Wisconsin Legislator Briefing Book

2015-16

Prepared by

Staff of the Wisconsin Legislative Council

Supporting Effective Lawmaking Since 1947

Wisconsin Legislator Briefing Book

Chapter 1. Wisconsin's Structure of Government and Law

Chapter 2. Legislative Documents and Glossary of Terminology

Chapter 3. Legislative Service Agencies and Staff

Chapter 4. Budget Process

Chapter 5. Administrative Rulemaking

Chapter 6. Open Meetings Law

Chapter 7. Open Records Law

Chapter 8. Interstate Legislative Organizations

PART I – THE LEGISLATURE AND LAWS RELATED TO THE LEGISLATURE

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 1 – WISCONSIN'S STRUCTURE OF GOVERNMENT AND LAW

In a democracy, the ultimate source of the government's authority is the consent of the people to be governed. That consent is embodied in governmental and legal systems designed to administer the will of the people. The purposes of these systems include administering order and justice, providing for domestic tranquility and prosperity, managing property systems, and promoting public health and welfare. Wisconsin has a tripartite governmental system of three separate but equal branches - the legislative, executive, and judicial. The principal sources of law in Wisconsin are the United States and Wisconsin Constitutions, which establish the fundamental principles of federal and state law and government. Other important sources of law include the state statutes and judicial rulings.

Larry Konopacki, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Structure of Wisconsin Government 1
The Legislative Branch 1
The Judicial Branch 1
The Executive Branch 2
State and Federal Authority 2
Exclusive and Concurrent Powers 2
Federal Preemption 3
Sources of Law in Wisconsin 3
Criminal Law and Civil Law 4

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Structure of Wisconsin Government

Wisconsin has a tripartite form of government, meaning that it has three separate but equal branches--the legislative, executive, and judicial. Wisconsin's Constitution created a separation of the powers of the three branches, giving each branch exclusive "core powers," in which other branches may not intrude. The Legislature's core power is legislative, the executive's core power executory, and the judiciary's core power judicial. Beyond those "core" powers there is a great deal of overlap in the powers of the three branches. The Wisconsin Supreme Court has described Wisconsin's government as a system of "separateness but interdependence." Wisconsin's tripartite structure also gives each branch the power to check and balance the other branches. For example, one of the Legislature's checks on the executive branch is the power to impeach the Governor.

The Legislative Branch

The legislative branch in Wisconsin is bicameral, meaning it consists of two houses. The two houses of the Wisconsin Legislature are the Senate and the Assembly. The core powers of the Legislature are to set state policy and design state programs through enactment of laws and passage of resolutions. The leadership of the Legislature includes the Majority and Minority Leaders in both houses, the President in the Senate, and the Speaker in the Assembly, among others. Both legislative houses elect a Chief Clerk and a Sergeant-At-Arms who, along with their staffs, administer the business of the Legislature. The Legislature is supported by five nonpartisan service agencies that perform various functions such as auditing, legal, fiscal, and policy analysis and research, drafting of bills and other legislative documents, and information technology services.

For more information about the legislative branch, see Chapter 2, *Legislative Documents and Glossary of Terminology*, and Chapter 3, *Legislative Services Agencies and Staff*.

The Judicial Branch

The Wisconsin judiciary is comprised of trial courts and two levels of appellate courts. Citizens must initially take their conflicts to trial courts, called circuit courts. There are just over 250 circuit court judges in the state. If someone is unsatisfied with a circuit court's decision, he or she may appeal to an appellate court. Wisconsin's two levels of appellate courts are the Court of Appeals, organized into four districts (16 judges), and the Supreme Court (seven justices). The Supreme Court is the state's highest court. The jurisdiction of the Wisconsin judiciary is derived from the Wisconsin Constitution. Wisconsin statutes also allow municipalities to create their own courts to handle municipal ordinance violations, such as traffic, parking, juvenile matters, first-time drunk driving offenses, and other ordinance matters. As of early 2014, there were 237 municipal courts (240 judges). A decision of a municipal court may be appealed to the circuit court.

Two of the judicial branch's checks over the Legislature are its powers to decide the constitutionality of legislative enactments and to address conflicts between state and federal laws.

