



WISCONSIN LEGISLATIVE COUNCIL

# SENATE COMMITTEE PROCEDURES AND POWERS

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*Supporting Effective Lawmaking Since 1947*

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# PART I

## OVERVIEW – ROLE OF COMMITTEES AND CHAIRPERSONS

### Introduction

This publication describes Senate committee procedures and powers, explains the role of a committee chair in administering the work of a committee, and summarizes committee requirements and process related to various topics including administrative rules, fiscal estimates, open meetings law, and open records law.

Following each provision included in this document is a bracketed list of the sources underlying the provision, including state statutes, Senate Rules (SR), and Joint Rules (JR).

### Role of Standing Committees

Senate standing committees are permanent legislative committees established to engage in activities related to the subject matter under each committee's jurisdiction. The standing committees regularly review proposed legislation and administrative rules and occasionally perform other functions at the discretion of the chairperson.

Standing committee activities are:

- **Review Proposed Legislation and Nominations for Appointments.** Standing committees review bills and resolutions, as well as nominations for appointments, referred to the committee and make recommendations to the full Senate about their disposition.
- **Review Administrative Rules.** Standing committees review proposed administrative rules referred to the committee and may object to a proposed rule or request modification to a proposed rule.
- **Conduct Studies, Investigations, and Reviews.** Standing committees may inquire into or conduct hearings on matters within the subject matter jurisdiction of the committee.

[SR 20 and 99 (86); and JR 84 (3)]

### Role of Special Committees

Senate special committees are temporary committees created by the Committee on Senate Organization to investigate a specific matter or subject area.

[SR 21]

### Responsibilities of Chairpersons

Committee chairpersons direct the activities of their committees and dictate the content and conduct of committee hearings. The responsibilities of committee chairpersons include the following:

- Schedule all committee meetings, including public hearings, executive sessions, and joint hearings.

- Establish the agenda for committee meetings.
- Notify committee members of all committee meetings.
- Issue public notice of committee meetings.
- Ensure that fiscal estimates and bills are available before committee meetings.
- Preside at committee meetings.
- Supervise the committee clerk to ensure that committee actions are properly handled and reported.
- Maintain custody of all bills, papers, and other documents in possession of the committee.
- Appoint subcommittees and subcommittee chairpersons to address matters within the committee's jurisdictional area.
- Establish liaison with executive branch agencies that have responsibility within the committee's jurisdictional area.
- Report committee recommendations on proposals.
- Conduct studies and investigations of subject matter within the committee's jurisdictional area.

## **PART II**

# **COMMITTEE PROCEDURE – BILLS, RESOLUTIONS, AND APPOINTMENTS**

The role of the committee and the duties of the chairperson relating to consideration of bills and resolutions, as well as nominations for appointments, referred to a standing committee are described below. They appear according to the usual sequence of committee consideration. Insofar as applicable, the rules of the Senate apply to the procedures of standing committees. [SR 25 (6)]

### **Referral**

- When a proposal is introduced, or received from the Assembly, it is given its first reading and is referred to a standing committee by the President. The President also refers to a standing committee a nomination for an appointment.
- After initial referral, the President, with the consent of the chairperson of the committee to which it was initially referred and of the chairperson of the Committee on Senate Organization, may withdraw the proposal and refer it to another standing committee, except that the President may not withdraw the proposal during the seven days before a committee hearing or the seven days after a committee hearing.
- Proposals may also be referred to committees by action of the Senate.
- Once a proposal is reported out of a committee, the proposal may be referred to another committee.
- Upon receipt of a proposal, the committee clerk starts a committee record on the proposal.

[SR 36 (1), (1m), and (2), 41 (1), and 46 (2)]

### **Scheduling a Hearing**

- The chairperson decides whether to hold a public hearing or executive session on a proposal, or a nomination for an appointment, that has been referred to the committee.
- Hearings are generally to be scheduled on the committee's assigned meeting day.
- Use of meeting rooms is arranged with the Sergeant at Arms' office.
- The general practice is to not convene committees while the Senate is in session.
- Copies of proposals must be available to the public and a fiscal estimate, if required for a proposal, must be prepared **before** a proposal can receive a public hearing. (See Part IV.)
- Hearings must be preceded by public notice complying with the Open Meetings Law. (See the following section.)
- Committee meetings held in this state but outside of Madison require the approval of the Committee on Senate Organization in order for a Senator to be reimbursed for expenses.

[ss. 13.093 (2) (a) and 13.123 (3) (a), Stats.; SR 22, 23, 25 (1), 34, 96, and 99 (28); and JR 49 (2)]

# Notice of Public Hearings

## Notice Form

A Senate public hearing notice form should be completed. The form should include the name of the committee, the date, time, and place of the hearing, and the subject of the hearing. If legislative proposals are to be heard, the number, relating clause, and author of each proposal should be listed.

## Timing

To comply with the Open Meetings Law, notice must be given at least 24 hours prior to a committee meeting. If the Committee on Senate Organization determines, for good cause, that 24-hour notice is impractical or impossible, the Open Meetings Law allows a shorter notice period, but not less than two hours.

