



Legislative Rules

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Legislative rules may be established through the actions of each house, or both houses, of the Legislature. Parliamentary procedure, prescribing how the Legislature and legislative committees operate, is set forth in the [Assembly Rules Manual](#) and the [Senate Rules Manual](#). In addition to the rules of each house, the Legislature has established [joint rules](#). Legislative rules may also be created through the lawmaking process. In either case, the Wisconsin Supreme Court has consistently held that, absent a constitutional violation, the Court will not interfere with the legislative process the Legislature follows in passing laws. Furthermore, the failure to comply with legislative rules, absent a constitutional violation, will not invalidate enacted legislation.

This issue brief provides examples of statutory legislative rules and describes the major Wisconsin Supreme Court cases describing the judicial branch's jurisdiction over the application of legislative rules.

EXAMPLES OF STATUTORY LEGISLATIVE RULES

Statutes that mandate certain legislative actions or procedures include the following:

- All appropriation and taxation bills must be referred to the Joint Committee on Finance before being passed. [s. 13.093 (1), Stats.]
- All appropriation bills and bills increasing or decreasing state or local fiscal liability or revenues must have a fiscal estimate prepared prior to legislative consideration. [s. 13.093 (2), Stats.]
- No proposal affecting property tax exemptions may be acted upon by the Legislature until the Joint Survey Committee on Tax Exemptions has submitted a written report setting forth an opinion on the legality of the proposal, its fiscal effect, and its desirability as a matter of public policy. [s. 13.52 (6), Stats.]

ENFORCEMENT OF LEGISLATIVE RULES

Observance and interpretation of legislative rules, whether set forth in internal rules or the statutes, are done exclusively by the Legislature. A court will intervene only if it finds that a violation of a rule constitutes a constitutional violation. The Wisconsin Supreme Court has consistently declined to interfere with the Legislature's interpretation and application of its rules.

Goodland v. Zimmerman

In *Goodland v. Zimmerman* [243 Wis. 459 (1943)], the Governor argued that the Secretary of State should be prohibited from publishing an act because it was not constitutionally enacted. In addition, he asserted that the provisions of the bill were unconstitutional. The Court did not address the constitutionality of the bill because it had not been published and was, therefore, not a law that could be challenged.¹ The Court did consider, however, the arguments regarding the process² the Legislature used in passing the bill and found it would be improper for the Court to act on a challenge to legislative rules:

The judicial department has no jurisdiction or right to interfere with the legislative process. That is something committed by the constitution entirely to the legislature itself. It makes its own rules, prescribes its own procedure, subject only to the provisions of the constitution and it is its province to determine what shall be enacted into law.

[*Id.* at 467.]

La Follette v. Stitt

In *State ex rel. La Follette v. Stitt* [114 Wis. 2d 358 (1983)], an act was challenged as invalid because it had not been referred to a joint committee prior to passage, as required by statute. One of the issues in the case was whether the bill that was the basis of the act met the criteria for referral to the joint committee. However, the Court did not consider that argument because it declined to interfere in the Legislature's enforcement of its own rule. The Court observed that "courts 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." [*Id.* at 365.]

In *Stitt*, the Court noted that the statute alleged to be violated did not embody any constitutional requirements. The Court also addressed the fact that the rule was in statute and found "the fact that [the statute] is something more than a mere internal procedural rule but less than a constitutional requirement, does not remove it from the general rule" that an act cannot be declared invalid for failure of a house of the Legislature to observe its own rules. [*Id.* at 367.]

Ozanne v. Fitzgerald

In *State ex rel. Ozanne v. Fitzgerald*, the Court declined to invalidate an act after it was alleged that the Legislature failed to comply with access and notice requirements under the Open Meetings Law for a joint conference committee executive session when passing the bill. [2011 WI 43.]

Unlike *Stitt*, in *Ozanne*, a constitutional violation was alleged. Specifically, the legislative process was challenged as violating Article IV, Section 10 of the Wisconsin Constitution, which provides: "The doors of each house shall be kept open except when the public welfare shall require secrecy." The Court found that the doors of the Senate parlor, where the executive session was held, were open and that members of the press and some members of the public were permitted to attend. In addition, the executive session was broadcast on WisconsinEye. The Court further found that there is a constitutional requirement to provide access, but there is not a requirement to provide access to as many people as wish to attend. [*Id.* at ¶ 11.]

The plaintiffs also argued that the Open Meetings Law defines the requirements of Wis. Const. art. IV, s. 10, and that providing less than two hours of notice for the conference committee executive session was also a constitutional violation. [See s. 19.87 (2), Stats.] The Court declined to review the legality of the procedure and found that the Legislature "relied on its interpretation of its own rules and procedures." [*Id.* at ¶¶ 12-13.]

¹ On this point, the Court stated: "There is no such thing known to the law as an unconstitutional bill. A court cannot deal with the question of constitutionality until a law has been duly enacted and some person has been deprived of his constitutional rights by its operation." [*Goodland*, at 466.]

² In *Goodland*, the Governor asserted that his veto had not been properly overridden by the Legislature due to the number of votes recorded that were paired.