TITLE XVIII.

Administrative Procedure and Review.

CHAPTER 227.

ADMINISTRATIVE PROCEDURE AND REVIEW.

227.01 Definitions. In this chapter:

(1) "Agency" means any board, commission, committee, department or officer in the state government, except the governor or any military or judicial officer of this state.

(2) "Contested case" means a proceeding before an agency in which, after hearing required by law, the legal rights, duties or privileges of any party to such proceeding are determined or directly affected by a decision or order in such proceeding and in which the assertion by one party of any such right, duty or privilege is denied or controverted by another party to such proceeding.

(3) "Rule" means a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing), of general application and having the effect of law, issued by an agency to implement, interpret or make specific legislation enforced or administered by such agency or to govern the organization or procedure of such agency.

(4) Every statement of general policy and every interpretation of a statute specifically adopted by an agency to govern its enforcement or administration of legislation shall be issued by it and filed as a rule. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within sub. (3) or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this subsection.

(5) "Rule" as defined in sub. (3) does not include or mean, and the provisions of sub. (4) do not apply to, action or inaction of an agency, regardless of whether otherwise within sub. (3) or (4), which:

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

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

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

(d) Relates to the use of the 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 or the laying out or relocation of a highway;

(f) Relates to the curriculum of public educational institutions or to the admission, conduct, discipline, or graduation of students of such institution;

(g) Relates to the use of facilities of public libraries;

(h) Relates to the management, discipline or release of persons who are committed to state institutions or to the state department of public welfare or who are placed on probation;

(i) Relates to military or naval affairs;

(j) Relates to the form and content of reports, records, or accounts of state, county or municipal officers, institutions or agencies;

(k) Relates to expenditures by state agencies, the purchase of materials, equipment or supplies by or for state agencies, or to printing or duplicating of materials for state agencies;

(l) Establishes personnel standards, job classifications, or salary ranges for state, county or municipal employes who are in the classified civil service;

(m) Determines water levels;

(n) Fixes or approves rates, prices, or charges, except when a statute specifically requires the same to be fixed by rule;

(o) Determines the valuation of securities held by insurance companies;

(p) Is a statistical plan relating to the administration of rate regulation laws applicable to casualty insurance or to fire and allied lines insurance;

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

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

History: 1951 c. 717; 1953 c. 277; 1955 c. 221.

Committee Note, 1955: The definition of agency has been changed from the former definition in the following respects: (a) The enumeration of certain specific agencies has been eliminated. Such enumeration is unnecessary and might cast doubt on the inclusion of agencies which are included within the general terms of the definition but which are in a different class than those which are enumerated. (b) The exclusion of the industrial commission "in matters arising out of the workmen's compensation act or the unemployment compensation act" has been transferred to 227.22 which contains other similar exceptions and has been narrowed so that it no longer excepts rule making in the fields of workmen's and unemployment compensation. (c) The phrase "having state-wide jurisdiction and authorized by statute to exercise rule-making powers or to adjudicate contested cases" has been deleted. The purpose is to make all governmental agencies at the state level of government subject to the administrative procedure act except as such agencies have been excluded by express provision. The phrase "before an agency" was added in the first line of (2) for the sake of clarity. Otherwise the definition is the same as in the former law. The definition of "rule" in (3) is substantially the same as the former definition. (4) is an expression of a legislative desire that statements of general policy and interpretations which have been specifically adopted by an agency to govern its enforcement or administration of legislation should be filed as rules. (5) contains a number of specific exceptions to the general definition of rule in (3). The purpose is to make it certain that, regardless of whether these might or might not be within the definition, they are not included. (Bill 5-S)

The provisions for judicial review of rulings and decisions of administrative agencies should be liberally construed. Kubista v. State Annuity and Inv. Board, 257 W 359, 43 NW (2d) 470.

The annuity and investment board is an "agency" so that its rulings and determinations in administering the state employes retirement system are subject to judicial review. Kubista v. State Annuity and Inv. Board, 257 W 359, 43 NW (2d) 470.

The sole purpose of the legislature in adopting the uniform administrative procedure act (227.01 to 227.21) in 1943 was to establish a uniform method of judicial review of official acts of administrative bodies, and there was no intent to abolish any existing right of review. Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514.

A regularly enacted statute, or an order of an administrative body made pursuant to statutory authority, will be presumed to be constitutional until it has been declared to be otherwise by a competent tribunal. A party attacking a statute has the burden of overcoming the presumption of constitutionality and showing that the statute is unconstitutional. State v. Stehlek, 262 W 642, 56 NW (2d) 514.

227.013 Forms. A form which imposes requirements which are within the definition of a rule shall be treated as a rule for the purpose of this chapter, except that:

(1) Its adoption, amendment or repeal need not be preceded by notice and public hearing; and

(2) It need not be adopted, amended or repealed by the board or officer charged with ultimate rule-making authority but may be adopted, amended or repealed by any employe of the agency to whom such board or officer has delegated the authority; and

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

History: 1955 c. 221.

Committee Note, 1955: Forms often impose substantive requirements which add to the requirements of the statute which is being administered. Even if they do not impose such requirements, they can be considered to be a type of procedural rule.

Nevertheless, for practical reasons, it is necessary to exempt them from many of the procedural requirements imposed upon rule making in general. Perhaps there are forms which might be considered of sufficient importance to be treated as rules for all purposes, but this section treats all forms alike because of the difficulty of drawing a satisfactory line to separate them. (Bill 5-S)

227.014 Extent to which the administrative procedure act confers rule-making authority. (1) Except as provided in sub. (2) and s. 227.08, and except as rule-making authority is conferred upon the revisor of statutes, nothing in this chapter confers rule-making authority upon or augments the rule-making authority of any agency.

(2) Rule-making authority hereby is expressly conferred as follows:

(a) Each agency is authorized to adopt such rules interpreting the provisions of statutes enforced or administered by it as it considers to be necessary to effectuate the purpose of the statutes, but such rules are not valid if they exceed the bounds of correct interpretation.