## Posting

- Copies of the notice are posted on the Assembly and Senate bulletin boards.
- After posting the notice, the chairperson of the committee must file with the Senate Chief Clerk a copy of the notice. All notices are published, on a daily basis, on the Legislature's committee Internet web site.<sup>1</sup>

## Other Notifications

- The chairperson should notify all committee members of committee meetings.
- It is customary for the chairperson to notify primary authors when their bills have been scheduled for a hearing or executive session.
- The Legislative Council staff attorney/analyst assigned to the committee should be notified of all committee meetings.

[s. 19.84 (1), (2), and (3), Stats.; and SR 25 (1) and 26]

# Conducting Hearings

## Hearing Slips

People attending Senate committee hearings who wish to speak or register a position on a proposal must complete a Senate hearing slip and submit the slip to the Senate Sergeant at Arms staff.

## Roll Call

The meeting begins with the roll call.<sup>2</sup> The roll may be left open and members accounted for as they arrive. A quorum is not required to be present in order to conduct a public hearing.

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<sup>1</sup> To transmit the committee public hearing notice properly to the Senate Chief Clerk's office, it is necessary to "publish" the hearing notice in the ComClerk program. Please refer to the ComClerk Manual for further information.

<sup>2</sup> In the Senate, a member who is connected to a committee meeting via teleconference shall be considered present for all purposes and to the same extent as a member who is attending the meeting in person. [SR 24]

## Announcements

The chairperson makes any announcements, such as changes to the order of business for the hearing or time limits that will be imposed on testimony.

## Conducting Business

The chairperson announces the proposal to be taken up and calls on those wishing to provide testimony. Following testimony, members who wish to ask questions of a speaker may do so upon recognition by the chairperson.

## Post-Hearing

### Attendance Slips

After the conclusion of a hearing, the committee clerk is responsible for taking a copy of the attendance record to the Chief Clerk's office.

### Record of Hearing

The committee clerk is responsible for compiling and maintaining a record of each committee meeting (before the expiration of 10 days after the meeting or before the next meeting, whichever is earlier). For each proposal taken up at the hearing, the record includes information on the hearing time and location, members present, and attendees registering or speaking on the proposal. The jackets of all proposals taken up at public hearings are taken to the Chief Clerk's office so that they can be updated to reflect that a hearing was held on the item.

### Hearing Materials

The Legislative Council scans and posts on its website most materials collected by staff during hearings on bills, resolutions, and administrative rules. These materials may be accessed at the following websites:

- Bills and resolutions: <http://lc.legis.wisconsin.gov/session-activities/bill-hearing-materials>.
- Administrative rules: <http://lc.legis.wisconsin.gov/administrative-rules>.

[JR 31 (1) and (2)]

## Executive Sessions

The committee takes action on proposals, and nominations for appointments, during executive sessions, which may be held separately or together with a public hearing. A committee may take executive action on any proposal before the committee, regardless of whether the proposal received a public hearing.<sup>3</sup>

Executive sessions are scheduled at the discretion of the committee chairperson. The chairperson also determines the business to be considered. A committee may not vote on a bill, joint resolution, or resolution unless the proposal has been introduced and made available to the public for at

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<sup>3</sup> However, a bill that has not received a public hearing may not be placed on a Senate calendar, unless the Committee on Senate Organization waives the hearing requirement. [SR 18 (1m)]

least 24 hours. This does not apply to amendments to proposals. In addition, when a fiscal estimate is required for a proposal, a committee may not vote on the proposal until a fiscal estimate is available.

Notices of executive sessions are issued following the same procedure as for public hearings.

A committee may conduct an executive session by paper ballot, if the executive session is preceded by public notice. Voting by polling is prohibited except in an emergency.

## Convening and Procedures

- To convene an executive session, the committee chairperson calls the meeting to order and directs the committee clerk to call the roll.
- A quorum must be present to convene an executive session and to conduct business.
- Proposals are taken up as called by the chairperson.

## Voting While Present

- All motions must receive a second in order to be placed before the committee for a vote.
- All committee votes must be taken on a roll call vote in the presence of the committee.
- *Members Must Be Present.* A member must be present in order to be recorded as voting. (See also SR 24, regarding the use of a teleconference for a member to be present.) Chairpersons have interpreted this requirement in varying ways in order to accommodate inevitable conflicts with committee members' schedules. For example, a common interpretation allows the voting roll be held open for absent members while the committee moves on to other business, and for a specified time after all other committee business is complete or until the absent member returns. The Legislative Council recommends that the chairperson and the clerk remain present in the committee room while waiting for absent members. If an absent member is unable to vote during the executive session, the member may request that the committee report show how the member would have voted if he or she had been present.
- Every present committee member must vote.
- Members vote in the order in which they were named to the committee.
- *Reconsideration.* A committee may reconsider any action taken on a proposal until the time that the proposal is reported out of committee to the Senate.

## Voting by Paper Ballot

- A chairperson of a standing committee may elect to vote on a proposal, amendment, appointment, or proposed administrative rule by ballot if the proposal, amendment, appointment, or proposed administrative rule has lain over for at least 24 hours, unless the Committee on Senate Organization determines that for good cause such a layover is impossible or impractical. In no case may a proposal, amendment, appointment, or proposed administrative rule be made available to the public less than two hours in advance of circulating the ballot.
- Public notice must be posted on the bulletin board of each house prior to the circulation of a ballot at least 24 hours before the ballot is circulated, unless the Committee on Senate

Organization determines that for good cause such notice is impossible or impractical. In no case may notice be provided less than two hours in advance of circulating the ballot.

