SUPREME COURT OF WISCONSIN
Appeal No. 2018AP0059

Clean Wisconsin, Inc. and
Pleasant Lake Management District,

Petitioners–Respondents,

v.

Wisconsin Department of Natural
Resources,

Respondent–Appellant,

Wisconsin Manufacturers & Commerce,
Dairy Business Association,
Midwest Food Processors Association,
Wisconsin Potato & Vegetable Growers Association,
Wisconsin Cheese Makers Association,
Wisconsin Farm Bureau Federation,
Wisconsin Paper Council and
Wisconsin Corn Growers Association

Intervenors–Co-Appellants

INTERVENORS–CO-APPELLANTS' MEMORANDUM IN SUPPORT OF WISCONSIN LEGISLATURE'S PETITION TO INTERVENE

Intervenors–Co-Appellants support the Wisconsin Legislature's petition to intervene. The Court asked the parties to address the interplay between Wis. Stat. § 227.53(1)(d) and Wis. Stat. §§ 809.13 and 803.09(2m) as they relate to that petition. DNR argues that Wis. Stat. § 227.53(1)(d) is the exclusive means to

intervene, including timing and standing requirements that would bar the Legislature from intervening in this case. If DNR is correct, the Legislature and any other interested parties would have no mechanism to intervene in Chapter 227 cases at the appellate level. The Legislature asserts that Wis. Stat. § 803.09(2m) provides an absolute right to intervene in this case. The Legislature is correct.

ARGUMENT

I. DNR's Position That Petitions to Intervene Can Only Be Filed at The Circuit Court Level Will Ban Interested Parties from Appeals That May Affect Vital Interests.

The rules for judicial review of agency decisions at the circuit court level are set forth in Chapter 227, Subchapter III (Administrative Actions and Judicial Review), Wis. Stat. §§ 227.40-.60. Wis. Stat. § 227.53(1)(d) is one of these provisions. It sets forth the circumstances in which a circuit court may allow parties to intervene and in relevant part provides:

> The [circuit] court may permit other interested persons to intervene. Any person petitioning the [circuit] court to intervene shall serve a copy of the petition on each party who appears before the agency and any additional parties to the judicial review at least five days prior to the date set [by the circuit court] for the hearing on the petition [to intervene].
>
> Wis. Stat. § 227.53(1)(d).

DNR makes two bold assertions. First, DNR asserts Wis. Stat. § 227.53(1)(d) governs any and all petitions to intervene in Chapter 227 cases, no matter at what juncture or in what court. Second, DNR claims that if there is such a petition to intervene before the circuit court, "it must be resolved before the

circuit court takes up the petition for judicial review." DNR Resp. to the Wisconsin Legislature's Pet. to Intervene (May 6, 2019), at 4 (citing *Citizens' Util. Bd. v. Pub. Serv. Comm'n of Wis*., 2003 WI App 206, ¶ 17, 267 Wis. 2d 414, 671 N.W.2d 11).

DNR's position, then, is that petitions to intervene in Chapter 227 proceedings are only allowed at the circuit court level. Beyond eliminating the ability of the Legislature to intervene here under Wis. Stat. § 803.09(2m), DNR's position wipes out any opportunity to participate at the appellate level by *any* parties in *any* Chapter 227 cases, whether that be under Wis. Stat. §§ 803.09(1) (as matter of right) or 803.09(2) (permissive intervention) or 803.09(2m) (legislative intervention).

This would pose a severe limit on judicial access beyond this case. Consider individuals or groups requesting a nonprofit law firm—Great Lakes Legal Foundation or Clean Wisconsin, for example—to consider representing them on a compelling Chapter 227 case after a notice of appeal. A typical scenario. Such firms could only file amicus briefs, no matter how severe an impact the appellate decision might have on the interests of those individuals or groups. They would be mere spectators, non-parties with no ability to affect settlement or dismissal. Such a sweeping bar to participate in judicial review is inconsistent with the plain meaning of the statutes and the policy underpinnings supporting permissive access to our courts.

Justice depends on access to the courts and Wisconsin caselaw makes it clear that standing "should be liberally construed," not "narrowly or restrictively." *Wisconsin's Environmental Decade, Inc. v. PSC,* 69 Wis.2d 1, 13, 230 N.W.2d 243 (1975). Access to the courts is so foundational, even a trifling interest can warrant entrance. *State ex rel. First National Bank v. M & I Peoples Bank*, 95 Wis.2d 303, 309, 290 N.W.2d 321 (1980). Liberally construed access applies to individuals and associations. *Metro. Builders Ass'n of Greater Milwaukee v. Vill. of Germantown*, 2005 WI App 103, ¶ 1, 282 Wis. 2d 458, 698 N.W.2d 301.

The Wisconsin Administrative Procedure Act of 1943 was one of the first attempts by any state legislature to codify in a single chapter of the statutes the procedures to be followed by agencies with respect to rulemaking, contested cases, and judicial review.[1] It was intended to be inclusive, not exclusive, in allowing interested parties to participate in judicial review of agency decisions. This includes a right to participate by parties with an interest in the proceedings regardless of *when* their interests demand their participation:

> There may be many cases in which a third party, who may have a great deal more interest in the preceding than the administrative agency itself, will be quite content with the handling of the case by the Attorney General in support of the agency's decisions *until a certain point in the litigation is*

[1] See Ralph M. Hoyt, *The Wisconsin Administrative Procedure Act*, 1944 Wis. L. Rev. 214 (1944) for a contemporaneous overview of Chapter 227's formation. This initial rendition of Chapter 227 was compiled by the Wisconsin Bar Association committee on administrative law and modeled after work by a corresponding American Bar Association committee. It was introduced by Sen. Gustave W. Buchen, a member of the State Bar committee, and passed both houses with little or no opposition.

> *reached, but may then conclude to step in and protect his own interests — as for instance by taking an appeal to the Supreme Court which the Attorney General has decided not to take*. Any court rule that would bar him from such participation merely because he has failed to serve a notice of appearance would undoubtably violate the legislative intention. (Emphasis added)
>
> Hoyt, *supra*, at 232-33.

This is precisely the situation here. In DNR motion for a revised briefing schedule in this case, the Attorney General, on behalf of DNR, states his intent to take positions before the Supreme Court that conflict with its "previous positions regarding the public trust doctrine; the import of this Court's decision in *Lake Beulah*; and the effect of 2011 Wis. Act 21 on [DNR's] authority regarding high capacity well permitting." In all "meaningful respects," DNR will urge the Court to vacate its own permits. DNR Mot. to Modify Briefing Schedule (May 2, 2019), at 3.

We sometimes need to be reminded that the real parties of interest in this case are those farmers whose water well permits approved by DNR were vacated by the circuit court. They reasonably expected the Attorney General and DNR would continue to defend these permits. They were wrong, presenting a situation in which other parties must take up the mantel. 2017 Wis. Act 369 clearly anticipated that on some occasions that would be the Legislature, particularly in cases like this in which the agency challenges the plain meaning of legislative enactments in order to invalidate their own permits. DNR's bait and switch in this case should not be rewarded.

II. Wis. Stat. § 227.53(1)(d) Sets Forth Procedures for Intervening in Judicial Review Proceedings at the Circuit Court Level Only.

The fundamental question is whether Wis. Stat. § 227.53(1)(d) applies to or otherwise precludes intervention at the appellate level. It does not. It provides intervention procedures at the circuit court level. Nothing more. Nothing less.

A. The Fundamental Concept of Judicial Review of Agency Decisions Under Chapter 227 Is Predicated Upon Procedures Governing Circuit Court Deliberations.

In Wisconsin, statutory interpretation centers on the text, context, and structure of a statute. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2018 WI 25, ¶¶ 45-46, 271 Wis.2d 633, 681 N.W.2d 110. "Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used." *Id*. ¶ 46. To determine context, a court may look to a statute's history. *Cnty. of Dane v. LIRC*, 2009 WI 9, ¶ 27, 315 Wis.2d 293, 759 N.W.2d 571.