(b) Each agency is authorized to prescribe such forms and procedures in connection with statutes to be enforced or administered by it as it considers to be necessary to effectuate the purpose of the statutes, but nothing in this paragraph authorizes the imposition of substantive requirements in connection with such forms or procedures.

(c) Each agency which is authorized by law to exercise discretion in deciding individual cases is authorized to formalize the general policies which may evolve from such decisions by adopting such policies as rules which the agency will follow until they are amended or repealed. Such rules are valid only to the extent that the agency has discretion to base its individual decisions on the policies expressed in the rules.

History: 1955 c. 221.

227.015 Petition for rules. (1) Except where the right to petition for a rule is restricted by statute to a designated group or except where the form of procedure for such petition is otherwise prescribed by statute, any municipality or any 5 or more persons having an interest in a rule may petition an agency requesting the adoption, amendment or repeal of such rule.

(2) Such petition shall state clearly and concisely:

(a) The substance or nature of the rule making which is requested; and

(b) The reasons for the request and the petitioners' interest in the request; and

(c) References to the authority of the agency to take the action which is requested.

(3) Within a reasonable period of time after the receipt of a petition pursuant to 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 give notice thereof to the person who filed the petition, including a brief statement of its reasons for the denial. If the agency proceeds with the requested rule making, it shall proceed in the manner prescribed by ss. 227.02 to 227.024.

History: 1955 c. 221.

Committee Note, 1955: This section replaces the former 227.04 which authorizes petitions for adoption, amendment or repeal of rules and requires each agency to prescribe the procedure for submission and disposition of such petitions. Since most agencies have not prescribed such rules, the procedure has been written into the new section. The new section also requires the agency to take action on the petitions. However, as a precaution against the agency's time being dissipated in making written denials of unfounded and pestiferous petitions, the section limits the right of petition to a municipality or to 5 or more interested persons. This section does not affect the constitutional right of fewer than 5 persons to petition for rule changes but the agency under such circumstances would not be required to take action on the petition. (Bill 5-S)

227.018 Advisory committees and informal consultations. An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. Each agency also is authorized to appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of such committees shall be advisory only.

History: 1955 c. 221.

227.02 When hearings required. (1) An agency shall precede all its rule making with notice and public hearing unless:

(a) The proposed rule is procedural rather than substantive; or

(b) The proposed rule is designed solely to bring the language of an existing rule into conformity with a statute which has been changed or adopted since the adoption of such rule, to bring the language of an existing rule into conformity with a controlling judicial decision, or to comply with a federal requirement; or

(c) The proposed rule is adopted pursuant to s. 227.027 as an emergency rule; or

(d) It is the adoption, revocation or modification of a statement of general policy coming within the provisions of s. 227.01 (4); or

(e) The proposed rule is published in the notice section of the administrative register together with a statement to the effect that the agency will adopt the proposed rule without public hearing thereon unless, within 30 days after publication of the notice, it is petitioned for a public hearing on the proposal by 25 persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule. If the agency receives such a petition it shall not proceed with the proposed rule making until it has given notice and held a hearing as prescribed by ss. 227.021 and 227.022.

(2) The exceptions to the general hearing requirement which are set forth in sub. (1) do not apply if:

(a) Another section of the statutes specifically requires the agency to hold a hearing prior to adoption of the proposed rule under consideration; or

(b) The agency determines that a hearing is desirable, in which event the agency has discretion to determine what kind of hearing it will hold and what kind of notice it will give.

History: 1955 c. 221.

227.021 Notice of hearing. (1) Whenever an agency is required by law to hold a public hearing as part of its rule-making process, the agency shall:

(a) Transmit written notice of hearing to the revisor of statutes for publication in the notice section of the administrative register, and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires publication in a local newspaper, publish notice as required by that statute in addition to publication in the notice section of the administrative register; and

(b) Transmit written notice of such hearing to every member of the legislature who previously has made a request in writing filed with the revisor of statutes to be notified of proposed rule making. The revisor of statutes upon request of any agency shall transmit to such agency a list of all such legistlators who have theretofore filed such request, together with their addresses; and

(c) Take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed rule making.

(2) The notice shall be given at least 10 days prior to the date set for the hearing. Where notice is given through publication in the administrative register it shall be deemed to have been given on the first day of the month following the publication of the issue of the register or, in case such publication is delayed beyond the end of the month for which such issue of the register is designated, then on the date prescribed in s. 227.026 (3).

(3) The notice which this section requires an agency to give shall include:

(a) A statement of the time and place at which the hearing is to be held; and

(b) Either the express terms or an informative summary of the proposed rule, or a description of the subject matter to be discussed; and

(c) Insofar as practicable, a reference to the statutory authority pursuant to which the agency proposes to adopt the rule; and

(d) Any additional matter which may be prescribed by statute applicable to the specific agency or to the specific rule or class of rules under consideration.

(4) 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).

History: 1955 c. 221.

227.022 Conduct of hearings. (1) The agency shall hold a public hearing at the time and place designated in the notice of hearing, and shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration. The presiding officer may limit oral presentations if he feels that the length of the hearing otherwise would be unduly increased by reason of repetition. The agency shall afford each interested person opportunity to present facts, views or arguments in writing whether or not he has had an opportunity to present them orally. At the beginning of each hearing, if the agency has made a proposal, the agency shall present a summary of the factual information on which its proposal is based, including any information obtained through the use of advisory committees or as a result of informal conferences or consultations.

(2) The agency or its duly authorized representative may administer oaths or affirmations and may continue or postpone the hearing to such time and place as it determines. The agency shall keep minutes or a record of the hearing in such manner as it determines to be desirable and feasible.

