency may hold a hearing on the proposed rule under ss. 227.17 and 227.18.


The purpose of a public hearing is to give interested parties not only a chance to be heard, but to have an influence in the final form of the regulations involved. That purpose would not be served if the adopted rules were required to be identical in form to those proposed before the hearing. HM Distributors of Milwaukee, Inc. v. Department of Agriculture, 53 Wis. 2d 261, 198 N.W.2d 598 (1972).
227.17  Notice of hearing.  (1) If a hearing is required under s. 227.16, the agency shall do all of the following:
   (a) Send written notice of the hearing, in an electronic format approved by the legislative reference bureau, to the legislative reference bureau for publication in the register and, if required, publish the notice in a local newspaper.
   (b) Send an electronic copy of the written notice of the hearing under par. (a) to each member of the legislature who has filed a written request for notice with the legislative reference bureau. Upon request, the legislative reference bureau shall furnish an agency with the name and address of each legislator who has requested notice.
   (bm) Send written notice of the hearing to the secretary of administration on the same day that the notice is sent to the legislative reference bureau under par. (a).
   (c) Take any action it considers necessary to provide notice to other interested persons.

   (2) The notice under sub. (1) shall be given at least 10 days prior to the date set for a hearing. Notice through the register is considered to have been given on the date on which the issue of the register in which the notice first appears is published under s. 35.93 (2).

   (2m) The notice under sub. (1) shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule.

   (3) The notice under sub. (1) shall include:
      (a) A statement of the date, time and place of the hearing.
      (b) A copy of the proposed rule as submitted to the legislative council staff under s. 227.15 (1).
      (eg) Any independent economic impact analysis prepared under s. 227.137 (4m).
      (f) If the proposed rule will have an effect on small businesses, as defined under s. 227.114 (1), an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses that will be affected by the rule, a brief description of the rule as proposed, bookkeeping and other procedures required for compliance with the rule and a description of the types of professional skills necessary for compliance with the rule.
      (g) Any additional matter required by statute.
      (i) The electronic mail address and telephone number of the small business regulatory coordinator and a link to an Internet site that allows a person to review the rule and make comments regarding the rule.

   (4) An agency may modify a proposed rule prior to a hearing without providing additional notice under this section if the modification is germane to the subject matter of the proposed rule. In this subsection, an agency’s proposal to delete part of a proposed rule for which notice was given under sub. (1) shall be treated as a germane modification of the proposed rule.

   (5) Failure of any person to receive notice of a hearing on proposed rule making is not grounds for invalidating the resulting rule if notice of the hearing was published as provided in sub. (1) (a).


Changes in a proposed rule after notice was published did not so alter the scope of the proposed rule as to require a second hearing. Brown County v. DHSS, 103 Wis. 2d 57, 307 N.W.2d 247 (1981). See also Applegate–Bader Farm, LLC v. DOR, 2020 WI App 7, 390 Wis. 2d 708, 340 N.W.2d 725, 18–1239.

Reversed on other grounds. 2021 WI 26, 396 Wis. 2d 69, 955 N.W.2d 793, 18–1239.

227.18  Conduct of hearings.  (1) An agency shall hold a public hearing at the date, time and place designated in the notice of hearing. The person conducting the hearing shall:

   (a) Explain the purpose of the hearing and describe how testimony will be received.
   (b) At the beginning of the hearing, present a summary of the factual information on which the proposed rule is based, including any information obtained from an advisory committee, informal conference or consultation.
   (c) Afford each interested person or a representative the opportunity to present facts, opinions or arguments in writing, whether or not there is an opportunity to present them orally.
   (d) Keep a record of the hearing in a manner the agency considers desirable and feasible.

   (2) The person conducting the hearing may:
      (a) Limit oral presentations if the hearing would be unduly lengthened by repetitious testimony.
      (b) Question or allow others present to question the persons appearing.
      (c) Administer an oath or affirmation to any person appearing.
      (d) Continue or postpone the hearing to a specified date, time and place.

   (3) (a) If the agency officer or a quorum of the board or commission responsible for promulgating the proposed rule is not present at the hearing, the procedures in this subsection apply.
      (b) At the beginning of the hearing, the person conducting it shall inform those present that any person who presents testimony at the hearing may present his or her argument to the agency officer, board or commission prior to promulgation of the proposed rule if the request to do so is made in writing at the hearing.
      (c) If required by the agency officer, board or commission, an argument shall be presented to the agency in writing. If oral arguments are permitted, the agency officer, board or commission may impose reasonable limitations on the length and number of appearances to conserve time and preclude undue repetition.
      (d) If a record of the hearing has been made, arguments before the agency officer, board or commission shall be limited to the record of the hearing.

   (4) The procedures required by this section do not supersedes procedures required by any statute relating to a specific agency or to the rule or class of rules under consideration.

History: 1985 a. 182.

227.185  Approval by governor. After a proposed rule is in final draft form, the agency shall submit the proposed rule to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed rule. If the governor approves a proposed rule, the governor shall provide the agency with a written notice of that approval. No proposed rule may be submitted to the legislature for review under s. 227.19 (2) unless the governor has approved the proposed rule in writing. The agency shall notify the joint committee for review of administrative rules whenever it submits a proposed rule for approval under this section.

History: 2011 a. 21; 2017 a. 57.

The requirement that agencies receive gubernatorial approval under s. 227.135 (2) prior to drafting a proposed rule, and again under this section before submitting the rule to the legislature, is constitutional as applied to the state superintendent of public instruction and the Department of Public Instruction. Koschkee v. Taylor, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600, 17–2278.


227.19  Legislative review prior to promulgation.

(1) STATEMENT OF PURPOSE. RULE-MAKING POWERS. (a) Article IV of the constitution of this state vests in the legislature the power to make laws, and thereby to establish agencies and to designate agency functions, budgets and purposes. Article V of the constitution of this state charges the executive with the responsibility to expedite all measures which may be resolved upon by the legislature.

   (b) The legislature recognizes the need for efficient administration of public policy. In creating agencies and designating their functions and purposes, the legislature may delegate rule-making authority to these agencies to facilitate administration of legislative policy. The delegation of rule-making authority is intended to eliminate the necessity of establishing every administrative
aspect of general public policy by legislation. In so doing, however, the legislature reserves to itself:

1. The right to retract any delegation of rule-making authority.
2. The right to establish any aspect of general policy by legislation, notwithstanding any delegation of rule-making authority.
3. The right and responsibility to designate the method for rule promulgation, review and modification.
4. The right to delay or suspend the implementation of any rule or proposed rule while under review by the legislature.

(2) NOTIFICATION OF LEGISLATURE. An agency shall submit a notice to the chief clerk of each house of the legislature when a proposed rule is in final draft form. The notice shall be submitted in triplicate and shall be accompanied by a report in the form specified under sub. (3). A notice received under this subsection after the last day of the legislature's final general-business floorperiod in the biennial session as established in the joint resolution required under s. 13.02 (3) shall be considered received on the first day of the next regular session of the legislature, unless the presiding officers of both houses direct referral of the notice and report under this subsection before that day. The presiding officer of each house of the legislature shall, within 10 working days following the day on which the notice and report are received, direct the appropriate chief clerk to refer the notice and report to one standing committee. The agency shall submit to the legislative reference bureau for publication in the register, in an electronic format approved by the legislative reference bureau, a statement that a proposed rule has been submitted to the chief clerk of each house of the legislature. The agency shall also include in the statement the date of approval of the proposed rule by the governor under s. 227.185. Each chief clerk shall enter a similar statement in the journal of his or her house.

(3) FORM OF REPORT. The report required under sub. (2) shall be in writing and shall include the proposed rule in the form specified in s. 227.14 (1); the material specified in s. 227.14 (2), (3), and (4); including any statement, suggested changes, or other material submitted to the agency by the small business regulatory review board; a copy of any economic impact analysis prepared by the agency under s. 227.137 (2); a copy of any revised economic impact analysis prepared by the agency under s. 227.137 (4); a copy of any independent economic impact analysis prepared under s. 227.137 (4m); a copy of any energy impact report received from the public service commission under s. 227.117 (2); and a copy of any recommendations of the legislative council staff. The report shall also include all of the following:

(a) A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.

(b) A summary of public comments to the proposed rule and the agency's response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at a public hearing.

(c) A list of the persons who appeared or registered for or against the proposed rule at a public hearing held under s. 227.136 or 227.16. (cm) Any changes to the analysis prepared under s. 227.14 (2) or the fiscal estimate prepared under s. 227.14 (4).

(d) A response to the legislative council staff recommendations under s. 227.15 indicating:

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

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

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

(f) If an energy impact report regarding the proposed rule was submitted with the report required under sub. (2), an explanation of the changes, if any, that were made in the proposed rule in response to that report.

(g) Any housing impact analysis prepared under s. 227.115 (2) (a) and any revised housing impact analysis prepared under s. 227.115 (2) (b).

(h) A response to any report prepared by the small business regulatory review board under s. 227.14 (2g).

(3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis specified under sub. (3) (e) is not required for any rule if the small business regulatory review board determines that the rule will not have a significant economic impact on a substantial number of small businesses.

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

(b) Committee review period. 1. Except as otherwise provided in this paragraph, the committee review period for each committee extends for 30 days after referral of the proposed rule to the committee under sub. (2). If the chairperson or the cochairpersons of a committee take either of the following actions within the 30-day period, the committee review period for that committee is continued for 30 days from the date on which the first 30−day review period would have expired:

a. Request in writing that the agency meet with the committee to review the proposed rule.

b. Publish or post notice that the committee will hold a meeting or hearing to review the proposed rule and immediately send a copy of the notice to the agency.

1m. Except as provided under subd. 5., if a notice and report received under sub. (2) after the last day of the legislature's final general-business floorperiod as specified in sub. (2) is referred for committee review before the first day of the next regular session of the legislature, the committee review period for each committee to which the proposed rule is referred extends to the day specified under s. 13.02 (1) for the next legislature to convene.

2. If a committee, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to consider making modifications, the review period for both committees to which the proposed rule is referred is extended either to the 10th working day following receipt by those committees of the modified proposed rule or a written state-
If a committee review period is interrupted by the loss of jurisdiction under this subdivision, a new committee review period as provided in subd. 1. shall begin for the committee to which the proposed rule or part of the proposed rule is referred under this subdivision beginning on the date of referral under this subdivision.

(c) Waiver of committee review. A committee may waive its jurisdiction over a proposed rule prior to the expiration of the committee review period by adopting, by a majority vote of a quorum of the committee, a motion waiving the committee’s jurisdiction.

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

1. An absence of statutory authority.
2. An emergency relating to public health, safety or welfare.
3. A failure to comply with legislative intent.
4. A conflict with state law.
5. A change in circumstances since enactment of the earliest law upon which the proposed rule is based.
6. Arbitrariness and capriciousness, or imposition of an undue hardship.
7. In the case of a proposed rule of the department of safety and professional services under s. 101.63 (1) establishing standards for the construction of a dwelling, as defined in s. 101.61 (1), the proposed rule would increase the cost of constructing or remodeling such a dwelling by more than $1,000. This subdivision applies notwithstanding that the purpose of the one- and two-family dwelling code under s. 101.60 includes promoting intra-state uniformity in construction standards. This subdivision does not apply to a proposed rule whose promulgation has been authorized under sub. (5) (fm).

(e) Conclusion of committee jurisdiction. Subject to par. (b) 3., a committee’s jurisdiction over a proposed rule is concluded when the committee objects to, approves, or waives its jurisdiction over the proposed rule or when the committee review period ends, whichever occurs first. When a committee’s jurisdiction over a proposed rule is concluded, the committee shall report the proposed rule and any objection as provided in sub. (5) (a).

(5) JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES.

(a) Referral. When a committee’s jurisdiction over a proposed rule is concluded as provided in sub. (4) (e), the committee shall report the proposed rule and any objection to the chief clerk of the appropriate house within 5 working days after that jurisdiction is concluded. The chief clerk shall refer the proposed rule and any objection to the joint committee for review of administrative rules within 5 working days after receiving the committee report.

(b) Joint committee review period. 1. Except as otherwise provided in this paragraph, the review period for the joint committee for review of administrative rules extends for 30 days after the last referral of a proposed rule and any objection to that committee, and during that review period that committee may take any action on the proposed rule in whole or in part permitted under this subsection. The joint committee for review of administrative rules shall meet and take action in executive session during that period with respect to any proposed rule or any part of a proposed rule to which a committee has objected and may meet and take action in executive session during that period with respect to any proposed rule or any part of a proposed rule to which no committee has objected, except that if the cochairs take either of the following actions within the 30–day period, the joint committee review period is continued for 30 days from the date on which the first 30–day review period would have expired:

a. Request in writing that the agency meet with the joint committee for review of administrative rules to review the proposed rule.

b. Publish or post notice that the joint committee for review of administrative rules will hold a meeting or hearing to review the
proposed rule and immediately send a copy of the notice to the agency.