- The public notice must indicate the day and hour when the ballot will be circulated and the number, author, and relating clause of each proposal to be considered.
- A member may change his or her vote if the change will not affect the outcome of the vote and if the proposal, amendment, appointment, or proposed administrative rule has not been reported out of committee. In no case may a member change his or her vote later than 24 hours after the ballot is due as provided in the executive session notice.

## Amendments

- *Order of Consideration.* The order of considering simple and substitute amendments is governed by SR 47. In general, substitute amendments and simple amendments are considered in ascending order.
- *Form.* Amendments should be drafted by the Legislative Reference Bureau (LRB). Amendments may also be drafted and offered in committee, using the preprinted forms provided by the Chief Clerk for that purpose. Amendments that are not complex may be drafted during an executive session by the Legislative Council attorney/analyst assigned to the committee. (Some committee chairpersons require amendments to be available to committee members at least 24 hours in advance of the meeting.)
- *Scope.* Committees may only offer amendments to proposals currently before the committee.
- If an amendment before a committee is not adopted, it is not reported by the committee. The amendment may later be “revived” by majority vote of the Senate, or may be redrafted for Senate consideration.

## Motions

The following motions are in order during an executive session. Amendments received during executive session that have not already been introduced must be offered for introduction by the committee (not an individual member).

- Motions on *introduction* of proposals and amendments.
  - Bills, resolutions, and joint resolutions. The following motion is in order during an executive session:
    - Introduction.
  - Amendments (simple and substitute). The following motion is in order during an executive session:
    - Introduction. (Strictly speaking, it is improper to move introduction and adoption, or rejection, together.)
- Motions on *Senate bills already introduced*. The following motions are in order during an executive session:
  - Bills:

- Passage.
  - Indefinite postponement.
- Amendments (simple and substitute):
  - Adoption.
  - Rejection.
- Bills, with amendments.
  - Passage, as amended.
  - Indefinite postponement, as amended.
- Motions on *Senate resolutions* and *joint resolutions already introduced*. The following motions are in order during an executive session:
  - Resolutions and joint resolutions:
    - Adoption.
    - Rejection.
  - Amendments (simple and substitute):
    - Adoption.
    - Rejection.
  - Resolutions and joint resolutions, with amendments:
    - Adoption, as amended.
    - Rejection, as amended.
- Motions on *Assembly bills* and *joint resolutions*. The following motions are in order during an executive session:
  - Bills and joint resolutions:
    - Concurrence.
    - Nonconcurrence.
  - Senate amendments to Assembly proposals (simple and substitute):
    - Adoption.
    - Rejection.
  - Assembly proposals with Senate amendments:
    - Concurrence, as amended.

- Nonconcurrency, as amended.
- On a nomination for an appointment, the question is on the confirmation of the appointment.
- *Motions to table.* Motions to table a bill to a time later than the adjournment of the meeting are not in order, since the motion does not form the basis for a recommendation to the Senate for final action. A chairperson may at any time, other than during a roll call vote, withdraw a proposal from consideration.

## Post-Adjournment Actions

Following completion of an executive session, the chairperson should ensure that the committee clerk prepares the record of the executive session and that bills and amendments are delivered to the Chief Clerk's office as needed. Proposals and amendments introduced during an executive session should first be forwarded to LRB for drafting and jacketing.

## Committee Reports

The chairperson must report a proposal to the Senate after executive action if the committee recommends that the proposal be adopted, passed, or concurred in. Senate Rule 24 provides that, before a proposal is reported, a committee may *reconsider* any action taken on the proposal.

A chairperson may exercise his or her discretion to report a proposal without recommendation only if the vote is tied. However, in past practice, a chairperson has also been allowed to report a proposal out of committee that has a negative vote. This has been accomplished by simply reporting the committee's action to the full Senate, rather than reporting action with a "recommendation" or "without recommendation."

[ss. 13.093 (2) (a) and 19.84 (1), (2), and (3), Stats.; SR 22, 24, 25 (4), 27 (1), (3), and (4), 34, 47, and 49; and JR 49 (2)]

## **Americans With Disabilities Act (ADA) Accessibility**

Any person who requires reasonable accommodation because of a disability, as provided under the ADA, should contact the Legislative Hotline (in Madison: 266-9960; Toll-free: 1-800-362-9472). If questions arise about accommodating persons under the ADA at committee hearings, contact the Senate Chief Clerk's office.

## **Accommodation of Recording Devices**

Senate rules require people other than Senate members and staff and accredited media to obtain permission from the Committee on Senate Organization to record a committee meeting. The Open Meetings Law does not permit recording, filming, or photographing in a manner that interferes with the conduct of the meeting or the rights of the participants.