(3) If the officer or a quorum of the board or commission charged by law with ultimate responsibility for rule making is not present at the hearing a person who appears at the

hearing shall be given an opportunity to present his arguments to such officer or quorum of such board or commission prior to adoption of the proposed rule if, at the hearing, the person makes a request for such opportunity in writing to the person presiding at the hearing. Such officer, board or commission may in its discretion require such arguments to be presented in writing. If a record of the hearing has been made, argument shall be limited to the record. Where oral argument is accorded, such officer, board or commission may impose reasonable limitations on the length and number of appearances in order to conserve time and preclude undue repetition.

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

History: 1955 c. 221.

227.023 **Filing of rules.** (1) A certified copy of every rule adopted by an agency shall be filed by the agency in the office of the secretary of state and in the office of the revisor of statutes. No rule is valid until a certified copy thereof has been so filed.

(2) The secretary of state shall indorse on the copy of each rule filed with him the date of filing. He shall keep a permanent file of such rules.

(3) The filing with the secretary of state of a certified copy of a rule raises a presumption that:

(a) The rule was duly adopted by the agency; and

(b) The rule was filed and made available for public inspection at the day and hour indorsed on it; and

(c) All the rule-making procedures prescribed by this chapter were complied with; and

(d) The text of the certified copy of the rule is the text as adopted by the agency.

History: 1955 c. 221.

Note: See note to 78.79 citing Mondovi Co-op. Equity Asso. v. State, 258 W 505, 46 NW (2d) 825.

227.024 **Preparation of rules for filing.** (1) An agency shall adhere substantially to the following form in preparing a rule for filing:

ORDER OF THE (agency)
ADOPTING, AMENDING OR REPEALING RULES.

Pursuant to authority vested in (officer or agency) by section(s) ...., Wis. Stats., the (officer or agency) hereby repeals, amends, and adopts rules as follows:

Sections .... of the Wisconsin administrative code are repealed.

Sections .... of the Wisconsin administrative code are amended to read:

(Here set forth the amended section, subsection or paragraph)

Sections .... of the Wisconsin administrative code are adopted to read:

(Here set forth the text of the sections created)

The rules, amendments, and repeals contained herein shall take effect on .... [as provided in section ....] [pursuant to authority granted by s. 227.026 (1) (b)] [as an emergency rule. Facts constituting the emergency are as follows:]

(Set forth the alternative which fits the particular situation)

Dated: Agency

Seal, if any (Signature and title of officer)

(2) Repeals, amendments and adoptions of rules need not be grouped together. Preferably, they should be set forth in the sequence in which they appear or will appear in the administrative code.

(3) Certified copies of rules filed shall be typed or duplicated on 8½ by 11 inch paper. Sufficient room for the secretary of state's stamp shall be left at the top of the first page. Forms which are filed need not comply with the specifications of this subsection.

(4) Each agency shall give each section of its rules an appropriate section title and section number. Sections shall be numbered according to the decimal system. To enable parts of a section to be amended without the necessity of setting forth the whole section, each section shall be divided into subsections whenever feasible. Subsections may be divided into paragraphs. Subsections shall be designated by Arabic numerals in parentheses and paragraphs by lower case letters in parentheses.

(5) Rules shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to effectively convey the meaning of a rule interpreting that language, the reference shall clearly indicate the portion of the language which is statutory and the portion which is the agency's amplification of that language.

(6) An agency may include with its rules brief notes, illustrations, findings of fact, digests of supreme court cases or attorney general's opinions, or other explanatory material if such materials are labeled or set forth in a manner which clearly distinguishes them from the rules. The revisor of statutes may edit such materials before publishing them in

the administrative code and register, may merely refer to the fact that they are on file, or may eliminate them or any reference to them in the administrative code and register if he feels that they would not, to any appreciable extent, add to an understanding of the rules. If the revisor of statutes edits such materials preparatory to publication, he shall submit the edited version to the agency for its comments prior to publication.

(7) The revisor of statutes may, in order to preserve uniformity in the administrative code, change the title or numbering of any rules. If an agency desires to secure an advance commitment as to the title or numbering of proposed rules, it shall, for that purpose, submit a copy of such rules to the revisor of statutes prior to filing. Such copy shall indicate the titles and numbering desired by the agency. As soon as possible, thereafter, the revisor of statutes shall either approve the titles and numbering suggested by the agency or indicate the changes which he considers necessary in order to preserve uniformity in the code. If the title or numbering of a rule is so revised, the revisor of statutes shall make certain that the revised version is filed with the secretary of state.

(8) The revisor of statutes shall furnish advice and assistance with respect to the form and mechanics of rule drafting whenever requested to do so by an agency.

History: 1955 c. 221.

227.025 Publication of rules. All rules and other materials which agencies are directed or authorized by this chapter to file with the revisor of statutes shall be published in the Wisconsin administrative code or register in the manner prescribed by s. 35.93. For the purpose of avoiding unwarranted expense, an agency may, with the consent of the revisor and attorney general, utilize standards established by technical societies and organizations of recognized national standing by incorporation of such standards in its rules by reference to the specific issue or issues of books or pamphlets in which they are set forth, without reproduction of the standards in full. The revisor and attorney general shall consent to such incorporation by reference only in rules that are of limited public interest and where the incorporated standards are readily available in published form. Each rule containing such incorporation by reference shall state how the material so incorporated may be obtained and that the books and pamphlets containing the standards are on file at the offices of the agency, the secretary of state and the revisor of statutes. Rules adopted jointly by 2 or more agencies need not be published in more than one place in the code. Agency materials which are exempted by s. 227.01 from complying with the requirements of this chapter may be published, either verbatim or in summary form, if the adopting agency and the revisor of statutes determine that the public interest would thereby be served.

History: 1955 c. 221.

