



WISCONSIN LEGISLATIVE COUNCIL

# SENATE COMMITTEE PROCEDURES AND POWERS

2019-20 Legislative Session

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# PART I: INTRODUCTION

In the Wisconsin Senate, standing committees perform various functions relating to the subject matter jurisdiction assigned to the committee. The primary function of a committee is to review legislation and nominations for appointments and make recommendations to the full Senate on whether the legislation and appointments should be approved by the Senate. Another function of a committee is to review proposed administrative rules and determine whether the committee should take any action to object, or request modifications, to proposed rules. A committee may perform other functions, including certain investigatory functions, at the discretion of the chairperson of the committee.

A Legislative Council attorney/analyst is assigned to each standing committee, except the Joint Committee on Finance, and attends every public hearing and executive session held by the committee. Although the attorney/analyst works most closely with the chairperson, the attorney/analyst is responsible for answering questions and providing information to all members of the committee. The work of the Legislative Council is nonpartisan and confidential.

This publication describes the role of Senate standing committees and chairpersons and procedure relating to legislation, nominations for appointments, and proposed administrative rules. In addition, this publication describes the investigatory functions of committees and application of the Open Meetings Law and Open Records Law to committees.<sup>1</sup>

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<sup>1</sup> Generally, the functions and procedures of Senate committees are derived from a variety of sources, including state statute, Senate Rules, Joint Rules, and interpretations and practices of the Senate.

Standing committee procedure is described throughout this publication. If a procedural requirement is a rule of legislative procedure, it is interpreted and enforced by the Legislature, not by the courts. “[C]ourts generally consider that the legislature’s adherence to the rules or statutes prescribing procedure is a matter entirely within legislative control and discretion, not subject to judicial review unless the legislative procedure is mandated by the constitution.” [*State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 365 (1983).] A court will not invalidate a legislative action because the Legislature did not follow its rules of procedure. The only issue for a court is whether constitutional requirements have been followed.



## PART II: ROLE OF COMMITTEES AND CHAIRPERSONS

Senate standing committees are permanent legislative committees that are established to engage in activities relating to the subject matter assigned to the committee.<sup>2</sup> At the beginning of each legislative session, the Committee on Senate Organization creates the Senate standing committees.

The Senate Majority Leader generally determines the representation of the majority and minority parties on standing committees. The Majority Leader appoints members of the majority party to each committee and appoints members of the minority party, based on nominations by the Minority Leader, to each committee.

[Senate Rules 20 and 99 (86).]

### **ROLE OF STANDING COMMITTEES**

Standing committees review legislation, nominations for appointments, and proposed administrative rules and occasionally perform other functions at the discretion of the chairperson.

#### **REVIEW LEGISLATION AND NOMINATIONS FOR APPOINTMENTS**

A standing committee reviews bills, resolutions, and joint resolutions and nominations for appointments referred to the committee and makes recommendations to the full Senate about their disposition.

#### **REVIEW ADMINISTRATIVE RULES**

A standing committee reviews proposed administrative rules referred to the committee and may object to a rule or request modifications to a rule.

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<sup>2</sup> In addition to standing committees, the Senate Rules provide for the creation of special committees. Special committees are temporary committees created by the Committee on Senate Organization and appointed by the Majority Leader. [Senate Rule 21.]

## **CONDUCT STUDIES, INVESTIGATIONS, AND REVIEWS**

A standing committee may inquire into, or conduct hearings on, matters within the subject matter jurisdiction of the committee.

[Senate Rules 20, 22, 25, and 27; and Joint Rule 84 (3).]

## **ROLE OF COMMITTEE CHAIRPERSONS**

The committee chairperson is the head of a standing committee. Chairpersons direct the activities of their committees and dictate the content and conduct of committee hearings.

### **COMMITTEE MEETINGS**

A committee chairperson schedules committee meetings, including public hearings, executive sessions, and joint hearings, and establishes the agenda for meetings. The chairperson issues public notices of meetings and notifies committee members of all committee meetings. The chairperson ensures that legislation and fiscal estimates are available before meetings. Lastly, the chairperson presides at committee meetings.

### **COMMITTEE RECORDS**

A committee chairperson maintains custody of all bills, papers, and other documents in possession of the committee. The chairperson also files a record of the committee's proceedings on legislation or administrative rules and reports committee recommendations on legislation and nominations for appointments.

### **OTHER ROLES**

A committee chairperson supervises the committee clerk to ensure that committee actions are properly handled and reported.

A committee chairperson may appoint subcommittees and subcommittee chairpersons to address matters within the committee's subject matter jurisdiction. The chairperson may also schedule informational hearings, conduct studies, or investigate matters within the committee's subject matter jurisdiction.



Lastly, the committee chairperson establishes liaison with executive branch agencies that have responsibilities within the committee's subject matter jurisdiction.

[Senate Rules 25, 27, and 99 (13); and Joint Rules 31, 84, and 99 (13).]



# PART III: COMMITTEE ACTION ON LEGISLATION AND APPOINTMENTS

In its consideration of legislation and nominations for appointments, a Senate standing committee generally holds a public hearing on the legislation or appointment, followed by an executive session, in which the committee votes whether to recommend approval of the legislation or appointment to the Senate. The committee chair determines whether, and when, legislation or an appointment receives a public hearing and executive session. This Part describes the general procedure that a committee and chairperson follow in the consideration of legislation and appointments.<sup>3</sup>

## **REFERRAL**

When legislation is introduced, or received from the Assembly, it is given its first reading and is referred to a standing committee by the Senate President. Legislation may also be referred to committees by action of the Senate. In addition, when a nomination for an appointment is submitted to the Senate, the President refers the appointment to a standing committee.

After initial referral, the President may withdraw the legislation and refer it to another standing committee, with the consent of the Senate Majority Leader and the chairperson of the committee to which the legislation was initially referred. Once legislation is reported out of a committee, the President may re-refer the legislation to another committee.

When a committee receives legislation, the committee clerk starts a committee record on the legislation.

