

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

except as otherwise provided by law and except for the following:

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

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

(4) Decisions of the office of credit unions.

(6) Decisions of the chairperson of the elections board or the chairperson's designee.

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

History: 1975 c. 414; 1977 c. 187, 418; 1981 c. 79, 96, 391; 1983 a. 27, 122, 183, 538; 1985 a. 182 s. 35; Stats. 1985 s. 227.52; 1995 a. 27 ss. 6233, 9130 (4); 1997 a. 3, 27; 1999 a. 9, 182; 2003 a. 33.

Cross-reference: See s. 50.03 (11) for review under subchapter I of chapter 50. Legislative Council Note, 1981: The amendment to s. 227.15 applies court review under ch. 227 to revocations, suspensions and nomenewals by the department of permits issued by it. [Bill 300-A]

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

The requirements of ss. 227.15 and 227.16 (1) [now ss. 227.52 and 227.53 (1)] for standing to seek review of an administrative decision do not create separate and independent criteria, but both sections essentially require that to be a person aggrieved for standing purposes, one must have an interest recognized by law in the subject matter that is injuriously affected by the decision. Wisconsin's Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1, 230 N.W.2d 243 (1975).

An order of the employment relations commission directing an election and determining the bargaining unit under 111.70 (4) (d) is not reviewable. West Allis v. WERC, 72 Wis. 2d 268, 240 N.W.2d 416 (1976).

An unconditional interim order by the public service commission fixing utility rates pending final determination was reviewable when no provision was made for the refund of excess interim rates. Friends of the Earth v. PSC, 78 Wis. 2d 388, 254 N.W.2d 299 (1977).

The decision of the PSC not to investigate under ss. 196.28 and 196.29 was a nonreviewable, discretionary determination. Reviewable decisions are defined. Wisconsin's Environmental Decade, Inc. v. PSC, 93 Wis. 2d 650, 287 N.W.2d 737 (1980). A court order setting aside an administrative order and remanding the case to the administrative agency was appealable as of right. Beams v. DILHR, 102 Wis. 2d 70, 306 N. W.2d 22 (1981).

Because an appointment to office was an administrative decision, a challenge of appointment could only be made under this chapter. State ex rel. Frederick v. Cox, 111 Wis. 2d 264, 330 N.W.2d 603 (Ct. App. 1982).

A declaratory judgment action was improper when the plaintiff did not pursue any available remedies under ch. 227. Trunkow v. DNR, 216 Wis. 2d 272, 576 N.W.2d 288 (Ct. App. 1998).

The division of hearings and appeals is not a line agency charged with the administration and enforcement of the statutes involved and does not have experience administering the underlying program. Unless the line agency has adopted DHA's interpretation as its own, de novo review of a DHA decision is appropriate. Buettner v. DHFS, 2003 WI App 90, 264 Wis. 2d 700, 663 N.W.2d 282.

Administrative decisions eligible for judicial review in Wisconsin. Klitzke, 61 MLR 405.

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

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

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for

Unofficial text from 01-02 Wis. Slats. database. See printed 01-02 Statutes and 2003 Wis. Acts for official text under s. 35.18 (2) slats. Report errors to the Revisor of Statutes at (608) 266-2011, FAX 264-6978, <http://www.logis.state.wi.us/lrsbl>

21 Updated 01-02 Wis. Stats. Database UNOFFICIAL TEXT

ADMINISTRATIVE PROCEDURE

227.54

review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 73.0301 (2) (b) 2., 77.59 (6) (b), 182.70 (6), and 182.71 (5) (g). If the petitioner is a nonresident, the proceedings shall be held in the county where the property affected by the decision is located or, if no property is affected, in the county where the dispute arose. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 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 it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.
2. The banking review board, the division of banking.
3. The credit union review board, the office of credit unions.