1m. If a notice and report received under sub. (2) after the last day of the legislature’s final general—business floorperiod as specified in sub. (2) is referred for review by the joint committee for review of administrative rules before the first day of the next regular session of the legislature, the review period for the joint committee for review of administrative rules extends to the day specified under s. 13.02 (1) for the next legislature to convene. During that review period, the joint committee for review of administrative rules may meet and take action in executive session and may take any action on the proposed rule or part of the proposed rule that the joint committee for review of administrative rules extends under this subsection. If the joint committee for review of administrative rules meets in executive session with respect to a proposed rule or part of a proposed rule to which a committee has objected, that joint committee shall take action as permitted under this subsection with respect to the committee’s objection.

2. If the joint committee for review of administrative rules, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to consider making modifications, the review period for the joint committee is extended to the 10th working day following receipt by the joint committee of the modified proposed rule or a written statement to the joint committee that the agency will not make the modifications or to the expiration of the review period under subd. 1. or, if applicable, subd. 1m., whichever is later. There is no limit on the number of modification agreements that may be entered into or on the time within which modifications may be made.

3. The joint committee for review of administrative rules, by a majority vote of a quorum of the committee, requests modifications in a proposed rule, and the agency, in writing, agrees to prepare the independent economic impact analysis for a proposed rule, regardless of whether an independent economic impact analysis was prepared under s. 227.137 (4m). If the joint committee for review of administrative rules requests an independent economic impact analysis under this subdivision, the committee shall request approval by the committee on senate organization and the committee on assembly organization. If both the committee on senate organization and the committee on assembly organization approve the request, the joint committee for review of administrative rules shall notify the agency preparing the proposed rule and shall contract with a person that is not an agency to prepare the independent economic impact analysis, and the review period for the committee is extended to the 10th working day following receipt by the committee of the completed analysis. The person preparing the independent economic impact analysis shall comply with s. 227.137 (4m) (c) 1. to 3. Costs of completing an independent economic impact analysis shall be paid as follows:

a. If the estimate in the independent economic impact analysis of total implementation and compliance costs under s. 227.137 (5) (b) 1. varies from the agency’s estimate by 15 percent or more or varies from the agency’s determination that there will be no implementation or compliance costs, the committee shall assess the agency that is proposing the proposed rule for the costs of completing the independent economic impact analysis.

b. If the estimate in the independent economic impact analysis of total implementation and compliance costs under s. 227.137 (3) (b) 1. does not vary from the agency’s estimate by 15 percent or more or is in accord with the agency’s determination that there will be no implementation and compliance costs, the costs of completing the independent economic impact analysis shall be paid in equal parts from the appropriation accounts under s. 20.765 (1) (a) and (b).

c. Notwithstanding subd. 3. a. and b., if the maximum potential obligation under the contract for completing the independent economic impact analysis exceeds $50,000, the joint committee for review of administrative rules shall submit the proposed contract to the joint committee on finance for the purpose of determining the funding source for the costs of completing the independent economic impact analysis, and the costs of completing the independent economic impact analysis shall be paid as provided by the joint committee on finance. If the joint committee on finance does not act to determine the funding source within 90 days, the costs of completing the independent economic impact analysis shall be paid as provided in subd. 3. a. and b.

4. If the joint committee for review of administrative rules has not concluded its jurisdiction over a proposed rule or a part of a proposed rule before the day specified under s. 13.02 (1) for the next legislature to convene, that jurisdiction immediately ceases and, within 10 working days after that date, the presiding officer of the appropriate house shall refer the proposed rule or part of the proposed rule to the joint committee for review of administrative rules of the next legislature. If a committee review period is interrupted by the loss of jurisdiction under this subdivision, a new committee review period as provided in subd. 1. shall begin for the joint committee for review of administrative rules to which the proposed rule or part of the proposed rule is referred under this subdivision beginning on the date of referral under this subdivision.

(c) Agency not to promulgate rule during joint committee review. An agency may not promulgate a proposed rule or a part of a proposed rule until the 10th working day following receipt by the joint committee of the modified proposed rule or a written statement to the joint committee that the agency will not make the modifications or to the expiration of the review period under subd. 1. or, if applicable, subd. 1m., whichever is later. There is no limit on the number of modification agreements that may be entered into or on the time within which modifications may be made.

(d) Joint committee action. The joint committee for review of administrative rules may not concur in a committee’s objection to a proposed rule or a part of a proposed rule, concur in a committee’s approval of a proposed rule or a part of a proposed rule, otherwise approve a proposed rule or a part of a proposed rule, or waive its jurisdiction over a proposed rule or a part of a proposed rule by voting to nonconcurs in the objection of the committee, concurs in the approval of the committee, otherwise approves the proposed rule or part of the proposed rule, or waives its jurisdiction over the proposed rule or part of the proposed rule under par. (d), until the expiration of the review period under par. (b) 1., if no committee has objected to the proposed rule or part of the proposed rule, until a bill introduced under par. (e) fails to be enacted, or until a bill introduced under par. (em) is enacted. An agency may promulgate any part of a proposed rule to which no objection has been made.

(e) Bills to prevent promulgation. When the joint committee for review of administrative rules objects to a proposed rule or a part of a proposed rule until a bill introduced under par. (e) fails to be enacted. The joint committee for review of administrative rules may object to a proposed rule or a part of a proposed rule under this paragraph only for one or more of the reasons specified under sub. (4) (d).

(f) Indefinite objection; joint committee action. If the joint committee for review of administrative rules objects to a proposed rule or a part of a proposed rule and invokes this paragraph, the agency may not promulgate the proposed rule or part of the proposed rule objected to until a bill introduced under par. (e) fails to be enacted. The joint committee for review of administrative rules may object to a proposed rule or a part of a proposed rule under this paragraph only for one or more of the reasons specified under sub. (4) (d). This paragraph does not apply to a proposed rule whose promulgation has been previously authorized under par. (em).
a proposed rule or a part of a proposed rule under par. (dm), any member of the legislature may introduce a bill to authorize promulgation of the proposed rule or part of the proposed rule. This paragraph does not apply to a proposed rule whose promulgation has been previously authorized under par. (fm).

(f) Bills to prevent promulgation; effect. If both bills required under par. (e) are defeated, or fail to be enacted in any other manner, the agency may promulgate the proposed rule or part of the proposed rule that was objected to. If either bill becomes law, the agency may not promulgate the proposed rule or part of the proposed rule that was objected to unless subsequent law specifically authorizes its promulgation. If any of those bills becomes law, the agency may promulgate the proposed rule or part of the proposed rule that was objected to.

(g) Introduction of bills in next session; effect. If the bills required under par. (e) are introduced on or after February 1 of an even-numbered year and before the next regular session of the legislature commences, as provided under s. 13.02 (2), or if the bills cannot be introduced during this time period under the joint rules of the legislature, the joint committee for review of administrative rules shall introduce the bills on the first day of the next regular session of the legislature, unless either house adversely disposes of either bill. If the joint committee for review of administrative rules is required to introduce the bills, the agency may not promulgate the proposed rule or part of the proposed rule to which the bills pertain except as provided in par. (f).

(fm) Indefinite objection; bills to authorize promulgation; effect. If all bills introduced under par. (em) are defeated, or fail to be enacted in any other manner, the agency may not promulgate the proposed rule or part of the proposed rule that was objected to.

(6) PROMULGATION PREVENTION OR AUTHORIZATION PROCEDURE. (a) The legislature may not consider a bill required or permitted under sub. (5) (e) or (em) until the joint committee for review of administrative rules has submitted a written report on the bill. The report shall be printed as an appendix to each bill and shall contain:

1. An explanation of the issue involving the proposed rule or part of the proposed rule objected to and the factual situation out of which the issue arose.
2. Arguments presented for and against the proposed rule at the executive session held under sub. (5) (b).
3. A statement of the action taken by the joint committee for review of administrative rules regarding the proposed rule.
4. A statement and analysis of the grounds upon which the joint committee for review of administrative rules relies for objecting to the proposed rule or part of the proposed rule.

(b) Upon introduction of the bills under sub. (5) (e) or (g), the presiding officer of each house of the legislature shall refer the bill introduced in that house to the appropriate committee, to the calendar scheduling committee or directly to the calendar. If the committee to which a bill is referred makes no report within 30 days after referral, the bill shall be considered reported without recommendation. No later than 40 days after referral, or as soon thereafter as is possible if the legislature is not in a floorperiod 40 days after referral, the bills shall be placed on the calendar of each house of the legislature according to its rule governing the placement of proposals on the calendar. A bill introduced under this section that is received in the 2nd house shall be referred, reported and placed on the calendar in the same manner as an original bill introduced under this section.

(7) NONAPPLICATION. This section does not apply to rules promulgated under s. 227.24.


Discussing rule-making procedure. Wisconsin State Telephone Ass’n v. PSC, 105 Wis. 2d 2601, 314 N.W.2d 873 (Ct. App. 1981).

Post-promulgation rule suspension under s. 227.26 (2) (d) does not violate the separation of powers doctrine. Martinez v. DILHR, 165 Wis. 2d 687, 478 N.W.2d 582 (1992). See also Service Employees International Union (SEIU), Local 1 v. Vos, 2020 WI 67, 393 Wis. 2d 38, 946 N.W.2d 35, 19−0614.

When administrative agencies promulgate rules, they are exercising legislative power that has been chosen to delegate to them by statute. Stated otherwise, agencies have no inherent constitutional authority to make rules, and their rule-making powers can be revoked by the legislature. It follows that the legislature may place limitations and conditions on an agency’s exercise of rulemaking authority, including establishing the procedures by which agencies may promulgate rules. Koschkee v. Taylor, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600, 17−2278.

Rulemaking is a legislative power that does not fall within the state superintendent’s supervisory constitutional authority under article X, section 1, of the Wisconsin Constitution. Rulemaking is a legislative delegation to the state superintendent of public instruction’s supervisory constitutional authority under article X, section 1, of the Wisconsin Constitution. Rulemaking is a legislative delegation to the state superintendent; therefore, it may be transferred or taken away, as the legislature chooses. Koschkee v. Taylor, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600, 17−2278.


227.20 Filing of rules. (1) An agency shall file a certified copy of each rule it promulgates with the legislative reference bureau. No rule is valid until the certified copy has been filed. A certified copy shall be typed or duplicated on 8 1/2 by 11 inch paper, leaving sufficient room for a stamp at the top of the first page. Forms that are filed need not comply with the specifications of this subsection. The agency shall also send a copy of the rule to the legislative reference bureau in an electronic format approved by the legislative reference bureau.

(2) The legislative reference bureau shall endorse the date and the time of filing on each certified copy filed under sub. (1). The bureau shall keep a file of all certified copies filed under sub. (1).

(3) Filing a certified copy of a rule with the legislative reference bureau creates a presumption of all of the following:

(a) That the rule was duly promulgated by the agency.
(b) That the rule was filed and made available for public inspection on the date and time endorsed on it.
(c) That all of the rule–making procedures required by this chapter were complied with, except as provided in s. 186.118 (2) (c) or (3) (b) 3.
(d) That the text of the certified copy of the rule is the text as promulgated by the agency.


Cross-reference: See s. 902.03 for provision for judicial notice of administrative rules.

Guidelines promulgated outside the context of one particular contested case do not qualify for exception to the requirement that all rules must be filed under s. 227.023 [now this section]. Here, failure to file the guideline as a rule did not deprive the Department of Industry, Labor and Human Relations of the authority to decide contested cases dealing with pregnancy leaves under the sex discrimination statute. Wisconsin Telephone Co. v. DILHR, 2017 a. 57, 325 Wis. 2d 135, 228 N.W.2d 649 (1975).

Sub. (3) directs a court to presume that the rule was duly promulgated by the agency and that all statutory rule–making procedures have been followed, including those pertaining to the preparation of a hearing impact statement. This section apparently creates a rebuttable presumption that a court is to presume that the agency that promulgated the rule followed the statute regarding housing reports, but a party challenging the rule may rebut that presumption. The statute also requires courts to respect the legislature’s role in reviewing and approving agency rules by presuming the validity of rules that have survived the legislature’s scrutiny. Wisconsin Realors Ass’n v. PSC, 2015 WI 63, 363 Wis. 2d 430, 867 N.W.2d 364, 13−1407.

227.21 Publication of rules; incorporation by reference. (1) The legislative reference bureau shall publish all rules that agencies are directed by this chapter to file with the legislative reference bureau under s. 227.20 in the register and shall publish all permanent rules that agencies are directed by this chapter to file with the legislative reference bureau under s. 227.20 in the code, as provided in s. 35.93.
227.21 ADMINISTRATIVE PROCEDURE

(2) (a) Except as provided in s. 601.41 (3) (b), to avoid unnecessary expense an agency may, with the consent of the attorney general, adopt standards established by technical societies and organizations of recognized national standing by incorporating the standards in its rules by reference to the specific issue or issues of the publication in which they appear, without reproducing the standards in full.

(b) The attorney general shall consent to incorporation by reference only in a rule of limited public interest and in a case where the incorporated standards are readily available in published form or are available on optical disc or in another electronic format. Each rule containing an incorporation by reference shall state how the material incorporated may be obtained and, except as provided in s. 601.41 (3) (b), that the standards are on file at the legislative reference bureau.

(c) An agency that adopts standards under par. (a) may provide the legislative reference bureau with one or more Web addresses to provide electronic access to the standards for publication in conjunction with the publication of the Wisconsin administrative code and register under s. 35.93.

(3) A rule promulgated jointly by 2 or more agencies need not be published in more than one place in the code.