The Executive Branch

Wisconsin's executive branch is headed by the Governor, who is the state's chief executive. In addition to the Governor, the Wisconsin Constitution provides for the election of five additional "constitutional officers:" Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, and State Superintendent of Public Instruction. Currently, there are 30 State of Wisconsin agencies and departments. There are also special committees, boards, commissions, and councils created by statute or by the Governor that are designed to address specific issues. The executive branch's core powers are to execute and administer laws, programs, and policies created by the Legislature. Most of the departments and independent agencies are empowered to promulgate administrative rules in order to execute their duties. One of the executive branch's checks over the Legislature is the power of the Governor to approve or veto legislation, as follows:

- **Governor's general veto power**. The Governor has six days (excluding Sunday) to approve or disapprove a bill presented to him or her. If the Governor entirely disapproves the bill, the bill is vetoed and it is returned to the legislative house of origin with the Governor's objections. A 2/3rds vote by each house is required to override a veto. The Governor's objections to a bill are generally written in a veto message.
- **Governor's partial veto power**. The Governor may veto any part of an appropriations bill if what remains is a complete and workable law. When doing so, he or she may not create new words by rejecting individual letters of words in the bill and may not create a new sentence by combining parts of two or more sentences of the bill. The Governor may reduce the amount of an appropriation by substituting (writing in) a smaller amount. If a partial veto occurs, the part approved becomes law and the part objected to does not become law unless a 2/3rds majority in each house overrides the partial veto. For further discussion of the partial veto in the context of the biennial budget bill, see Chapter 4, *Budget Process*.

State and Federal Authority

Exclusive and Concurrent Powers

In the United States, our system of "federalism" provides for governance by both a national (federal) government and state governments. The U.S. Constitution grants specific authority and powers to the federal government, such as the exclusive power to coin money, engage in certain foreign affairs, and regulate interstate commerce. All other powers are reserved to the states.

Federal Preemption

The federal government and the states exercise concurrent powers over some areas of the law. At times, conflicts occur regarding the exercise of these concurrent powers. The U.S. Constitution provides: "the laws of the United States [i.e., the Constitution, Acts of Congress and federal regulations, and federal court decisions] . . . shall be the supreme law of the land . . . and . . . every state shall be bound thereby, anything in the [state] Constitution or laws of any state to the contrary notwithstanding." Thus, in the exercise of concurrent powers, state law must yield to appropriate federal law in situations where they are in conflict.

The U.S. Supreme Court has developed the following guidelines for determining when a federal law will preempt a state law:

- Federal law will supersede state law when Congress has expressly declared its intent that federal law is exclusive as to a specific subject matter.
- Federal law will supersede state law when the extent of federal regulation over a specific subject matter is so pervasive that no other conclusion regarding congressional intent can be permitted than that additional state regulation of the subject matter is preempted.
- Federal law will supersede state law whenever the federal interest in uniformity is of such dominance that state regulation of a given subject matter should be precluded.

Sources of Law in Wisconsin

The U.S. Constitution is the "supreme law of the land." The Constitution vests the U.S. Congress with primary federal lawmaking authority, subject to the veto power of the President and review for constitutional compatibility and interpretation by the federal judiciary. Even with constitutional restrictions, the states retain substantial legislative authority. Each state has developed a large body of state law that has a direct impact on the day-to-day lives of its citizens. In addition to the U.S. Constitution and federal laws, the basic sources of law that form the foundation of government at the state and local level in Wisconsin include:

- **The Wisconsin Constitution**. In Wisconsin, the fundamental principles of state law and government, the rights and obligations of citizens, and the relationship between the state and local governments are expressed in the Wisconsin Constitution. The Wisconsin Constitution can only be amended by legislative action and subsequent ratification by referendum. The Wisconsin Constitution, like the U.S. Constitution, vests primary lawmaking powers with an elected legislative body, the Wisconsin Legislature, subject to the "checks and balances" of executive veto and review for constitutional sufficiency and interpretation by the state judiciary. Unlike the U.S. Constitution, Wisconsin's founders expressly provided that the "common law" (judicial precedent), of the territory not inconsistent with the Wisconsin Constitution "shall be

and shall continue part of the law of this state until altered or suspended by the legislature."

- **Statutes**. Statutes are laws that are passed by the Legislature, signed into law by the Governor (or enacted notwithstanding a gubernatorial veto), and formally codified in the Wisconsin Statutes.
- **Administrative rules**. Administrative rules are promulgated by executive branch state agencies to interpret and implement state statutes. A state agency cannot adopt rules that exceed or are outside the scope of its statutory authorization, and the content of such rules must also be consistent with state law. The Governor and Legislature play key roles in the statutory rule review process that occurs prior to the promulgation of a rule. For more information about administrative rules, see Chapter 5, *Administrative Rulemaking*.
- **Ordinances**. Ordinances are laws created by local governments (counties and municipalities) and are limited in scope by the Wisconsin Constitution and statutes.
- **Common law**. The common law is an accumulation of judicial decisions in specific cases. A large body of common law has been developed over the years. Some of the most important and far-reaching laws in Wisconsin can only be found in the common law. While the importance of the common law has diminished as it has been superseded in part by legislative enactments, it continues as an important source of law.