[Senate Rules 22, 36 (1), (1m), and (2), 41 (1), and 46 (2).]

## **PUBLIC HEARINGS**

The chairperson decides whether to hold a public hearing on any legislation or nomination for an appointment that has been referred to the committee.

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<sup>3</sup> Insofar as applicable, the rules of the Senate apply to the procedures of standing committees. [Senate Rule 25 (6).]

## **SCHEDULING A HEARING**

A public hearing is generally scheduled on the committee's assigned meeting day. However, committees generally do not meet while the Senate is in session. Use of meeting rooms is arranged with the Sergeant at Arms' office.<sup>4</sup>

Committee meetings held outside of Madison require the approval of the Committee on Senate Organization in order for a Senator to be reimbursed for expenses.

Copies of legislation scheduled for the public hearing must be available to the public and a fiscal estimate, if required for the legislation, must be prepared before the legislation can receive a public hearing. (See Part VI.)

[ss. 13.093 (2) (a) and 13.123 (3) (a), Stats.; Senate Rules 23 and 25 (1); and Joint Rule 49 (2).]

## **HEARING NOTICE**

A committee meeting must be preceded by public notice that complies with the Open Meetings Law. (See Part VII.)

### **Notice Form**

The committee clerk should use the ComClerk program to generate a public hearing notice. The notice should include the name of the committee; the date, time, and place of the hearing; and the subject of the hearing. If legislation will be considered at the hearing, the notice should also include the legislation's number, relating clause, and author.

### **Timing**

To comply with the Open Meetings Law, the committee clerk must provide notice 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.

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<sup>4</sup> Any person who requires reasonable accommodation because of a disability, as provided under the federal Americans with Disabilities Act (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 Chief Clerk's office.

## **Distribution**

Copies of the notice are posted on the Assembly and Senate bulletin boards. The notice will be published on the committee schedule webpage on the Legislature's website through the ComClerk program. The notice should also be placed in each of the press boxes in the State Capitol Press Room. (The State Capitol Press Room is in 235 Southwest.)

## **Other Notifications**

The chairperson should notify committee members of all committee meetings. If unIntroduced legislation will be considered at the meeting, the notice must indicate that copies of the unIntroduced legislation are available at the Chief Clerk's office.<sup>5</sup> The chairperson should also notify the Legislative Council attorney/analyst who is assigned to the committee of all committee meetings.

In addition, it is customary for the chairperson to notify primary authors when their legislation has been scheduled for a public hearing or executive session.

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

## **CONDUCTING A HEARING**

### **Hearing Slips**

Individuals who wish to speak or register a position on legislation or an appointment at a committee hearing must complete a Senate hearing slip and submit the slip to Senate Sergeant at Arms' staff.

### **Roll Call**

To convene a public hearing, the committee chairperson calls the meeting to order and directs the committee clerk to call the roll. The roll may be left open and members accounted for as they arrive. A quorum is not required to convene and conduct a public hearing. A member who participates in a committee meeting by telephone or by other means of telecommunication or electronic communication is considered present.

### **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.

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<sup>5</sup> The chairperson must provide a copy of the unIntroduced legislation to the Chief Clerk before publishing the notice. [Senate Rule 25 (1) (c).]

## **Testimony**

The chairperson announces the legislation or appointments 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.

## **Legislative Council Attorney/Analyst**

The Legislative Council attorney/analyst assigned to the committee provides information and responds to questions during the hearing, upon request. For example, it is common for the attorney/analyst to do any of the following:

- Describe the provisions of any legislation or amendment before the committee.
- Respond to questions on legislation and amendments and describe how legislation and amendments affect current law.
- Explain procedural rules and the powers of the chairperson.

[Senate Rule 24.]

## **POST-HEARING ACTIONS**

### **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 Committee Proceedings**

The chairperson must compile and maintain a record of each committee meeting (before the expiration of 10 days after the meeting or before the next meeting, whichever is earlier). For legislation taken up at the hearing, the record includes information on the hearing date, time, and location; committee members present; and attendees registering or speaking on the legislation. The committee clerk should notify the Chief Clerk's office that the committee has held a public hearing on the legislation or appointment, and the Chief Clerk's office will update the legislation's or appointment's history.

### **Hearing Materials**

The Legislative Council scans and posts on its website most materials collected by the Legislative Council staff during hearings on legislation. These materials may be accessed on the bill history webpage on the Legislature's website or at the following website: <http://lc.legis.wisconsin.gov/>.

[Joint Rule 31 (1) and (2).]

## **EXECUTIVE SESSIONS**

A committee takes action on legislation or nominations for appointments during an executive session, which may be held separately or together with a public hearing. The chairperson decides whether to hold an executive session on legislation or appointments that have been referred to the committee.

### **SCHEDULING AN EXECUTIVE SESSION**

A committee may take executive action on any legislation or appointment before the committee, regardless of whether the legislation or appointment received a public hearing. 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.

A committee may not vote on legislation unless it has been introduced and made available to the public for at least 24 hours. This does not apply to amendments to legislation. In addition, when a fiscal estimate is required for legislation, a committee may not vote on the legislation until a fiscal estimate is available.

[s. 13.093 (2) (a), Stats.; Senate Rules 18 (1m) and 34; and Joint Rule 49 (2).]

### **EXECUTIVE SESSION NOTICE**

Notices for executive sessions are issued following the same procedures as notices for public hearings.

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

### **CONDUCTING AN EXECUTIVE SESSION**

#### **Roll Call**

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. A member who participates in a committee meeting by telephone or by other means of telecommunication or electronic communication is considered present.

#### **Announcements**

The chairperson makes any announcements, such as changes to the order of business for the executive session.

The chairperson announces the legislation or appointments to be taken up and leads the committee through the voting process on the legislation or appointments.

### **Legislative Council Attorney/Analyst**

The Legislative Council attorney/analyst assigned to the committee provides information and responds to questions during the executive session, upon request. For example, it is common for the attorney/analyst to do any of the following:

- Describe the provisions of any legislation or amendment before the committee.
- Respond to questions on legislation and amendments and describe how legislation and amendments affect current law.
- Explain procedural rules and the powers of the chairperson.