A key purpose in creating Chapter 227 was to provide one judicial review process to replace what were over 70 separate statutes prescribing methods of judicial review of agency decisions.[2] The Legislature did so by swapping out these old judicial review processes with a simple reference to the new chapter, such as: "Any order of the Board shall be subject to review in the manner provided in

[2] Hoyt, *supra*, at 229.

chapter 227."[3] This unified judicial review process is set forth in Subchapter III, Wis. Stat. §§ 227.40-.60.

While frequently specific about the procedures binding agencies and circuit courts, Chapter 227's judicial review provisions never purport to dictate appellate court procedure, as can be seen by the statute's repeated use of the word "court" to mean "circuit court." The word "court" appears 84 times in Subchapter III, including Wis. Stat. 227.53(1)(d), relating to "any person petitioning the court to intervene." Except on two occasions within all 25 sections of Subchapter III is a reference to any "court" referring to anything but a "circuit court."[4] In those two instances, the words "appellate court" only is used once relates specifically to

[3] *Id.*

[4] Sixteen times the statute specifies "circuit courts." At least 22 times, the context of the word "court" clearly leads to "circuit court." For example, 6 times "court" appears in the same sentence or within the same paragraph as "circuit court," obviously implying the more specific meaning. *See, e.g*. Wis. Stat. 227.53(1)(a)(3). Also, at least 16 times, "court" remains unidentified within the paragraph, but an earlier paragraph in the same provision defines "court" as "circuit court," or the language addresses procedure specific to circuit courts. In several cases, the meaning of "court" remains more ambiguous but still leads to "circuit court." For example, § 227.53 early on defines "court" as "circuit court" but later simply references "the court." Similarly, § 227.57(1)-(9), (11) uses the word "court" 15 times without further definition; however, contextual clues imply "circuit court."

Sometimes "court" does mean "all Wisconsin courts," but never within the context of procedure. For example, § 227.485(1) addresses "costs to certain prevailing parties" and specifically instructs "hearing examiners and *courts in this state*, when interpreting this section, be guided by federal case law." (Emphasis added.) The requirement, however, references a standard, how to award costs, not procedure for awarding it.

procedure.[5] This sole reference to appellate procedure in Chapter 227 is set forth at Wis. Stat. § 227.58.

Wis. Stat. § 227.58 is the gateway between Chapter 227 circuit court procedures and appellate court procedures prescribed in Chapters 808 (Rules of Appellate Procedure) and 809 (Rules of Appellate Procedure). It provides:

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

Wis. Stat. § 227.58 was amended by 1983 Wis. Act 219, a bill developed by the Judicial Council for the purposes of standardizing appellate filing deadlines. The Act also did some routine cleanup, as was done in then numbered Wis. Stat. § 227.21:[6]

> SECTION 30. 227.21 of the statutes is amended to read:
>
> **227.21 Appeals**. Any party, including the agency, may secure a review of the final judgment of the circuit court by appeal to the court of appeals~~. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in other civil cases, except at the time for appeal shall be limited to 30 days from the notice of entry of the judgment~~ within the time period specified in s. 808. 04(1).
>
> **[Judicial Council] Note**: This section is amended by repealing the appeal deadline of 30 days from the notice of entry of judgment for greater uniformity. An appeal must be initiated within the time frame specified in s. 808.04 (1). stats.

[5] Wis. Stat. § 227.60 grants jurisdiction to "*state courts* to determine validity of laws when attacked in federal court and to stay enforcement." But granting jurisdiction, once again, does not direct procedure.

[6] Wis. Stat. § 227.21 was renumbered 227.58 by 1985 Wis. Act 182 s.41.

> This section is further amended to eliminate the superfluous provision that the appeal be taken in a manner other of other civil appeals. Civil appeal procedures are governed by chs. 808 and 809, stats.
>
> 1983 Wis. Act 219, Exhibit A.

Deleting the 30-day limit and referencing Wis. Stat. § 808.04(1) was consistent with the Act's primary purpose: to standardize deadlines for appellate action. But directly citing Chapter 808 makes it clear that Chapter 808 and not Chapter 227 controls appellate procedures on timing. Moreover, the accompanying Judicial Council note explained that "This section is further amended to eliminate the superfluous provision that the appeal is taken in the manner of other civil appeals. *Civil appeal procedures are governed by chs. 808 and 809, stats*." (Emphasis added.) That is, there is no need to waste ink to note appeals will be handled as "provided by law for appeals from the circuit court" because chapters 808 and 809 clearly are the applicable laws governing civil appeal procedures.

Wis. Stat. § 227.58's placement at the end of Chapter 227 might well evidence its role as an exit from a Chapter 227 circuit court judicial review, to chapters 808 and 809 appellate review of the circuit court's decision. That is, these chapters set forth sequential, not overlapping procedures. Once the circuit court review is complete, further review at the appellate level is conducted under

chapters 808 and 809, including Wis. Stat. § 809.13 setting forth the means to intervene at the appellate level.

B. DNR Cites No Statutes or Caselaw to Support Its Position that Wis. Stat. § 227.53(1)(d) is Controlling.

The judicial review processes in Chapter 227 for circuit courts and chapters 808 and 809 for appellate courts are sequential and mutually exclusive, not conflicting. Because the issue at hand is a petition to intervene at the appellate level, Wis. Stat. § 809.13 applies. Conceptually, this should be apparent. For example, in an unpublished Chapter 227 case, the court of appeals noted that one of the parties that were dismissed could have petitioned to intervene under Wis. Stat. § 809.13 to become a "proper party on appeal."[7] This observation is dicta, but it states the obvious.

As for the not so obvious, DNR cite no cases standing for the proposition Wis. Stat. § 227.53(1)(d) is the exclusive means to intervene at both the circuit court and appellate levels, including timing and standing requirements that would bar the Legislature from intervening in this case. Nowhere in the statutes or caselaw is it mentioned that petitions to intervene at the appellate level in Chapter 227 proceedings can only be filed through a narrow window at the circuit court level. The reason there is no statutory or caselaw support for DNR's assertions is

[7] *Town of Rockland v. Green Bay Metro. Sewage Dist*., 2011 WI App 1, ¶ 9, 330 Wis.2d 833, 794 N.W.2d 926, Exhibit B. *See* Rules of Appellate Procedure, Rule 809.23(3). Unpublished opinions issued on or after July 1, 2009 may be cited for persuasive value.

that the legislature and the courts would find it repugnant to shut down all opportunities to intervene at the appellate court level.

The caselaw cited by DNR occurred within the context of circuit court level procedure and has never been applied to appellate level procedure. For example, DNR cites *State ex rel. Dep't of Nat. Res. v. Wisconsin Court of Appeals, Dist. IV* (Dist. IV), which in turn quotes *Wagner v. State Med. Examining Bd.*, for the proposition that Chapter 227 must prevail *when conflict exists* between procedural provisions. 2018 WI 25, ¶18, 380 Wis.2d 354, 909 N.W.2d 114. But *Dist. IV* cites *Wagner* as a rule of statutory interpretation within the context of *circuit court* venue designation. It contrasts Wis. Stat. § 801.50(3)(a)—circuit court venue generally—with Wis. Stat. § 227.53(1)(a)(3)—circuit court venue for administrative appeals. *Id*., ¶14. *Wagner*, in turn, couches the Chapter 227 question as to whether a *circuit court* properly applied default judgement. 181 Wis.2d 633, 635, 511 N.W.2d 874 (1994). It held, "a *circuit court's* discretion for judicial review in a ch. 227 review proceeding is limited to the parameters outlined in sec. 227.57." *Id*. at 638. (Emphasis added.) Finally, another case cited by DNR, *State ex rel. Town of Delavan v. Circuit Court for Walworth Cty.*, analyzed whether Wis. Stat. § 801.58(7)—substitution of a trial court judge—conflicted with any provision in Chapter 227. 167 Wis. 2d 719, 723, 482 N.W.2d 899 (1992). It found

no conflict existed. *Id*. at 724. DNR's application of Wis. Stat. § 227.53(1)(d) to appellate procedure presents a novel, and unsupported, use of the statute.[8]

A truism in *Dist. IV* that is compelling here is that "in the absence of a contrary provision in Chapter 227, it does not matter. . ." *Id*. ¶ 19. If Wis. Stat. § 227.53(1)(d) does not apply to appellant procedures, *it does not matter.* We need not fire canons of construction at a provision that is irrelevant. And Wis. Stat. § 227.53(1)(d) is irrelevant here. The only question is which provision controls intervention at the appellate level.