Criminal Law and Civil Law

Wisconsin law is divided into two bodies, criminal and civil. Wisconsin's criminal law is the body of law that does the following:

- Prohibits persons from engaging in specified conduct or activity and authorizes the imposition of penalties against violators in the form of a fine or imprisonment, or both.
- Establishes procedures for law enforcement and the apprehension and detention of persons accused or suspected of committing criminal offenses.
- Sets forth the rights of alleged criminal offenders.
- Establishes procedures for the trial of alleged offenders and the sentencing of persons convicted of crimes.
- Provides post-conviction remedies for offenders and establishes procedures and criteria for probation and parole.
- Establishes a general framework for the administration of penal justice.

For more information about criminal law and the criminal justice system, see Chapter 10, *Criminal Justice, Corrections, and Juvenile Justice*.

At the state level, all laws and legal proceedings not involving the matters listed above make up Wisconsin's civil law. Some prohibitions on conduct are civil offenses rather than crimes. In these instances, violators are neither fined nor imprisoned, but only a monetary

penalty knows as a "forfeiture" may be imposed. These civil forfeitures, which can be authorized by state law or local ordinance, usually involve minor offenses such as parking violations, local dwelling code violations, minor hunting and fishing violations.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 2 – LEGISLATIVE DOCUMENTS AND GLOSSARY OF TERMINOLOGY

The business of the state Legislature involves numerous types of documents, most of which are readily available to the public. The purpose of this chapter is to provide a brief description of the documents that are either considered and acted upon by the Legislature or that are used as part of the legislative process, and a glossary of terms used in the legislative arena.

Larry Konopacki, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Legislative Documents 1
Legislative Proposals 1
Preparation and Introduction of Bills 1
Contents of Bills 2
Fiscal Estimates 2
How a Bill Becomes a Law 3
Amendments and Substitute Amendments 3
Resolutions and Joint Resolutions 4
Citations 5
Laws and Administrative Rules 5
Laws, Acts, Session Laws, and Statutes 5
Administrative Rules 6
Informational Documents 6
Sources 6
Official Legislative Publications 7
Glossary of Terminology 8

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Legislative Documents

The principal function of the Legislature is the enactment of laws through the passage of bills. Approximately, 1,000 to 2,000 bills are introduced in each legislative session and a few hundred of those are enacted into law. Other types of documents are also part of the legislative process.

Legislative documents fall into three basic categories:

- **Legislative proposals (bills or resolutions)**, which are considered by the Legislature and may be acted upon by either or both houses of the Legislature and the Governor.
- **Laws and administrative rules**, which include the laws currently in force and administrative rules, which are promulgated by state agencies and have the force and effect of law.
- **Informational documents**, which include documents from various sources that describe legislative proposals, current laws, and other matters of interest to the Legislature, and official legislative publications that provide information about the daily activities of the Legislature, the actions of committees and the houses, and the rules and procedures by which the Legislature operates.

A wide variety of legislative documents are available through links on the Legislature's website:

http://www.legis.wisconsin.gov

Many of these documents are available to the public over the Internet and to legislators and legislative branch employees through the Legislature's in-session websites and the Folio database.

Legislative Proposals

Preparation and Introduction of Bills

The Wisconsin Constitution provides, in art. IV, s. 17, that no law shall be enacted except by bill. A bill may originate in either house of the Legislature and when passed by one house, may be amended in the other house. After being passed by both houses in an identical form, a bill is presented to the Governor for approval or disapproval. Appropriations bills may be approved in whole or in part by the Governor, subject to certain limitations contained in Wis. Const. art. V, s. 10.

Each bill must be prepared for introduction by the Legislative Reference Bureau (LRB). The process for preparing legislative proposals is highly systematic, so as to reduce errors in the process, to the greatest extent practicable. The LRB employs a staff of bill drafting attorneys to ensure that bills are drafted in proper form and accurately express the intent of the authors.

A bill may be introduced in either house only by a legislator, a legislative committee of that house, a joint committee, or the Joint Legislative Council or its Law Revision Committee. Most bills are introduced by legislators. A legislator or committee may introduce a bill at the request of an individual, an organization, or a public official or agency, and may have the request noted in the heading of the bill.