(4) Agency materials that are exempt from the requirements of this chapter under s. 227.01 (13) may be published, either verbatim or in summary form, if the promulgating agency and the legislative reference bureau determine that the public interest would be served by publication.


Consent may not be given to incorporate by reference the U.S. Code or federal regulations, except rules meeting the definition of a technical standard. Material incorporated by reference cannot include future amendments thereto. 59 Atty. Gen. 31. See also 68 Atty. Gen. 9.

227.22 Effective date of rules. (1) In this section, “date of publication” means the date on which a rule is published in the code as required under s. 35.93 (2) (c) 1.

(2) A rule is effective on the first day of the month commencing after the date of publication unless one of the following occurs:

(a) The statute under which the rule was promulgated prescribes a different effective date for the rule.

(b) A later date is prescribed by the agency in a statement filed with the rule.

(c) The rule is promulgated under s. 227.24, in which case it becomes effective at the time prescribed in that section.

(d) The rule has a significant economic impact on small businesses, as defined in s. 227.114 (1), in which case the rule applies to small businesses no earlier than the first day of the 3rd month commencing after the date of publication of the rule.

(3) The legislative reference bureau may prescribe in the manual prepared under s. 227.15 (7) the monthly date prior to which a rule must be filed in order to be included in that month’s issue of the register. The legislative reference bureau shall compute the effective date of each rule submitted for publication in the register and shall publish it in a note at the end of each section. For the purpose of computing the effective date, the legislative reference bureau may presume that an issue of the register will be published only for 150 days.


227.23 Forms. A form imposing a requirement which meets the definition of a rule shall be treated as a rule for the purposes of this chapter, except that:

(1) Its promulgation need not be preceded by notice and public hearing.

(2) It need not be promulgated by the board or officer charged with ultimate rule-making authority but may be promulgated by any employee of the agency authorized by the board or officer.

(3) It need not be published in the code and register in its entirety, but may be listed by title or description together with a statement as to how it may be obtained.

History: 1985 a. 182.

227.24 Emergency rules; exemptions. (1) PROMULGATION. (a) An agency may, except as provided in s. 227.136 (1), promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

(b) An agency acting under s. 186.235 (21), 215.02 (18) or 220.04 (8) may promulgate a rule without complying with the notice, hearing and publication procedures under this chapter.

(c) A rule promulgated under par. (a) takes effect upon publication in the official state newspaper or on any later date specified in the rule and, except as provided under sub. (2), remains in effect only for 150 days.

(d) A rule promulgated under par. (b) takes effect upon publication in the official state newspaper or on any later date specified in the rule and remains in effect for one year or until it is suspended or the proposed rule corresponding to it is objected to by the joint committee for review of administrative rules, whichever is sooner. If a rule under par. (b) is suspended or a proposed rule under s. 186.235 (21), 215.02 (18) or 220.04 (8) is objected to by the joint committee for review of administrative rules, any person may complete any transaction entered into or committed to in reliance on that rule and shall have 45 days to discontinue other activity undertaken in reliance on that rule.

(e) An agency that promulgates a rule under this subsection shall do all of the following:

1d. Prepare a statement of the scope of the proposed emergency rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s. 227.135 (2), send the statement to the legislative reference bureau for publication in the register as provided in s. 227.135 (3), and hold a preliminary public hearing and comment period if directed under s. 227.136 (1). If the agency changes the scope of a proposed emergency rule as described in s. 227.135 (4), the agency shall prepare and obtain approval of a revised statement of the scope of the proposed emergency rule as provided in s. 227.135 (4). No state employee or official may perform any activity in connection with the drafting of a proposed emergency rule except for an activity necessary to prepare the statement of the scope of the proposed emergency rule until the governor and the individual or body with policy-making powers over the subject matter of the proposed emergency rule approve the statement.

1g. Submit the proposed emergency rule in final draft form to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed emergency rule. If the governor approves a proposed emergency rule, the governor shall provide the agency with a written notice of that approval. An agency may not file an emergency rule with the legislative reference bureau as provided in s. 227.20 and an emergency rule may not be published until the governor approves the emergency rule in writing.

1m. Prepare a plain language analysis of the rule in the format prescribed under s. 227.14 (2) and print the plain language analysis with the rule when it is published.

2. Prepare a fiscal estimate for the rule in the format prescribed under s. 227.14 (4), mail the fiscal estimate to each member of the legislature, and send a copy of the fiscal estimate to the legislative reference bureau in an electronic format approved by the legislative reference bureau, not later than 10 days after the date on which the rule is published.
**227.25 Legislative reference bureau.** (1) The legislative reference bureau shall, in cooperation with the legislative council staff under s. 227.15 (7), prepare a manual informing agencies about the form, style and placement of rules in the code.

(2) The legislative reference bureau shall, upon request, furnish an agency with advice and assistance on the form and mechanics of rule drafting.

(3) An agency may request an advance commitment as to the title or numbering of a proposed rule by submitting a copy of the proposed rule indicating the requested title and numbering to the legislative reference bureau prior to filing. As soon as possible after that, the legislative reference bureau shall either approve the request or inform the agency of any change necessary to preserve uniformity in the code.

**227.26 Legislative review after promulgation; joint committee for review of administrative rules.** (1) DEFINITION. In this section, “rule” means all or any part of a rule which has taken effect as provided under s. 227.22 (2).

(2) REVIEW OF RULES BY COMMITTEE. (a) Purpose. The joint committee for review of administrative rules shall promote adequate and proper rules, statements of general policy and interpretations of statutes by agencies and an understanding upon the part of the public respecting the rules, statements and interpretations.

(b) Requirement for promulgation. If the committee determines that a statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule under s. 227.24 (1) (a) within 30 days after the committee’s action.

(c) Public hearings. The committee shall hold a public hearing to investigate any complaint with respect to a rule if it considers the complaint meritorious and worthy of attention.

(d) Temporary suspension of rules. The committee may suspend any rule by a majority vote of a quorum of the committee. A rule may be suspended only on the basis of testimony in relation to that rule received at a public hearing and only for one or more of the reasons specified under s. 227.19 (4) (d).

(e) Notice. When the committee suspends a rule, it shall publish a class 1 notice, under ch. 985, of the suspension in the official state newspaper and give any other notice it considers appropriate.

(f) Introduction of bills. If any rule is suspended, the committee shall, within 30 days after the suspension, meet and take executive action regarding the introduction, in each house of the legislature, of a bill to support the suspension. The committee shall introduce the bills within 5 working days after taking executive action in favor of introduction of the bills unless the bills cannot be introduced under sub. (1) (e) 1d., an agency shall hold a public hearing within 45 days after it promulgates a rule under sub. (1). If within that 45−day period the agency submits to the legislative council staff under s. 227.15 a proposed rule corresponding to the rule under sub. (1), it shall hold a public hearing on both rules within 90 days after promulgation of the rule under sub. (1), or within 30 days after the agency receives the report on the proposed rule prepared by the legislative council staff under s. 227.15 (2), whichever occurs later.

be introduced during this time period under the joint rules of the legislature.

(g) **Committee report required.** No bill required by this subsection may be considered by the legislature until the committee submits a written report on the proposed bill. The report shall be printed as an appendix to the bills introduced under par. (f). The report shall contain all of the following:

1. An explanation of the issue regarding the suspended rule and the factual situation out of which the issue arose.
2. Arguments presented for and against the suspension action at the public hearing held under par. (c).
3. A statement of the action taken by the committee regarding the rule.
4. A statement and analysis of the grounds upon which the committee relies for suspending the rule.

(h) **Legislative procedure.** Upon the introduction of bills by the committee under this subsection, the presiding officer of each house of the legislature shall refer the bill introduced in that house to the appropriate committee, to the calendar scheduling committee or directly to the calendar. If the committee to which a bill is referred makes no report within 30 days after referral, the bill shall be considered reported without recommendation. No later than 40 days after referral, or as soon thereafter as is possible if the legislature is not in a floor period 40 days after referral, the bills shall be placed on the calendar of each house of the legislature according to its rule governing the placement of proposals on the calendar. A bill introduced under this subsection which is received in the 2nd house shall be referred, reported and placed on the calendar in the same manner as an original bill introduced under this subsection.

(i) **Timely introduction of bills; effect.** If both bills required under this subsection are defeated, or fail to be enacted in any other manner, the rule remains in effect and the committee may act to suspend a rule as provided under this subsection multiple times.

(j) **Late introduction of bills; effect.** If the bills required under par. (f) are introduced on or after February 1 of an even-numbered year and before the next regular session of the legislature commences, as provided under s. 13.02 (2), or if the bills cannot be introduced during this time period under the joint rules of the legislature, unless either house adversely disposes of either bill, the committee shall introduce the bills on the first day of the next regular session of the legislature. If the committee is required to introduce the bills on the first day of the next regular session, the rule to which the bills pertain remains suspended except as provided in par. (i). If either house adversely disposes of either bill, the rule remains in effect and the committee may not suspend it again. In this paragraph, “adversely disposes of” has the meaning given under s. 227.19 (5) (g).

(k) **Biennial report.** The committee shall submit a biennial report of its activities to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), and to the governor and include recommendations.

(L) **Emergency rules.** If the committee suspends an emergency rule under this section, the agency may not submit to the legislature under s. 227.19 (2) the substance of the emergency rule as a proposed permanent rule during the time the emergency rule is suspended.

(3) **PUBLIC HEARINGS BY STATE AGENCIES.** By a majority vote of a quorum of the committee, the committee may require any agency to hold a public hearing in respect to recommendations made under sub. (2) and to report its action to the committee within the time specified by the committee. The agency shall publish a class 1 notice, under ch. 985, of the hearing in the official state newspaper and give any other notice which the committee directs. The hearing shall be conducted in accordance with s. 227.18 and shall be held not more than 60 days after receipt of notice of the requirement.

(4) **REPEAL OF UNAUTHORIZED RULES.** (a) In this subsection, “unauthorized rule” means a rule that an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.

(b) Notwithstanding ss. 227.114 to 227.117 and 227.135 to 227.19, an agency that promulgated or that otherwise administers a rule that the agency determines is an unauthorized rule shall petition the joint committee for review of administrative rules for authorization to repeal that rule by using the following process:

1. The agency shall submit a petition with a proposed rule that repeals the rule the agency has determined is an unauthorized rule to the legislative council staff for review. The proposed rule shall be in the form required under s. 227.14 (1) and shall include the material required under s. 227.14 (2) (a) 1., 2., and 7. and a statement that the agency is petitioning the joint committee for review of administrative rules to use the process under this subsection to repeal a rule the agency has determined to be an unauthorized rule. The agency shall also send an electronic copy of the petition and the proposed rule to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register.

2. The legislative council staff shall review the petition and proposed rule in accordance with s. 227.15 (2) and submit to the joint committee for review of administrative rules the petition and proposed rule with a written report including a statement of its determination as to whether the proposed rule proposes to repeal an unauthorized rule. The legislative council staff shall send the agency a copy of its report with an indication of the date on which the petition and proposed rule were submitted to the committee.

3. Following receipt of the petition and proposed rule submitted by the legislative council staff under subd. 2., the joint committee for review of administrative rules shall review the petition and proposed rule and may do any of the following:
   a. Approve the agency’s petition if the committee determines that the proposed rule would repeal an unauthorized rule.
   b. Deny the agency’s petition.
   c. Request that the agency makes changes to the proposed rule and resubmit the petition and proposed rule under subd. 1.
   d. The committee shall inform the agency in writing of its decision as to the petition.

(c) If the joint committee for review of administrative rules approves a petition to repeal an unauthorized rule as provided in par. (b) 3., the agency shall promulgate the proposed rule by filing a certified copy of the rule with the legislative reference bureau under s. 227.20, together with a copy of the committee’s decision.


Rule suspension under sub. (2) (d) does not violate the separation of powers doctrine. Martinez v. DILHR, 165 Wis. 2d 687, 478 N.W.2d 582 (1992). See also Service Employees International Union (SEIU), Local 1 v. Vos, 2020 W 67, 393 Wis. 2d 38, 946 N.W.2d 35, 19–0614.

In this case, the facial challenge to sub. (2) (im) failed. If one three-month suspension was constitutionally permissible, two three-month suspensions were as well. Under such a scenario, the six-month, rather than three-month, delay was still followed. Thus, the decision was constitutionally permissible, two three-month suspensions were as well. Service Employees International Union (SEIU), Local 1 v. Vos, 2020 W 67, 393 Wis. 2d 38, 946 N.W.2d 35, 19–0614. A collective bargaining agreement between the regents and the teaching assistants association is not subject to review by the committee. 59 Att. Gen. 200.

In giving notice of public hearings held under sub. (2), the committee should currently employ the various forms of notice available that best fit the particular circumstances. 62 Att. Gen. 299.

If an administrative rule is properly adopted and is within the power of the legislature to delegate there is no material difference between it and a law. No law, including a valid rule can be revoked by a joint resolution of the legislature as such a resolution deprives the executive its power to veto an act of the legislature. 63 Att. Gen. 159.
227.265 Repeal or modification of rules. If a bill to repeal or modify a rule is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply. Instead, the legislative reference bureau shall publish the repeal or modification in the Wisconsin administrative code and register as required under s. 35.93, and the repeal or modification shall take effect as provided in s. 227.22.