[s. 19.90, Stats.; and SR 11 (7)]



## PART III

### COMMITTEE PROCEDURE – ADMINISTRATIVE RULES

#### Legislative Review and Standing Committee Referral

- Proposed administrative rules must be submitted to the Legislature for review before they may become effective. Legislative review is initiated when a rule, in final draft form, with an accompanying report and economic impact analysis, is submitted to the Chief Clerk.
- Within 10 working days, the President must refer the rule to a standing committee. (During the same time period, the identical rule is also referred to a standing committee in the Assembly.) Within three working days after initial referral, the President, with the consent of the chairperson, may withdraw the rule and rerefer it to another standing committee.
- During the period of legislative review, the agency may not proceed with promulgation of the rule.
- A proposed rule submitted after the last day of the Legislature's final general business floorperiod is referred to standing committees convened by the next Legislature, unless the presiding officers of both houses direct referral of the proposed rule before that day.
- Upon referral of a rule to a committee, the chairperson is required to *notify*, in writing, *each committee member* of the referral. The usual practice is to provide this notice by email. The Legislative Council staff person assigned to the committee should also be notified of the referral of a rule.
- Following standing committee review, the proposed rule and any objection are referred to the Joint Committee for Review of Administrative Rules (JCRAR).

[s. 227.19 (2), (3), (3m), and (4) (a) and (c), Stats.; and SR 46 (2) (am) and (b)]

#### Committee Review Period

- The committee review period, during which time the committee has jurisdiction over the rule, initially is *30 calendar days* from the date of referral.
  - If a proposed rule is submitted after the final general business floorperiod and the proposed rule is referred to standing committees by the presiding officers of both houses, the committee review period extends to the day the next Legislature convenes. If a committee's review period straddles the end and beginning of legislative biennial sessions, the statutes provide for continuation of the review period in the new session (but not necessarily by the same committee).
- If, during the committee review period, the committee chairperson requests the agency proposing the rule to meet with the committee regarding the rule, or the chairperson publishes or posts notice that the committee will hold a hearing or meeting to review the proposed rule (and immediately sends a copy of the notice to the agency), the committee review period is *extended* for 30 calendar days beyond the initial 30 days, resulting in a 60-day review period.

- A committee may meet and vote to waive its jurisdiction over a rule, prior to the expiration of the committee review period. If that action is taken (and a similar action is taken by the Assembly committee with jurisdiction over the rule), the rule is reported out of the standing committee and referred to JCRAR.
- If the agency proposing the rule submits, on its own initiative, a germane modification to the standing committee during the final 10 days of the committee review period, the review period for both committees (Assembly and Senate) is extended for 10 working days. If such a modification is submitted to a standing committee after the standing committee in the other house has concluded its jurisdiction over the proposed rule, the jurisdiction of the committee of the other house *is revived* for 10 working days.
- An agency may modify a proposed rule following termination of the committee review period, if the modification is germane to the rule. An agency pursuing that course of action: (a) recalls the rule from the Chief Clerk of both houses; (b) modifies the rule; and (c) resubmits the rule to the presiding officers of each house. The presiding officers refer the rule to a standing committee and the entire committee review process and procedure begins anew.
- A committee's review period may be extended beyond the extended 60-day review period by certain actions of the committee, as described in more detail below.
- At the end of the committee's review period, the committee's jurisdiction ends and the rule and any objection are referred to JCRAR.

[ss. 13.02 (1) and 227.19 (4) (b) and (c), Stats.]

## **Committee Meetings on Rules**

- A committee may schedule a meeting to review a proposed rule. Committees generally hold meetings prior to taking other action on a proposed rule, such as requesting modifications to a rule or objecting to all or a part of a rule, as described in more detail below.
- All committee meetings *must be held during* the committee's review period.
- If a meeting to review administrative rules is scheduled, public notice should be given in the same manner as provided in Part II.
- The chairperson is responsible for notifying committee members of all committee hearings, including meetings on proposed administrative rules.
- If the meeting is a *public hearing*, it is conducted in the same manner as a hearing on bills. (See Part II.) Agency personnel are usually called to testify first, and asked to explain the proposed rule to the committee and those members of the public in attendance. If necessary, agency personnel may be asked to reappear to answer any questions raised.
- If the meeting involves committee members and agency representatives only, it should be convened in the same manner as an executive session. Following the roll call, discussion of the proposed rule is in order.
- An executive session on a rule may be held in conjunction with a public hearing, or as part of an executive session on bills or other matters before the committee, but notice of the executive session on the administrative rule must be included in the public hearing or executive session notice.

- Executive sessions on rules are conducted in the same manner as executive sessions on bills.
- Standing committees do *not* “approve” rules by an affirmative motion. The statutes limit committee powers to those options set out below.

[s. 227.19 (4) (am), (b), (c), and (d), Stats.; and SR 25 and 27 (2)]