[Senate Rule 24.]

## **VOTING IN AN EXECUTIVE SESSION**

All motions must receive a second in order to be placed before the committee for a vote. All votes are decided by a majority of a quorum.

### **Members Must Be Present**

All committee votes must be taken in the presence of the committee, and a member must be present in order to be recorded as voting, except as described below for absent members.<sup>6</sup> Senate rules provide that every present committee member must vote, unless excused for special cause. Members vote in the order in which they were named to the committee.

### **Absent Members**

Committee chairpersons have interpreted the requirement to be present in varying ways to accommodate conflicts with committee members' schedules. For example, a common interpretation allows the voting roll to 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 clerk remain present in the committee room while waiting for absent members.

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<sup>6</sup> Under Senate Rule 24, a member who participates in a committee meeting by telephone or by other means of telecommunication or electronic communication is considered present.



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.

### **Reconsideration**

A committee may reconsider any action taken on legislation or an appointment until the time that the legislation or appointment is reported out of the committee to the Senate.

[Senate Rules 24 and 73 (1).]

## **AMENDMENTS TO LEGISLATION**

### **Order of Consideration**

Amendments are numbered in the order in which they are received by the Chief Clerk. In general, substitute amendments and simple amendments are considered in ascending numerical order. Whenever a substitute or simple amendment is being considered, simple amendments to it are considered in ascending numerical order before action on the original substitute or simple amendment.

### **Form**

Amendments should generally be drafted by the Legislative Reference Bureau (LRB) prior to the executive session. 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**

A committee may only consider amendments to legislation currently before the committee.

A question of germaneness of an amendment adopted by a committee may be raised when the legislation is being considered by the full Senate but is not in order during a committee's action on the legislation.

If an amendment before a committee is not adopted, it is generally not reported by the committee. The amendment may later be "revived" by majority vote of the Senate or redrafted for Senate consideration.

[Senate Rules 47, 49, and 50 (1m).]

## **MOTIONS IN EXECUTIVE SESSION**

The motions listed below are in order during an executive session.

Legislation or amendments must be introduced prior to the committee's consideration of the legislation or amendment during an executive session. If the legislation or amendment has not been introduced prior to the executive session, the committee (and not an individual member) must introduce the legislation or amendment before the committee may consider it.

### **Motions on Introduction of Legislation and Amendments**

#### Bills, resolutions, and joint resolutions

- Introduction.

#### Amendments (simple and substitute)

- Introduction. (Strictly speaking, it is improper to move introduction and adoption, or rejection, together.)

### **Motions on Senate Bills**

#### 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**

#### 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**

### Assembly bills and joint resolutions

- Concurrence.
- Nonconcurrence.

### Senate amendments to Assembly bills and joint resolutions (simple and substitute)

- Adoption.
- Rejection.

### Assembly bills and joint resolutions, with Senate amendments

- Concurrence, as amended.
- Nonconcurrence, as amended.

## **Motions on Nominations for Appointments**

On a nomination for an appointment, the motion is on confirmation of the appointment.

## **Motions to Table**

Motions to table legislation to a time later than the adjournment of the meeting are not in order because 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 legislation from consideration.

[Senate Rules 22 (2), 27, and 65 (2).]

## **PAPER BALLOTS**

A committee chairperson may elect to vote on legislation, amendments, appointments, or proposed administrative rules by paper ballot. For a committee to vote by paper ballot, the legislation, amendment, appointment, or proposed rule has to lay over for at least 24 hours, unless the Committee on Senate Organization determines, for good cause, that such

a layover is impossible or impractical.<sup>7</sup> To comply with the Open Meetings Law, the committee clerk must provide notice at least 24 hours prior to circulation of the paper ballot.<sup>8</sup> The 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 committee member may change his or her vote if the change will not affect the outcome of the vote and if the legislation, amendment, appointment, or proposed rule has not been reported out of committee. However, a member may not change his or her vote later than 24 hours after the ballot is due.

[Senate Rule 25 (4) (am) and (b).]

## **POLLING**

A committee member who was recorded as present at an executive session may vote by polling on the legislation, amendment, appointment, or proposed administrative rule considered at that executive session.

If a committee member was not recorded as present at an executive session, the committee member may not vote by polling unless the committee chairperson determines that voting by polling is necessary in an emergency for the preservation of the public peace, health, safety, or welfare.

[Senate Rule 25 (4) (a).]

## **POST-EXECUTIVE SESSION ACTIONS**

### **Record of Executive Session**

The chairperson must compile and maintain a record of each committee meeting (before the expiration of 10 days after the meeting or before the next meeting, whichever is earlier). For legislation taken up at the executive session, the record includes information on the votes of each member on all legislation and amendments acted on at the executive session. The committee clerk should notify the Chief Clerk's office that the committee has

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<sup>7</sup> If a 24-hour layover is impossible or impractical, any legislation, amendment, appointment, or proposed rule must be made available to the public at least two hours before a paper ballot is circulated. [Senate Rule 25 (4) (am).]

<sup>8</sup> 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. [Senate Rule 25 (1) (b).]

held an executive session on the legislation or appointment, and the Chief Clerk's office will update the legislation's or appointment's history.

The chairperson must report legislation or an appointment to the Senate after executive action if the committee recommends that the legislation be adopted, passed, or concurred in or that the appointment be confirmed. A chairperson may exercise his or her discretion to report legislation or an appointment without recommendation if the vote is tied. However, in past practice, a chairperson has also been allowed to report legislation out of committee that has a negative vote. This has been accomplished by reporting the committee's action to the Senate, rather than reporting action with "recommendation" or "without recommendation."

### **Delivery of Legislation**

The committee clerk delivers legislation and amendments to the Chief Clerk's office. Legislation and amendments introduced during an executive session should first be forwarded to LRB for drafting and jacketing.