Committee Note, 1955: The publication requirements prescribed by this section supersede the publication requirements prescribed by former 227.03 (1) and by the various statutes amended or repealed by ss. 19 to 58 of this bill. The details of publication are prescribed in 35.93. (Bill 5-S)

227.026 Effective date of rules. (1) A rule is effective on the first day of the month following its publication in the Wisconsin administrative register unless:

(a) The statute pursuant to which the rule was adopted prescribes a different effective date; or

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

(c) The rule is adopted pursuant to s. 227.027 as an emergency rule, in which event it becomes effective at the time prescribed in that section; or

(d) Publication of the issue of the register of which the rule is a part was delayed beyond the end of the month in which such register was designated for publication, in which event the rule becomes effective as provided in sub. (3).

(2) The revisor of statutes may prescribe by rule the monthly date prior to which rules must be filed in order to be included in that month's issue of the register. The revisor shall compute the effective date of all rules submitted for publication in the administrative register and shall cause such information to be published in brief notes at the end of each section. For the purpose of computing such effective date, the revisor of statutes may presume that any particular issue of the register will be published during the month in which it is designated for publication.

(3) If, because of some contingency, an issue of the register is not published during the month by which the particular issue is designated, the revisor of statutes shall stamp the publication date on the title page of each copy of that issue. Rules and notices contained in that issue of the register are not effective until the day following the date stamped on the title page.

(4) In this section, "date of publication" refers to the date when copies of the register first are mailed to persons entitled by law to receive them.

History: 1955 c. 221.

Committee Note, 1955: This section replaces the former 227.03 (2). It differs in that it bases the effective date on publication in the administrative register rather

than on publication in the official state paper. The idea of a delayed effective date is to make rules available to the public before such rules become effective. At the same time, the minimum period between the adoption and effective date of a rule should be as short as possible so as not to impede effective administration of the law. This section serves both ends. Rules will be distributed through the monthly administrative register prior to their becoming effective. Emergencies may demand more prompt action. Therefore, special provision has been made in new 227.027 for emergency rules. The agency also is given discretion to fix a later effective date than the general one prescribed by this section. To meet constitutional publication requirements, special provision for a delayed effective date is made in (3) in the event that unforseen circumstances delay publication of the register beyond the end of the month in which it was scheduled for publication. (Bill 5-S)

227.027 Emergency rules excepted from certain procedures. (1) If preservation of the public peace, health, safety or welfare necessitates putting a rule into effect prior to the time it could be put into effect if the agency were to comply with the notice, hearing and publication requirements of this chapter, the agency may adopt such rule as an emergency rule. An emergency rule takes effect upon publication in the official state paper or on such later date as is specified in a statement published with the rule, but remains in effect only for a period of 120 days.

(2) An agency shall file an emergency rule as provided in s. 227.023, shall mail copies to each member of the legislature, and shall take such other steps as it considers to be feasible to make the rule known to persons who will be affected by it. The revisor of statutes shall insert in the notice section of each issue of the administrative register a brief description of emergency rules currently in effect.

History: 1955 c. 221.

Committee Note, 1955: (2) prescribes certain supplementary publicity procedures, but the validity of the rule is not dependent on compliance with these procedures. (Bill 5-S)

227.03 Construction of administrative rules. The following rules apply when construing rules of administrative agencies:

(1) The repeal of a rule does not revive a rule which previously had been repealed.

(2) The repeal of a rule does not defeat or impair any right which had accrued or affect any penalty which had been incurred under the rule which was repealed.

(3) Whenever a rule of an agency authorizes or requires the use of registered mail, and does not require a return receipt of the addressee only, certified mail may be used if a sender's receipt is obtained from the postal authorities and a return receipt is requested. If a return receipt signed by the addressee only is required, registered mail must be used.

History: 1955 c. 221, 448.

Committee Note, 1955: This section is new. It prescribes, with respect to construction of rules of administrative agencies, 2 principles which 990.03 and 990.04 make applicable to construction of statutes. Both are common principles of statutory construction and should be equally applicable to the construction of administrative rules. (Bill 5-S)

227.031 Effect of administrative procedure act on procedures prescribed by other statutes. Compliance with the procedures prescribed by this chapter does not obviate the necessity of complying with procedures prescribed by other provisions of the statutes.

History: 1955 c. 221.

Committee Note, 1955: While many of the provisions prescribing rule-making procedure with respect to specific agencies are repealed by ss. 19 to 58 of this bill, some will be retained and others may be added in the future. This provision makes clear that the general procedure prescribed by this bill does not supersede such specific procedures. (Bill 5-S)

227.033 Discrimination by rule prohibited. No rule, either in its terms or in its application, shall discriminate for or against any person by reason of his race, creed, color, national origin, or ancestry. Every person affected by a rule shall be entitled to the same benefits and subject to the same obligations as any other person under the same or similar circumstances.

History: 1955 c. 221.

227.041 Committee for review of administrative rules. (1) There is hereby created a special joint legislative committee to be known as the committee for review of administrative rules consisting of 2 senators and 3 assemblymen to be appointed in the same manner as are standing committees in the respective houses of the legislature. Members shall be appointed for a term of 2 years to expire on May 1 of each odd-numbered year and shall retain membership until their successors are appointed and qualify. If a member of the committee ceases to be a member of the legislature, his membership on the committee also terminates. Vacancies shall be filled from the same house and in the same manner as original appointments and shall be for the remainder of the term.

(2) The committee shall meet at the call of its chairman or upon a call signed by 2 of its members or signed by 5 members of the legislature.

(3) The committee shall elect its own officers. Three members constitute a quorum of such committee.

(4) The committee shall have advisory powers only and its function shall be the promotion of adequate and proper rules by agencies and an understanding upon the part of the public respecting such rules. It may investigate complaints with respect to rules that it considers meritorious and worthy of attention, and thereupon recommend to the rule-making agency responsible for the rules complained of, such changes in, deletions from or additions to the rules as they believe would make the rules to which objection was raised more equitable, practical and more in conformity with the public interest. It shall make a biennial report to the legislative council, legislature and governor of its activities and include therein its recommendations.