4. The savings institutions review board, the division of banking, except if the petitioner is the division of banking, the prevailing parties before the savings institutions review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in

which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

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

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmation, 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 provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

History: 1971 c. 243; 1975 c. 94 s. 3; 1975 c. 414; 1977 c. 26 s. 75; 1977 c. 187; 1979 c. 90, 208, 355; 1985 a. 149 s. 10; 1985 a. 182 ss. 37, 57; Stats. 1985 s. 227.53; 1987 a. 27, 313, 399; 1991 a. 221; 1995 a. 27; 1997 a. 27; 1999 a. 9, 85; 2001 a. 38; 2003 a. 33, 118.

The circuit court had no jurisdiction of an appeal from the tax appeals commission when the petition for review was served only on the department of revenue and not on the commission within the allowed 30 days. *Brachtl v. DOR*, 48 Wis. 2d 184, 179 N.W.2d 921 (1970).

Service on the department of a notice of appeal by ordinary mail, when received in time and not promptly objected to was good service. Service on a staff member of the department was sufficient when in the past that individual had represented himself as an agent and as an attorney for the department. *Hamilton v. DILHR*, 56 Wis. 2d 673, 203 N.W.2d 7 (1973).

An appeal will not lie from an order denying a petition to reopen an earlier PSC order when no appeal was taken from the order or the order denying rehearing within 30 days. *Town of Caledonia v. PSC*, 56 Wis. 2d 720, 202 N.W.2d 912 (1973).

A failure to strictly comply with the caption requirements of sub. (1) does not divest a court of jurisdiction if all other jurisdictional requirements are met. *Evans v. DLAD*, 62 Wis. 2d 622, 215 N.W.2d 408 (1974).

When the taxpayer failed to serve a copy of his petition for review of a decision and order of the tax appeals commission upon the department of revenue within 30 days, the circuit court had no jurisdiction. *Cudahy v. DOR*, 66 Wis. 2d 253, 224 N.W.2d 570 (1974).

The implied authority of the PSC under various provisions of ch. 196 to insure that future supplies of natural gas will remain as reasonably adequate and sufficient as practicable indicates a legally recognized interest of the environmental group members living in the area affected by the commission order in the future adequacy of their service that is sufficient to provide standing if the facts alleged in the petition are true to challenge the commission's failure to consider conservation alternatives to the proposed priority system. *Wisconsin's Environmental Decade, Inc. v. PSC*, 69 Wis. 2d 1, 230 N.W.2d 243 (1975).

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

"Parties" under sub. (1) (c), 1975 stats., are those persons affirmatively demonstrating active interest in the proceedings; the PSC must identify parties. *Wisconsin's Environmental Decade, Inc. v. PSC*, 84 Wis. 2d 504, 267 N.W.2d 609 (1978). Chapter 801 is inapplicable to judicial review proceedings. *Omerrick v. DNR*, 94 Wis. 2d 309, 287 N.W.2d 841 (Ct. App. 1979).

Service on a department rather than on a specific division within the department was sufficient notice under this section. *Sunnyview Village v. DOA*, 104 Wis. 2d 396, 311 N.W.2d 632 (1981).

When the petitioners lacked standing to seek review and the intervenors filed after the time limit in sub. (1), the intervenors could not continue to press their claim. *Fox v. DHSS*, 112 Wis. 2d 514, 334 N.W.2d 532 (1983).

The test for determining whether a party has standing is: 1) whether the agency decision directly causes injury to the interest of the petitioner; and 2) whether the asserted interest is recognized by law. *Waste Management of Wisconsin v. DNR*, 144 Wis. 2d 499, 424 N.W.2d 685 (1988).

Although it may not be able to sue the state, a county has standing to bring a petition for review because the petition initiates a special proceeding rather than an action. *Richland County v. DHSS*, 146 Wis. 2d 271, 430 N.W.2d 374 (Ct. App. 1988).