### **Amendment Memos**

The Legislative Council prepares an Amendment Memo on any amendment that is recommended for adoption by a committee or that is adopted by the Senate. Amendment Memos may be accessed on the bill history webpage on the Legislature's website or at the following website: <http://lc.legis.wisconsin.gov/>.<sup>9</sup>

[Senate Rules 22 (1) and 27 (1), (3), and (4); and Joint Rule 31 (1) and (2).]

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<sup>9</sup> The Legislative Council also prepares an Act Memo on any legislation that is enacted. Act Memos may be accessed on the bill history webpage on the Legislature's website or at the following website: <http://lc.legis.wisconsin.gov/>.



## PART IV: COMMITTEE ACTION ON ADMINISTRATIVE RULES

When an agency intends to promulgate a permanent administrative rule, the proposed rule must be submitted to the Legislature for review by a standing committee in each house and the Joint Committee for Review of Administrative Rules (JCRAR) before it may go into effect. The standing committees and JCRAR may request modifications to a rule, object to a rule, waive committee jurisdiction over a rule, approve a rule, or take no action on a rule. Standing committees are not required to approve a rule by affirmative action.

An agency initiates legislative review when it submits a rule, in final draft form, with an accompanying report and economic impact analysis, to the Chief Clerk of each house. During the period of legislative review, the agency may not proceed with promulgation of the rule.

This Part describes the general procedures that a committee and chairperson follow in the consideration of proposed rules, as well as additional powers that may be exercised by JCRAR.

[s. 227.19 (4) and (5), Stats.]

### **STANDING COMMITTEE REFERRAL**

Within 10 working days following receipt of a proposed rule by the Chief Clerk, the Senate President refers the rule to a standing committee.<sup>10</sup> (During the same time period, the identical proposed rule is also referred to a standing committee in the Assembly.) The President, with the consent of the chairperson, may withdraw the rule and re-refer it to another standing committee within three working days after initial referral.

When a proposed rule is referred to a standing committee, the chairperson is required to notify, in writing, each committee member of the referral. The practice is to provide this notice by email. The Legislative Council attorney/analyst assigned to the committee should also be notified of the referral of a rule.

[s. 227.19 (2), (3), and (4) (a), Stats.; and Senate Rule 46 (2) (am) and (b).]

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<sup>10</sup> 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 rule before that day.

## **STANDING COMMITTEE REVIEW**

A committee has jurisdiction over a proposed rule during a review period that, initially, is 30 calendar days from the date of the referral.<sup>11</sup> The committee's review period may be extended for 30 calendar days beyond the initial 30-day period, for a total of 60 days, if the chairperson takes one of the following actions during the committee's initial review period:

- Requests the agency proposing the rule to meet with the committee regarding the rule.
- 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).

During its review period, a committee may take any of the following actions on a proposed rule: (1) request modifications to the rule; (2) object to the rule; (3) waive jurisdiction over the rule; (4) approve a rule; or (5) take no action on a rule. In addition, an agency may submit a germane modification to a rule, on its own initiative, during the standing committee review period. Following standing committee review, the rule and any objection are referred to JCRAR.

[s. 227.19 (4) (b) to (e), Stats.; and Senate Rule 27 (2).]

### **REQUEST FOR RULE MODIFICATION**

A standing committee may request modifications to a proposed rule. Such action is taken during an executive session, by a majority vote of a quorum of the committee. The agency can either agree to consider the modifications or refuse to do so.

If the agency agrees to consider making the modifications, the committee review period is extended to the 10th working day following receipt of the modifications or to the expiration of the original committee review period, whichever is later. A request for modifications initiated by a standing committee in one house triggers a similar extension of the review period of the committee having jurisdiction over the rule in the other house.

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<sup>11</sup> However, 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 the committee believes that the agency may refuse to modify the proposed rule, the committee may choose to adopt, as part of its motion requesting modifications, 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 “Objection to Rule” below.) If this provision is included in the motion, the specified deadline date must be a date that occurs before the expiration of the committee review period.

There is no limit on the number of modifications that may be initiated during the committee review period. Both standing committees having jurisdiction over the rule may initiate modifications.

[s. 227.19 (4) (b) 2., Stats.]

## **OBJECTION TO RULE**

A standing committee may object to a proposed rule. Such action is taken during an executive session, by a majority vote of a quorum of the committee. A committee may object to a rule or to part of a rule for any of the following seven reasons, one of which must be specified in the motion to object:

- 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.

If a standing committee objects to a rule, the rule is reported out of the committee and referred to JCRAR. In addition, the committee chairperson must immediately notify the chairperson of the standing committee that has jurisdiction over the rule in the other house. Upon such notification, the second committee’s review period immediately ceases and that committee can take no further action, other than to also object to the rule.

[s. 227.19 (4) (b) 5. and (d), Stats.]

## **WAIVER OF JURISDICTION**

A standing committee may waive its jurisdiction over a proposed rule. Such action is taken during an executive session, by a majority vote of a quorum of the committee. If that action is taken, the rule is reported out of the standing committee and referred to JCRAR.

[s. 227.19 (4) (c), Stats.]

## **APPROVAL OF RULE**

A standing committee may approve a proposed rule. Such action is taken during an executive session, by a majority vote of a quorum of the committee. If that action is taken, the rule is reported out of the standing committee and referred to JCRAR.

[s. 227.19 (4) (e), Stats.]

## **GERMANE MODIFICATION SUBMITTED BY AGENCY**

An agency may submit a germane modification to a proposed rule, on its own initiative, during a standing committee review period. If an agency submits a germane modification during the final 10 days of the committee review period, the review period for the standing committees in both houses 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.

In addition, an agency may submit germane modifications to a proposed rule following termination of the committee review period. An agency pursuing that course of action must do all of the following: (a) recall the rule from the Chief Clerk of both houses; (b) modify the rule; and (c) resubmit the rule to the presiding officers of each house. In this situation, in the Senate, the President refers the rule to a standing committee and the entire committee review process begins anew.

[s. 227.19 (4) (b) 3. and 4., Stats.]

