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 members of the Grand Army home for veterans at King, or 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.

(s) Prescribes or relates to a uniform system of accounts for persons, including municipalities, regulated by the public service commission.

(t) Ascertains and determines prevailing hours of labor, wage rates and truck rental rates pursuant to s. 103.50 and prevailing wage rates and hours of labor pursuant to s. 103.49 but any such action or inaction which so ascertains and determines prevailing hours of labor, wage rates and truck rental rates pursuant to ss. 103.49 and 103.50 shall continue to be subject to judicial review, the same as a rule, as provided in this chapter.

History: 1963 c. 457; 1965 c. 295.

The rules of Ch. 227 as to judicial review, made applicable only to "contested cases" as defined in (2), apply only to those situations in which the law already requires an opportunity for hearing to be offered, but the act does not itself specify or determine what types of cases require a hearing, that being a matter which is left for specification in the particular regulatory act which the agency administers. Milwaukee v. Public Service Comm. 11 W (2d) 111, 104 NW (2d) 167.

In the definition of "contested case" referring to a "party" controverting the right, duty, or privilege of another party, the term "party" does not restrict the definition of "contested case" to proceedings wherein issues are contested between private parties. Hall v. Banking Review Board, 13 W (2d) 359, 108 NW (2d) 543.

The board of pharmacy's announcement that it intended to prosecute out-of-state manufacturers who sell prescription drugs in this state without a license pursuant to 151.04 (5) does not constitute a rule and is not subject to review under 227.05. Barry Laboratories, Inc. v. State Bd. of Pharm. 26 W (2d) 505, 132 NW (2d) 833.

A letter issued to all plumbers in Wisconsin by the state board of health directed, "To Whom It May Concern," prohibiting the use of single vent double chair carrier water closet fittings, which pronouncement contained no indication that the policy was limited to a particular manufacturer and distributor to the exclusion of others, constituted a rule, since it was a statement of agency policy of general application reviewable by the declaratory-relief procedure set forth in 227.05. Josam Mfg. Co. v. State Board of Health, 26 W (2d) 587, 133 NW (2d) 301.

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.

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.

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, corporation 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.

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.

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.

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 legislators 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).

There is no time limit on adoption of rules and regulations after hearing and investigations, but a court might consider the lapse of time in determining whether the agency was arbitrary or capricious. The doctrine of laches might apply. 54 Atty. Gen. 225.

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.

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.

Discussion of Ch. 227 relative to rule-making procedures by state agencies and correction of possible errors. 52 Atty. Gen. 315.

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.

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.

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 department of administration 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: 1965 c. 249.

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.

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.

An order of an administrative body, made pursuant to statutory authority will be presumed constitutional, and the burden to rebut the presumption requires proof beyond a reasonable doubt. Great weight should be given to an administrative agency's interpretation and application of its own rules, unless plainly erroneous or inconsistent with the regulations so interpreted. The party attacking a rule issued by a state board or agency has the duty of establishing its unconstitutionality by proof beyond a reasonable doubt, i.e., it must be shown that there is no reasonable basis upon which the legislature (and hence the board or agency) could have based its legislation (and hence the rule which it has promulgated). Josam Mfg. Co. v. State Board of Health, 26 W (2d) 587, 133 NW (2d) 301.

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.

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.

227.05 Declaratory judgment proceedings. (1) Except as provided in sub. (2) 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) 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.

(3) 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.

(4) 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: 1965 c. 191.

In a declaratory relief proceeding to determine the scope of a motor carrier license issued after a hearing, the PSC should consider the entire record in making its determination. B. D. C. Corp. v. Public Service Comm. 23 W (2d) 260, 127 NW (2d) 409.

See note to 227.01, citing Barry Laboratories, Inc. v. State Bd. of Pharm. 26 W (2d) 505, 132 NW (2d) 833.

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

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

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

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

(c) The petition shall be signed by one or more persons, with each signer's address set forth opposite 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.

History: 1965 c. 191.

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.

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.

It is not the province of courts to prescribe rules of procedure for adminstrative bodies, as that function belongs to the legislature; hence the rule-making power of the supreme court does not extend to prescribing procedures to be followed by administrative agencies. State ex rel. Thompson v. Nash, 27 W (2d) 183, 133 NW (2d) 769.