Delivery of a petition to an agency attorney did not meet the requirements for service under sub. (1) (a) I. *Weisensel v. DHSS*, 179 Wis. 2d 637, 508 N.W.2d 33 (Ct. App. 1993).

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

In the case of a ch. 227 petition for review, the petition commences the action rather than continuing it. As an attorney is not authorized to accept the service of process commencing an action, service on the attorney general rather than the agency is insufficient to commence an action for review. *Gimenez v. State Medical Examining Board*, 229 Wis. 2d 312, 600 N.W.2d 28 (Ct. App. 1999).

Section 227.48 applies only to contested cases. By virtue of the reference to s. 227.48, the 30-day deadline in sub. (1) (a) 2. is inapplicable to noncontested cases. Because there is no statutory limit for noncontested cases, a 6-month default limitation applies. *Hedrich v. Board of Regents of the University of Wisconsin System*, 2001 WI App 228, 248 Wis. 2d 204, 635 N.W.2d 650.

Because parties to an agency proceeding have the right to participate in judicial review proceedings under the first sentence in sub. (1) (d), those parties are not part of the group referred to as "other interested persons" in the second sentence and therefore are not entitled to petition for permissive intervention. Under sub. (1) (d) the petition to intervene must be served on all parties to the judicial review at least 5 days before the hearing on the intervention petition. *Citizens' Utility Board v. PSC*, 2003 WI App 206, - Wis. 2d - N.W.2d -

227.54 Stay of proceedings. The institution of the proceeding for review shall not stay enforcement of the agency decision. The reviewing court may order a stay upon such terms as it deems proper, except as otherwise provided in ss. 196.43, 253.06 (7), 448.02 (9) and 551.62.

History: 1983 a. 27; 1985 a. 182 s. 39; Stats. 1985 s. 227.54; 1987 a. 5; 1997 a. 27, 311.

Unofficial text from 01-02 Wis. Stats. database. See printed 01-02 Statutes and 2003 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266-2011, FAX 264-6978, <http://www.legis.state.wi.us/lrs/b>

227.55 ADMINISTRATIVE PROCEDURE

Updated 01-02 Wis. Stats. Database 22 UNOFFICIAL TEXT

227.55 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.

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

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

227.56 Additional evidence; trial; motion to dismiss; amending petition. (1) If before the date set for trial, application is made to the circuit court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceedings before the agency, the

court may order that the additional evidence be taken before the agency upon such terms as the court may deem proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court the additional evidence together with any modified or new findings or decision.

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

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

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

Section 111.36 (3m) (c) [now s. 111.39 (5) (c)] shows a policy against opening Fair Employment proceedings more than one year after the commission's final order; a court should not use ch. 227 or s. 752.35 to circumvent that policy. *Chicago & North Western Railroad v. LIRC*, 91 Wis. 2d 462, 283 N.W.2d 603 (Ct. App. 1979).

A court may not find facts under sub. (1); the court may only receive evidence to determine whether to remand to the agency for further fact finding. *State Public Intervenor v. DNR*, 171 Wis. 2d 243, 490 N.W.2d 770 (Ct. App. 1992).

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

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

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

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

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

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

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

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

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

(10) 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 the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit or privilege under such act.

History: 1975 c. 94 s. 3; 1975 c. 414; 1979 c. 208; 1985 a. 182 s. 41; Stats. 1985 s.227.57.

Under sub. (6), a finding of fact is supported if reasonable minds could arrive at the same conclusion. *Westring v. James*, 71 Wis. 2d 462, 238 N.W.2d 695 (1976). A reviewing court, in dealing with a determination or judgment that an administrative agency is alone authorized to make, must judge the propriety of the action solely on grounds invoked by the agency with sufficient clarity. *Stas v. Milwaukee County Civil Service Commission* 75 Wis. 2d 465, 249 N. W.2d 764 (1977).