## **END OF COMMITTEE REVIEW PERIOD**

When a standing committee's jurisdiction over a proposed rule is concluded, the committee must report the rule and any objection to the Chief Clerk within five working

days after that jurisdiction has concluded. The Chief Clerk refers the rule and any objection to JCRAR within five working days after receiving the committee report.

[s. 227.19 (5) (a), Stats.]

## **STANDING COMMITTEE MEETINGS**

### **SCHEDULING A MEETING**

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 or objecting to a rule. A committee meeting on a rule must be held during the committee's review period. A public hearing or executive session on a proposed rule may be held in conjunction with a public hearing or executive session on legislation or other matters before the committee.

If a committee schedules a meeting, that action automatically extends the committee's review period from 30 to 60 days, as described above.

[s. 227.19 (4) (am) and (b), Stats.]

### **MEETING NOTICE**

The chairperson must provide public notice of a meeting to review a proposed rule in the same manner as described in Part III. If a public hearing or executive session on a proposed rule is held in conjunction with a meeting on legislation or other matters before the committee, the notice of the public hearing or executive session on the rule must be included in the committee's meeting notice.

In addition, the chairperson should notify committee members of the meeting.

### **CONDUCTING A MEETING**

If the meeting is a public hearing, it is conducted in the same manner as a hearing on legislation. Agency personnel are usually called to testify first, and asked to explain the proposed rule to the committee and respond to questions about the rule.<sup>12</sup> If the meeting is an executive session, in which the committee wishes to take action on a proposed rule,

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<sup>12</sup> If the meeting involves committee members and agency representatives only, it can be convened as a public hearing with invited testimony only or as an executive session.

it is conducted in the same manner as an executive session on legislation. (See Part III for procedure governing public hearings and executive sessions.)

### **LEGISLATIVE COUNCIL ATTORNEY/ANALYST**

The Legislative Council attorney/analyst assigned to the committee provides information and responds to questions during a meeting on administrative rules, upon request. For example, it is common for the attorney/analyst to do any of the following:

- Explain the process for promulgating administrative rules.
- Discuss and draft motions to request modifications or object to a proposed rule or to waive jurisdiction over a proposed rule.
- Describe the provisions of a proposed rule and how the rule affects current law.

## **JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES**

### **GENERAL PROCESS**

After the standing committee review period, a proposed rule is referred to JCRAR. The JCRAR review period initially is 30 calendar days from the date of the last referral from the standing committees.<sup>13</sup> The committee's review period may be extended for 30 calendar days beyond the initial 30-day period, for a total of 60 days, if the co-chairpersons take one of the following actions during JCRAR's initial review period:

- Request the agency proposing the rule to meet with JCRAR regarding the rule.
- Publish or post notice that JCRAR will hold a hearing or meeting to review the proposed rule (and immediately send a copy of the notice to the agency).

If a standing committee objects to a proposed rule, JCRAR is required to meet and take action on the objection. If a standing committee does not object to a proposed rule, JCRAR may review the rule during its review period in the same manner as a standing committee.

JCRAR may object to a rule for any of the same seven reasons that a standing committee may object to a rule, as described above. If JCRAR objects to a proposed rule, the agency may not promulgate the proposed rule until a bill supporting the objection is introduced and fails to be enacted. As an alternative to this temporary objection process, JCRAR may also indefinitely object to any proposed rule, for the same reasons a temporary objection

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<sup>13</sup> However, if a proposed rule is referred to JCRAR after the final general-business floorperiod, the JCRAR review period extends to the day the next Legislature convenes.

may be made. Under this provision, an agency would not be able to promulgate a rule following indefinite objection unless a bill authorizing such promulgation was enacted into law.

During the JCRAR review period, JCRAR may request and contract for the preparation of an independent economic impact analysis (EIA) of a proposed rule, with the cost of the independent EIA paid by the Legislature if the result varies by less than 15% from the agency's EIA, and paid by the agency that is proposing the rule if the result varies by more than 15%, except that the Joint Finance Committee may determine the funding source for contracts with a maximum potential obligation in excess of \$50,000. Before contracting for the preparation of an EIA, a request for an independent EIA by JCRAR must be approved by both the Committee on Senate Organization and the Committee on Assembly Organization.<sup>14</sup>

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

## **EXPEDITED REPEAL PROCESS**

State agencies must petition JCRAR to repeal certain existing administrative rules using an expedited process. The process applies to an "unauthorized rule," defined to mean a rule that an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.

The expedited process includes the following steps:

- An agency submits a petition for rule repeal to the Legislative Council staff.
- The Legislative Council staff reviews the petition and submits a written report to JCRAR as to whether the petition proposes to repeal an unauthorized rule.
- JCRAR reviews the petition and may approve, deny, or request changes to the petition.
- If JCRAR approves the petition, the agency must certify the repeal to the Legislative Reference Bureau (LRB), for publication. If JCRAR denies the petition, the agency

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<sup>14</sup> Prior to gubernatorial approval, a co-chair of JCRAR may request and contract for the preparation of an independent EIA of a proposed rule, with the cost of the independent EIA paid by the co-chair's house of the Legislature if the result varies by less than 15% from the agency's EIA, and paid by the agency that is proposing the rule if the result varies by more than 15%, except that the Joint Finance Committee may determine the funding source for contracts with a maximum potential obligation in excess of \$50,000. Before contracting for the preparation of an EIA, a request for an independent EIA by a co-chair of JCRAR must be approved by the Organization Committee of the co-chair's house of the Legislature. [s. 227.137 (4m), Stats.]

may pursue a repeal or amendment of the rule using the general process under current law.

[s. 227.26 (4), Stats.]

## **JCRAR TREATMENT OF RULES IN EFFECT**

### **Suspension of Existing Rules**

JCRAR may, by a majority vote of a quorum of the committee, suspend a permanent rule or emergency rule that has been promulgated and is in effect if JCRAR has first received testimony about the rule at a public hearing and the suspension is based on one or more of the reasons a committee may cite when objecting to a proposed rule. If JCRAR suspends a rule, it must, within 30 days, introduce a bill in each house to repeal the suspended rule. If both bills are defeated or fail to be enacted in any other manner, the rule remains in effect unless JCRAR suspends it again. If either bill is enacted, the rule is repealed and may not be promulgated again by the agency unless a subsequent law specifically authorizes such action.