III. Parties Seeking Review of The Final Judgment of The Circuit Court by Appeal to The Court of Appeals, Including Those Seeking to Intervene on Appeal, Are Governed by Chapter 808 and 809.

As noted in Wis. Stat. § 227.58, chapters Wis. Stat. §§ 808 and 809 govern. With respect to the issue here, Wis. Stat. § 809.13 reads in pertinent part: "The court may grant the petition [to intervene] upon a showing that the petitioner's interest meets the requirements of s. 803.09(1), (2), or (2m)." Wis. Stat. § 803.09(1) invokes intervention by absolute right, and (2) by permissive right. Wis. Stat. § 803.09(2m), most pertinent to the present litigation, applies to legislative intervention.

[8] If the Legislature's petition to intervene was at the circuit court level, these cases may be relevant, requiring further analysis on the interplay between Wis. Stat. § 227.53(1)(d) and Wis. Stat. § 803.09(2m) with respect to intervention at the circuit court level.

Critically, however, at the appellate level none of these requirements depend on § 227.53(1)(d) at all. It does not matter if the case arises from judicial review of an administrative decision or something else entirely. Wis. Stat. § 809.13 governs intervention at the appellate level.

The clarification matters for the present litigation because while (2m) may *also* allow legislative intervention under Wis. Stat. § 227.53(1)(d) at the circuit court level, the question does not arise here. A plain reading of the statutes demonstrates that for appellate procedure, Wis. Stat. § 809.13 applies. Accordingly, the requirements of Wis. Stat. § 803.09—whether (1), (2), or (2m)—also apply.

To meet the requirements Wis. Stat. § 809.13(2m), the legislative intervention statute, three things must happen. First, a party must challenge "the constitutionality of a statute, facially or as applied, challenges a statute as violating or preempted by federal law, or otherwise challenges the construction or validity of a statute." Second, the legislature must then choose to intervene as prescribed in Wis. Stat. §13.365. Third, these things met, the legislature can then intervene "at any time in the action as a matter of right by serving a motion upon the parties as provided in s. 801.14." In the present case, the Legislature fulfilled all three steps.

First, Clean Wisconsin plainly challenged the constitutionality, construction, and validity of DNR's original construction of Wis. Stat. § 227.10(2m). Specifically, Clean Wisconsin challenges the constitutionality of Wis. Stat. § 227.10(2m) as applied, arguing the DNR's interpretation of (2m) is "an unconstitutional abrogation of DNR's Public Trust authority and duties." Wisconsin Legislature's Pet. to Intervene (April 25, 2019), Exhibit A. Additionally, it challenges the construction, arguing DNR's application of Wis. Stat. § 227.10(2m) must be rejected because it misconstrues the statute's use of the word "explicit" and creates "an insufficient basis to regulate." Clean Wisconsin Resp. Br. (June 1, 2018), at 26, 28. Finally, Clean Wisconsin challenges the validity of the statute, arguing the DNR's construal of "explicit" to mean "statutory authority must be so specific as to leave nothing to the discretion of the agency is inimical to the structure of administrative law and the Administrative Procedures [sic] Act." *Id*. at 28.

Second, the legislature followed the steps as laid out in Wis. Stat. §13.365. Wis. Stat. § 13.365(3) reads: "The joint committee on legislative organization may intervene at any time in the action on behalf of the legislature." It did so here. See Joint Committee on Legislative Organization Ballot, approved April 25, 2019.

Third and finally, the legislature served a motion upon the parties as provided in Wis. Stat. § 801.14. See Wisconsin Legislature's Pet. to Intervene

Cover Letter to the Clerk of Court (noting a copy of the brief "is being served upon counsel for the parties by U.S. Mail.")

Since the legislature met the requirements of Wis. Stat. § 809.13(2m), it in turn fulfilled Wis. Stat. § 809.13 and its petition for intervention should be granted.

CONCLUSION

For the reasons discussed, Intervenors–Co-Appellants ask the Court to recognize the Legislature's absolute right to intervene.

Respectfully summitted,

/s/

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1983 Senate Bill 151

Date of enactment: **April 20, 1984**
Date of publication: **April 26, 1984**

1983 Wisconsin Act 219

AN ACT *to repeal* 32.05 (13), 32.06 (13), 66.05 (8) (c), 88.09 (2), 117.03 (5), 808.04 (2) (a), 879.27 (3) and 971.08 (2); *to renumber* 808.04 (2) (b) and (c); *to renumber and amend* 808.07 (7); *to amend* 9.10 (4) (a), 30.30 (3) (c), 48.43 (6), 48.47 (1), 48.911, 51.20 (15), 62.075 (4), 62.50 (21), 66.014 (7) (b), 66.021 (10) (b), 66.05 (2) (b) and (3), 66.435 (4) (b), 70.47 (13) and (16) (a), 70.85 (1), 74.11 (5), 78.72, 87.16, 102.25 (1), 103.59, 128.15 (1), 128.20 (2), 186.29 (5), 215.32 (12) (b) and (d), 227.21, 227.25, 227.26, 779.29, 779.30, 805.15 (6), 944.25 (8) (c), 974.02 (title) and (1) and 974.05 (1) (intro.); *to repeal and recreate* 879.31; and *to create* 55.06 (18) and 808.04 (2) to (4) of the statutes, *relating to* time limits for commencing appeals and preferential treatment of certain actions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

PREFATORY NOTE: This bill was developed by the judicial council for the purposes of standardizing, clarifying and simplifying the statutory deadlines for appealing from circuit court judgments and orders to the court of appeals.

Generally, appeals in civil cases must be initiated within 90 days after the circuit court's written judgment or order is "entered", i.e., filed in the office of the clerk of court. See s. 808.04 (1), stats. The prevailing party can reduce the appeal time to 45 days by providing notice of entry of the judgment or order within 21 days after that occurs. See ss. 806.06 (5) and 808.04 (1), stats.

The present appeal deadline was established when the court of appeals was created by laws of 1977, chapter 187. Between 1936 and 1978, the general deadline for appeals from circuit court was 6 months after entry of judgment, or 3 months if notice of entry was given. See s. 817.01 (1), 1975 stats. This period was in turn much shorter than the one-year limit which governed civil appeals between 1848 and 1936. See laws of 1935, chapter 541.

During the period when the time limit for appeals was substantially longer than it is now, numerous statutory exceptions were created for the purpose of expediting the final resolution of certain controversies. Litigation concerning municipal incorporation, annexation and condemnation, drainage and flood control, school district reorganizations, evictions and worker's compensation awards are among the many exceptions which have accumulated over the years and are now referenced in s. 808.04 (2) (a), stats.

The judicial council carefully reviewed the origin, history and purpose of each of these exceptions and concluded that most of them are no longer justified nor needed in view of the comparatively short general appeal deadline of s. 808.04 (1), stats. Rather, the exceptions are often confusing and present traps for any person who does not frequently appear in the appellate courts.