**History:** 2013 a. 125, 136, 210, 277, 278, 295, 320, 332, 361, 363.

227.27 Construction of administrative rules. (1) In construing rules, ss. 990.001, 990.01, 990.03 (1), (2) and (4), 990.04 and 990.06 apply in the same manner in which they apply to statutes, except that ss. 990.001 and 990.04 do not apply if the construction would produce a result that is inconsistent with the manifest intent of the agency.

(2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau under s. 227.20 or modified under s. 227.265, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.


When interpreting administrative regulations, a court uses the same rules of interpretation as the court applies to statutes. DaimlerChrysler v. LIRC, 2007 WI 71, 299 Wis. 2d 1, 727 N.W.2d 311, 05−0544.

An administrative agency’s interpretation of its own rules or regulations is controlling unless plainly erroneous or inconsistent with the regulations. For an agency’s interpretation of its own rules or regulations, if the interpretation is reasonable and consistent with the intended purpose, a court generally applies either “controlling weight” or “great weight” deference. DaimlerChrysler v. LIRC, 2007 WI 71, 299 Wis. 2d 1, 727 N.W.2d 311, 05−0544. But see Tetra Tech EC, Inc. v. DOR, 2018 WI 75, 382 Wis. 2d 496, 914 N.W.2d 21, 15−2019.

227.29 Agency review of rules and enactments. (1) By March 31 of each odd−numbered year, each agency with any rules published in the code shall submit a report to the joint committee for review of administrative rules listing all of the following rules promulgated or otherwise administered by that agency:

(a) Unauthorized rules, as defined in s. 227.26 (4) (a), together with a description of the legislation that eliminated the agency’s authority to promulgate any such rule.

(b) Rules for which the authority to promulgate has been restricted, together with a description of the legislation that restricted that authority.

(c) Rules that are obsolete or that have been rendered unnecessary, together with a description of why those rules are obsolete or have been rendered unnecessary.

(d) Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction, together with a citation to or the text of any such statute, regulation, or ruling.

(e) Rules that the agency determines are economically burdensome.

(2) The report under sub. (1) shall also include all of the following:

(a) A description of the agency’s actions, if any, to address each rule listed in the report. If the agency has not taken any action to address a rule listed in the report, the agency shall include an explanation for not taking action.

(b) A description of the status of each rule listed in the previous year’s report not otherwise listed.

(c) If the agency determines that there is no rule as described under sub. (1) (a), (b), (c), (d), or (e), a statement of that determination.

(3) If an agency identifies an unauthorized rule under sub. (1) (a) and is not otherwise in the process of promulgating a rule that repeals the unauthorized rule, the agency shall, within 30 days after the agency submits the report, submit a petition to the legislative council staff under s. 227.26 (4) (b) 1. to repeal the unauthorized rule if the agency has not previously done so.

(4) (a) In this subsection, “enactment” means an act or a portion of an act that is required to be published under s. 35.095 (3) (a).

(b) Each agency shall review enactments to determine whether any part of an enactment does anything of the following:

1. Eliminates or restricts the agency’s authority to promulgate any rules promulgated or otherwise administered by that agency.

2. Renders any rules promulgated or otherwise administered by that agency obsolete or unnecessary.

3. Renders, for any reason, any rules promulgated or otherwise administered by that agency not in conformity with or superseded by a state statute, including due to statutory numbering or terminology changes in the enactment.

4. Requires or otherwise necessitates rule making by the agency.

(c) If an agency determines that any consequence specified in par. (b) 1. to 4. results from an enactment or part of an enactment, within 6 months after the applicable effective date for the enactment or part of the enactment, the agency shall do one or more of the following, as applicable, to address the consequence identified by the agency and notify the joint committee for review of administrative rules of its action:

1. Submit a statement of the scope of a proposed rule under s. 227.135 (2), unless the enactment requires otherwise or unless the agency submits a notice to the committee explaining why it is unable to submit the statement of scope within that time period and an estimate of when the agency plans to submit the statement of scope.

2. In the case of an affected rule that the agency determines is an unauthorized rule, as defined in s. 227.26 (4) (a), submit a petition to the legislative council staff under s. 227.26 (4) (b) 1.

3. In the case of a consequence specified under par. (b) 3. that can be addressed by the legislative reference bureau using its authority under s. 13.92 (4) (b), submit a request to the legislative reference bureau to use that authority.

**History:** 2013 a. 108.

227.30 Review of administrative rules or guidelines. (1) The small business regulatory review board may review the rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules and to the agency.

(2) When reviewing the report, the joint committee for review of administrative rules shall consider all of the following:

(a) The continued need for the rule or guideline.

(b) The nature of the complaints and comments received from the public regarding the rule or guideline.

(c) The complexity of the rule or guideline.

(d) The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.

(e) The length of time since the rule or guideline has been evaluated.

(f) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.

(3) The joint committee for review of administrative rules may refer the report regarding the rule or guideline to the presiding
officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. 227.26.


SUBCHAPTER III

ADMINISTRATIVE ACTIONS AND JUDICIAL REVIEW

Cross-reference: See also ch. NR 2, Wis. adm. code.

227.40 Declaratory judgment proceedings. (1) Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule or guidance document shall be an action for declaratory judgment as to the validity of the rule or guidance document brought in the circuit court for the county where the party asserting the invalidity of the rule or guidance document resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The officer or other agency whose rule or guidance document is involved shall be the party defendant. The summons in the action shall be served as provided in s. 801.11 (3) and by delivering a copy to that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency. The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or guidance document or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule or guidance document in question.

(2) The validity of a rule or guidance document may be determined in any of the following judicial proceedings when material therein:
(a) Any civil proceeding by the state or any officer or agency thereof to enforce a statute or to recover thereunder, provided such proceeding is not based upon a matter as to which the opposing party has failed to exercise such right to review so accorded.
(b) Criminal prosecutions.
(c) Proceedings or prosecutions for violations of county or municipal ordinances.
(d) Habeas corpus proceedings relating to criminal prosecution.
(e) Proceedings under s. 66.191, 1981 stats., or s. 40.65 (2), 106.50, 106.52, 303.07 (7) or 303.21 or ss. 227.52 to 227.58 or under ch. 106, 108, 113, 114, 115, 116 or 119, or an action of declaratory judgment for decisions and orders of administrative agencies if the validity of the rule or guidance document involved was duly challenged in the proceeding before the agency in which the order or decision sought to be reviewed was made or entered.
(f) Proceedings under s. 227.114 (6m).

(3) (ag) In any judicial proceeding other than one under sub. (1) or (2), in which the invalidity of a rule or guidance document is material to the cause of action or any defense thereto, the assertion of that invalidity shall be set forth in the pleading of the party maintaining the invalidity of the rule or guidance document in that proceeding. The party asserting the invalidity of the rule or guidance document shall, within 30 days after the service of the pleading in which the party sets forth the invalidity, apply to the court in which the proceedings are had for an order suspending the trial of the proceeding until after a determination of the validity of the rule or guidance document in an action for declaratory judgment under sub. (1).

(ar) Upon the hearing of the application, if the court is satisfied that the validity of the rule or guidance document is material to the issues of the case, an order shall be entered staying the trial of said proceeding until the rendition of a final declaratory judgment in proceedings to be instituted forthwith by the party asserting the invalidity of the rule or guidance document. If the court finds that the asserted invalidity of the rule or guidance document is not material to the case, an order shall be entered denying the application for stay.

(b) Upon the entry of a final order in the declaratory judgment action, it shall be the duty of the party who asserts the invalidity of the rule or guidance document to formally advise the court of the outcome of the declaratory judgment action so brought as ordered by the court. After the final disposition of the declaratory judgment action the court shall be bound by and apply the judgment so entered in the trial of the proceeding in which the invalidity of the rule or guidance document is asserted.

(c) Failure to set forth the invalidity of a rule or guidance document in a pleading or to commence a declaratory judgment proceeding within a reasonable time pursuant to the order of the court or to prosecute the declaratory judgment action without undue delay shall preclude the party from asserting or maintaining that the rule or guidance document is invalid.

(4) (a) In any proceeding pursuant to this section for judicial review of a rule or guidance document, the court shall declare the rule or guidance document invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated or adopted without compliance with statutory rule-making or adoption procedures.

(b) Notwithstanding s. 227.54, in any proceeding under this section for judicial review of a rule, a court may not restrain, enjoin or suspend enforcement of the rule during the course of the proceeding on the basis of the alleged failure of the agency promulgating the rule to comply with s. 227.114.

(c) Notwithstanding par. (a), if a court finds that an agency did not adequately comply with s. 227.114, the court may not declare the rule invalid on that basis but shall order the agency to comply with that section and to propose any amendments to the rule that are necessary within a time specified by the court. Unless the legislature acts under s. 227.26 (2) to suspend the rule, the rule remains in effect while the agency complies with the order.

(5) The joint committee for review of administrative rules shall be served with a copy of the petition in any action under this section and, with the approval of the joint committee on legislative organization, shall be made a party and be entitled to be heard.

(6) Upon entry of a final order in a declaratory judgment action under sub. (1) with respect to a rule, the court shall send an electronic notice to the legislative reference bureau of the court’s determination as to the validity or invalidity of the rule, in a format approved by the legislative reference bureau, and the legislative reference bureau shall publish a notice of that determination in the Wisconsin administrative register under s. 35.93 (2) and insert an annotation of that determination in the Wisconsin administrative code under s. 13.92 (4) (a).


The plaintiff could not bring a declaratory judgment action under sub. (1) since it could contest the validity of a rule in an action brought against the plaintiff under sub. (2). Phillips Plastics Corp. v. DNR, 98 Wis. 2d 524, 297 N.W.2d 69 (Cl. App. 1980).

Establishing pleading requirements for challenging administrative rules. Discussing the record for judicial review and the scope of judicial review. Liberty Home, Inc. v. DEHLR, 136 Wis. 2d 368, 401 N.W.2d 805 (1987).

A failure to comply with this section prevented the trial court from acquiring jurisdiction. Harris v. Rezvitz, 142 Wis. 2d 82, 417 N.W.2d 50 (Cl. App. 1987).

Under sub. (5), the plaintiff must serve the Joint Committee for Review of Administrative Rules within 60 days of filing, pursuant to s. 893.02. Richards v. Young, 150 Wis. 2d 619, 441 N.W.2d 742 (1989).

In a conflict between a statute and a rule, the statute controls. Debcek v. DNR, 172 Wis. 2d 382, 493 N.W.2d 234 (Cl. App. 1992).

A section encompasses policies or other statements, standards, or orders that meet the definition of a rule under s. 227.01 (13) but have not been promulgated as rules under s. 227.10. Heritage Credit Union v. Office of Credit Unions, 2001 WI App 213, 247 Wis. 2d 589, 634 N.W.2d 593, 90–1562.

2021–22 Wisconsin Statutes updated through all Supreme Court and Controlled Substances Board Orders filed before and in effect on January 1, 2023. Published and certified under s. 35.18. Changes effective after January 1, 2023, are designated by NOTES. (Published 1–1–23)
The trial court erred by denying a motion to change venue to Dane County when the motion asserted that a Department of Corrections system was a rule, although it was never promulgated as a rule, and therefore, the “rule” was invalid. Johnson v. Reynolds, 2007 WI App 51, 260 Wis. 2d 758, 659 N.W.2d 418, 02-0911.

Although administrative agencies do not have the power to declare statutes unconstitutional, and the lack of authority has been a basis for not applying the exhaustion of administrative remedies doctrine, if the agency has the authority to provide the relief requested without invalidating the rule, a constitutional basis for a claim does not in itself support an exception to the rule. Metz v. Veterinary Examining Board, 2007 WI App 520, 305 Wis. 2d 798, 741 N.W.2d 244, 06-1613.

A challenge to a policy on the basis that it is actually a rule is to be construed as a challenge to the validity of a rule, and the requirements of this section do apply. Because the challenge falls under this section, the petitioner was required to serve the Joint Committee for Review of Administrative Rules with a copy of her petition. Because she failed to do so, the court lacked competency to review the issue. Mata v. Operator of the Children & Families, 2014 WI App 69, 354 Wis. 2d 486, 849 N.W.2d 908, 13–2013.

Even without the statutory presumption in s. 227.20 (3), the party challenging the validity of the rule has the burden of proving the invalidity of the rules. Wisconsin Realtors Ass’n v. PSC, 2015 WI 63, 363 Wis. 2d 430, 867 N.W.2d 364 14-1407.


227.41 Declaratory rulings. (1) Except as provided in sub. (5), any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. Full opportunity for hearing shall be afforded to interested parties. A declaratory ruling shall bind the agency and all parties to the proceedings on the statement of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions.

(2) Petitions for declaratory rulings shall conform to the following requirements:

(a) The petition shall be in writing and its caption shall include the name of the agency and a reference to the nature of the petition.

(b) The petition shall contain a reference to the rule or statute with respect to which the declaratory ruling is requested, a concise statement of facts describing the situation as to which the declaratory ruling is requested, the reasons for the requested ruling, and the names and addresses of persons other than the petitioner, if any, upon whom it is sought to make the declaratory ruling binding.

(c) The petition shall be signed by one or more persons, with each signer’s address set forth opposite the signer’s name, and shall be verified by at least one of the signers. If a person signs on behalf of a corporation, limited liability company or association, that fact also shall be indicated opposite that person’s name.