### **Retrospective EIA**

JCRAR may direct an agency to prepare a retrospective EIA for any of an agency's existing rules. Requests for such an analysis may be made with respect to one or more chapters, sections, or other subunits of the Administrative Code that are administered by the agency. Following a request, the agency must prepare the retrospective EIA in the same manner it would prepare an EIA on a proposed rule.

### **Requirement to Promulgate Policy as a Rule**

If JCRAR determines that an agency's statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days of JCRAR's action. Further, by a majority vote of a quorum of the committee, JCRAR may require any agency promulgating rules to hold a public hearing with respect to general recommendations of JCRAR and to report its actions to JCRAR within a specified time.

[ss. 227.138 and 227.26, Stats.]

## **EMERGENCY RULE EXTENSION**

On occasion, preservation of the public peace, health, safety, or welfare necessitates placing a rule into effect prior to the time it could take effect as a permanent rule, in which case

the agency may initially adopt the rule as an emergency rule. An agency must hold a public hearing on an emergency rule within 45 days after the adoption of the rule. An emergency rule remains in effect only for 150 days, unless JCRAR grants an extension for up to an additional 60 days. The total period for all extensions granted may not exceed 120 days.

[s. 227.24, Stats.]





# PART V: COMMITTEE INVESTIGATIONS

Senate standing committees have the authority to investigate any subject matter customarily within the jurisdiction of the committee. This Part describes the general authority of a committee to investigate and the authority to issue subpoenas.

## **GENERAL AUTHORITY TO INVESTIGATE**

A standing committee's authority to investigate is inherent to the legislative process and is recognized in the Joint Rules of the Legislature. However, 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 U.S. and Wisconsin Constitutions designed to protect individuals in their enjoyment of life, liberty, and property, and from inquisitions into private affairs.

[Joint Rule 84 (3); and *State ex rel. Rosenhein v. Frear*, 138 Wis. 173, 176-77 (1909).]

## **AUTHORITY TO ISSUE SUBPOENAS**

A standing committee's investigative authority includes the power to issue subpoenas. Subpoenas may compel witnesses to testify at a committee meeting or produce records and documents to the committee. Although a standing committee has general authority to investigate a matter, the committee may issue subpoenas only if the committee is specifically authorized to investigate a particular matter.

[s. 13.31, Stats.]

## **AUTHORIZATION TO INVESTIGATE**

A standing committee's authorization<sup>15</sup> to investigate a matter should precisely define the area of investigation. In addition, the authorization should: (1) 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; and (2) establish the state's interest in making such an investigation by showing a substantial relationship between the information

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<sup>15</sup> State statutes do not specify the means by which the authorization is provided to a committee. Presumably, such authorization could be provided through various means, including a resolution or motion. [*Goldman v. Olson*, 286 F. Supp. 35 (W.D. Wis. 1968); and Joint Rule 84 (3).]

sought and a compelling state interest or concern. These two elements are necessary for the Senate to enforce a subpoena and find a subpoenaed witness in contempt for refusing to attend or testify.

[s. 13.31, Stats.; and *Goldman v. Olson*, 286 F. Supp. 35, 43 (W.D. Wis. 1968).]

## **ISSUANCE OF SUBPOENAS**

A subpoena may be used to compel testimony or produce records and documents desired by a committee engaged in an authorized investigation. It is recommended that a committee request the appearance of a witness or the production of records and documents before issuing a subpoena. If a witness refuses, the committee may then issue a subpoena.

A subpoena should refer to the authorization of the committee to investigate; state the nature of the investigation; and state where, when, and before whom the witness is required to appear and, if applicable, produce records and documents. A subpoena must be signed by the Senate President and Chief Clerk, and it may be served by any person and must be returned to the Chief Clerk.

[ss. 13.31 to 13.33, Stats.; and Senate Rule 44.]

## **TESTIMONY FROM WITNESSES**

A legislator who is a member of the investigating committee may administer the oath to a witness in a matter before the committee.

Any compelled testimony or evidence, or evidence derived from that compelled testimony or evidence, provided by a subpoenaed witness may not be used in a criminal or forfeiture prosecution (except perjury regarding the witness's testimony).

If a witness refuses to appear, testify, or produce records and documents pursuant to a subpoena from an authorized investigatory committee, the witness may be found in contempt by the Senate. The committee chairperson certifies, to the Senate, a witness's refusal to appear, testify, or produce records and documents.

[ss. 13.26 (1) (c), 13.27, 13.34, 13.35, 13.45 (6), and 972.085, Stats.]

# PART VI: FISCAL ESTIMATES AND OTHER REPORTS

In its consideration of legislation, a standing committee may encounter fiscal estimates and other reports that are prepared on legislation. A fiscal estimate is a report that explains the impact of legislation on state and local finances. In addition to fiscal estimates, reports on legislation may be prepared by the Joint Survey Committee on Retirement Systems, Joint Survey Committee on Tax Exemptions, or Joint Review Committee on Criminal Penalties. This Part describes fiscal estimates and joint committee reports.

## **FISCAL ESTIMATES**

### **REQUIREMENT FOR A FISCAL ESTIMATE**

A fiscal estimate is a report that provides information about the state and local fiscal implications of a bill. A fiscal estimate must be prepared for a bill that does any 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.

A fiscal estimate is not required for amendments or substitute amendments; the requirement applies only to bills. However, the following bills do not require fiscal estimates: (1) an executive budget bill; and (2) a bill containing a penalty provision but no other provision requiring a fiscal estimate.

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

### **FISCAL ESTIMATE PROCEDURE**

LRB determines whether a fiscal estimate is necessary at the time a bill is drafted and indicates the need for a fiscal estimate in the bill analysis. If a fiscal estimate is necessary on a bill, the bill jacket is stamped “FE.”