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.

Hearsay evidence, if admissible before an administrative agency, should not be received over objection where direct testimony as to the same facts is obtainable. Outagamie County v. Brooklyn, 18 W (2d) 303, 118 NW (2d) 201.

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.

A hearing held by the highway commission on the relocation of an arterial highway was only a part of the investigation by the commission and not a "contested case"; the court's review is not limited to the record made at the hearing but can include additional materials and reports used by the commission in making its decision. Ashwaubenon v. State Highway Comm. 17 W (2d) 120, 115 NW (2d) 498.

227.12 Examination of evidence by agency. Whenever in a contested case, or upon hearing ordered, 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. Whenever the ultimate decision of the agency is contrary to the recommendations of the person conducting the hearing, the decision shall include a statement of facts and ultimate conclusions relied upon in rejecting the recommendations of the hearing officer. The parties may by written stipulation waive compliance with this section.

History: 1965 c. 191.

227.13 Decisions. Every decision of an agency following a hearing 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 material issue of fact without recital of evidence.

History: 1965 c. 191.

State superintendent of schools was acting in a legislative capacity in ordering attachment of school districts under 40.035 and he was not required to hold a formal hearing or restrict his decision to the facts in the record. The fact that appellants sought review by certiorari does not convert the exercise of a legislative function into a contested case. State ex rel. La Crosse v. Rothwell, 25 W (2d) 228, 130 NW (2d) 806, 131 NW (2d) 699.

There is no requirement that an administrative agency charged with and performing a legislative function state the reasons or basis for a policy determination comporting with prescribed legislative standards, and findings meet the requirement when they are stated in terms of ultimate-factual determinations, albeit couched in the very words of the statute. Hixon v. Public Service Comm. 32 W (2d) 608, 146 NW (2d) 577.

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.

Where a certain existing bank, opposing the granting of a charter to a proposed new bank, was interested in serving the area which would also be served by the proposed new bank, and in defending the adequacy of its service therein, the interest of such opposing bank would be sufficient to make it a "party aggrieved" by a decision of the banking review board adverse to it, so as to be entitled to a judicial review. Hall v. Banking Review Board, 13 W (2d) 359, 108 NW (2d) 543.

A landowner objecting to a decision of the highway commission that a certain highway is to be a non-access highway may have review under this section as an ex-

clusive remedy. Nick v. State Highway Comm. 13 W (2d) 511, 109 NW (2d) 71.

A prisoner's interest in parole is not a legal right or privilege within the meaning of this section and the refusal of the department of public welfare to parole a prisoner is not a decision reviewable under 227.15 to 227.21. Tyler v. State Department of Public Welfare, 19 W (2d) 166, 119 NW (2d) 460.

Even though this was not a "contested case," the right to judicial review under the administrative procedure act was not foreclosed by such fact, since the amendment of secs. 227.15 and 227.16 by ch. 511, Laws 1945, removed this circumstance as a condition to judicial review. [Prior decisions out of harmony herewith, modified.] Ashwaubenon v. Public Service Comm. 22 W (2d) 38, 125 NW (2d) 647, 126 NW (2d) 567.

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.

30.11, reposing in municipalities the right to establish bulkhead lines in navigable waters subject to the approval of the public service commission, is sufficient to make a town whose application has been denied a "person aggrieved" under 227.16, so as to be entitled to a judicial review under the administrative procedure act. Ashwaubenon v. Public Service Comm. 22 W (2d) 38, 125 NW (2d) 647, 126 NW (2d) 567.

A taxpayer seeking review of a decision rendered by the board of tax appeals must comply with the mandatory requirements of (1) with respect to service of his petition seeking relief, and he cannot effectively invoke the jurisdiction of the circuit court by causing service of the petition for review to be made on that board, and omitting within the prescribed 30 days to serve the adverse tax agency. Monahan v. Department of Taxation, 22 W (2d) 164, 125 NW (2d) 331.

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.

The general provisions in 227.16 (1) apply to motions to dismiss under 227.19 (3). Where the motion to dismiss was not expressly grounded upon failure to state facts sufficient to show how petitioner was aggrieved so that petitioner was alerted to the claimed insufficiency, the court should not have dismissed the petition. Milwaukee County Dist. Council v. Wis. E. R. Bd. 23 W (2d) 303, 127 NW (2d) 59.