(3) Except as provided in sub. (5) (b), the petition shall be filed with the administrative head of the agency or with a member of the agency’s policy board.

(4) Except as provided in sub. (5) (c), within a reasonable time after receipt of a petition pursuant to this section, an agency shall either deny the petition in writing or schedule the matter for hearing. If the agency denies the petition, it shall promptly notify the person who filed the petition of its decision, including a brief statement of the reasons therefor.

(a) The department of revenue shall, on petition by any interested person, or any group or association of interested persons, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforced by it. The department of revenue may issue a declaratory ruling on the facts contained in the petition. If the department of revenue does not deny the petition or issue a declaratory ruling on the facts contained in the petition, the department of revenue shall hold a hearing, as provided under s. 227.44, and shall afford all interested parties an opportunity to participate in the hearing. A declaratory ruling shall bind the department and all parties to the proceedings on the statement of facts contained in the ruling, unless it is altered or set aside by the tax appeals commission or a court or the applicable rule or statute is repealed or materially amended. A ruling, including the denial of the petition, shall be subject to review by the tax appeals commission as provided in ch. 73.

(b) A petition under par. (a) shall conform to the requirements under sub. (2) and be filed with the secretary of revenue.

(c) No later than 30 days after the day that the secretary of revenue receives a petition under this subsection, the department of revenue shall deny the petition in writing, issue a notice that it will issue a declaratory ruling on the facts contained in the petition, in which case the department of revenue shall issue the ruling no later than 90 days after issuing the notice, or schedule the matter for hearing. The department may deny the petition only if the petition fails to comply with the requirements under sub. (2) and par. (b) or if the department determines that the petition is frivolous, a justiciable controversy does not exist, the ruling would not provide guidance on matters of general applicability, or the ruling would substitute for other procedures available to the parties for resolution of the dispute. If the department denies the petition, it shall promptly notify the person who filed the petition of its decision and include with the notice a brief statement of the reasons for denying the petition. The department may not deny a petition for lack of a justiciable controversy solely because the only parties to the matter are the petitioner and the department.

(d) 1. If the department of revenue does not deny the petition, or issue a notice that it will issue a declaratory ruling based on the facts contained in the petition, the department shall hold a hearing and determine, no later than 180 days after the secretary receives the petition, whether the petitioner has presented sufficient facts from which to issue a declaratory ruling. The department of revenue, petitioner, and other parties may take and preserve evidence prior to and during the hearing using the methods allowed to parties under s. 227.45. With the agreement of the parties, the department may rule on the petition based on facts stipulated by the parties.

2. If the department determines that it does not have sufficient facts from which to issue a declaratory ruling, the department may deny the petition. If the department determines that it has sufficient facts from which to issue a declaratory ruling, the department shall issue a ruling on the merits of the petition no later than 180 days after the determination, unless the deadline is extended by written agreement of all parties. The ruling may deny the petition on the grounds that the petition is frivolous, a justiciable controversy does not exist, the ruling would not provide guidance on matters of general applicability, or that the ruling would substitute for other procedures available to the parties for resolution of the dispute.

History: 1985 a. 182 s. 27; Stats. 1985 s. 227.41; 1991 a. 316; 1993 a. 112; 2011 a. 66 s. 163; 2013 a. 165.

When a party files an application for a license with an administrative agency and the latter points to some announced agency policy of general application as a reason for rejecting the application, such announced policy constitutes a rule, the validity of which the applicant is entitled to have tested in a declaratory action. Schoolway Transportation Co. v. Division of Motor Vehicles, 72 Wis. 2d 223, 240 N.W.2d 403 (1976).

Res judicata does not apply to administrative agency proceedings, but this section requires internal consistency within a proceeding by binding the agency within that proceeding to its own declaratory ruling. Board of Regents v. Wisconsin Personnel Commission, 103 Wis. 2d 545, 309 N.W.2d 566 (Ct. App. 1983).

This section does not provide a method for review of a determination already made by the agency, but only a method for requesting an agency to make a determination. Therefore, this section could not be used by prisoners to challenge the Department of Corrections’ dismissal of their complaint under the inmate complaint review system. Aiello v. Litscher, 104 F. Supp. 2d 1068 (2000).

227.42 Right to hearing. (1) In addition to any other right provided by law, any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case.

(a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;

(b) There is no evidence of legislative intent that the interest is not to be protected;
(c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and

(d) There is a dispute of material fact.

(2) Any denial of a request for a hearing shall be in writing, shall state the reasons for denial, and is an order reviewable under this chapter. If the agency does not enter an order disposing of the request for hearing within 20 days from the date of filing, the request shall be deemed denied as of the end of the 20-day period.

(3) This section does not apply to rule-making proceedings or rehearings, or to actions where hearings at the discretion of the agency are expressly authorized by law.

(5) Except as provided under s. 289.27 (1), this section does not apply to any part of the process for approving a feasibility report, plan of operation or license under subch. III of ch. 289 or ch. 291, or any part of the process of negotiation and arbitration under s. 289.33.

(6) This section does not apply to a decision issued or a hearing conducted under s. 291.87.

86.20 (17) 2003 a. 49, s. 1.


A person who satisfies the conditions under sub. (1) is entitled to a hearing whether or not that person has any “other right provided by law.” Milwaukee Metropolitan Sewerage District v. DNR, 126 Wis. 2d 63, 375 N.W.2d 649 (1985).

Sub. (1) does not grant the right to a contested case hearing regarding the need for an executed contract. North Lake Management District v. DNR, 157 Wis. 2d 678, 460 N.W.2d 802 (Ct. App. 1990).

Sub. (1) (b) provides authority for agencies to develop appropriate summary disposition procedures if there are no disputes of material fact. Halebe v. Wisconsin Personnel Commission, 223 Wis. 2d 739, 598 N.W.2d 418 (Ct. App. 1998), 98–1432.

When an ALJ’s decision did not provide notice of the 30-day time period under s. 227.42 (1) this section does not apply. Habitual Offender Board v. DNR, 2001 WI App 228, 218.32 (4) (a) (2). The department of natural resources is required to notify a hearing examiner under sub. (1) (b) after the department of natural resources is notified that a hearing on the matter is required. (am) The department of workforce development shall notify the division of hearings and appeals of every pending hearing to which the department of natural resources is required to assign hearing examiner under sub. (1) (b) after the department of workforce development is notified that a hearing on the matter is required.

(b) The department of transportation shall notify the division of hearings and appeals of every pending hearing to which the department of transportation is required to assign a hearing examiner under sub. (1) (b) after the department of transportation is notified of a hearing on the matter is required.

(c) The department of health services shall notify the division of hearings and appeals of every pending hearing to which the department of natural resources is required to assign a hearing examiner under sub. (1) (b) after the department of health services is notified that a hearing on the matter is required.

(d) The department of children and families shall notify the division of hearings and appeals of every pending hearing to which the department of transportation is required to assign a hearing examiner under sub. (1) (b) (2) after the department of transportation is notified that a hearing on the matter is required.

227.43 Division of hearings and appeals. (1) The administrator of the division of hearings and appeals in the department of administration shall:

(a) Serve as the appointing authority of all hearing examiners under s. 230.06.

(b) Assign a hearing examiner to preside over any hearing of a contested case which is required to be conducted by the department of natural resources and which is not conducted by the secretary of natural resources.

(bd) Assign a hearing examiner to preside over any hearing of a contested case which is required to be conducted by the department of children and families under s. 118.134 (1).

(bg) Assign a hearing examiner to preside over any hearing or review under ss. 84.30 (18), 84.305, 84.31 (6) (a), 85.013 (1), 86.15 (4), 86.16 (5), 86.179 (5), 86.195 (9) (b), 86.196 (5) (1), 101.935 (2) (b), 101.951 (7) (a) and (b), 114.134 (4) (b), 114.135 (9), 114.20 (19), 175.05 (4) (b), 194.145 (1), 194.46, 201.014 (7) (d) and (12) (b), 218.0116 (2), (4), (7) (a), (8) and (a) and (10), 218.0131 (3), 218.11 (7) (a) and (b), 218.22 (4) (a) and (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a) and (b), 341.09 (2m) (d), 342.26, 343.69, 348.105 (5) (h), and 348.25 (9).

(bm) Assign a hearing examiner to preside over any hearing of a worker’s compensation claim or other dispute under ch. 102.

(bn) Assign a hearing examiner to preside over any hearing of a contested case which is required to be conducted by the department of transportation and which is not conducted by the secretary of transportation.

(bu) Assign a hearing examiner to preside over any hearing of a contested case that is required to be conducted by the department of health services and that is not conducted by the secretary of health services.

(by) Assign a hearing examiner to preside over any hearing of a contested case that is required to be conducted by the department of children and families under ch. 48 or subch. III of ch. 49 and that is not conducted by the secretary of children and families.

(c) Supervise hearing examiners in the conduct of the hearing and the rendering of a decision, if a decision is required.

(d) Promulgate rules relating to the exercise of the administrator’s and the division’s powers and duties under this section.

(1g) The administrator of the division of hearings and appeals shall establish a system for assigning hearing examiners to preside over any hearing under this section. The system shall ensure, to the extent practicable, that hearing examiners are assigned to different subjects on a rotating basis. The system may include the establishment of pools of examiners responsible for certain subjects.

(1m) Upon the request of an agency that is not prohibited from contracting with a 3rd party for contested case hearing services, the administrator of the division of hearings and appeals in the department of administration may contract with the agency to provide the contested case hearing services and may assign a hearing examiner to preside over any hearing performed under such a contract.

(2a) (a) The department of natural resources shall notify the division of hearings and appeals of every pending hearing to which the administrator of the division is required to assign a hearing examiner under sub. (1) (b) after the department of natural resources is notified that a hearing on the matter is required.

(b) The department of workforce development shall notify the division of hearings and appeals of every pending hearing to which the administrator of the division is required to assign a hearing examiner under sub. (1) (b) (1) after the department of workforce development is notified that a hearing on the matter is required.

(c) The department of health services shall notify the division of hearings and appeals of every pending hearing to which the administrator of the division is required to assign a hearing examiner under sub. (1) (b) (2) after the department of health services is notified that a hearing on the matter is required.

(d) The department of children and families shall notify the division of hearings and appeals of every pending hearing to which the administrator of the division is required to assign a hearing examiner under sub. (1) (b) (3) after the department of transportation is notified that a hearing on the matter is required.

(bm) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of natural resources by a hearing examiner under this section. The fee shall cover the total cost of the services.

(bn) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of workforce development by a hearing examiner under this section. The fee shall cover the total cost of the services.

(br) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of children and families under ch. 48 or subch. III of ch. 49 and that is not conducted by the secretary of children and families.
department of public instruction by a hearing examiner under this section. The fee shall cover the total cost of the services.

(c) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of health services by a hearing examiner under this section in a manner consistent with a federally approved allocation methodology. The fees shall cover the total cost of the services.

(d) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of children and families by a hearing examiner under this section in a manner consistent with a federally approved allocation methodology. The fees shall cover the total cost of the services.

(e) The administrator of the division of hearings and appeals may set the fees to be charged for any services contracted for under sub. (1m).

(4) (a) The department of natural resources shall pay all costs of the services of a hearing examiner assigned to the department under sub. (1) (b), according to the fees set under sub. (3) (a).

(b) The department of transportation shall pay all costs of the services of a hearing examiner assigned under sub. (1) (bg) or assigned to the department under sub. (1) (br), according to the fees set under sub. (3) (b).

(bm) The department of workforce development shall pay all costs of the services of a hearing examiner assigned under sub. (1) (bn), according to the fees set under sub. (3) (bm).

(br) The department of public instruction shall pay all costs of the services of a hearing examiner, including support services, assigned under sub. (1) (bd), according to the fees set under sub. (3) (br).

(c) The department of health services shall pay all costs of the services of a hearing examiner, including support services, assigned under sub. (1) (bu), according to the fees set under sub. (3) (c).

(d) The department of children and families shall pay all costs of the services of a hearing examiner, including support services, assigned under sub. (1) (by), according to the fees set under sub. (3) (d).

(e) The agency contracting out for contested case hearing services under sub. (1m) shall pay all costs of the services of a hearing examiner, including support services, assigned under sub. (1m), according to the fees set under sub. (3) (e).

History:

Cross-reference: See also HA, Wis. adm. code.

227.44 Contested cases; notice; parties; hearing; records.

(1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Except in the case of an emergency, reasonable notice shall consist of mailing notice to known interested parties at least 10 days prior to the hearing.

(2) The notice shall include:

(a) A statement of the time, place, and nature of the hearing, including whether the case is a class 1, 2 or 3 proceeding.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held, and, in the case of a class 2 proceeding, a reference to the particular statutes and rules involved.

(c) A short and plain statement of the matters asserted. If the matters cannot be stated with specificity at the time the notice is served, the notice may be limited to a statement of the issues involved.

(d) If the subject of the hearing is a decision of the department of natural resources or the department of transportation, the name and title of the person who will conduct the hearing.

(2m) Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person’s request, be admitted as a party.

(3) Opportunity shall be afforded all parties to present evidence and to rebut or offer countervailing evidence.