The council further concluded that the desirability of having one appeal time is pronounced because the court of appeals obtains jurisdiction over an appeal only if a notice of appeal is timely filed and, in civil cases, the appellate court has no authority to waive or extend the time period absent a specific grant of authority by statute. Accordingly, most of the present exceptions destroy the uniformity and certainty which should accompany jurisdictional requirements.

This bill, therefore, repeals most of the exceptions, retaining only those few exceptions for cases having particular exigencies or involving right to counsel or addressing appeals by the state. The standard appeal time of s. 808.04 (1), stats., would uniformly govern all appeals with only the following limited exceptions: recall and eviction cases as well as cases in which the validity of a state law is attacked in federal district court would have an expedited appeal time deadline of 15 days from entry of judgment or order; criminal appeals by a defendant and appeals by a defendant, interested person, juvenile or subject individual under the children's code (except adoptions), ch. 48, stats., the mental health act, ch. 51, stats., and the protective placement act, ch. 55, stats., would continue to be governed by s. 809.30, stats.; and appeals by the state in a criminal case under s. 974.05, stats., or a case under the children's code (except adoptions), ch. 48, stats., would have an appeal time deadline of 45 days from entry of judgment or order. Approximately 26 exceptions would be repealed.

SECTION 1. 9.10 (4) (a) of the statutes is amended to read:

9.10 (4) (a) For the recall of any city, village, town or school district official, the municipal clerk shall verify the eligibility of the respective signers and circulators, shall certify thereto and shall transmit the petition to the clerk of circuit court within 10 days of the filing date. The circuit court within 10 days after receipt of the petition shall determine by hearing whether the petition states good and sufficient reason for the recall. The clerk of circuit court shall notify the incumbent of the hearing date. The person subject to recall and the petition circulators may appear by counsel and the court may take testimony with respect to the recall petition. If the circuit court judge determines the

grounds stated in the petition and proof offered at the hearing show good and sufficient reasons for recall, the judge shall issue a certificate directing the governing body or school board to hold an election under this section. If the grounds stated in the petition and proof offered at the hearing do not show good and sufficient reason for recall, issuance of the certificate shall be denied. Any party aggrieved by the circuit court determination may appeal to the court of appeals within ~~10 days following the circuit court determination by filing a notice of appeal with the clerk of the court of appeals~~ the time period specified in s. 808.04 (2). An appeal under this section shall ~~have~~ be given preference ~~on the court of appeals calendar~~. The appeal shall stay enforcement of a certificate issued by the circuit court until the court of appeals determines the appeal. The governing body or school board upon receiving the certificate from the circuit court shall call a special election not less than 50 nor more than 60 days from the date of the certificate. The special election for recall of more than one official may be held on the same day.

NOTE: Section 9.10 (4) (a), stats., is amended to eliminate the requirement that the notice of appeal be filed with the clerk of the court of appeals. The notice of appeal must be filed with the clerk of circuit court under s. 809.10, stats. The appeal deadline of 10 days after the circuit court's determination is replaced by the time provisions of s. 808.04 (2), stats., for greater uniformity. Section 808.04 (2), stats., provides that an appeal must be initiated within 15 days after entry of judgment or order appealed from.

SECTION 2. 30.30 (3) (c) of the statutes is amended to read:

30.30 (3) (c) ~~In the event~~ If the owners of the property on which ~~such~~ the dock wall or shore protection wall is located fail to notify the board of harbor commissioners or the local legislative body~~, as the case may be,~~ within ~~such~~ the 90-day period that ~~such~~ the work will be commenced as specified in the resolution, the board of harbor commissioners or the local legislative body shall request the city attorney, district attorney or corporation counsel for the commencement of an action in the circuit court in the county in which ~~such~~ the property is located for determination of whether or not ~~such~~ the improvement, alteration, repair or extension of the dock wall or shore protection wall is required and for the fixing of the time by the court within which time the work must be commenced and completed. The action shall be entitled in the name of the state and the municipality, and the attorney general shall participate on behalf of the state. The complaint shall recite the type of improvement, alteration, repair or extension which is required, the approximate cost thereof, the need for such work as related to the reasons stated in par. (b), and such other allegations as may be pertinent. The owners of the property within which ~~such~~ the dock wall or shore protection wall is located shall be named defendants~~; they~~. They shall be permitted to plead as provided for in civil actions. The action shall be brought to trial in the circuit court as promptly as possible. If the circuit court determines that the work shall be performed, it shall make a finding to that effect and enter an order directing the owners of the property to commence the work and to complete it within a period of time fixed by the court in ~~such~~ the order, or in the alternative provide that the municipality may complete ~~such~~ the work and charge the cost thereof to the owners of the property. ~~The cost of such~~ If the work ~~in the event it~~ is performed by the municipality, the cost shall be recovered from the owners of the property as special assessments for benefits to lands provided for in s. 66.60. Either party to the action may appeal from the determination of the circuit court ~~within 30 days following the entry of the order. The~~ and the appeal ~~to the court of appeals shall be perfected in the same manner as are other civil actions and~~ shall be given ~~precedence~~ preference. Only such portion of the cost of the work shall be assessed against the owners which is of benefit to their lands.

NOTE: Subsection (3) (c) is amended to replace the appeal deadline of 30 days after entry of the order by the standard time specified in s. 808.04 (1), stats. The subsection is further amended to eliminate the superfluous provision that the appeal be perfected in the same manner as other civil appeals. The manner of perfecting civil appeals is established by s. 809.11, stats.

SECTION 3. 32.05 (13) of the statutes is repealed.

NOTE: Section 32.05 (13), stats., provides that either party in an action for condemnation for sewers or transportation facilities under s. 32.05, stats., may appeal to the court of appeals within 6 months after date of notice of entry of circuit court judgment. The 6-month appeal time created by laws of 1959, chapter 639, corresponded with the then general appeal time of 6 months from entry of judgment if no notice of entry was given. The 6-month appeal time is now unnecessarily lengthy compared to the general civil appeal time specified in s. 808.04 (1), stats. The provision that the appeal time runs from notice of entry of judgment rather than from the standard provision of entry of judgment is confusing. The subsection is therefore repealed for greater uniformity and certainty. An appeal in a condemnation case must now be initiated within 45 days of entry of judgment or order appealed from if written notice of entry of judgment or order is given, or within 90 days of entry if notice is not given, as specified in s. 808.04 (1), stats.

SECTION 4. 32.06 (13) of the statutes is repealed.

NOTE: Section 32.06 (13), stats., provides that either party in an action for condemnation under s. 32.06, stats., may appeal to the court of appeals within 6 months after the date of notice of entry of circuit court judgment. For the reasons set forth in the NOTE to s. 32.05 (13), stats., the subsection is repealed.

SECTION 5. 48.43 (6) of the statutes is amended to read:

48.43 (6) Judgments under this subchapter terminating parental rights are final and appealable under s. 48.47~~, except that appeal shall be taken within 30 days of the date the order is entered~~.

NOTE: Section 48.43 (6), stats., is amended to eliminate the appeal deadline of 30 days after entry of order so that the appeal time deadline is that specified in s. 48.47, stats.

SECTION 6. 48.47 (1) of the statutes is amended to read:

48.47 (1) Any person aggrieved by ~~an adjudication~~ a final judgment or final order of the court under this chapter ~~and directly affected thereby has the right to appeal to the court of appeals in accordance with s. 809.40. Appeal from an order granting or denying an adoption under s. 48.91 and from any circuit court review under s. 48.64 (4) (c) shall be to the court of appeals~~ may appeal within the time period specified in s. 808.04 (3) or (4).

NOTE: Section 48.47 (1), stats., is amended to harmonize the right to appeal language with s. 808.03 (1), stats., which provides that only a final judgment or final order is appealable as of right, and to clarify that the time to appeal is specified in s. 808.04 (3) and (4), stats. The last sentence of sub. (1) is repealed as surplusage. Appeals are to the court of appeals as provided in chs. 752, 808 and 809, stats.