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.

Cross Reference: See 196.405 (2) for provision that as to PSC decisions no one on appeal to any court can rely on any ground not set forth in the application for rehearing.

See note to 196.405, citing Cobb v. Public Service Comm. 12 W (2d) 441, 107 NW (2d) 595.

Where competent evidence is introduced by both the taxpayer and the department of taxation before the board of tax appeals on the issue in controversy in a case involving an additional assessment of income taxes, the reviewing court is concerned only with whether there is substantial evidence in view of the entire record to sustain the board's finding, and it is immaterial in relation thereto that the burden of proof is on the taxpayer to show the incorrectness of the additional assessment. Department of Taxation v. O. H. Kindt Mfg. Co. 13 W (2d) 258, 108 NW (2d) 535.

In proceedings instituted by a transport company for the review of certain orders of the public service commission prescribing passenger fares to be charged by the company for urban mass-transportation service provided by trackless trolleys and busses, the trial (reviewing) court was neither called on nor authorized to make an independent determination of rate base, operating revenues, and return, nor an independent determination of facts. Milwaukee & S. T. Corp. v. Public Service Comm. 13 W (2d) 384, 108 NW (2d) 729.

Under (1) (d), the words "substantial evidence" mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, the test of

reasonableness being implicit in the statutory words "substantial evidence"; use of the statutory words "in view of the entire record as submitted" strongly suggesting that the test of reasonableness is to be applied to the evidence as a whole, not merely to that part which tends to support the agency's findings. Copland v. Department of Taxation, 16 W (2d) 543, 114 NW (2d) 858.

Although (1) (b) and (d) require Wisconsin courts to employ the so-called analytical approach when reviewing agency decisions, nevertheless, in fields in which an agency has particular competence or expertise, the courts should not substitute their judgment for the agency's application of a particular statute to the found facts if a rational basis exists in law for the agency's interpretation and it does not conflict with the statute's legislative history, prior decisions of the supreme court, or constitutional prohibitions. Pabst v. Department of Taxation, 19 W (2d) 313, 120 NW (2d) 77.

On judicial review of a decision of the board of tax appeals in an income-tax case —wherein all the facts before the board were stipulated—if but one inference can reasonably be drawn from such undisputed facts, a question of law is presented and the finding of the board to the contrary is not binding on the reviewing court; but if more than one inference can reasonably be drawn, then the finding of the board is conclusive. Pabst v. Department of Taxation, 19 W (2d) 313, 120 NW (2d) 77.

(1) (d) does not apply to the review of workmen's compensation or unemployment compensation cases. Seymour v. Industrial Comm. 25 W (2d) 482, 131 NW (2d) 323.

In a proceeding on application for unemployment benefits in which the commission found that the employe's conduct did not evince a wilful, wanton, or substantial disregard of the standards of behavior which the employer had a right to expect, reversal by the circuit court was erroneous where the court incorrectly applied the test of preponderence of the credible evidence as the burden of proof necessary to sustain the findings of the commission rather than the test of whether there was credible evidence which, if unexplained, would support the findings. Liebmann Packing Co. v. Industrial Comm. 27 W (2d) 335, 134 NW (2d) 458.

In any review of an agency decision the credibility of the witnesses and the weight to be attached to the reasonableness of the evidence as a whole remains with the agency. Hilboldt v. Wisconsin R. E. Brokers' Board, 28 W (2d) 474, 137 NW (2d) 432.

The applicant's challenge to the adverse determination of the PSC that its findings of fact were unsupported by substantial evidence in view of the entire record, and that they were arbitrary and capricious, was adequate to raise the question of the sufficiency of the findings both on review in the circuit court and in the supreme court. Hixon v. Public Service Comm. 32 W (2d) 608, 146 NW (2d) 577.

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.

There can be no appeal to the supreme court from any determination of the circuit court in a proceeding for review under ch. 227 except from a final judgment or final order. Ashwaubenon v. Public Service Comm. 15 W (2d) 445, 113 NW (2d) 412.

227.22 Application of chapter 227. (1) This chapter applies to cases arising under ss. 76.38, 76.39 and 76.48.

(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: 1967 c. 109.

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

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.