## **Actions to Seek Rule Changes or Prevent Promulgation**

- **Rule modification.** A motion may be made in executive session that the committee requests that an *agency consider modifications in the rule*. This action is taken if the committee desires changes in the rule before it becomes effective. The agency can either agree to consider the modifications or refuse to do so.
  - If a standing committee requests a modification and the agency agrees to consider making the modification, the committee review period is extended to the *10th working day following receipt* of the modification (unless the expiration of the “normal” committee review period is a later date). A modification initiated by a standing committee in one house triggers a similar extension of the committee review period of the committee having jurisdiction over the rule in the other house.
  - If the committee believes that the agency may refuse to modify the rule, it may choose to adopt, *as part of its* motion requesting modification, a provision that if the agency does not agree, by a specified date, to consider modifications, the rule will be considered objected to as of that date (See “Objections to rules” below). If this provision is included in the motion, the specified deadline date must be a date which occurs *before the expiration of the committee review period*.
  - There is *no limit* on the number of modifications which may be initiated during the committee review period. Both the committees having review jurisdiction over the rule and the agency proposing the rule may initiate modifications.
- **Objections to rules.** A motion may be made in executive session that the committee *objects to the rule*, in whole or in part.
  - If a motion to object is adopted, notification of objection must immediately be given to the chairperson having jurisdiction of the rule in the other house. Upon such notification, that committee’s review period immediately ceases and the committee can take no further action, other than also objecting to the rule.
  - The governing statute provides seven reasons for objection. The specific reason or reasons relied upon *must be specified* in the motion. The reasons for objecting to all or part of a proposed rule are:
    - An absence of statutory authority.
    - An emergency relating to public health, safety, or welfare.
    - A failure to comply with legislative intent.
    - A conflict with state law.
    - A change in circumstances since enactment of the earliest law upon which the proposed rule is based.

- Arbitrariness and capriciousness, or imposition of an undue hardship.
- For a proposed rule of the Department of Safety and Professional Services that establishes standards for the construction of a dwelling, the proposed rule would increase the costs of construction or remodeling such a dwelling by more than \$1,000.

[s. 227.19 (4) (b), (c), (d), and (e), Stats.; and SR 27 (2)]

## **Joint Committee for Review of Administrative Rules**

- The JCRAR review period follows standing committee review.
  - If a rule, or part of a rule, is objected to by a standing committee, JCRAR *must* review the rule and either uphold or reverse the committee objection or seek an acceptable rule modification. The JCRAR may use the same seven reasons for objecting that are used by the original reviewing committee.
  - If a rule, or part of a rule, is not objected to by a standing committee, the law *permits* the JCRAR to review the rule during the period of JCRAR jurisdiction in similar fashion as the initial standing committee review.

[s. 227.19 (5), Stats.; and SR 27 (2)]

# PART IV

## FISCAL ESTIMATES; SPECIAL REPORTS ON PROPOSALS

### Fiscal Estimates

#### Requirement for a Fiscal Estimate

Fiscal estimates are required reports that provide information about the fiscal implications of a bill. A fiscal estimate must be prepared for any bill that does one of the following:

- Makes an appropriation.
- Increases or decreases an existing appropriation.
- Increases or decreases state or general local government fiscal liability or revenues.
- Increases or decreases liability or revenues of the unemployment reserve fund.
- Creates a new surcharge.
- Modifies an existing surcharge.

Fiscal estimates are not required for amendments or substitute amendments; the requirement applies only to bills. However, certain bills do not require a fiscal estimate because the Joint Rules contain an applicable exception.

The following bills **do not require** fiscal estimates:

- An executive budget bill.
- A bill containing a penalty provision, but no other provision requiring a fiscal estimate.

[s. 13.093 (2) (a), Stats.; and JR 41 (1) and (2)]

#### Fiscal Estimate Timeline

The following timeline explains the typical process followed by a fiscal estimate:

1. The LRB determines whether a fiscal estimate is necessary at the time the bill is drafted and indicates the need for an estimate in the bill analysis.
2. The bill jacket is stamped “FE.”
3. LRB or the Department of Administration (DOA) forwards the bill to all state agencies that will be required to collect money, receive an appropriation, or administer a program under the bill. Each agency is requested to prepare a fiscal estimate.
4. The state agencies complete fiscal estimates concerning the bill and return them to DOA.

5. The Committee on Senate Organization may request that the Legislative Fiscal Bureau (LFB) prepare a fiscal estimate if the agency fiscal estimate will not be completed prior to a public hearing, standing committee vote, or Senate consideration of the bill. In some cases, a committee chairperson may request that the LFB prepare a fiscal estimate.
6. DOA reviews each fiscal estimate. DOA may also submit a supplemental fiscal estimate on its own initiative.
7. DOA forwards any fiscal estimates to LRB.
8. LRB forwards the fiscal estimate to the bill's primary author for review. The author has five working days to review each fiscal estimate.
9. The primary author may then request that the preparing agency rewrite the estimate, request a supplemental estimate, or approve the estimate.
10. If the author requests a rewrite from the agency and the agency agrees, a new fiscal estimate is prepared by the agency. If the author requests a supplemental estimate, the supplemental estimate is prepared by LFB or DOA. At any time during the bill author's five-day review period, the author may make the fiscal estimate public by releasing it.
11. The fiscal estimate is transmitted to the Chief Clerk and inserted in the bill jacket.

[SR 96; and JR 41 to 50]

## Lack of Fiscal Estimate

A bill requiring a fiscal estimate may not receive a public hearing, committee vote, or house vote until a fiscal estimate is available. A committee chairperson is responsible for ensuring that copies of any fiscal estimate are available at a hearing if the fiscal estimate has not yet been printed.

The statutes and joint rules require that a fiscal estimate be available prior to a hearing or vote. However, in practice, hearings are sometimes conducted prior to completion of a fiscal estimate. When this occurs, every effort should be made to obtain the fiscal estimate prior to an executive session on the bill.