(5) The committtee may hold public hearings and make investigations at such times and places within the state as it deems necessary to the performance of its function. Any member of the committee may administer oaths to persons testifying before it. The committee may subpoena witnesses and have subpoenas enforced in the manner provided in s. 13.35 (4).

(6) Members of the committee shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

History: 1955 c. 221.

Committee Note, 1955: The thought frequently has been voiced, particularly by members of the legislature, that there is a need for better understanding between the legislature and the administrative agencies and between the agencies and the public with respect to administrative rules. This section attempts to meet that need by providing a formal device for screening complaints with respect to rule making and for channeling the pertinent information and recommendations to the legislature. The committee will have advisory powers only, but its advice no doubt will carry considerable weight. (Bill 5-S)

227.05 Declaratory judgment proceedings. (1) Except as provided in sub. (3) hereof, the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of such rule brought in the circuit court for Dane county. The officer, board, commission or other agency whose rule is involved shall be the party defendant. The summons in such action shall be served by delivering a copy to the attorney general or leaving it at his office in the capitol with one of his assistants or clerks, and by delivering a copy to such officer or to the secretary or clerk of the agency where composed of more than one person or to any member of such agency. The court shall render a declaratory judgment in such action only when it appears from the complaint and the evidence presented in support thereof that the rule 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 in question.

(2) Whenever an issue of fact is raised concerning the applicability of a rule to a party or affecting the validity or proper interpretation of a rule, the court shall, before deciding the pertinent legal question, refer the case to the agency for determination of the fact issue under the declaration ruling procedure provided in s. 227.06. The determination of such fact issue by the agency shall be transmitted promptly thereafter to the court by the agency, together with all papers transmitted to the agency by the court upon the referral of the case to the agency and a record or certified copy of the entire record of the proceedings before said agency in respect to such determination, subject to the same requirements and provisions as are set forth in s. 227.18. The determination shall be reviewable by the court in the proceeding in which it arose as an issue and the scope of such review shall be as provided in s. 227.20.

(3) The validity of a rule 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 is accorded an administrative review or a judicial review by other provisions of the statutes and such 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 ss. 227.15 to 227.21 or under ch. 102 or 108 for review of decisions and orders of administrative agencies provided the validity of the rule involved was duly challenged in the proceeding before the agency in which the order or decision sought to be reviewed was made or entered.

(4) In any judicial proceeding other than one set out above, in which the invalidity of a rule is material to the cause of action or any defense thereto, the assertion of such invalidity shall be set forth in the pleading of the party so maintaining the invalidity of

such rule in that proceeding. The party so asserting the invalidity of such rule shall, within 30 days after the service of the pleading in which he sets forth such invalidity, apply to the court in which such proceedings are had for an order suspending the trial of said proceeding until after a determination of the validity of said rule in an action for declaratory judgment under sub. (1) hereof.

(a) Upon the hearing of such application if the court is satisfied that the validity of such rule 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 such rule. If the court shall find that the asserted invalidity of a rule 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 said declaratory judgment action, it shall be the duty of the party who asserts the invalidity of the rule 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 is asserted.

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

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

History: 1955 c. 221.

Committee Note, 1955: This section replaces the former 227.05 which provides for petitions for declaratory judgments on rules. It was not clear that the former 227.05 was the exclusive method of judicial review of administrative rules. This new section clarifies the law by providing that a rule may be reviewed only as provided therein. It spells out in detail the various forms of proceedings in which a rule may be judicially reviewed and the procedures which must be followed. The primary method of review is an action for declaratory judgment set forth in (1). Former 227.05 provides for such review by petition. Procedural difficulties and uncertainties were encountered thereunder, and the elimination thereof impelled change so as to provide that the procedure is by an action like in other declaratory judgment matters. Five other types of proceedings in which a rule may be reviewed if its validity is material to the proceeding are set forth in (3). (4) prescribes the procedure to be followed when the validity of a rule is material to and arises in any proceeding other than those described in (3). In such a case, the party asserting the invalidity of the rule must do so in his pleading and then apply to the court for a stay of that proceeding until the validity of the rule can be determined in an independent declaratory judgment action pursuant to (1). (5) prescribes the scope of judicial review in any case in which a rule is subject to such review and is substantially the same as was provided in former 227.05 (2). (Bill 5-S)

227.06 Declaratory rulings. (1) Any agency may, on petition by any interested person, and shall upon reference of a case in accordance with s. 227.05, 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 state of facts alleged, unless it is altered or set aside by a court. A ruling other than one made upon a reference under s. 227.05 (2) shall be subject to review in the circuit court in the manner provided for the review of administrative decisions in contested cases.

(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 his name, and shall be verified by at least one of the signers. If a person signs on behalf of a corporation or association, that fact also shall be indicated opposite his name.

(3) The petition shall be filed with the administrative head of the agency or with a member of the agency's policy board.

(4) 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.

(5) Within a reasonable time after receipt of a case in accordance with the provisions of s. 227.05, the agency shall schedule the matter for hearing and shall issue its ruling within a reasonable time after the hearing.

History: 1955 c. 221.

Committee Note, 1955: This section replaces the former 227.06. (1) is a restatement of former law. (2) to (5) are new. They prescribe the procedure to be followed by a person who petitions for a declaratory ruling and the procedure to be followed by the agency in acting on such petition. The present section directs the various agencies to prescribe its own procedures relative to such matters but it was found that very few of the agencies had done so. (Bill 5-S)

A petition to the circuit court for Dane county to review the action of the annuity and investment board, in denying the petition of the administrator of a deceased state employe to grant the request of such employe to change to another plan of payment under the state employes retirement system, was sufficient to give the court jurisdiction as a petition for a review of a "declaratory ruling" by the board under this section, although the petition filed with the board was not designated as a petition for a declaratory ruling, and neither petition made any reference to this section. Kubista v. State Annuity and Inv. Board, 257 W 359, 43 NW (2d) 470.