When a DNR decision under s. 30.12 prohibited a structure and the riparian owner did not seek review under s. 227.20 [now 227.57], the trial court had no jurisdiction to hear an action by the owner seeking a declaration that structure was a permitted "pier" under s. 30.13. *Kosmatka v. DNR*, 77 Wis. 2d 558, 253 N.W.2d 887.

Summary judgment procedure is not authorized in proceedings for judicial review under this chapter. *Wis. Environmental Decade v. PSC*, 79 Wis. 2d 161, 255 N. W.2d 917.

"Discretion" means a process of reasoning, not decision-making, based on facts in the record or reasonably inferred from the record, and a conclusion based on a logical rationale founded on proper legal standards. *Reidinger v. Optometry Examining Board*, 81 Wis. 2d 292, 260 N.W.2d 270.

An agency determination that an environmental impact statement was adequately prepared is reviewed under s. 227.20 [s. 227.57]. *Wisconsin's Environmental Decade, Inc. v. PSC*, 98 Wis. 2d 682, 298 NW 2d 205 (Ct. App. 1980).

Relief from a judgment entered in a ch. 227 review may not be granted under s. 806.07. *Charter Manufacturing Co. v. Milwaukee River Restoration Council, Inc.* 102 Wis. 2d 521, 307 N.W.2d 322 (Ct. App. 1981).

A party cannot recover attorney's fees against the state under sub. (9). An administrative judge should have been disqualified due to a compelling appearance of impropriety. *Guthrie v. WERC*, 107 Wis. 2d 306, 320 N.W.2d 213 (Ct. App. 1982). Affirmed. 111 Wis. 2d 447, 331 NW.2d 331 (1983).

The commission's change of accounting treatment for recovery of utility expenditures was arbitrary and capricious. *Wisconsin Public Service Corp. v. PSC*, 109 Wis. 2d 256, 325 N.W.2d 867 (1982).

Sub. (7) grants the trial court broad authority to remand a matter to an agency for further action when no hearing has been held and no particular result is compelled as a matter of law. *R. W. Docks & Slips v. DNR*, 145 Wis. 2d 854, 429 N.W.2d 86 (Ct. App. 1988).

Unofficial text from 01-02 Wis. Stars. database. See printed 01-01 Statutes and 2003 Wis. Acts for official text under s. 35.18 (2) stars. Report errors to the Revisor of Statutes at (608) 266-1011, FAX 264-6978, <http://www.legis.state.wi.us/lrsbl>

23 Updated 01-02 Wis. Stats. Database UNOFFICIAL TEXT

ADMINISTRATIVE PROCEDURE 227.60

On review, there are three levels of deference that may be given to an administrative agency's conclusions of law and statutory interpretations, depending on the agency's experience, technical competence, and knowledge in regard to the question presented. *Kelley Co. v. Marquardt*, 172 Wis. 2d 234, 493 N.W.2d 68 (1992).

Statutes enabling rule promulgation are strictly construed to preclude the exercise of a power not expressly granted. Whether an agency exceeded its authority in promulgating a rule is reviewed de novo by a reviewing court. *State Public Intervenor v. DNR*, 177 Wis. 2d 666, 503 N.W.2d 305 (Ct. App. 1993).

Agency jurisdiction is a legal issue reviewed de novo by a reviewing court. An agency's decision on the scope of its own power is not binding on the court. *Loomis v. Wisconsin Personnel Commission*, 179 Wis. 2d 25, 505 N.W.2d 462 (Ct. App. 1993).

Default judgment is incompatible with the scope of review of a ch. 227 proceeding. *Wagner v. State Medical Examining Board*, 181 Wis. 2d 633, 511 N.W.2d 874 (1994). A circuit judge has inherent authority to order briefs in a case under this section and to dismiss the action if a party fails to file a brief as ordered. *Lee v. LIRC*, 202 Wis. 2d 559, 550 N.W.2d 534 (Ct. App. 1996).