[s. 13.093 (2) (a), Stats.; and JR 49 (2)]

## **Report by the Joint Review Committee on Criminal Penalties**

### Requirement for a Report

If required, the Joint Review Committee on Criminal Penalties is required to prepare a report on bills that create a new crime or revise the penalty for an existing crime. A report may be requested by the chairperson of a standing committee to which a crime-related bill is referred. In addition, if the bill is introduced but not referred to a standing committee, a report may be requested by the presiding officer of the Senate.

### Contents of the Report

A report prepared by the Joint Review Committee on Criminal Penalties must address the following items:

- Costs likely to be incurred or saved by state and local government agencies, the courts, the public defender, and district attorneys if the bill is enacted.

- Consistency of the proposed criminal penalties with existing penalties.
- Whether language must be added or changed to conform the penalties to existing criminal statutes.
- Whether conduct prohibited under the bill is currently prohibited under existing criminal statutes.

## Lack of a Report

The standing committee to which a crime-related bill was referred may not recommend passage of the bill until the Joint Review Committee on Criminal Penalties submits its report, or until 30 days have passed, whichever is earlier. Similarly, the Senate may not pass the bill until the Joint Review Committee on Criminal Penalties submits its report, or until 30 days have passed. This requirement is interpreted in Senate practice to require a report or 30-day delay *only if* a report has been requested from the Joint Review Committee on Criminal Penalties.

[s. 13.525, Stats.]

## **Report by the Joint Survey Committee on Tax Exemptions (JSCTE)**

Upon the introduction of a bill that affects an existing statute or creates new statutes relating to the exemption of any property or person from any state or local taxes or special assessments, the bill shall be referred to the JSCTE and shall not be considered further by either house until the JSCTE has submitted a written report on the proposal.

A bill that pertains only incidentally to a matter of concern to the JSCTE may be referred directly to the committee appropriate to the major substance of the bill, and in that case, the JSCTE shall prepare its report on the bill while that bill is in the possession of the other committee. Referral in these manners does not suspend the requirement that the report of the JSCTE must be received before the bill is given its second reading.

[s. 13.52, Stats.; and SR 36 (2) (c)]

## **Report by the Joint Survey Committee on Retirement Systems (JSCRS)**

No bill or amendment thereto creating or modifying any system for, or making any provision for, the retirement of or payment of pensions to public officers or employees shall be acted upon by the Legislature until it has been referred to the JSCRS and the JSCRS has submitted a written report on the bill or amendment. If, based on any available information, the bill or amendment may have a significant fiscal impact on the costs, actuarial balance, or goals of the Wisconsin Retirement System, an independent actuarial opinion may also be requested.

A bill that pertains only incidentally to a matter of concern to the JSCRS may be referred directly to the committee appropriate to the major substance of the bill, and in that case, the JSCRS shall prepare its report on the bill while that bill is in the possession of the other committee. Referral in these manners does not suspend the requirement that the report of the JSCRS must be received before the bill is given its second reading.

[s. 13.50, Stats.; and SR 36 (2) (c)]



# PART V

## OPEN MEETINGS LAW

Wisconsin law requires that all meetings of governmental bodies be preceded by adequate public notice and held in open session. A “meeting” of a governmental body occurs when there is a purpose to engage in governmental business and the number of members present is sufficient to determine the governmental body’s course of action. A “meeting” may occur even in situations not commonly considered a meeting. For example, a telephone conference or email exchange may constitute a meeting. In addition, communications or gatherings between separate groups of committee members may constitute a “walking quorum,” which triggers open meetings requirements, when enough members to constitute a quorum of the committee agree to act uniformly.

[ss. 19.82 and 19.83, Stats.]

### Public Notice Requirements

The Open Meetings Law requires written notice of a meeting setting forth the time, date, place, and subject matter of the meeting, including the subject matter for consideration in any closed session. The notice must be given at least **24 hours in advance**, unless for “good cause” notice is not possible or practical. However, **in no case may notice be provided less than two hours in advance of the meeting.**

Notice must be given to the public, to news media requesting notice, and to the designated official newspaper (*Wisconsin State Journal*). The procedures for giving notice of public hearings and meetings by standing committees, if followed, assure compliance with the requirements of the law. (See Part II.)

[ss. 19.84 (1) to (4) and 19.87, Stats.]

### Open Session Requirements

The Open Meetings Law requires that meetings be held publicly and be reasonably accessible and open to members of the public. A committee may occasionally meet in nontraditional locations, such as a construction site or prison facility. A committee may conduct business off-site if it provides public notice of all the locations to be visited and if the locations are accessible to the public while any business is being conducted.

[s. 19.81 (2), Stats.; and JR 27]

### Closed Session

#### Grounds for Meeting in Closed Session

Legislative committees may occasionally need to conduct public business in closed session. The Open Meetings Law provides reasons for holding a closed session. The most relevant reasons for holding a standing committee meeting in closed session include:

- Deliberating or negotiating the purchase of public property, the investing of public funds, or other public business whenever competitive or bargaining reasons require a closed session.

- Considering financial, medical, social, or personal histories, disciplinary data of specific persons, and charges against and personnel problems involving specific persons, where discussion in public would likely have a substantial adverse impact on the reputations of those persons.
- Conferring with legal counsel about strategies to be adopted in current or anticipated litigation involving the governmental body.