227.07 Administrative adjudication; notice and hearing. Prior to the final disposition of any contested case, all parties shall be afforded opportunity for full, fair, public hearing after reasonable notice, but this shall not preclude the informal disposition of controversies by stipulation, agreed settlement, consent orders, or default.

A determination made by an administrative agency is not the exercise of a judicial function, but is an administrative act merely and does not have the force of a judgment of a court. A ruling made by an administrative agency relates only to the facts and conditions presented on the pending proceeding, and the agency is not bound by its prior determinations. A determination of the employment relations board denying a petition of certain employers involving certain issues of fact did not preclude the board from later making a determination granting a subsequent petition involving the same issues. Dairy Employes Ind. Union v. Wisconsin E. R. Board, 262 W 280, 55 NW (2d) 3.

227.08 Rules pertaining to procedure. Each agency shall adopt rules governing the form, content, and filing of pleadings, the form, content and service of notices, the conduct of pre-hearing conferences, and other necessary rules of procedure and practice.

The function of prescribing rules for pleading and procedure before administrative bodies is not for the courts but for the legislature, which may prescribe such rules or may authorize the administrative board or agency to prescribe its own rules. Gray Well Drilling Co. v. State Board of Health, 263 W 417, 58 NW (2d) 64.

227.09 Notification of issues. Every party to a contested case shall be given a clear and concise statement of the issues involved.

227.10 Evidence and official notice. In contested cases:

(1) Agencies shall not be bound by common law or statutory rules of evidence. They shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. They shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force, as recognized in equitable proceedings, shall govern the proof of all questions of fact.

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

(3) Agencies 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 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) Agencies shall take official notice of all rules which have been published in the Wisconsin administrative code or register.

History: 1955 c. 221.

On the issue whether "outside" employes constituted a single division or department of the employer, the employment relations board properly admitted and considered bargaining contracts of other dairies operating in the area since, although evidence of that character would not under most circumstances be received in a court of law, proceedings before the board, as an administrative body, are not required to be conducted with all the formality of a trial in a court and the board is not bound by common-law or statutory rules of evidence in contested cases. Dairy Employes Ind. Union v. Wisconsin E. R. Board, 262 W 280, 55 NW (2d) 3.

227.11 Records of hearings. Each agency shall keep an official record of all proceedings in contested cases. Exhibits and testimony shall be part of the official record.

227.12 Examination of evidence by agency. Whenever in a contested case it is impracticable for the members of the agency who participate in the decision to hear or read all the evidence, the final decision shall not be made until a summary of the evidence prepared by the person conducting the hearing, together with his recommendations as to the findings of fact and the decision in the proceeding has been prepared and furnished

to each party, and a reasonable opportunity has been afforded to each party to file written exceptions to such summary and proposed findings and decision and to argue with respect to them orally and in writing before all the members who are to participate in the decision. The agency's findings of fact may be made upon the basis of such summary and the filed exceptions thereto as herein provided. The parties may by written stipulation waive compliance with this section.

227.13 Decisions. Every decision of an agency in a contested case shall be in writing accompanied by findings of fact and conclusion of law. The findings of fact shall consist of a concise and separate statement of the ultimate conclusions upon each contested issue of fact without recital of evidence.

Findings of the personnel board that the commissioner of the motor vehicle department "had reason to believe" that an employe in such department was guilty of certain conduct did not constitute proper findings of fact to support a conclusion that the employe's discharge was for just cause; it is not sufficient for the board to find that the commissioner believed the employe guilty of certain conduct which, if true, would constitute just cause for the discharge, but rather, whether the employe actually did these things which the board found that the commissioner believed the employe did. Bell v. Personnel Board, 259 W 602, 49 NW (2d) 889.

227.14 Service of decision. Every decision when made, signed and filed, shall be served forthwith by personal delivery or mailing of a copy to each party to the proceedings or to his attorney of record.

227.15 Judicial review; orders reviewable. Administrative decisions, which directly affect the legal rights, duties or privileges of any person, whether affirmative or negative in form, except the decisions of the department of taxation, the commissioner of banks and the commissioner of savings and loan associations, shall be subject to judicial review as provided in this chapter; but if specific statutory provisions require a petition for rehearing as a condition precedent, review shall be afforded only after such petition is filed and determined.

See note to 196.405, citing Milwaukee v. Public Service Comm. 259 W 30, 47 NW (2d) 298.

See note to 31.06, citing Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514.

See note to 66.03, citing St. Francis v. Public Service Comm. 270 W 91, 70 NW (2d) 221.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in section 227.15 and directly affected thereby shall be entitled to judicial review thereof as provided in this chapter. Proceedings for review shall be instituted by serving a petition therefor personally or by registered mail upon the agency or one of its members or upon its secretary or clerk, and by filing such petition in the office of the clerk of the circuit court for Dane county (unless a different place of review is expressly provided by law), all within 30 days after the service of the decision of the agency upon all parties as provided in section 227.14 or in cases where a rehearing is requested within 30 days after service of the order finally disposing of the application for such rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The petition shall state the nature of the petitioner's interest, the fact showing that petitioner is aggrieved and directly affected by the decision, and the ground or grounds specified in section 227.20 upon which petitioner contends that the decision should be reversed or modified. 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 the same 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 board of tax appeals or of the banking review board, the consumer credit review board or the credit union review board, or of the savings and loan advisory committee, the department of taxation or the commissioner of banks or the commissioner of savings and loan associations, as the case may be, shall be the named respondent. Copies of the petition shall be served, personally or by registered mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made; and for the purpose of such service the agency upon request shall certify to the petitioner the names and addresses of all such parties as disclosed by its records, which certification shall be conclusive. The agency (except in the case of the board of tax appeals and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan advisory committee) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court, in its discretion, may permit other interested persons to intervene.