(4) (a) In any action to be set for hearing, the agency or hearing examiner may direct the parties to appear before it for a conference to consider:

1. The clarification of issues.
2. The necessity or desirability of amendments to the pleadings.
3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.
4. The limitation of the number of witnesses.
5. Such other matters as may aid in the disposition of the action.

(b) The agency or hearing examiner presiding at a conference under this subsection shall make a memorandum for the record which summarizes the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of the parties. Such memorandum shall control the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. In any proceeding in which a hearing is required by law, if there is no such hearing, the agency or hearing examiner shall record in writing the reason why no such hearing was held, and shall make copies available to interested persons.

(6) The record in a contested case shall include:

(a) All applications, pleadings, motions, intermediate rulings and exhibits and appendices thereto.

(b) Evidence received or considered, stipulations and admissions.

(c) A statement of matters officially noticed.

(d) Questions and offers of proof, objections, and rulings thereon.

(e) Any proposed findings or decisions and exceptions.

(f) Any decision, opinion or report by the agency or hearing examiner.

(7) All staff memoranda and staff data, not admitted as evidence in a contested case, which are submitted to the hearing examiner or officials of the agency in connection with their consideration of the case, are not part of the official record but shall be made a part of the file and shall be served on all parties. Any party may, within 10 days of service of such memorandum or data, submit comments thereon to the examiner or officials and such comments shall also be served on all parties and placed in the file.

(8) A stenographic, electronic or other record of oral proceedings shall be made in any class 2 or class 3 proceeding and in any class 1 proceeding when requested by a party. Each agency may establish rules relating to the transcription of the record into a written transcript and the providing of free copies of the written transcript. Rules may require a purpose for transcription which is deemed by the agency to be reasonable, such as appeal, and if this test is met to the satisfaction of the agency, the record shall be transcribed at the agency’s expense, except that in preparing the record for judicial review of a decision that was made in an appeal under s. 227.47 (2) or in an arbitration proceeding under s. 292.63 (6s) or 230.44 (4) (bm) the record shall be transcribed at the expense of the party petitioning for judicial review. Rules may require a showing of impecuniousness or financial need as a basis for providing a free copy of the transcript, otherwise a reasonable compensatory fee may be charged. If any agency does not pro-
mulgate such rules, then it must transcribe the record and provide free copies of written transcripts upon request. In any event, an agency shall not refuse to provide a written transcript if the person making the request pays a reasonable compensatory fee for the transcription and for the copy. This subsection does not apply where a transcript fee is specifically provided by law.

(9) The factual basis of the decision shall be solely the evidence and matters officially noticed.


Cross-reference: See also ch. HA 1, Wis. adm. code.

It was not an abuse of discretion for a hearing examiner to not use an interpreter. Kropiwka v. DILHR, 87 Wis. 2d 709, 275 N.W.2d 881 (1979).

Procedural due process is violated when the scope of the hearing exceeds that stated in a notice. The parties have a right to be apprised of the issues to insure the right to be heard. Bebragin v. Board of Nursing, 159 Wis. 2d 402, 464 N.W.2d 111 (Cl. App. 1990).

A reprimand may be imposed only after affording an opportunity for a hearing as provided for in a class two contested case. 67 Atty. Gen. 188.


227.445 Substitution of hearing examiner assigned by division of hearings and appeals. (1) A person who has applied for a contract, permit, or other approval from the department of natural resources or the department of agriculture, trade and consumer protection that is the subject of a contested case hearing for which the division of hearings and appeals has assigned a hearing examiner may file a written request with the administrator of the division of hearings and appeals in the department of administration, not later than 10 days after receipt of the notice under s. 227.44 (1), for a substitution of a new hearing examiner.

(2) No person may file more than one request under sub. (1) for a single hearing.

(3) Upon receipt of a request under sub. (1), the administrator of the division of hearings and appeals shall determine if the request was made timely and in proper form. If the request was made timely and in proper form, the administrator of the division of hearings and appeals shall transfer the matter to another hearing examiner and shall transmit to the new hearing examiner all materials relating to the matter.

History: 2015 a. 391.

227.45 Evidence and official notice. In contested cases:

(1) Except as provided in s. 901.05, an agency or hearing examiner shall not be bound by common law or statutory rules of evidence. The agency or hearing examiner shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. The agency or hearing examiner shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(2) All evidence, including records and documents in the possession of the agency or hearing examiner of which the agency or hearing examiner desires to avail himself or herself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or countervarying evidence.

(3) An agency or hearing examiner may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.

(4) An agency or hearing examiner shall take official notice of all rules which have been published in the Wisconsin administrative code or register.

(5) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(6) A party may conduct cross-examinations reasonably required for a full and true disclosure of the facts.

(6m) A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding.

(7) In any class 2 proceeding, each party shall have the right, prior to the date set for hearing, to take and preserve evidence as provided in ch. 804. Upon motion by a party or by the person from whom discovery is sought in any class 2 proceeding, and for good cause shown, the hearing examiner may make any order in accordance with s. 804.01 which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. In any class 1 or class 3 proceeding, an agency may by rule permit the taking and preservation of evidence, but in every such proceeding the taking and preservation of evidence shall be permitted with respect to a witness:

(a) Who is beyond reach of the subpoena of the agency or hearing examiner;

(b) Who is about to go out of the state, not intending to return in time for the hearing;

(c) Who is so sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing; or

(d) Who is a member of the legislature, if any committee of the same or the house of which the witness is a member is in session, provided the witness waives his or her privilege.

History: 1975 c. 94 ss. 3; 1975 c. 414 ss. 9, 10, 12; Stats. 1975 s. 227.08; 1977 c. 216; 1977 c. 447; 1979 c. 162; 1985 a. 182 s. 33; Stats. 1985 s. 227.45; 1989 a. 139; 1991 a. 269; 2007 a. 1.

If there is evidence that a rule promulgated by an administrative agency is founded on a particular source, it is reasonable to resort to the source to interpret the rule, but it is the course of reliance on the source in the uniform administrative interpretation of the rule that gives the interpretation validity and not the source itself. Employers Mutual Liability Insurance Co. v. DILHR, 62 Wis. 2d 327, 214 N.W.2d 587 (1974).

Admission of evidence by an administrative agency is a matter of discretion. Stein v. Psychology Examining Board, 2003 WI App 147, 265 Wis. 2d 781, 668 N.W.2d 112, 02-2726.

This section requires very relaxed rules of evidence. A similar relaxation of the statutory rules of evidence is required as to documents. Sub. (5) does not require certified copies of medical records. Rutherford v. LIRC: 2008 WI App 66, 359 Wis. 2d 498, 752 N.W.2d 897, 06-3110.

227.46 Hearing examiners; examination of evidence by agency. (1) Except as provided under s. 227.43 (1), an agency may designate an official of the agency or an employee on its staff or borrowed from another agency under s. 20.901 or 230.047 as a hearing examiner to preside over any contested case. Subject to rules of the agency, examiners presiding at hearings may:

(a) Administer oaths and affirmations.

(b) Issue subpoenas authorized by law and enforce subpoenas under s. 885.12.

(c) Rule on offers of proof and receive relevant evidence.

(d) Take depositions or have depositions taken when permitted by law.

(e) Regulate the course of the hearing.

(f) Hold conferences for the settlement or simplification of the issues by consent of the parties.

(g) Dispose of procedural requests or similar matters.

(h) Make or recommend findings of fact, conclusions of law and decisions to the extent permitted by law.

(i) Take other action authorized by agency rule consistent with this chapter.

(2) Except as provided in sub. (2m) and s. 227.47 (2), in any contested case which is a class 2 or class 3 proceeding, where a majority of the officials of the agency who are to render the final
decision are not present for the hearing, the hearing examiner presiding at the hearing shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case. The proposed decision shall be a part of the record and shall be served by the agency on all parties. Each party adversely affected by the proposed decision shall be given an opportunity to file objections to the proposed decision, briefly stating the reasons and authorities for each objection, and to argue with respect to them before the officials who are to participate in the decision. The agency may direct whether such argument shall be written or oral. If the agency’s decision varies in any respect from the decision of the hearing examiner, the agency’s decision shall include an explanation of the basis for each variance.

(2m) In any hearing or review assigned to a hearing examiner under s. 227.43 (1) (bg), the hearing examiner presiding at the hearing shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case. The proposed decision shall be a part of the record and shall be served by the division of hearings and appeals in the department of administration on all parties. Each party adversely affected by the proposed decision shall be given an opportunity to file objections to the proposed decision within 15 days, briefly stating the reasons and authorities for each objection, and to argue with respect to them before the administrator of the division of hearings and appeals. The administrator of the division of hearings and appeals may direct whether such argument shall be written or oral. If the decision of the administrator of the division of hearings and appeals varies in any respect from the decision of the hearing examiner, the decision of the administrator of the division of hearings and appeals shall include an explanation of the basis for each variance. The decision of the administrator of the division of hearings and appeals is a final decision of the agency subject to judicial review under s. 227.52. The department of transportation may petition for judicial review.

(3) With respect to contested cases except a hearing or review assigned to a hearing examiner under s. 227.43 (1) (bg), an agency may by rule or in a particular case may order:

(a) Direct that the hearing examiner’s decision be the final decision of the agency;
(b) Except as provided in sub. (2) or (4), direct that the record be certified to it without an intervening proposed decision; or
(c) Direct that the procedure in sub. (2) be followed, except that in a class 1 proceeding both written and oral argument may be limited.

(4) Notwithstanding any other provision of this section, in any contested case if a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposed decision is served upon the parties and an opportunity is afforded to each party adversely affected to file objections and present briefs or oral argument to the officials who are to render the decision. Except as provided in s. 227.47 (2), the proposed decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the hearing examiner or a person who has read the record. The parties by written stipulation may waive compliance with this subsection.

(5) In any class 2 proceeding, if the decision to file a complaint or otherwise commence a proceeding to impose a sanction or penalty is made by one or more of the officials of the agency, the hearing examiner shall not be an official of the agency and the procedure described in sub. (2) shall be followed.

(6) The functions of persons presiding at a hearing or participating in proposed or final decisions shall be performed in an impartial manner. A hearing examiner or agency official may at any time disqualify himself or herself. In class 2 and 3 proceedings, on the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a hearing examiner or official, the agency or hearing examiner shall determine the matter as part of the record and decision in the case.

(7) (a) Notwithstanding any other provision of law, the hearing examiner presiding at a hearing may order such protective measures as are necessary to protect the trade secrets of parties to the hearing.

(b) In this subsection, “trade secret” has the meaning specified in s. 134.90 (1) (c).

(8) If the hearing examiner assigned under s. 227.43 (1) (b) renders the final decision in a contested case and the decision is subject to judicial review under s. 227.52, the department of natural resources may petition for judicial review. If the hearing examiner assigned under s. 227.43 (1) (br) renders the final decision in a contested case and the decision is subject to judicial review under s. 227.52, the department of transportation may petition for judicial review.
within 90 days after receipt of the notice. The court shall stay the proceedings pending receipt of the findings and conclusions.

History: 1975 c. 414 s. 15; 1977 c. 418; 1979 c. 208; 1985 a. 182 ss. 33, 57; Stats. 1985 s. 227.47; 1993 a. 16, 491; 2003 a. 33 ss. 2376, 2377, 9160; 2015 a. 55.

Absent a controlling legislative to the contrary, determinations by administrative agencies acting in a judicial capacity are generally given preclusive effect in subsequent court actions between the same parties. Certain conditions must, however, be met: (1) the administrative proceeding must have been properly before the agency; (2) the administrative must have been acting in a judicial capacity; (3) the issues for which preclusion is sought must have been actually determined by the administrative agency; and (4) the parties must have had an adequate opportunity to litigate those issues before the administrative agency. Hlavinka v. Blunt, Ellis & Loewi, Inc., 174 Wis.2d 381, 497 N.W.2d 756 (Ct. App. 1993).

227.48 Service of decision. (1) Except as provided in s. 196.40, every decision when made, signed and filed, shall be served forthwith by personal delivery or by mailing or, with the consent of the parties, by electronically mailing a copy to each party to the proceedings or to the party’s attorney of record.

(2) Each decision shall include notice of any right of the parties to petition for rehearing and administrative or judicial review of adverse decisions, the time allowed for filing each petition and identification of the party to be named as respondent. No time period specified under s. 227.49(1) for filing a petition for rehearing, under s. 227.53(1) (a) for a filing a petition for judicial review or under any other section permitting administrative review of an agency decision begins to run until the agency has complied with this subsection.


Service of a decision is complete on the date of its mailing regardless of its receipt by the addressee. In In re Proposed Incorporation of Pewaukee, 72 Wis.2d 593, 241 N.W.2d 603 (1976).

Formal notice under sub. (2) of the right to judicial review need be given only with a decision arising out of a contested case proceeding. Collins v. Polanco, 231 Wis. 2d 420, 605 N.W.2d 260 (Ct. App. 1999), 99-0255.

227.483 Costs upon frivolous claims. (1) If a hearing examiner or the tax appeals commission finds, at any time during the proceeding, that an administrative hearing commenced or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(2) If the costs and fees awarded under sub. (1) are awarded against the party other than a public agency, those costs may be assessed fully against either the party or the attorney representing the party or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(3) To find a petition for a hearing or a claim or defense to be frivolous under sub. (1), the hearing examiner must find at least one of the following:

(a) That the petition, claim, or defense was commenced, used, or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) That the party or the party’s attorney knew, or should have known, that the petition, claim, or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of the decision.