LRB forwards the bill to the Department of Administration (DOA), and DOA forwards the bill to all state agencies that will be required to collect revenue, receive an appropriation, or administer a program under the bill. Each agency is requested to prepare a fiscal estimate.<sup>16</sup>

The state agencies complete fiscal estimates on the bill and return them to DOA. DOA reviews each fiscal estimate. DOA may also submit a supplemental fiscal estimate on its own initiative. DOA forwards any fiscal estimates to LRB.

LRB forwards the fiscal estimate to the bill's primary author for review. The author has five working days to review each fiscal estimate. The author may request that the preparing agency rewrite the estimate, request a supplemental estimate, or approve the estimate. If the author requests that the agency rewrite the fiscal estimate and the agency agrees, the agency prepares a new fiscal estimate. If the author requests a supplemental estimate, the Legislative Fiscal Bureau (LFB) or DOA prepares the supplemental estimate. At any time during the author's five-day review period, the author may make the fiscal estimate public by releasing it. After the five-day review period, the fiscal estimate is transmitted to the Chief Clerk and inserted in the bill jacket.

[Joint Rules 41 to 50.]

### **LACK OF FISCAL ESTIMATE**

A bill requiring a fiscal estimate may not receive a public hearing, committee vote, or Senate vote until a fiscal estimate is available. However, in practice, a public hearing on a bill is sometimes conducted prior to the completion of a bill's fiscal estimate. If this occurs, the standing committee chairperson should ensure that the fiscal estimate is available prior to the executive session on the bill.

In addition, if a fiscal estimate is completed but not available on the bill history on the Legislature's website, the committee chairperson should ensure that copies of the fiscal estimate are available for committee members at the public hearing or executive session.

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

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<sup>16</sup> The Committee on Senate Organization may request that the LFB prepare a fiscal estimate if the agency fiscal estimate will not be completed prior to a public hearing, committee vote, or Senate consideration of the bill. In some circumstances, a committee chairperson may request that the LFB prepare a fiscal estimate. [Senate Rule 96 (1) and (1m).]

## **REPORT BY THE JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS**

Any bill or amendment creating or modifying any system for, or making any provision for, the retirement of or payment of pensions to public officers or employees must be referred to the Joint Survey Committee on Retirement Systems (JSCRS).<sup>17</sup> Before the Legislature may act on the bill or amendment, the JSCRS must submit a written report on the bill or amendment that contains the probable costs involved, the effect on the actuarial soundness of the retirement system, and the desirability of the bill or amendment as a matter of public policy.

In addition, the Senate President, co-chairpersons of JSCRS, or co-chairpersons of the Joint Committee on Finance may order an independent actuarial opinion if the bill or amendment may have a significant fiscal impact on the costs, actuarial balance, or goals of the Wisconsin Retirement System.

[s. 13.50, Stats.]

## **REPORT BY THE JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS**

Any bill that affects an existing statute or creates a new statute relating to the exemption of any property or person from any state or local taxes or special assessments must be referred to the Joint Survey Committee on Tax Exemptions (JSCTE).<sup>18</sup> The bill may not be considered further by either house of the Legislature until the JSCTE has submitted a written report that sets forth an opinion on the legality of the bill, the fiscal effect upon the state and its subdivisions, and its desirability as a matter of public policy.

[s. 13.52, Stats.]

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<sup>17</sup> A bill that pertains only incidentally to a matter of concern to the JSCRS may be referred directly to the standing committee appropriate to the major substance of the bill. In that case, the JSCRS must prepare its report on the bill while that bill is in the possession of the other committee. Referral in this manner does not suspend the requirement that the report of the JSCRS must be received before the bill is given its second reading. [Senate Rule 36 (2) (c).]

<sup>18</sup> A bill that pertains only incidentally to a matter of concern to the JSCTE may be referred directly to the standing committee appropriate to the major substance of the bill. In that case, the JSCTE must prepare its report on the bill while that bill is in the possession of the other committee. Referral in this manner does not suspend the requirement that the report of the JSCTE must be received before the bill is given its second reading. [Senate Rule 36 (2) (c).]

## **REPORT BY THE JOINT REVIEW COMMITTEE ON CRIMINAL PENALTIES**

If requested, the Joint Review Committee on Criminal Penalties (JRCCP) is required to prepare a report on any bill that creates a new crime or revises the penalty for an existing crime. A report may be requested by the chairperson of a standing committee to which the bill is referred. If the bill is introduced but not referred to a standing committee, a report may be requested by the Senate President.

A report prepared by the JRCCP includes all of the following information:

- Costs likely to be incurred or saved by state and local government agencies, the courts, the state 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 prohibited under existing criminal statutes.

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

[s. 13.525, Stats.]

## PART VII: OPEN MEETINGS LAW

Under Wisconsin's Open Meetings Law, a meeting of a Senate standing committee generally must be preceded by public notice and held in open session. This Part describes the applicability of the Open Meetings Law to a standing committee.<sup>19</sup>

### DEFINITION OF "MEETING"

Under the Open Meetings Law, 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, the following activities may be considered a meeting: (1) telephone conference calls or email exchanges between committee members; and (2) communications or gatherings between separate groups of committee members when enough members to constitute a quorum of the committee agree to act uniformly (commonly referred to as a "walking quorum").

[ss. 19.82 and 19.83, Stats.]

### PUBLIC NOTICE

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 of the meeting, unless for "good cause" such notice is impossible or impractical.<sup>20</sup> 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*). (See Part III for the procedures on providing notice of public hearings and executive sessions.)

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

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<sup>19</sup> For additional information, see Legislative Council, *Chapter 5: Open Meetings Law*, Wisconsin Legislator Briefing Book (2019-20), or Department of Justice, *Wisconsin Open Meetings Law Compliance Guide* (2018).

<sup>20</sup> The Committee on Senate Organization makes the determination of whether, for good cause, 24-hour notice is impossible or impractical. [Senate Rule 25 (1) (b).]

## **OPEN SESSION**

The Open Meetings Law requires that meetings be publicly held in places reasonably accessible and open to members of the public. A standing 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 Joint Rule 27.]