[s. 19.85 (1), Stats.]

## **Procedure When Meeting in Closed Session**

The following requirements apply when a committee intends to meet in closed session:

- *Prior Notice.* The notice must indicate that a closed session is planned or anticipated and the subject matter of the closed session must be included.
- *Motion to Close.* A governmental body may convene in closed session only upon adoption of a motion to do so during open session. Prior to the motion, the chairperson must announce the nature of the business to be conducted in closed session and note the specific exemption under which closed session is authorized. The motion must be decided by a recorded roll call vote and must be adopted by majority vote.
- *Closing the Session.* After adoption of a motion to go into closed session, any person not necessary for the business in closed session is asked to leave. Members of the Sergeant at Arms' staff may assist in clearing the room.
- *Limiting Business Conducted in Closed Session.* The business taken up in closed session must be restricted to that described in the chairperson's announcement made prior to going into closed session.
- *Public Record of Action in Closed Session.* All votes and motions on which a vote was taken during closed session must be recorded and made available for public inspection.
- *Conclusion of Closed Session.* No meeting which went into closed session may be reconvened in open session within 12 hours unless public notice of the subsequent open session was given at the same time and in the same manner as notice of the meeting convened prior to closed session.

[ss. 19.85 (1) (intro.) and (2) and 19.88, Stats.]

# PART VI

## COMMITTEE INVESTIGATIONS

### General Power to Investigate

- Standing committees have power to investigate any subject matter customarily within the jurisdiction of the committee. The power to undertake such activity is inherent to the legislative process and is recognized in the Joint Rules of the Legislature.
- The power to investigate is not absolute. It is generally limited to obtaining information on matters that fall within the proper field of legislative action, such as the administration of existing laws or need for new laws.
- In conducting an investigation, the committee must observe all provisions of the Constitution designed to protect individuals in their enjoyment of life, liberty, and property, and from inquisitions into private affairs.

[JR 84 (3)]

### Specific Authorization to Investigate

- Under Wisconsin law, a committee may issue subpoenas if the committee is *specifically authorized to investigate a particular matter*.
- The authorization should define how broad the investigation can be and the subject on which testimony can be compelled. The authorization should define the subject of the investigation with sufficient clarity to afford witnesses appearing before the investigating committee a reasonable basis for judgment as to whether a particular question is pertinent to the subject matter under investigation.

[s. 13.31, Stats.]

### Issuance of Subpoenas

- Subpoenas may be used to produce testimony or documents desired by a committee engaged in an authorized investigation. In most circumstances, a request for the appearance of specific witnesses or the submitting of particular documents will be honored and should be made first. If a refusal occurs, subpoenas can then be used.
- Subpoenas should refer to the authorization of the committee to investigate and state the nature of the investigation and state where, when, and before whom the witness is required to appear.
- Subpoenas may be issued only if signed by the President and the Chief Clerk. The subpoena may be served by any person and are returned to the Chief Clerk.

[ss. 13.31, 13.32, and 13.33, Stats.; and SR 44]

## **Testimony From Witnesses**

- A subpoenaed witness is immune from criminal or forfeiture prosecution regarding any compelled testimony or evidence or evidence derived from that compelled testimony or evidence (except perjury regarding the witness's testimony).
- If witnesses are put under oath, the oath may be administered by a legislator who is a member of the investigating committee.
- If, subsequent to a proper request from an authorized investigatory committee, a witness refuses to appear or to testify, that person may be found in contempt by the Senate. If a witness refuses to appear or testify, that fact is certified by the chairperson to the Senate.

[ss. 13.26 (1) (c), 13.34, 13.35, 13.45 (6), and 972.085, Stats.]

## **PART VII**

### **ACCESS TO COMMITTEE RECORDS**

#### **Chairperson as Custodian of Records**

- Each committee chairperson is the legal custodian of the committee's records, but may designate a staff person to act as the legal custodian of the committee records.
- Committee records include such items as hearing notices, committee reports on bills, petitions, written statements, and letters presented to the committee or the chairperson.
- The legal custodian of the records is responsible for making decisions on access to records, pursuant to the specific requirements of the statutes.

[ss. 19.32 (2) and 19.33 (1) and (2), Stats.]

#### **What Records Are Open to the Public**

- The Open Records Law provides that all records are open to the public for inspection and copying, except as explained in the following sections.

[s. 19.35 (1) (a), Stats.]

#### **Who May Have Access to Records**

- Any member of the public has a right to inspect and copy records that are open to the public, except that a person who is incarcerated in a penal facility, or placed on probation with confinement a condition of placement, only has a right to inspect public records that contain specific references to that person or to the person's minor children if he or she has not been denied visitation rights to the children.
- Requests to inspect and receive a copy of records need not be in writing. Oral requests must be honored.
- An individual requesting to inspect and copy records is not required to reveal his or her identity except when security reasons require. While requesters usually will identify themselves voluntarily, they cannot be required to do so by the custodian as a precondition to being given access to the particular records.
- An individual requesting access to a record containing "personally identifiable information" pertaining to that individual may have a greater right of access than the general public to that record.

[ss. 19.32 (1c), (1e), and (3) and 19.35 (1) (am), (b), (h), and (i), Stats.]