SECTION 7. 48.911 of the statutes is amended to read:

48.911 Appeal in adoption proceedings. ~~Notwithstanding the provisions of chs. 808, 809 and 879, any~~ An appeal from ~~an~~ a final judgment or final order in an adoption proceeding ~~is limited to 40 days from the date of the entry of the order~~ shall be taken within the time period specified in s. 808.04 (1).

NOTE: This section is amended to replace the appeal deadline of 40 days after entry of order by the standard time specified in s. 808.04 (1), stats., for greater uniformity.

SECTION 8. 51.20 (15) of the statutes is amended to read:

51.20 (15) APPEAL. An appeal may be taken to the court of appeals within the time period specified in s. 808.04 (3) in accordance with s. 809.40 by the subject of the petition or the individual's guardian, by any petitioner or by the representative of the public.

NOTE: Section 51.20 (15), stats., is amended to clarify that the time to appeal is specified in s. 808.04 (3), stats., while procedural requirements are specified in s. 809.40, stats.

SECTION 9. 55.06 (18) of the statutes is created to read:

55.06 (18) An appeal may be taken to the court of appeals from a final judgment or final order under this section within the time period specified in s. 808.04 (3) and in accordance with s. 809.40 by the subject of the petition or the individual's guardian, by any petitioner or by the representative of the public.

NOTE: Section 55.06 (18), stats., is created to establish that the time to appeal from a final judgment or final order under this section is specified in s. 808.04 (3), stats. Previously, the time for appeals for ch. 55 cases was specified in s. 974.02 (1), stats., which is within the criminal procedure code. No substantive change has been made.

SECTION 10. 62.075 (4) of the statutes is amended to read:

62.075 (4) (title) OBJECTIONS; DECISIONS. The city, town or towns, owners of land in the vicinity, or owners of any interest therein, if opposed to the proceedings, shall, at least 15 days before the time of hearing fixed by the order, file in the office of the clerk of circuit court and serve on the petitioners their verified objections to the granting of the prayer of the petition, specifying the grounds of objections thereto. The proceedings may be adjourned or continued for cause. The issue raised by the petition shall be tried by the circuit court upon the evidence submitted by the petitioners and objectors; and witnesses shall be compelled to appear and testify as in other cases in circuit court and the rules of evidence, practice and procedure shall be the same. The circuit court may render judgment ~~in accordance with~~ under subs. (1) and (2), detaching from the city and annexing to the town or towns the area, if the facts required by the subsections are proved by a preponderance of the evidence. If the facts are not so proved, the petition shall be dismissed. In the event of a contest, costs may be awarded to the successful party. ~~Any person aggrieved by the final judgment may appeal to the court of appeals from the judgment within 6 months after service of notice of entry thereof in the manner provided by chs. 808 and 809.~~

NOTE: The last sentence of s. 62.075 (4), stats., providing an appeal deadline of 6 months after service of notice of entry of judgment is repealed for greater uniformity. An appeal must now be initiated within the time specified in s. 808.04 (1), stats.

SECTION 11. 62.50 (21) of the statutes is amended to read:

62.50 (21) CERTIFICATION AND RETURN OF RECORD; HEARING. Upon the service of the demand under sub. (20), the board upon which ~~such~~ the service is made shall within 5 days thereafter certify to the clerk of the circuit court of the county all charges, testimony, and everything relative to the trial and discharge, suspension or reduction in rank of the member. Upon the filing of the return with the clerk of court, actions for review shall be ~~deemed at issue and shall have precedence over any other cause of a different nature pending in such court, and such court shall be considered always open for the trial thereof~~ given preference. Upon application of the discharged member or the board, the court shall fix a date for the trial which shall be no later than 15 days after the date of

~~such~~ the application except upon agreement between the board and the discharged or suspended member. ~~Such~~ The action shall be tried by the court without a jury and shall be tried upon the return made by the board. In determining the question of fact presented, the court shall be limited in the review thereof to the question: "Under the evidence was the decision of the board reasonable?" The court may require additional return to be made by the board, and may also require the board to take additional testimony and make return thereof.

NOTE: The provision in s. 62.50 (21), stats., regarding preferential court treatment is harmonized and standardized with similar provisions in the statutes.

SECTION 12. 66.014 (7) (b) of the statutes is amended to read:

66.014 (7) (b) ~~Any~~ An action contesting an incorporation shall be ~~placed at the head of~~ given preference in the circuit court ~~calendar for an early hearing and determination. The time within which a writ of error may be issued or an appeal taken to obtain review by the court of appeals of any judgment or order in any action or proceeding contesting an incorporation is limited to 30 days from the date of the filing of such judgment or order~~.

NOTE: The last sentence of s. 66.014 (7) (b), stats., providing an appeal deadline of 30 days from the filing of the judgment or order, is repealed for greater uniformity. An appeal must now be initiated within the time specified in s. 808.04 (1), stats. The provision requiring preferential court treatment is harmonized and standardized with similar provisions in the statutes.

SECTION 13. 66.021 (10) (b) of the statutes is amended to read:

66.021 (10) (b) ~~Any~~ An action contesting an annexation ~~except actions pending on November 17, 1957~~ shall be ~~placed at the head of~~ given preference in the circuit court ~~calendar for an early hearing. The time within which a writ of error may be issued or an appeal taken to obtain review by the court of appeals of any judgment or order in any action or proceeding contesting an annexation is limited to 30 days from the date of notice of the entry of such judgment or order~~.

NOTE: The 2nd sentence of s. 66.021 (10) (b), stats., providing an appeal deadline of 30 days from notice of entry of judgment or order, is repealed for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats. The provision requiring preferential court treatment is harmonized and standardized with similar provisions in the statutes.

SECTION 14. 66.05 (2) (b) and (3) of the statutes are amended to read:

66.05 (2) (b) Any municipality, inspector of buildings or designated officer may, in his, her or its official capacity, commence and prosecute an action in circuit court for an order of the court requiring the owner to comply with an order to raze or remove any building or part thereof issued under this section if the owner fails or refuses to do so within the time prescribed in ~~such~~ the order, or for an order of the court requiring any person occupying a building whose occupancy has been prohibited under this section to vacate the premises, or any combination of ~~such~~ the court orders. Hearing on such actions shall be given ~~precedence over other matters on the court's calendar~~ preference. Costs shall be in the discretion of the court.

(3) Anyone affected by any such order shall within the time provided by s. 893.76 apply to the circuit court for an order restraining the inspector of buildings or other designated officer from razing and removing the building or part thereof or forever be barred. ~~Hearing~~ The hearing shall be ~~had~~ held within 20 days and shall be given ~~precedence over other matters on the court's calendar~~ preference. The court shall determine whether the order of the inspector of buildings is reasonable, and if found reasonable the court shall dissolve the restraining order, and if found not reasonable the court shall

continue the restraining order or modify it as the circumstances require. Costs shall be in the discretion of the court. If the court finds that the order of the inspector of buildings is unreasonable, the inspector of buildings or other designated officer shall issue no other order ~~pursuant to the authority of~~ under this section in regard to the same building or part thereof until its condition is substantially changed. The remedies provided in this subsection are exclusive remedies and anyone affected by such an order of the inspector shall not be entitled to recover any damages for the razing and removal of any such building.

NOTE: Provisions in s. 66.05 (2) (b) and (3), stats., regarding preferential court treatment are harmonized and standardized with similar provisions in the statutes.

SECTION 15. 66.05 (8) (c) of the statutes is repealed.

NOTE: Section 66.05 (8) (c), stats., providing an appeal deadline of 30 days from entry of order, is repealed for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats.