## **CLOSED SESSION**

### **GROUNDINGS FOR MEETING IN CLOSED SESSION**

Standing 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 committee meeting in closed session include the following:

- 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**

All of the following requirements apply when a standing committee meets 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 limited 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. A meeting that went into closed session may not 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.]

## **ACCOMMODATION OF RECORDING DEVICES**

A person may audio or video record the proceedings of a Senate committee with permission of the Committee on Senate Organization. The requirement to obtain permission does not apply to accredited correspondents of the news media or to staff of the Chief Clerk, the Sergeant at Arms, or a Senator. 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 Senate Rule 11 (7).]



## PART VIII: OPEN RECORDS LAW

Under Wisconsin's Open Records Law, all government records, including standing committee records, are generally open to public inspection. This Part describes the applicability of the Open Records Law to a standing committee.

### **DEFINITION OF "RECORD"**

The Open Records Law defines "record" as any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, that has been created or is being kept by an authority.

Standing committee records include hearing notices, committee reports on legislation, petitions, written statements, and letters presented to the committee or the chairperson.

[s. 19.32 (2), Stats.]

### **CUSTODIAN OF COMMITTEE RECORDS**

Under the Open Records Law, the legal custodian of records is responsible for making decisions on access to records, pursuant to the specific requirements of the law. A standing committee chairperson is the legal custodian of the committee's records, but the chairperson may designate a staff person to act as the legal custodian of the committee's records.

[s. 19.33 (1) and (2), Stats.]

### **RECORDS REQUEST**

#### **REQUESTER**

The Open Records Law provides that any member of the public has a right to inspect and copy records that are open to the public, except a person who is incarcerated in a penal facility, placed on probation with confinement as a condition of placement, or committed in an inpatient treatment facility. However, a person who is incarcerated, on probation with confinement, or committed 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.

A person requesting access to a record containing “personally identifiable information” pertaining to that person may have a greater right of access than the general public to that record.

A person requesting to inspect and copy records is not required to reveal his or her identity, except when security reasons require identification, or to state the purpose of his or her request. Although requesters usually identify themselves voluntarily, they cannot be required to do so by the custodian as a precondition to being given access to the records.

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

### **SUBMISSION OF REQUEST**

A request to inspect and receive a copy of records need not be in writing. Although an oral request must be honored, only a written request can be enforced judicially.

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

## **RESPONSE TO RECORDS REQUEST**

Under the Open Records Law, committee records are generally open to public inspection.<sup>21</sup> However, the right to inspect public records is not absolute. For instance, state statutes may provide an exemption<sup>22</sup> for a particular record or there may be situations where the harm done to the public interest by inspection outweighs the right of members of the public to have access to public records.

### **BALANCING TEST**

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 that 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

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<sup>21</sup> For additional information, see Legislative Council, *Chapter 6: Open Records Law*, Wisconsin Legislator Briefing Book (2019-20), or Department of Justice, *Wisconsin Public Records Law Compliance Guide* (2018).

<sup>22</sup> For example, the Open Records Law prohibits or limits the disclosure of certain records relating to public employees and officials under certain circumstances. [ss. 19.32 (1bg), (1dm), (2g), and (4), 19.356, and 19.36 (10) to (13), Stats.]

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.

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

### **DENIAL OF REQUEST**

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 a person seeking a record containing “personally identifiable information” pertaining to that person is not subject to the balancing test and access may be denied only for reasons specified by statute.

[s. 19.35 (1) (a) and (am) and (4), 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.]

## **COPYING**

Any record that is subject to public inspection under the Open Records Law may be copied. A custodian may charge a fee for copying that does not exceed the actual, necessary, and direct cost of reproduction, including labor. In addition, a custodian may charge for the costs of mailing records.<sup>23</sup>

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

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<sup>23</sup> Contact the Chief Clerk for suggestions on fees and procedure.

## **NOTICE**

As custodian of committee records, a standing committee chairperson is required to post a notice<sup>24</sup> at his or her office (which is also the committee office), setting forth all of the following:

- 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.
- The costs, if any, for copying and mailing records.

[s. 19.34 (1), Stats.]

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<sup>24</sup> Contact the Chief Clerk for a sample notice.

## PART IX: GLOSSARY OF TERMS

Americans with Disabilities Act (ADA): A federal law that prohibits discrimination on the basis of disability. The ADA was 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. [s. 227.01 (13), Stats.]

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 legislation, nominations for appointments, or administrative rules. The action of the committee is reported to the Senate.

Fiscal Estimate: A memorandum that explains the impact of a bill on state and local finances. [Senate Rule 99 (28).]

Germaneness: The relevance or appropriateness of an amendment. [Senate Rule 99 (31).]

Hearing Slip: A document with which an individual may register to speak for or against legislation or for information only or may register for or against legislation 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.]

Legislation: A bill, resolution, or joint resolution.

Legislative Council staff: A legislative service agency that provides legal and research services to standing committees and to members of the Legislature in a nonpartisan and confidential manner. [s. 13.91, 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.]

Nomination: A proposed appointment submitted to the Senate for confirmation. The President refers a nomination to a standing committee for its consideration. [Senate Rule 22.]

Open Meetings Law: A state law that requires advanced public notice of a meeting of a governmental body and that requires most meetings to be open to the public. [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 legislation or issues before the committee. [Senate Rule 99 (32).]

Quorum: A majority of the membership of a committee or the Senate, whichever is applicable. [Senate Rule 99 (62).]

Simple Amendment: A suggested alteration in any legislation, often distinguished from a substitute amendment (which is intended to take the place of the legislation). [Senate Rule 99 (4).]

Standing Committee: A committee that is permanent and established by the Committee on Senate Organization. A standing committee conducts public hearings and executive sessions on legislation, nominations for appointments, and proposed administrative rules that are referred to the committee. [Senate Rules 20 and 99 (86).]

Substitute Amendment: An amendment that, if accepted, takes the place of the original legislation. [Senate Rule 99 (88).]