(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 stating his position with reference 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 on the named respondent 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 be made only upon the petitioner and such other persons as have served and filed the notice as herein provided or have been permitted to intervene in said proceeding, as parties thereto ,by order of the reviewing court.

A citizen of the state, who has appeared at a hearing of the public service commission, held under 31.06, in respect to an application to erect a dam in a navigable stream, is a person "aggrieved" and "directly affected" by a decision of the commission finding that public rights will not be violated by the erection of the proposed dam, and is therefore entitled, under 227.16 (1), to petition the circuit court for review under 227.15. When public rights are at stake in proceedings for the review of findings of the public service commission authorizing a permit to erect a dam in navigable waters, the state is an "interested person" so that, under 227.16 (1), the attorney general, in the name of the state, may be permitted by the court to intervene in the review proceedings. Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514.

The L. telephone company was a person interested in and a proper party to proceedings before the public service commission on the petition of certain rural patrons of the L. Company in the town of W. P., in which the C. telephone company was also rendering local telephone service, for service from the C. company, and a "person aggrieved" by the adverse decision of the public service commission, within the meaning of 227.16 (1), so as to be entitled to a review of the commission's order in the circuit court. Lodi Telephone Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

227.17 Stay of proceedings. The institution of the proceeding for review shall not stay enforcement of the agency decision; but the reviewing court may order a stay upon such terms as it deems proper, except as otherwise provided in sections 189.25 and 196.43.

227.18 Record on review. Within 30 days after service of the petition for review upon the agency, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings in which the decision under review was made, including all pleadings, notices, testimony, exhibits, findings, decisions, orders and exceptions, therein; but by stipulation of all parties to the review proceedings the record may be shortened by eliminating any portion thereof. Any party, other than the agency, refusing to stipulate to limit the record may be taxed by the court for the additional costs. The record may be typewritten or printed. The exhibits may be typewritten, photostated 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.

227.19 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 section 227.16 (2).

(3) Within 20 days after the time specified in section 227.16 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 aggrieved and directly affected 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.

Where, in a proceeding for a review of a determination of the department of public welfare in the circuit court, the required notice of setting the date for "trial" had been served, the court had set a date, and arguments were made, briefs had been filed, and the matter had been entirely presented to the court, a petition thereafter made for leave to present additional evidence was properly denied as not timely. Lakeland v. State Dept. of Public Welfare, 265 W 321, 61 NW (2d) 477.

227.20 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. The court

may affirm the decision of the agency, or may reverse or modify it if the substantial rights of the appellant have been prejudiced as a result of the administrative findings, inferences, conclusions or decisions being:

(a) Contrary to constitutional rights or privileges; or

(b) In excess of the statutory authority or jurisdiction of the agency, or affected by other error of law; or

(c) Made or promulgated upon unlawful procedure; or

(d) Unsupported by substantial evidence in view of the entire record as submitted; or

(e) Arbitrary or capricious.

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

The trial court must reverse the personnel board's decision sustaining the employe's discharge if there is no substantial evidence, considering the entire record as a whole, which would establish that the discharge was for just cause; the supreme court is unable to reach the conclusion of the trial court that there is no substantial evidence which might sustain the board's decision if the board had made proper findings of fact, and hence the record must be returned to the board so that it may make proper findings of fact and a new decision based on such new findings. Bell v. Personnel Board, 259 W 602, 49 NW (2d) 889.

In an order of the public service commission, requiring the railroad to stop a certain transcontinental train at a certain city, "or in the alternative, shall provide other eastbound passenger service between 6 a. m. and 12 noon daily," the alternative portion was inserted for the benefit of the railroad, and therefore it is in no positfon to claim that it was prejudiced thereby by asserting that the order was "arbitrary or capricious" in this respect within the meaning of (1) (e). Chicago, M., St. P. & P. R. Co. v. Public Service Comm. 260 W 212, 50 NW (2d) 416.

This section, (1) (d) in particular, prescribing the scope of review by a court of findings and orders of administrative bodies, such as the public service commission, is construed as meaning that the reviewing court must accept findings of fact of an administrative body if they are supported by substantial evidence, even in cases where a constitutional question is involved. Chicago, M., St. P. & P. R. Co. v. Public Service Comm. 260 W 212, 50 NW (2d) 416.

A finding of the public service commission, that the construction and operation of an extension of trackless trolley lines and service by a street railway will not impair the earnings of the company so as to prevent an adequate or fair return, may be disturbed on appeal only if it is unsupported by substantial evidence in view of the entire record. The commission might reasonably assume that the company will take appropriate steps to save its property from confiscation, that is, apply for a rate increase, if the required extension will produce or increase an existing loss of revenue. In reviewing findings, the court must recognize that the commission has expert knowledge, that such knowledge may be applied by it, and that, even though the court might differ from the commission, the court is without power to substitute its views of what may be reasonable. Milwaukee E. R. & T. Co. v. Public Service Comm. 261 W 299, 52 NW (2d) 876.

See note to 111.05, citing Dairy Employes Ind. Union v. Wisconsin E. R. Board, 262 W 280, 55 NW (2d) 3.

The commission's finding that the L. company's service to the petitioners was inadequate was sufficiently supported by evidence as to the cost of toll charges which the petitioners were required to pay in order to make calls to their trading, social, church and school center, and the commission's order requiring the C. company to extend its line in the town of W. P. so as to render local service to the petitioners was within the commission's jurisdiction, and did not deprive the L. company of any existing unqualified legal right under its authorization to operate in the same area. Lodi Telephone Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

The court should not interfere with a finding of the public service commission merely because the commission may have reversed prior commission policy by so finding. Lodi Telephone Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

A city challenging a sewage-treatment order of the state committee on water pollution on grounds of excess of statutory authority or on constitutional grounds or on some other ground, can obtain a judicial review of the order only by the methods specified under 144.56 (2) and 227.20, and the city cannot instead obtain a review of such order through the medium of an action for a declaratory judgment. (State ex rel. Martin v. Juneau, 238 W 564, explained.) Where a specified method of review is prescribed by statute, the method so prescribed is exclusive. Superior v. Committee on Water Pollution, 263 W 23, 56 NW (2d) 501.