(c) If the proceeding relates to mining for ferrous minerals, as defined in s. 295.41 (18), that the petition, claim, or defense was commenced, used, or continued primarily for the purpose of causing delay to an activity authorized under a license that is the subject of the hearing.


227.485 Costs to certain prevailing parties. (1) The legislature intends that hearing examiners and courts in this state, when interpreting this section, be guided by federal case law, as of November 20, 1985, interpreting substantially similar provisions under the federal equal access to justice act, 5 USC 504.

(2) In this section:

(a) “Hearing examiner” means the agency or hearing examiner conducting the hearing.

(b) “Nonprofit corporation” has the meaning designated in s. 181.0103 (7).

(c) “Small business” means a business entity, including its affiliates, which is independently owned and operated, and which employs 25 or fewer full-time employees or which has gross annual sales of less than $5,000,000.

(d) “Small nonprofit corporation” means a nonprofit corporation which employs fewer than 25 full-time employees.

(e) “State agency” does not include the citizens utility board.

(f) “Substantially justified” means having a reasonable basis in law and fact.

(3) In any contested case in which an individual, a small nonprofit corporation or a small business is the prevailing party and submits a motion for costs under this section, the hearing examiner shall award the prevailing party the costs incurred in connection with the contested case, unless the hearing examiner finds that the state agency which is the losing party was substantially justified in taking its position or that special circumstances exist that would make the award unjust.

(4) In determining the prevailing party in cases in which more than one issue is contested, the examiner shall take into account the relative importance of each issue. The examiner shall provide for partial awards of costs under this section based on determinations made under this subsection.

(5) If the hearing examiner awards costs under sub. (3), he or she shall determine the costs under this subsection, except as modified under sub. (4). The decision on the merits of the case shall be placed in a proposed decision and submitted under ss. 227.47 and 227.48. The prevailing party shall submit, within 30 days after service of the proposed decision, to the hearing examiner and to the state agency which is the losing party an itemized application for fees and other expenses, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The state agency which is the losing party has 15 working days from the date of receipt of the application to respond in writing to the hearing examiner. The hearing examiner shall determine the amount of costs using the criteria specified in s. 814.245 (5) and include an order for payment of costs in the final decision.

(6) A final decision under sub. (5) is subject to judicial review under s. 227.52. If the individual, small nonprofit corporation or small business is the prevailing party in the proceeding for judicial review, the court shall make the findings applicable under s. 814.245 and, if appropriate, award costs related to that proceeding under s. 814.245, regardless of who petitions for judicial review. In addition, the court on review may modify the order for payment of costs in the final decision under sub. (5).

(7) An individual is not eligible to recover costs under this section if the person’s properly reported federal adjusted gross income was $150,000 or more in each of the 3 calendar years or corresponding fiscal years immediately prior to the commencement of the case. This subsection applies whether the person files the return individually or in combination with a spouse.

(8) If a state agency is ordered to pay costs under this section, the costs shall be paid from the applicable appropriation under s. 20.865 (1) (a), (g) or (q).

(9) Each state agency that is ordered to pay costs under this section or that recovers costs under sub. (10) shall submit a report annually, as soon as is practicable after June 30, to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), the number, nature and amounts of the claims paid, the claims involved in the contested case in which the costs were incurred, the costs recovered under sub. (10) and any other relevant information to aid the legislature in evaluating the effect of this section.
(10) If the examiner finds that the motion under sub. (3) is frivolous, the examiner may award the state agency all reasonable costs in responding to the motion. In order to find a motion to be frivolous, the examiner must find one or more of the following:

(a) The motion was submitted in bad faith, solely for purposes of harassing or maliciously injuring the state agency.

(b) The party or the party’s attorney knew, or should have known, that the motion was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

That the state loses a case does not justify the automatic imposition of fees and costs. An award depends upon whether the state’s position had arguable merit. Behneke v. DNR, 146 Wis. 2d 178, 430 N.W.2d 600 (Ct. App. 1988).

This section requires a party who prevails in an agency’s proposed decision to seek costs within 30 days of the proposed decision, thereby permitting the hearing examiner to make appropriate findings on entitlement to, and amount of costs to be awarded. Any disputes regarding that decision can be then be resolved, along with the merits of the underlying matter, in one final decision. Gordon v. State Medical Examination Board, 235 Wis. 2d 552, 591 N.W.2d 481 (Ct. App. 1999), 98−2144.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30−day period, the petition shall be deemed to have been denied as of the expiration of the 30−day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly as may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency’s judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful, unreasonable, the agency may reverse, change, modify or suspend the order accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 139; 1979 c. 208; 1985 a. 182 s. 331; Stats. 1985 s. 227.49.

This subsection does not require service of a petition for rehearing within 20 days of service of the order, only filing. DOR v. Hogan, 198 Wis. 2d 792, 542 N.W.2d 148 (Ct. App. 1995), 95−0438.

Filing of a petition for rehearing under sub. (1) is not accomplished upon its mailing. A petition is filed when it is physically delivered to and received by the relevant authority. Currier v. DOR, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520, 05−0292.

In this case, where the analysis set forth in an order of the Public Service Commission (PSC) denying a petition for rehearing under this section was analogous to the PSC's decision in DOR v. Olson, 227−585, 1987 a. 186, the decision denying the rehearing made the definition of an administrative decision for purposes of being subject to judicial review under s. 227.52. The substantial evidence standard under s. 227.57 (6) there-fore applied with respect to review of the PSC’s findings of fact underlying the PSC’s decision on whether to grant rehearing. Town of Holland v. PSC, 2018 WI App 38, 382 Wis. 2d 799, 913 N.W.2d 914, 17−1129.

227.50 Ex parte communications in contested cases. (1) (a) 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:

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. 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.

(am) Paragraph (a) does not apply to any of the following:

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

2. An ex parte communication by an official or employee of an agency which is conducting a class 1 proceeding.

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, the chairperson, or a commissioner.

(2) A hearing examiner or other agency official or employee involved in the decision−making process who receives an ex parte communication in violation of sub. (1) shall place on the record the pending matter the communication, if written, a memorandum stating the substance of the communication, if oral, all written responses to the communication and a memorandum stating the substance of all oral responses made, and also shall advise all parties that the material has been placed on the record; however, any writing or memorandum which would not be admissible into the record if presented at the hearing shall not be placed in the record, but notice of the substance or nature of the communication shall be given to all parties. Any party desiring to rebut the communication shall be allowed to do so, if the party requests the opportunity for rebuttal within 10 days after notice of the communication. The hearing examiner or agency official or employee may, if deeming it necessary to eliminate the effect of an ex parte communication received, withdraw from the proceeding, in which case a successor shall be assigned.

History: 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 418; 1985 a. 182 s. 331; Stats. 1985 s. 227.50; 2013 a. 28; 2015 a. 55.

The failure to notify the parties of the receipt of an ex parte communication was harmless error. Seebach v. PSC, 97 Wis. 2d 712, 295 N.W.2d 753 (Ct. App. 1980).

227.51 Licenses. (1) When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a license has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally acted upon by the agency, and, if the application is denied or the terms of the new license are limited, until the last day for seeking review of the agency decision or a later date fixed by order of the reviewing court.

(3) (a) Except as otherwise specifically provided by law, no revocation, suspension, annulment, or withdrawal of any license is lawful unless the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license.

Notes

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(b) If an agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the agency may order the summary suspension of a license pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined.

(c) If an agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the agency may order the summary limitation of a license pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined. This paragraph applies only to an agency described in s. 440.05 (1).

History: 1975 c. 414; 1985 a. 182 s. 33e; Stats. 1985 s. 227.51; 2017 a. 328.

Cross-reference: See also chs. SPS 1 and 2, Wis. adm. code.

An applicant denied a racetrack license had a right to a contested case hearing. Metropolitan Greyhound Management Corp. v. Wisconsin Racing Board, 157 Wis. 2d 678, 460 N.W.2d 802 (Ct. App. 1990).

A change to the statutes or rules that might negatively affect a permit holder does not itself constitute a revocation for the purpose of this section. LeClair v. Natural Resources Board, 168 Wis. 2d 227, 483 N.W.2d 278 (1992).

Discussing summary suspension of occupational licenses. 76 Atty. Gen. 110.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative, which are subject to review as provided in this chapter, except as otherwise provided by law and except for the following:

(1) Decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125.

(2) Decisions of the department of employee trust funds.

(3) Those decisions of the division of banking that are subject to review, prior to any judicial review, by the banking institutions review board, and decisions of the division of banking relating to savings banks or savings and loan associations, but no other institutions subject to the jurisdiction of the division of banking.

(4) Decisions of the office of credit unions.

(5) Decisions of the chairperson of the elections commission or the chairperson’s designee.

(6) Those decisions of the department of workforce development which are subject to review, prior to any judicial review, by the labor and industry review commission.


Cross-reference: See s. 30.03 (11) for review under subsection 1 of chapter 30.

An appeals commission refusing to dismiss proceedings for lack of jurisdiction was not appealable because the merits of the case were still pending. Pasch v. DOR, 58 Wis. 2d 346, 206 N.W.2d 157 (1973).

The right to appeal from an administrative agency’s determination is statutory and does not exist where expressly given and cannot be extended to cases not within the statute. Pasch v. DOR, 58 Wis. 2d 346, 206 N.W.2d 157 (1973).

The requirements of ss. 227.15 and 227.16 (1) now section and s. 227.53 (1) for appeal of the administrative decision do not create separate and independent criteria, but both sections essentially require that to be a person aggrieved for standing purposes, one must have an interest recognized by law in the subject matter that is injuriously affected by the decision. Wisconsin’s Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1, 230 N.W.2d 243 (1975).

An order of the Employment Relations Commission directing an election and filing a petition under this subdivision commences on the day after the service of the decision of the agency upon all parties remaining undetermined and the cause is retained for further action. Sierra Club v. DNR, 2007 WI App 181, 304 Wis. 2d 614, 716 N.W.2d 918, 06–2653.

In this case, when the analysis set forth in an order of the Public Service Commission (PSC) denying a petition for rehearing under s. 227.49 was analogous to the PSC’s order in the underlying matter, the decision denying the rehearing met the definition of an administrative decision for purposes of being subject to judicial review under this section. The substantial evidence standard under s. 227.57 (6) is applied with respect to denial of the PSC’s findings of fact underlying the PSC’s decision on whether to grant rehearing. Town of Holland v. PSC, 2018 WI App 38, 382 Wis. 2d 799, 913 N.W.2d 914, 17–1129.

Environmental impact statements (EIS) by its plain terms, is not a final decision; it analyzes the effects of, and alternatives to, a proposal without dictating any course of action or establishing the rights of any interested party. Accordingly, a party must wait for some final agency decision it is aggrieved by, such as the issuance or denial of a permit, at which point it may raise its challenges to the EIS in a petition for judicial review of the agency decision that the EIS analyzes. Friends of the Black River Forest v. DNR, 2015 WI App 54, 364 Wis. 2d 342, 19–2434.


227.53 Parties and proceedings for review. (1) Except as otherwise specified provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the following procedural requirements:

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking institutions review board, or the credit union review board, the petition for review shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1. to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review of contested cases shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review under this subdivision shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. If a party desires judicial review within the 30–day period following a petition under this subdivision commences on the day after personal service or mailing of the decision by the agency.

2m. Petitions for review of cases other than contested cases shall be served and filed within 30 days after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be held in the circuit court for the county where the respondent resides and except as provided in ss. 73.0301 (2) (b) 2. 77.59 (6) (b), 108.227 (6), 182.70 (6), and 182.71 (5) (g). If the petitioner is a nonresident, the proceedings shall be held in the county where the prop-
The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.
2. The credit union review board, the office of credit unions.
3. The banking institutions review board, the division of banking.
4. The tax appeals commission, the department of revenue.
5. The banking institutions review board, the division of banking.
6. The credit union review board, the office of credit unions.
7. The tax appeals commission, the department of revenue.
8. The banking institutions review board, the division of banking.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party’s attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party’s attorney of record until the petition fails to serve a person listed as a party for purposes of review in the agency’s decision under s. 227.47 or the person’s attorney of record.

(d) Except in the case of the tax appeals commission, the banking institutions review board, and the credit union review board, the agency and all parties to the proceeding before it shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person’s position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served upon the named respondents and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need not be made upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceedings, as parties thereto, by order of the reviewing court.

The circuit court had no jurisdiction of an appeal from the Tax Appeals Commission when the petition for review was served only on the Department of Revenue and not on the commissioner specified in the allowed 30 days. Bracht v. DOR, 48 Wis. 2d 184, 179 N.W.2d 921 (1970).

Service on the Department of Industry, Labor and Human Relations of a notice of appeal by ordinary mail, when received in time and not promptly objected to was good service. Service on a staff member of the department was sufficient to provide standing to challenge the commission’s failure to consider conservation alternatives to the proposed priority system. Wisconsin’s Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1, 230 N.W.2d 243 (1975).

A county had standing to challenge the validity of a rule not adopted in conformity with former sub. 227.02 to 227.025, 1983 stats. Dane County v. DHSS, 79 Wis. 2d 323, 255 N.W.2d 539 (1977).