SECTION 16. 66.435 (4) (b) of the statutes is amended to read:

66.435 (4) (b) Any person ~~feeling~~ aggrieved by the determination of any board, commission or commissioner of health, following review of an order issued by officers and employes of a municipality under this section may appeal directly to the circuit court of the county in which the dwelling or other structure is located by filing a petition for review with the clerk of the circuit court within 30 days after a copy of the order of the board, commission or commissioner of health has been served upon the person. The petition shall state the substance of the order appealed from and the grounds upon which the person believes the order to be improper. A copy of the petition shall be served upon the board, commission or commissioner of health whose determination is being appealed. The copy shall be served personally or by registered or certified mail within the 30-day period provided in this paragraph. A reply or answer shall be filed by the board, commission or commissioner of health within 15 days from the receipt of the petition. A copy of the written proceedings of the hearing held by the board, commission or commissioner of health which led to service of the order being appealed, shall be included with the reply or answer when filed. If it appears to the court that the petition is filed for purposes of delay, it shall, upon application of the municipality, promptly dismiss the petition. Either party to the proceedings may then petition the court for an immediate hearing on the order. The court shall review the order, the copy of written proceedings of the hearing conducted by the board, commission or commissioner of health and shall take such testimony as in its judgment may be appropriate, and following a hearing upon the order without a jury, the court shall make its determination. If the court affirms the determination made by the board, commission or commissioner of health, the court shall fix a time within which the order appealed from shall become operative. ~~Either party may appeal from the determination made by the circuit court to the court of appeals within 60 days following the determination of the circuit court, but not thereafter. If the court of appeals or supreme court affirms the order appealed from, the court shall set the time within which the order shall become effective.~~

NOTE: The last 2 sentences of s. 66.435 (4) (b), stats., providing an appeal deadline of 60 days after determination, are repealed for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats.

SECTION 17. 70.47 (13) and (16) (a) of the statutes are amended to read:

70.47 (13) CERTIORARI. Except as provided in s. 70.85, appeal from the determination of the board of review shall be by an action for certiorari commenced within 90 days after final adjournment of the board. The action shall be ~~placed at the head of the circuit court calendar for an early hearing~~ given preference. If the court on the appeal finds any error in the proceedings of the board which renders the assessment or the proceedings

comment, 1963, 1970 Wis. Annot., 15 WSA 118 (1972). The underlying legislative concerns with uniformity, clarity and sufficient time from entry are now covered by s. 808.04 (1), stats., so that the subsection is presently unnecessary. The subsection is therefore repealed. An appeal in a drainage of lands case must be initiated within the time period specified in s. 808.04 (1), stats.

SECTION 23. 102.25 (1) of the statutes is amended to read:

102.25 (1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal therefrom within ~~30 days from the date of service by either party upon the other of notice of entry of judgment~~ the time period specified in s. 808.04 (1). A trial court shall not require the commission or any party to the action to execute, serve or file an undertaking under s. 808.07 or to serve, or secure approval of, a transcript of the notes of the stenographic reporter or the tape of the recording machine. ~~All such appeals shall be placed on the calendar of the court of appeals and brought to a hearing in the same manner as state causes on the calendar.~~ The state is ~~deemed~~ a party aggrieved~~, within the meaning of~~ under this subsection~~, whenever~~ if a judgment is entered upon ~~such a~~ the review confirming any order or award against it. At any time before the case is set down for hearing in the court of appeals or the supreme court, the parties may have the record remanded by the court to the department in the same manner and for the same purposes as provided for remanding from the circuit court to the department under s. 102.24 (2).

NOTE: Section 102.25 (1), stats., is amended to replace the appeal deadline of 30 days after service of notice of entry of judgment or award by the standard time specified in s. 808.04 (1), stats., for greater uniformity. The subsection is further amended to eliminate the superfluous provisions for calendaring and hearing the appeal.

SECTION 24. 103.59 of the statutes is amended to read:

103.59 Injunctions: appeals. ~~Whenever~~ If any court ~~or judge or judges thereof shall issue or deny~~ issues or denies any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on ~~his~~ filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the appropriate appellate court for its review. Upon the filing of ~~such~~ the record in the appropriate appellate court the appeal shall be ~~heard with the greatest possible expedition, giving the proceeding precedence over all other matters except older matters of the same character~~ given preference.

NOTE: The provision regarding preferential court treatment is harmonized and standardized with similar provisions in the statutes.

SECTION 25. 117.03 (5) of the statutes is repealed.

NOTE: Section 117.03 (5), stats., providing an appeal deadline of 60 days from notice of entry of order in school district reorganization cases, is repealed for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats.

SECTION 26. 128.15 (1) of the statutes is amended to read:

128.15 (1) At the expiration of the period of time limited for the filing of claims, the receiver or assignee shall file with the clerk proof of publication of notice and a list of the creditors to whom ~~such~~ the notice was made with the debts thereof respectively verified by ~~his~~ an affidavit, and also a list of claims filed stating the names of creditors, residences and amounts claimed respectively. At any time thereafter the receiver or assignee or, upon ~~his~~ that person's refusal or failure to act, any creditor may file written objections to any claim specifying the grounds thereof and serve a copy thereof in such manner as the court may order upon ~~such~~ the claimant. Depositions may thereafter be taken as in civil actions. The court, on the application of either party, shall fix by order a time when ~~such~~

the objections shall be heard, which shall be served as therein prescribed upon the adverse party. Upon the final hearing the court shall make such order as shall be just and may compel the payment of costs ~~in its discretion. An appeal may be taken from such order within thirty days from the entry thereof, but not afterwards, in the manner provided for taking appeals from orders in civil actions~~.

NOTE: The last sentence of s. 128.15 (1), stats., providing an appeal deadline of 30 days after entry of order, is repealed for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats.

SECTION 27. 128.20 (2) of the statutes is amended to read:

128.20 (2) Upon filing ~~such~~ the report the receiver or assignee may apply to the court upon not less than ~~ten~~ 10 days' notice thereof by mail to the respective creditors named ~~therein~~ in the report, for a final settlement of ~~such~~ the account~~, and the~~. The court shall fix a time and place for the hearing of objections or taking of evidence and by order settle and adjust ~~such~~ the accounts and the compensation and expenses of ~~such~~ the receiver or assignee, regardless of whether objection ~~be~~ is made ~~or not and such~~. The order shall be conclusive upon all parties including the sureties of the receiver or assignee, but the receiver or assignee or any creditor may appeal from ~~such~~ the order ~~within thirty days from the entry thereof~~ in the manner prescribed for appeals in civil actions except that the receiver or assignee may file ~~his~~ a notice and undertaking with the clerk without other service thereof. The receiver or assignee shall be discharged of ~~his~~ the trust and ~~his~~ the bond canceled upon compliance with the final order of the court.

NOTE: Section 128.20 (2), stats., is amended by repealing the appeal deadline of 30 days from entry for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats.

SECTION 28. 186.29 (5) of the statutes is amended to read:

186.29 (5) ADJUSTMENT OF LOANS AND WITHDRAWAL VALUE OF SHARES. The value of shares pledged upon a loan to the credit union shall be applied and credited to the loan and the borrower shall be liable only for the balance. The rate of interest charged upon the balance shall be the legal rate. The value shall be determined in such manner as the commissioner prescribes, and shall be made under s. 186.30 (1) and (3), or in such other manner as the commissioner may prescribe. Upon the approval of the value by the commissioner and the circuit court of the county in which the credit union is located, the book value of each member shall be reduced proportionately. At least 5 days' written notice of the determination of value shall be given to all shareholders of the time and place the value shall be submitted to the circuit court for approval. ~~Should any~~ Approval of the circuit court shall be by an order entered under s. 807.11 (2). Any stockholder or creditor of ~~such~~ the credit union ~~feel~~ aggrieved by the determination of value~~, he or she~~ may ~~at any time within 15 days after the mailing of a notice by the commissioner, addressed to the last known address of the party, giving notice of the determination and value of the shares,~~ appeal to the court of appeals.