Under (1) (d) authorizing the reviewing court to reverse or modify the decision of any administrative agency covered by such act if the substantial rights of the appellant have been prejudiced as the result of the agency's findings, conclusions or decision being "unsupported by substantial evidence in view of the entire record," it is not proper for the court to affirm the findings of any such agency by merely considering isolated testimony which, if standing alone, would be sufficient to sustain the findings, without considering other testimony in the record which impeaches the same. Motor Transport Co. v. Public Service Comm. 263 W 31, 56 NW (2d) 548.

Although the public service commission's findings are not to be disturbed if inferences from established facts are properly drawn, an isolated piece of testimony does not constitute "substantial evidence in view of the entire record," under (1) (d), if such isolated statement is explained or entirely discredited by other testimony or evidence in the record. Albrent Freight & Storage Co. v. Public Service Comm. 263 W 119, 56 NW (2d) 846.

For discussion of use of certiorari where statutory appeal is given, see notes to 40.03, citing Perkins v. Peacock, 263 W 644, 58 NW (2d) 536.

Orders of an administrative agency, like statutes, should not be held to be too indefinite to be operative because they contain terms not susceptible of exact meaning, or are imperfect in their details, or where they employ words commonly understood, and they should not be pronounced void for uncertainty if they are susceptible of any reasonable construction, but should be given effect if by any reasonable construction they are capable of administration and enforcement. Madison Bus Co. v. Public Service Comm. 264 W 12, 58 NW (2d) 463.

See note to 71.11, citing Platon v. Department of Taxation, 264 W 254, 58 NW (2d) 712.

See note to 111.07, citing St. Joseph's Hospital v. Wisconsin E. R. Board, 264 W 396, 59 NW (2d) 448.

As used in (1) (d), authorizing the reviewing court to reverse or modify the decision of any administrative agency subject

to the act if the substantial rights of the appellant have been prejudiced as a result of the agency's findings, inferences, conclusions, or decision being unsupported by "substantial evidence in view of the entire record," the term "substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, but the substantiality of evidence must take into account whatever in the record fairly detracts from its weight. Chicago, M., St. P. & P. R. Co. v. Public Serv. Comm. 267 W 402, 66 NW (2d) 351.

227.21 Appeals. Any party, including the agency, may secure a review of the final judgment of the circuit court by appeal to the supreme court. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in other civil cases, except that the time for appeal shall be limited to 30 days from the notice of entry of the judgment.

The supreme court is required to assume, unless there is affirmative proof to the contrary, that the commission acted regularly as to all matters and pursuant to the rules of law and proper procedures in its determination. Brouwer Realty Co. v. Industrial Comm. 266 W 73, 62 NW (2d) 577.

227.22 Exceptions from chapter 227. (1) This chapter applies to cases arising under s. 76.38. Except for cases arising under s. 76.38, the provisions of this chapter relating to proceedings in contested cases and to judicial review of administrative decisions do not apply to assessments made under ch. 76, or to decisions of the board of tax appeals upon the review of such assessments, or to decisions made by the department of taxation pursuant to a hearing under s. 76.10 (1).

(2) Only the provisions of ss. 227.01 to 227.21 relative to rules are applicable to matters arising out of the workmen's compensation act or the unemployment compensation act.

History: 1953 c. 277; 1955 c. 221.

Committee Note, 1955: (1) is substantially a restatement of the former 227.22. (2) replaces the complete exclusion, presently contained in the definition of "agency". (Bill 5-S)

227.24 Short title. This chapter may be cited as the Administrative Procedure Act.

History: 1955 c. 221.

227.25 Certification of certain cases from the circuit court of Dane county to other circuits. Any action or proceeding for the review of any order of an administrative officer, commission, department or other administrative tribunal of the state required by law to be instituted in or taken to the circuit court of Dane county except action or appeal for the review of any order of the industrial commission which shall have been so instituted or taken and shall not have been called for trial or hearing within 6 months after such proceeding or action has been instituted, and the trial or hearing of which shall not have been continued by stipulation of the parties or by order of the court for cause shown, shall on the application of either party on 5 days' written notice to the other be certified and transmitted for trial to the circuit court of the county of the residence or principal place of business of the plaintiff or petitioner, where such action or proceeding shall have the precedence over all ordinary civil actions. Unless written objection shall be filed within such 5-day period, the order certifying and transmitting such proceeding shall be entered without hearing. The plaintiff or petitioner shall pay to the clerk of the circuit court of Dane county a fee of $2 for transmitting the record.

227.26 Jurisdiction of state courts to determine validity of laws when attacked in federal court and to stay enforcement. Whenever a suit praying for an interlocutory injunction shall have been begun in a federal district court to restrain any department, board, commission or officer from enforcing or administering any statute or administrative order of this state, or to set aside or enjoin such suit or administrative order, such department, board, commission or officer, or the attorney-general, may bring a suit to enforce such statute or order in the circuit court of Dane county at any time before the hearing on the application for an interlocutory injunction in the suit in the federal court. Jurisdiction is hereby conferred upon the circuit court of Dane county and on the supreme court, on appeal, to entertain such suit with the powers herein granted. The circuit court shall, when such suit is brought, grant a stay of proceedings by any state department, board, commission or officer under such statute or order pending the determination of such suit in the courts of the state. The circuit court of Dane county upon the bringing of such suit therein shall at once cause a notice thereof, together with a copy of the stay order by it granted, to be sent to the federal district court in which the action was originally begun. An appeal may be taken within ten days after the termination of the suit in the circuit court to the supreme court of the state, and such appeal shall be in every way expedited and set for an early hearing.