

## TITLE XVIII.

## Administrative Procedure and Review.

## CHAPTER 227.

## ADMINISTRATIVE PROCEDURE AND REVIEW.

227.01	Definitions.	227.16	Parties and proceedings for review.
227.02	Existing rule-making authority and procedure.	227.17	Stay of proceedings.
227.03	Registry and compilation of rules.	227.18	Record on review.
227.04	Right of petition for rules.	227.19	Additional evidence.
227.05	Declaratory judgment on rules.	227.20	Scope of review.
227.06	Declaratory rulings.	227.21	Appeals.
227.07	Administrative adjudication; notice and hearing.	227.22	Public utility assessments.
227.08	Rules pertaining to procedure.	227.23	Uniformity of interpretation.
227.09	Notification of issues.	227.24	Short title.
227.10	Evidence and official notice.	227.25	Certification of certain cases from the circuit court of Dane county to other circuits.
227.11	Records of hearings.	227.26	Jurisdiction of state courts to determine validity of laws when attacked in federal court and to stay enforcement.
227.12	Examination of evidence by agency.		
227.13	Decisions.		
227.14	Service of decision.		
227.15	Judicial review; orders reviewable.		

**227.01 Definitions.** For the purposes of this chapter:

(1) "Agency" includes the public service commission, the industrial commission (except in matters arising out of the workmen's compensation act or the unemployment compensation act), the insurance commissioner, the department of securities, the board of tax appeals (except in assessments made under chapter 76), the state board of health, the motor vehicle department, the banking commission, the banking review board, the personnel board, and all other boards, commissions, departments and officers having statewide jurisdiction and authorized by statute to exercise rule-making powers or to adjudicate contested cases; but said term does not include the governor, or any military or judicial officer of the state.

(2) "Rule" means a rule, regulation, standard, or statement of policy of general application, including the amendment or repeal thereof, issued by an agency to implement, interpret or make specific the legislation enforced or administered by it, or governing its organization and procedure, but it does not include regulations concerning internal management of the agency not affecting private rights or interests.

(3) "Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined by decisions or orders addressed to them or disposing of their interests, after opportunity for hearing. [1943 c. 375]

**227.02 Existing rule-making authority and procedure.** This chapter does not change the rule-making authority now granted by statute to any agency, nor affect specific statutory provisions governing rule-making procedure. [1943 c. 375]

**227.03 Registry and compilation of rules.** Each agency shall file forthwith in the office of the secretary of state a certified copy of every rule adopted by it, including all rules now in effect. The secretary of state shall keep a permanent register of all such rules. Except as otherwise provided by statute, all rules hereafter adopted shall become effective upon such filing, unless a later date is specifically stated therein. Each agency shall periodically compile and make available to interested persons, upon request, all rules adopted by it and remaining in effect. [1943 c. 375]

**227.04 Right of petition for rules.** Any interested person may petition an agency requesting the promulgation or amendment or repeal of any rule. Each agency shall prescribe by rule the form, content, and procedure for submission, consideration and disposition of such petitions. [1943 c. 375]

**227.05 Declaratory judgment on rules.** (1) Except as otherwise specifically provided by statute, the validity of any rule may be judicially determined upon petition for

a declaratory judgment addressed to the circuit court of Dane county. The court shall hear the petition and render a declaratory judgment thereon only when it appears from the petition 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 petitioner.

(2) A declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question. In rendering judgment, the court shall give effect to any pertinent (a) constitutional limitations upon the powers of the agency; (b) statutory limits upon the authority of the agency; (c) if the rule in question is an interpretative rule, the limits of correct interpretation; and (d) statutory requirements concerning rule-making procedures.

(3) Whenever a decision upon the validity of a rule requires a decision upon an issue of fact concerning the applicability of the rule to the petitioner, the court shall, after deciding the pertinent legal questions, refer the case to the agency for determination of the fact issue under the declaratory ruling procedure provided in section 227.06. Review by the courts of the agency determination may thereafter be had in the manner prescribed for such cases. [1943 c. 375]

**227.06 Declaratory rulings.** Any agency may, on petition by any interested person, and shall upon reference of a case in accordance with the provisions of section 227.05, issue a declaratory ruling with respect to the applicability to any persons, property, or state of facts of any rule or statute enforced by it. Each agency shall prescribe by rule the form, content and procedure for submission, consideration and disposition of such petitions. 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 shall be subject to review in the circuit court in the manner provided for the review of administrative decisions in contested cases. [1943 c. 375]