#### **Denying Access**

- The right to inspect public records is not absolute. For instance, there may be situations where the harm done to the public interest by inspection may outweigh the right of members of the public to have access to public records. This is rare with respect to committee records, which have generally been made public at a prior meeting.

- The custodian is required to balance the harmful effects to the public interest, if inspection is allowed, against the benefits gained by allowing inspection.
- In weighing the competing interests, the custodian may use the exemptions to the Open Meetings Law as a guide to the types of interests which may be protected by nondisclosure. These exemptions may be used only if the custodian can make a specific demonstration that there is a need to deny access at the time the request is made. In addition, if information has been collected under a pledge of confidentiality and the pledge was necessary to obtain the information, access to the information may be denied following the application of the balancing test.
- Any denial of access must be accompanied by a specific explanation of the reasons for the denial. Oral requests may be denied orally, unless a demand for a written statement of the reasons for the denial is made within five business days of the oral denial. Written requests, if denied, must be denied in writing.
- Denial of access to an individual seeking a record containing “personally identifiable information” pertaining to that individual is not subject to the balancing test and access may be denied only for reasons specified by statute.

[ss. 19.35 (1) (a) and (am) and (4) and 19.85 (1), Stats.]

## **Partial Disclosure**

- If certain portions of a record are required to be kept confidential, those portions may be deleted and the remainder of the record must be disclosed.

[s. 19.36 (6), Stats.]

## **Records and Information Concerning Public Officers and Employees**

- If requested information regarding a public employee includes personal information, employment-related evaluation, or information relating to a current investigation for misconduct, the custodian may be prohibited from releasing the information.
- If requested information regarding a public employee includes information relating to a closed investigation concerning employee misconduct, the custodian may be required to give the employee notice of impending release and the right of judicial review before releasing the record.
- Similar, but more limited constraints, apply to release of records concerning individuals who hold local or state public office.

[ss. 19.32 (1bg), (1dm), (2g), and (4), 19.356, and 19.36 (10) to (12), Stats.]

## **Copying**

- Any record that is subject to public inspection may be copied.
- A fee for copying, which does not exceed the actual, necessary, and direct cost of reproduction, including labor, may be charged. Costs of mailing may also be charged. (Contact the Chief Clerk for suggestions on fees and procedure.)

[s. 19.35 (1) (b) and (3), Stats.]

## Notice

- As custodian of the committee records, each chairperson is required to post a notice at his or her office (which is also the committee office), setting forth:
  - The committee name and the location of the office;
  - The committee records kept there;
  - The normal business hours of the office;
  - The name of the custodian to whom requests to inspect and copy records are to be directed; and
  - The costs, if any, for copying and mailing records.
- Contact the Chief Clerk for a copy of a sample notice.

[s. 19.34 (1), Stats.]



# PART VIII

## GLOSSARY OF TERMS

**Americans with Disabilities Act (ADA):** A federal law that prohibits discrimination on the basis of disability. The ADA was first enacted in 1990.

**Administrative Rule:** A regulation, standard, policy statement, or order of general application promulgated by a state agency. An administrative rule has the force and effect of law. Rules are issued by an agency: (a) to make specific, implement, or interpret provisions of statutes that are enforced or administered by the agency; or (b) to establish procedures for the agency to follow in administering its programs.

**Balancing Test:** A test that is used by a custodian of public records to determine whether records that are requested should be disclosed under the state Open Records Law. The test balances the public interest in disclosure of a record against the harm done to the public interest by disclosure.

**Department of Administration (DOA):** A state department in the executive branch that has administrative duties, including duties relating to budgeting, purchasing, and coordination. [ss. 15.10 to 15.107 and ch. 16, Stats.]

**Executive Session:** A meeting of a committee in which the committee takes action on a proposal. The action of the committee is reported to the Senate.

**Fiscal Estimate:** A memorandum that explains the impact of a bill on state or local finances. [SR 99 (28)]

**Hearing Slip:** A document with which an individual may register to speak for or against a proposal or for information only or may register for or against a proposal or for information only at a public hearing.

**Joint Committee for Review of Administrative Rules (JCRAR):** A joint committee consisting of five senators and five representatives that has authority and duties relating to administrative rules. [ss. 13.56, 227.19, and 227.26, Stats.]

**Legislative Reference Bureau (LRB):** A legislative service agency that provides bill drafting, research, and library services to members of the Legislature in a nonpartisan and confidential manner. [s. 13.92, Stats.]

**Open Meetings Law:** A state law that requires advanced public notice of a meeting of a governmental body. [subch. V of ch. 19, Stats.]

**Open Records Law:** A state law that requires the disclosure of public records, upon a request for such records. [subch. II of ch. 19, Stats.]

**Public Hearing:** A meeting of a committee in which the public may testify on a proposal or issue before the committee. [SR 99 (32)]

**Quorum:** A majority of the membership of a committee or the Senate, whichever is applicable.

**Special Committee:** A temporary committee created to investigate a specific matter or subject area. [SR 21]

**Standing Committee:** A committee that is permanent and is created by the rules of the Senate or by the Committee on Senate Organization. A standing committee conducts public hearings and executive sessions on proposals that are referred to the committee. [SR 20 and 99 (86)]