“Parties” under former sub. (1), (c), 1975 stats., are those persons affirmatively demonstrating active interest in the proceedings. It was incumbent upon the Public Service Commission to identify those parties. Wisconsin’s Environmental Decade, Inc. v. PSC, 64 Wis. 2d 304, 267 N.W.2d 609 (1978).Ch. 801 is inapplicable to judicial review proceedings. Omenick v. DNR, 94 Wis. 2d 309, 287 N.W.2d 841 (Ct. App. 1979).

“Parties” under former sub. (1), (d), 1975 stats., are those persons affirmatively demonstrating active interest in the proceeding. The petition initiates a special proceeding rather than an action. Richland County v. DHSS, 144 Wis. 2d 499, 424 N.W.2d 685 (1988).

Although it may not be able to sue the state, a county has standing to bring a petition for review because the petition initiates a special proceeding rather than an action. Gimenmez v. Medical Examining Board, 229 Wis. 2d 304, 620 N.W.2d 28 (Ct. App. 1999). When a party to an agency proceeding files a notice of appeal under sub. (1), a (a) 1. Weisensel v. DHSS, 179 Wis. 2d 637, 508 N.W.2d 33 (Ct. App. 1993).

The time provisions under sub. (2) are mandatory. Wagner v. Medical Examining Board, 181 Wis. 2d 633, 511 N.W.2d 874 (1994).

In the case of a petition for review under this chapter, the petition commences the action rather than continuing it. As an attorney is not authorized to accept the service of process commencing an action, service on the attorney general rather than the agency in charge of the original adverse agency decision is required to commence the action for review. Gimenmez v. Medical Examining Board, 229 Wis. 2d 304, 620 N.W.2d 28 (Ct. App. 1999).

Because parties to an agency proceeding have the right to participate in judicial review proceedings under the first sentence in sub. (1), (d), those parties are not part of the “other interested persons” in the second sentence and therefore are not entitled to petition for permisive intervention. Under sub. (1), (d), the party seeking a permit to intervene must file a petition for permisive intervention 30 days before the hearing on the intervention petition. Citizens’ Utility Board v. PSC, 2003 WI App 206, 267 Wis. 2d 414, 671 N.W.2d 11, 02−1834.

Sub. (a) 1. General matter, sub. (1) (a) 1. (a) provides that the original adverse agency decision shall be final if not reviewed within 30 days from the date of service of the petition. A failure to strictly comply with the caption requirements of sub. (1) does not divest the court of jurisdiction. Wisconsin’s Environmental Decade, Inc. v. PSC, 229 Wis. 2d 304, 267 N.W.2d 609 (1978).

Although sub. (1) did not clearly prescribe which governmental entity must be named and served as respondent in this case, the Division of Hearings and Appeals’ notice of decision satisfied the requirement in sub. (1), (a) 2. By serving the petitioner’s failure to follow the notice unreasonable and dismissal of the petition for judicial review proper. All Star Rent A Car, Inc. v. DOT, 2006 WI 85, 292 Wis. 2d 615, 709 N.W.2d 906, 03−2668.

Sub. (1) (b) does not authorize a circuit court to dismiss a petition for judicial review because it does not show the nature of the petitioner’s interest or state a ground for dismissal.

The court sua sponte. Jackson v. JIBC, 2006 WI App 97, 293 Wis. 2d 332, 715 N.W.2d 52 (Ct. App. 2006).

Sub. (1) (c) 1. (a) 1. is triggered only by s. 227.48 service of the decision upon the parties, which occurs on the date the decision is mailed to the parties, not the various dates of receipt. Once the time limitation is triggered, strict compliance is required. Wisconsin Power & Light Co. v. PSC, 2006 WI App 221, 296 Wis. 2d 705, 725 N.W.2d 423, 05−3092.

227.54 Stay of proceedings. The institution of the proceeding for review shall not stay the service of the agency decision. The reviewing court may order a stay upon such terms as it deems

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proper, except as otherwise provided in ss. 196.43, 253.06, and 448.02 (9).

History: 1983 a. 27; 1985 a. 182 s. 39; Stats. 1985 s. 227.54; 1987 a. 5; 1997 a. 27, 311; 2007 a. 20, 196; 2009 a. 28.

227.55 Record on review. (1) Within 30 days after service of the petition for review upon the agency, or within such further time as the court allows, the agency in possession of the record for the decision under review shall transmit to the reviewing court the original or a certified copy of the entire record, including all pleadings, notices, testimony, exhibits, findings, decisions, orders, and exceptions, except that by stipulation of all parties to the review proceedings the record may be shortened by eliminating any portion of the record. Any party, other than the agency that is a party, refusing to stipulate to limit the record may be taxed by the court for the additional costs. Except as provided in sub. (2), the record may be typewritten or printed. The exhibits may be typewritten, photocopied, or otherwise reproduced, or, upon motion of any party, or by order of the court, the original exhibits shall accompany the record. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(2) In the case of a record under sub. (1) that is in the possession of the division of hearings and appeals, if any portion of the record is in the form of an audio or video recording, the division may transmit the reviewing court a copy of that recording in lieu of preparing a transcript, unless the court requires a transcript.

History: 1985 a. 182 s. 41; Stats. 1985 s. 227.55; 2017 a. 39.

Time provisions under this section are mandatory. Wagner v. Medical Examining Board, 181 Wis. 2d 633, 511 N.W.2d 874 (1994).

227.56 Additional evidence; trial; motion to dismiss; amending petition. (1) If before the date set for trial, application is made to the circuit court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceedings before the agency, the court may order that the additional evidence be taken before the agency upon such terms as the court may deem proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court the additional evidence together with any modified or new findings or decision.

(2) Proceedings for review of administrative agency decisions as provided in this chapter may be brought on for trial or hearing at any time upon not less than 10 days’ notice given after the expiration of the time for service of the notices provided in s. 227.53 (2).

(3) Within 20 days after the time specified in s. 227.53 for filing notices of appearance in any proceeding for review, any respondent who has served such notice may move to dismiss the petition as filed upon the ground that such petition, upon its face, does not state facts sufficient to show that the petitioner named therein is a person aggrieved by the decision sought to be reviewed. Upon the hearing of such motion the court may grant the petitioner leave to amend the petition if the amendment as proposed shall have been served upon all respondents prior to such hearing. If so amended the court may consider and pass upon the validity of the amended petition without further or other motion to dismiss the same by any respondent.

History: 1975 c. 414; 1985 a. 182 ss. 41, 57; Stats. 1985 s. 227.56.

Section 111.56 (3m) (c) (now s. 111.39 (5) (c)) shows a policy against opening Fair Employment hearings more than one year after the commission’s final order. A court should not use this chapter or s. 752.35 to circumvent that policy. Chicago & North Western Railroad v. LIRC, 91 Wis. 2d 462, 283 N.W.2d 605 (Cl. App. 1979).

A court may find facts under sub. (1); the court may only receive evidence to determine whether to remand to the agency for further fact finding. State Public Intervenor v. DNR, 171 Wis. 2d 243, 490 N.W.2d 770 (Cl. App. 1992).

Substantial evidence is that quantity and quality of evidence that a reasonable person could accept as adequate to support a conclusion. Written hearsay medical reports are admissible as evidence. Properly admitted evidence may not necessarily constitute substantial evidence. Uncorroborated written hearsay medical reports alone that were controverted by an–person testimony did not constitute substantial evidence to support a board’s decision. Gehin v. Wisconsin Group Insurance Board, 2008 WI App 78, 238 Wis. 2d 111, 692 N.W.2d 573 (2006).

Because sub. (3) specifically describes in the last sentence the circumstances under which a court may dismiss an amended petition without a motion from the respondent, the only reasonable construction of sub. (3) is that the court may not dismiss the original petition without a timely motion from the respondent asserting that the petition does not allege facts showing that the petitioner is aggrieved. The court does not have the authority to dismiss the petition sua sponte on the ground that it does not allege facts showing that the petitioner was aggrieved. Jackson v. LIRC, 2006 WI App 97, 293 Wis. 2d 332, 715 N.W.2d 654, 05–C–2123.


227.57 Scope of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court and, if leave is granted to take such testimony, deposition of witnesses and written interrogatories may be taken prior to the date set for hearing as provided in ch. 804 if proper cause is shown therefor.

(2) Unless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency’s action.

(3) The court shall separately treat disputed issues of agency procedure, interpretations of law, determinations of fact or policy within the agency’s exercise of delegated discretion.

(4) The court shall remand the case to the agency for further action if it finds that either the fairness of the preceding proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.

(5) The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

(6) If the agency’s action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute the agency’s judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency’s action depends on any finding of fact that is not supported by substantial evidence in the record.

(7) If the agency’s action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency’s responsibility.

(8) The court shall reverse or remand the case to the agency if it finds that the agency’s exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(9) The court’s decision shall provide whatever relief is appropriate irrespective of the original form of the petition. If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(10) Subject to sub. (11), upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it.

(11) Upon review of an agency action or decision, the court shall accord no deference to the agency’s interpretation of law.

(12) The right of the appellant to challenge the constitutionality of any act or of any provision to the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit, or privilege under such act.

History: 1975 c. 94 s. 3; 1975 c. 414; 1979 c. 208; 1985 a. 182 s. 41; Stats. 1985 s. 227.57; 2015 s. 391; 2017 s. 365 s. 110; 2017 s. 369.

Under sub. (6), a finding of fact or finding of reasonable minds could arrive at the same conclusion. Westrom v. James, 71 Wis. 2d 462, 238 N.W.2d 695 (1976).

A reviewing court, in dealing with a determination or judgment that an administrative agency is alone authorized to make, must judge the propriety of the action solely

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on grounds invoked by the agency with sufficient clarity. Stat v. Milwaukee County Civil Service Commission, 75 Wis. 2d 465, 249 N.W.2d 764 (1977).

When a Department of Natural Resources decision under s. 30.12 prohibited a structure, an owner did not seek review under s. 227.20 [now under s. 806.07], the trial court had no jurisdiction to hear an action by the owner seeking a declaration that such structure was a “permitted” pier under s. 30.13. Kosmatka v. DNR, 77 Wis. 2d 558, 253 N.W.2d 887 (1977).

Summary judgment procedure is not authorized in proceedings for judicial review under this chapter. Wisconsin’s Environmental Decade, Inc. v. PSC, 79 Wis. 2d 161, 259 N.W.2d 917 (1977).

“Discrimination” means a process of reasoning, not decision-making, based on facts in the record or reasonably inferred from the record, and a conclusion based on a logical rationale founded on proper legal standards. Reiderger v. Optometry Examining Board, 81 Wis. 2d 260, 260 N.W.2d 270 (1977).

An agency determination that an environmental impact statement was adequately prepared is reviewed under s. 227.20 [now this section]. Wisconsin’s Environmental Decade, Inc. v. PSC, 98 Wis. 2d 682, 298 N.W.2d 205 (Ct. App. 1980).

Right to judgment entered in a review under this chapter may not be granted under s. 806.07. Charter Manufacturing Co. v. Milwaukee River Restoration Coun-

The test under sub. (6) is whether, taking account of all the evidence in the record, reasonable minds could arrive at the same conclusion as the agency. The find-

The Public Service Commission’s change in administrative policy has been reviewed under s. 227.20 [now this section]. Wisconsin’s Environmental Decade, Inc. v. PSC, 109 Wis. 2d 256, 325 N.W.2d 867 (1982).

Sub. (7) grants the trial court broad authority to remand a matter to an agency for further hearing if the agency has been held in contempt or as a result of the administrative proceeding is mone-

The test under sub. (6) is whether, taking account of all the evidence in the record, reasonable minds could arrive at the same conclusion as the agency. The find-

Sub. (4) does not require a higher standard of fairness than the constitutional requirement of due process. Due process merely insures that the agency’s conclusions are reasonable, they will be upheld. Kitten v. DWD, 179 Wis. 2d 466, 503 N.W.2d 305 (Ct. App. 1993).

Sub. (4) does not require a higher standard of fairness than the constitutional requirement of due process. Due process merely insures that the agency’s conclusions are reason-

Sub. (3) authorizes an administrative law judge to proceed with the review of the agency’s decision, whether or not the agency has complied with the procedures set forth in sub. (2). The test is whether, taking account of all the evidence in the record, reasonable minds could arrive at the same conclusion as the agency. The find-

Sub. (3) authorizes an administrative law judge to proceed with the review of the agency’s decision, whether or not the agency has complied with the procedures set forth in sub. (2). The test is whether, taking account of all the evidence in the record, reasonable minds could arrive at the same conclusion as the agency. The find-
court in which the action was originally begun. An appeal shall be taken within the time period specified in s. 808.04 (2). The appeal shall be given preference.

History: 1977 c. 187; 1983 a. 219; 1985 a. 182 s. 49; Stats. 1985 s. 227.60.

Judicial Council Note, 1983: This section is amended to replace the appeal deadline of 10 days after termination of the suit by the time provisions of s. 808.04 (2), for greater uniformity. Section 808.04 (2) provides that an appeal must be initiated within 15 days of entry of judgment or order appealed from. The provision requiring preferential court treatment is harmonized and standardized with similar provisions in the statutes. [Bill 151–S]