NOTE: The last sentence of s. 186.29 (5), stats., is amended by repealing the appeal deadline of 15 days after the mailing of notice for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats.

SECTION 29. 215.32 (12) (b) and (d) of the statutes are amended to read:

215.32 (12) (b) Upon the approval of ~~such~~ the determined value by the commissioner and the circuit court, the withdrawal value of each savings account shall be depreciated proportionately. The commissioner shall give each member or saver at least 5 days' written notice of ~~such~~ the determination of value and of the time and place such value of the savings accounts will be submitted to the circuit court for approval. Approval of the circuit court shall be by an order entered under s. 807.11 (2).

(d) ~~Should any~~ Any member, saver or creditor ~~feel~~ aggrieved by ~~such~~ the determination of value~~, such person~~ may ~~within 15 days after the mailing of the notice under par. (c),~~ appeal to the court of appeals.

NOTE: Section 215.32 (12) (d), stats., is amended by repealing the appeal deadline of 15 days after the mailing of notice for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats.

SECTION 30. 227.21 of the statutes is amended to read:

227.21 Appeals. Any party, including the agency, may secure a review of the final judgment of the circuit court by appeal to the court of appeals~~. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in other civil cases, except that the time for appeal shall be limited to 30 days from the notice of entry of the judgment~~ within the time period specified in s. 808.04 (1).

NOTE: This section is amended by repealing the appeal deadline of 30 days from notice of entry of judgment for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats.

This section is further amended to eliminate the superfluous provision that the appeal is taken in the manner of other civil appeals. Civil appeal procedures are governed by chs. 808 and 809, stats.

SECTION 31. 227.25 of the statutes is amended to read:

227.25 Certification of certain cases from the circuit court of Dane county to other circuits. Any action or proceeding for the review of any order of an administrative officer, commission, department or other administrative tribunal of the state required by law to be instituted in or taken to the circuit court of Dane county except an action or appeal for the review of any order of the department of industry, labor and human relations or findings and orders of the labor and industry review commission which is instituted or taken and is not called for trial or hearing within 6 months after ~~such~~ the proceeding or action is instituted, and the trial or hearing of which is not continued by stipulation of the parties or by order of the court for cause shown, shall on the application of either party on 5 days' written notice to the other be certified and transmitted for trial to the circuit court of the county of the residence or principal place of business of the plaintiff or petitioner, where ~~such~~ the action or proceeding shall ~~have precedence over all ordinary civil actions~~ be given preference. Unless written objection is filed within ~~such~~ the 5-day period, the order certifying and transmitting ~~such~~ the proceeding shall be entered without hearing. The plaintiff or petitioner shall pay to the clerk of the circuit court of Dane county a fee of $2 for transmitting the record.

NOTE: The provision regarding preferential court treatment is harmonized and standardized with similar provisions in the statutes.

SECTION 32. 227.26 of the statutes is amended to read:

227.26 Jurisdiction of state courts to determine validity of laws when attacked in federal court and to stay enforcement. Whenever a suit praying for an interlocutory injunction shall have been begun in a federal district court to restrain any department, board, commission or officer from enforcing or administering any statute or administrative order of this state, or to set aside or enjoin the suit or administrative order, the department, board, commission or officer, or the attorney general, may bring a suit to enforce the statute or order in the circuit court of Dane county at any time before the hearing on the application for an interlocutory injunction in the suit in the federal court. Jurisdiction is hereby conferred upon the circuit court of Dane county and on the court of appeals, on appeal, to entertain the suit with the powers granted in this section. The circuit court shall, when the suit is brought, grant a stay of proceedings by any state department, board, commission or officer under the statute or order pending the determination of the suit in the courts of the state. The circuit court of Dane county upon the bringing of the

suit therein shall at once cause a notice thereof, together with a copy of the stay order by it granted, to be sent to the federal district court in which the action was originally begun. An appeal ~~may~~ shall be taken within ~~10 days after the termination of the suit in the circuit court to the court of appeals, and~~ the time period specified in s. 808.04 (2). The appeal shall be ~~in every way expedited and set for an early hearing~~ given preference.

NOTE: This section is amended to replace the appeal deadline of 10 days after termination of the suit by the time provisions of s. 808.04 (2), stats., for greater uniformity. Section 808.04 (2), stats., provides that an appeal must be initiated within 15 days of entry of judgment or order appealed from. The provision requiring preferential court treatment is harmonized and standardized with similar provisions in the statutes.

SECTION 33. 779.29 of the statutes is amended to read:

779.29 (title) **Intervention.** In an action for the enforcement of a lien upon property under s. 779.18 a person not a party may, at any time before sale of the property upon which a lien is claimed, become a party defendant by filing with the clerk of the court where the action is pending an affidavit made in behalf of or by the person that the person is the owner of or of some interest in the property upon which a lien is claimed and ~~verily~~ believes that ~~said~~ the claim for lien is invalid~~; upon~~. Upon filing this affidavit the person may defend this action so far as a claim for a lien is concerned~~, and in case~~. If judgment has been previously rendered for a lien, the person may ~~appeal~~ move the court for relief from the judgment within 20 days after the filing of the affidavit. The right to file an affidavit ~~or take an appeal~~ shall not extend beyond one year from the rendition of the judgment.

NOTE: This section is amended by repealing an appeal procedure and substituting the right to move the trial court for relief from its judgment.

SECTION 34. 779.30 of the statutes is amended to read:

779.30 (title) **Undertaking by intervenor; procedure.** ~~An appeal~~ The filing of an affidavit under s. 779.29 shall not stay execution unless the ~~appellant~~ intervenor files an undertaking, with 2 or more sureties, who shall each justify in a sum equal to double the amount of the judgment, conditioned that if the plaintiff establishes the right to a lien on ~~such~~ the property they will pay the amount of judgment in the plaintiff's favor with costs; the undertaking shall be approved by the judge of the court ~~to which the appeal is taken~~; and upon filing it all proceedings upon the judgment ~~appealed from~~ shall be stayed during the pendency of the ~~appeal, and in case~~ proceedings. If execution has been previously issued the same shall, upon presenting to the officer in whose custody it may be a certified copy of ~~such~~ the affidavit and undertaking ~~and certificate of the clerk of the court that an appeal has been perfected~~, be returned, and all property in which ~~appellant~~ the intervenor claims an interest that may have been levied upon shall be released from ~~such~~ the levy. If upon the trial ~~in the appellate court~~ the plaintiff recovers judgment of lien upon this property the judgment may be entered against the ~~appellant~~ intervenor and sureties; but if the plaintiff does not establish the right to a lien the ~~appellant~~ intervenor shall recover judgment for costs.

NOTE: See the NOTE to s. 779.29.

SECTION 35. 805.15 (6) of the statutes is amended to read:

805.15 (6) EXCESSIVE OR INADEQUATE VERDICTS. If a trial court determines that a verdict is excessive or inadequate, not due to perversity or prejudice or as a result of error during trial (other than an error as to damages), the court shall determine the amount which as a matter of law is reasonable, and shall order a new trial on the issue of damages, unless within 10 days the party to whom the option is offered elects to accept judgment in the changed amount. If the option is not accepted, the ~~order for new trial shall be deemed final for purposes of appeal~~ time period for petitioning the court of appeals

for leave to appeal the order for a new trial under ss. 808.03 (2) and 809.50 commences on the last day of the option period.

NOTE: Section 805.15 (6), stats., is amended to codify the holding of *Wick v. Mueller*, 105 Wis. 2d 191, 313 N.W. 2d 749 (1982) that orders for new trials under this subsection are not appealable as of right and that the time period for seeking leave to appeal under ss. 808.03 (2) and 809.50, stats., is computed from the last day of the option period set forth in the trial court's order.

SECTION 36. 808.04 (2) (a) of the statutes is repealed.