**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. [1943 c. 375]

**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. [1943 c. 375]

**227.09 Notification of issues.** Every party to a contested case shall be given a clear and concise statement of the issues involved. [1943 c. 375]

**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. [1943 c. 375]

**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. [1943 c. 375]

**227.12 Examination of evidence by agency.** Whenever in a contested case it is impracticable for the members of the agency who are to participate in the decision to hear or read all the evidence, the final decision shall not be made until a tentative draft, including findings of fact, has been prepared and furnished to each party, and an opportunity has been afforded to each party to file exceptions and to argue with respect to them orally and in writing before all the members who are to participate in the decision. The parties may by written stipulation waive compliance with this section. [1943 c. 375]

**227.13 Decisions.** Every decision of an agency in a contested case shall be in writing accompanied by findings of fact and conclusions 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. [1943 c. 375]

**227.14 Service of decision.** A copy of the decision shall be delivered or mailed forthwith to each party to the proceedings or to his attorney of record. [1943 c. 375]

**227.15 Judicial review; orders reviewable.** Administrative decisions in contested cases, whether affirmative or negative in form, except the decisions of the department of taxation and the banking commission, shall be subject to judicial review; 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. [1943 c. 375]

**227.16 Parties and proceedings for review.** Except as otherwise specifically provided by law, any person aggrieved by a decision in a contested case and directly affected thereby shall be entitled to judicial review thereof under this chapter. Proceedings for review shall be instituted by serving a notice of appeal personally or by registered mail upon the agency or one of its members or secretary or clerk, and filing such notice 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, or within 30 days after service of the order entered upon an application for rehearing if a rehearing is requested. The notice of appeal shall state the nature of the appellant's interest and the grounds of appeal, and may be amended, by leave of court, though the time for appeal has expired. Copies of the notice shall be served, personally or by registered mail, not later than 30 days after the institution of the appeal, upon all parties who appeared before the agency in the proceeding; and for the purpose of such service the agency upon request shall certify to the appellant 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), 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. [1943 c. 375]

**227.17 Stay of proceedings.** The taking of the appeal 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. [1943 c. 375]

**227.18 Record on review.** Within 30 days after service of the notice of appeal 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 under review, 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. [1943 c. 375]

**227.19 Additional evidence.** 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. [1943 c. 375]

**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. [1943 c. 375]

**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. [1943 c. 375]

**227.22 Public utility assessments.** This chapter shall not apply to assessments made under chapter 76 or to decisions of the board of tax appeals upon the review of such assessments. [1943 c. 375]

**227.23 Uniformity of interpretation.** Sections 227.01 to 227.21 inclusive shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states that enact it. [1943 c. 375]

**227.24 Short title.** Sections 227.01 to 227.21 may be cited as the Uniform Administrative Procedure Act. [1943 c. 375]

**227.25 Certification of certain cases from the circuit court of Dane county to other circuits.** Any action or appeal 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 3 months after such appeal has been so taken or action 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 appellant, 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 appellant shall pay to the clerk of the circuit court of Dane county a fee of \$2 for transmitting the record. [1941 c. 194; 1943 c. 375]

**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. [1931 c. 280; 1943 c. 375]

**Note:** This section authorizes any department, board, commission or officer sought to be restrained, or the attorney-general, to bring, in the circuit court for Dane county, a suit to enforce any state statute assailed, presumably on constitutional grounds, in any federal district court, at any time before the hearing on the application for an interlocutory injunction in the suit in the federal court. Department of Agriculture and Markets v. Laux, 223 W 287, 270 NW 548.

This section does not in any real sense confer jurisdiction of the subject matter of the action that has not already been conferred by the constitution, but prescribes the venue of the action and, in the situations specified, authorizes suit by the proper department, board, commission, or officer. Where a foreign insurance company com-

menced an action in the federal court seeking to restrain the commissioner from enforcing, in accordance with his understanding of them, state statutes regulating the insurance business in Wisconsin, the situation was sufficiently within this section to authorize the commissioner to bring an action thereunder to enforce the state statutes, as against the contention that, since there was no formal order of denial of license by the commissioner at the time the action in the federal court was commenced, there was no attempt by the company to restrain enforcement of any "order" and the contingency on which the commissioner's authority to bring an action never happened. *Duel v. State Farm Mut. Auto Ins. Co.*, 240 W 161, 1 NW (2d) 887, 2 NW (2d) 871.