De novo review of an administrative decision is appropriate only if the issue is one of first impression or the agency's position has been so inconsistent as to be of no guidance. An agency need not have considered identical or even substantially similar facts before, only the particular statutory scheme. *ITW Deltar v. LIRC*, 226 Wis. 2d 11, 593 N.W.2d 908 (Ct. App. 1999).

Emphasizing the uniqueness of certain facts presented to an administrative agency does not assure de novo review of the agency's decision. The test is not whether the agency has ruled on the precise, or even substantially similar, facts. The key is the agency's experience in administering a particular statutory scheme. *Mattila v. Employee Trust Funds Board*, 2001 WI App 79, 243 Wis. 2d 90, 626 N.W.2d 33.

The courts will not defer to an agency interpretation that directly contravenes the words of a rule. *Trott v. DHFS*, 2001 WI App 68, 242 Wis. 2d 397, 626 N.W.2d 48. The test under sub. (6) is whether, taking into account all of the evidence in the record, reasonable minds could arrive at the same conclusion as the agency. The findings of an administrative agency do not need to reflect a preponderance of the evidence as long as the agency's conclusions are reasonable. If the factual findings of the administrative body are reasonable, they will be upheld. *Kitten v. DWD*, 2002 WI 54, 252 Wis. 2d 561, 644 N.W.2d 649.

Ordinarily a reviewing court will not consider issues beyond those properly raised before the administrative agency, and a failure to raise an issue generally constitutes a waiver of the right to raise the issue. However, the rule is one of administration, and the reviewing court has the power to decide issues that were not raised before the agency if all the necessary facts are of record and the issue is a legal one of great importance. *Bunker v. LIRC*, 2002 WI App 216, 257 Wis. 2d 255, 650 N.W.2d 864.

Due process does not disqualify an agency as a decision-maker merely because of familiarity with the facts of the case. *Hortonville Dist. v. Hortonville Ed. Assn.*, 426 U.S. 482 (1976).

If a court affirms an agency decision under sub. (2), an unsuccessful claimant may not bring a claim to federal court. *Young v. Michigan Wisconsin Pipe Line Co.*, 569 F. Supp. 741 (1983).

The Standards of Review for Agency Interpretation of Statutes in Wisconsin. *Massa*, 83 MLR 597 (2000).

The scope of judicial review in Wisconsin. *Hewitt*, 1973 WLR 554.

The standard of review of administrative rules in Wisconsin. 1982 WLR 691.

227.58 Appeals. Any party, including the agency, may secure a review of the final judgment of the circuit court by appeal to the court of appeals within the time period specified in s. 808.04 (1).

History: 1977 c. 187 s. 134; 1983 a. 219; 1985 a. 182 s. 41; Stars. 1985 s. 227.58. Judicial Council Note, 1983: This section is amended by repealing the appeal deadline of 30 days from notice of entry of judgment for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stars. This section is further amended to eliminate the superfluous provision that the appeal is taken in the manner of other civil appeals. Civil appeal procedures are governed by chs. 808 and 809. [Bill 151-S]

The court of appeals had no power to remand a case under 806.07 (1) (b) or (h); ch. 227 cannot be supplemented by statutory remedies pertaining to civil procedure. *Chicago & North Western Railroad v. LIRC*, 91 Wis. 2d 462, 283 N.W.2d 603 (Ct. App. 1979).

227.59 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 an action or appeal for the review of any order of the department of workforce development or the department of commerce or findings and orders of the labor and industry review commission which is instituted or taken and is not called for trial or hearing within 6 months after the proceeding or action is instituted, and the trial or hearing of which is not 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 the action or proceeding shall be given preference. Unless written objection is filed within the 5-day period, the order certifying and transmitting the 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.

History: 1977 c. 29; 1983 a. 219; 1985 a. 182 s. 47; Stats. 1985 s. 227.59; 1995 a. 27 ss. 6238, 9116 (5), 9130 (4); 1997 a. 3.