SECTION 37. 808.04 (2) (b) and (c) of the statutes are renumbered 808.04 (5) and (6).

SECTION 38. 808.04 (2) to (4) of the statutes are created to read:

808.04 (2) An appeal under s. 9.10 (4) (a), 227.26 or 799.445 (1) shall be initiated within 15 days after entry of judgment or order appealed from.

(3) Except as provided in sub. (4) or s. 48.911, an appeal in a criminal case or under ch. 48, 51 or 55 shall be initiated within the time period specified in s. 809.30.

(4) An appeal by the state in a criminal case under s. 974.05 or a case under ch. 48, except adoption appeals under s. 48.911, shall be initiated within 45 days of entry of judgment or order appealed from.

NOTE: Section 808.04 (2), stats., requires expedited initiation of appeals in recall and eviction cases as well as cases in which the validity of a state law is attacked in federal district court. Section 808.04 (3), stats., references the appeal deadline for criminal, juvenile, mental commitment and protective placement appeals. Section 808.04 (4), stats., references the appeal deadline for appeals by the state in criminal and children's code cases.

SECTION 39. 808.07 (7) of the statutes is renumbered 799.445 and amended to read:

799.445 (title) **Appeal.** ~~In all eviction actions except those tried to a jury of 12, the time for service and filing of the notice of appeal is limited to 10 days after mailing of notice of entry of judgment~~ An appeal in an eviction action shall be initiated within 15 days of the entry of judgment or order as specified in s. 808.04 (2). No such appeal by a defendant may stay proceedings on the judgment unless the appellant serves and files with the notice of appeal an undertaking to the plaintiff, in an amount and with surety approved by the judge who ordered the entry of judgment, to the effect that the appellant will pay all costs and disbursements of the appeal which may be taxed against the appellant, obey the order of the appellate court upon the appeal and pay all rent and other damages accruing to the plaintiff during the pendency of the appeal. Upon service and filing of this undertaking, all further proceedings in enforcement of the judgment appealed from are stayed pending the determination of the appeal. Upon service by the appellant of a copy of the notice and appeal and approved undertaking upon the sheriff holding an issued but unexecuted writ of restitution or of execution, the sheriff shall promptly cease all further proceedings thereon pending the determination of the appeal.

NOTE: This section is renumbered from s. 808.07 (7), stats., and amended to replace the appeal deadline of 10 days after mailing notice of entry of judgment by the time period specified in s. 808.04 (2), stats., for greater uniformity. The appeal deadline established by that statute applies regardless of whether the action has been tried to a 12-person jury.

SECTION 40. 879.27 (3) of the statutes is repealed.

NOTE: Section 879.27, stats., providing an appeal deadline of 60 days from entry of order or judgment in probate proceedings, has been repealed for greater uniformity. An appeal must be initiated within the time period specified in s. 808.04 (1), stats.

SECTION 41. 879.31 of the statutes is repealed and recreated to read:

879.31 Relief from judgment or order. On motion, notice to adverse parties and hearing, the court may relieve a party or legal representative from a judgment or orders of the court or the party's stipulation as provided in s. 806.07.

NOTE: This section formerly allowed the trial court discretion to extend the appeal deadline and is repealed for greater uniformity and consistency. The new statute allows aggrieved persons who cannot appeal to move the trial court for relief from the judgment and empowers the probate court to grant such relief as in other civil actions and proceedings.

SECTION 42. 944.25 (8) (c) of the statutes is amended to read:

944.25 (8) (c) If the court, ~~pursuant to~~ under sub. (4), finds probable cause to believe the exhibited material to be harmful to minors, and so endorses the complaint, the court may, upon the motion of the attorney general or the district attorney, issue a temporary restraining order against any respondent prohibiting him or her from selling, commercially distributing or exhibiting or giving away ~~such~~ the material to minors or from permitting minors to inspect ~~such~~ the material. No temporary restraining order ~~shall~~ may be granted without notice to the respondents unless it clearly appears from specific facts shown by affidavit or by the verified complaint that one or more of the respondents are engaged in the sale or exhibition of harmful material to minors and that immediate and irreparable injury to the morals and general welfare of minors in this state will result before notice can be served and a hearing had thereon. Every temporary restraining order shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its own terms within such time after entry, not to exceed 3 days, as the court fixes unless within the time so fixed the respondent against whom the order is directed consents that it may be extended for a longer period. If a restraining order is granted without notice, a motion for a preliminary injunction shall be set down for hearing within 2 days after the granting of ~~such~~ the order and shall ~~take precedence over all matters except older matters of the same character; and when~~ be given preference. When the motion comes on for hearing, the attorney general or the district attorney shall proceed with the application for a preliminary injunction and, if he or she does not do so, the court shall dissolve the temporary restraining order.

NOTE: The provision in s. 944.25 (8) (c), stats., regarding preferential court treatment is harmonized and standardized with similar provisions in the statutes.

SECTION 43. 971.08 (2) of the statutes is repealed.

NOTE: Section 971.08 (2), stats., providing a 120-day time limit for withdrawing a guilty plea or a plea of no contest after conviction, is repealed as unnecessary. Withdrawal of a guilty plea or plea of no contest may be sought by postconviction motion under s. 809.30 (1) (f), stats., or under s. 974.06, stats.

SECTION 44. 974.02 (title) and (1) of the statutes are amended to read:

974.02 (title) **Appeals and postconviction relief in criminal cases.** (1) ~~An appeal to the court of appeals by the defendant in a criminal case or a defendant, juvenile or subject individual under chs. 48, 51 and 55 or a motion for post-conviction relief in a felony case must~~ A motion for postconviction relief other than under s. 974.06 by the defendant in a criminal case shall be made in the time and manner provided in ss. 809.30 and 809.40. An appeal by the defendant in a criminal case from a judgment of conviction or from an order denying a postconviction motion or from both shall be taken in the time and manner provided in ss. 808.04 (3), 809.30 and 809.40. An appeal of an order or judgment on habeas corpus remanding to custody a prisoner committed for trial under s. 970.03 ~~must~~ shall be taken under ss. 808.03 (2) and ~~809.30~~ 809.50, with notice to the attorney general and the district attorney and opportunity for them to be heard.

NOTE: Section 974.02 (1), stats., is amended to repeal provisions relating to appeals under ch. 48, 51 or 55 cases. Those provisions have been relocated in their respective chapters for ease of reference. The subsection is also amended to clearly establish the time for bringing a postconviction motion other than under s. 974.06 and the manner for proceeding and the appeal times from a judgment of conviction, order denying a postconviction motion or both. Reference in sub. (1) to s. 809.30 is changed to s. 809.50 because the latter statute prescribes appropriate procedures for discretionary appeals while the former does not.

SECTION 45. 974.05 (1) (intro.) of the statutes is amended to read:

974.05 (1) (intro.) Within ~~45 days of entry of the judgment or order to be appealed~~ the time period specified by s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809, an appeal may be taken by the state from any:

NOTE: The appeal deadline of s. 974.05 (1), stats., is not changed but is replaced by a reference to s. 808.04 (4), stats., for ease of reference.

SECTION 46. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

(1) CIRCUIT COURTS.

A	B	C
Statute Sections	Old Cross-References	New Cross-References
32.05 (2a)	subs. (9) to (13)	subs. (9) to (12) and chs. 808 and 809
32.06 (2a)	subs. (9)(a) and (b), (10), (12) and (13)	subs. (9)(a) and (b), (10) and (12) and chs. 808 and 809
32.22 (10)	32.05 (9) to (13)	32.05 (9) to (12) and chs. 808 and 809

SECTION 47. **Initial applicability.**

(1) CIRCUIT COURTS. This act first applies to appeals from judgments and orders of the circuit court entered on the effective date of this act.

SECTION 48. **Effective date.** This act takes effect on January 1, 1984, or the day after its publication, whichever is later.

Exhibit
B