State statutes are created, revised, and repealed by bills. The Legislature also makes all appropriations through bills.

Contents of Bills

The first page of each bill provides its date of introduction, the authors and cosponsors, and the committee to which the bill was referred upon introduction. Each bill then lists the statutory sections affected by the bill, followed by a "relating clause" briefly stating the bill's subject. Following the relating clause, each bill contains an LRB analysis of the bill "in plain language." Included at the end of the LRB analysis are any notes about required fiscal estimates, committee reports, or other special requirements for the particular bill.

Each law is required by the Wisconsin Constitution to begin with the phrase: "The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:". This is called the "enacting clause" and is found after the LRB analysis. Following the enacting clause, the substantive provisions of the bill begin.

A bill may create a new statute, modify an existing statute, or repeal particular existing statutes. Each bill may also contain nonstatutory provisions, usually relating to the initial applicability or effective date of a law, or directing an agency to take one-time action. These nonstatutory, or "nonstat," provisions are not included in the state statutes.

Fiscal Estimates

A **fiscal estimate** is required for any bill that makes an appropriation, increases or decreases an existing appropriation, affects state or local fiscal liabilities or revenues, or creates or modifies a court surcharge. A fiscal estimate is a prediction of the cost of a bill to the state and, if appropriate, to political subdivisions of the state. It is prepared by the state agency most familiar with or affected by the proposal. It is common for more than one agency to prepare fiscal estimates on the same bill.

A fiscal estimate is required to be prepared and available before the Legislature can take any action on a bill.

The bill's author receives the agency's prepared fiscal estimate prior to its publication to allow the author to review the estimate. There is a five-working day delay from the day the bill's author receives the estimate until the estimate is automatically published, unless the author authorizes earlier publication. If the author disagrees with the fiscal estimate's accuracy, he or she may request that the agency rewrite the estimate. If the agency refuses to rewrite it, the author may request a supplemental fiscal estimate from the Department of Administration or the Legislative Fiscal Bureau (LFB).

Executive budget bills are exempt, by statute, from the statutory fiscal estimate requirement. In addition, bills containing only penalty provisions are exempt from the requirement, but may be referred to the Joint Review Committee on Criminal Penalties for a report, as described below.

Joint Survey Committee and Joint Review Committee Reports

Bills containing the following types of proposals are statutorily required to be referred to the specified committees for the preparation of printed reports: proposals relating to or affecting public retirement laws (Joint Survey Committee on Retirement Systems) and proposals that would affect tax exemptions (Joint Survey Committee on Tax Exemptions). These reports are statutorily required even if the key proposed provision is only a small portion of a larger bill dealing primarily with other subjects. Proposals that would create a new crime or revise a penalty for an existing crime may be referred by the standing committee chairperson to the Joint Review Committee on Criminal Penalties for the preparation of a written report on the proposal.

The reports of joint survey or review committees are printed as appendices to the bill to which they relate and are distributed to all legislators in the same manner as are amendments and fiscal estimates to the bill.

How a Bill Becomes a Law

The chart on page 13 of the LRB publication "How a Bill Becomes a Law" (available at http://www.legis.wisconsin.gov/assembly/acc/Documents/HABBL.pdf) illustrates the process that a bill must complete in order to be enacted into law. As noted earlier, bills may begin the legislative process in either chamber and may be introduced by a number of entities. The chart tracks the typical path for a bill originating in the Assembly that is introduced by a state representative after it is drafted by the LRB.

Amendments and Substitute Amendments

After the introduction of a bill, a legislator may wish to see a portion of the bill changed or eliminated or may want to add provisions to the proposal. This can be proposed by the introduction of an amendment.

Amendments may be offered by legislators and by legislative committees in either house.

A **simple amendment** affects only a portion of a bill. It may propose one or more changes, deletions, or additions to a bill. Amendments may also be amended. Amendments are only allowed to the second degree, i.e., an amendment to an amendment. A simple amendment specifies particular changes to the bill by citing the page and line numbers of the bill where the changes are to be made.

A **substitute amendment** is an amendment that redrafts the entire original bill and, if approved, replaces the original bill. A substitute amendment is frequently used when the

proposed changes to a bill are so numerous or complex that a simple amendment would be confusing. A substitute amendment may also be amended by simple amendments.

Amendment Memos can be found at the Legislative Council website:

http://www.legis.wisconsin.gov/lc

If an amendment is recommended for adoption by a standing committee or adopted on the floor of either legislative house, the Legislative Council staff prepares an Amendment Memo which explains how the amendment modifies the bill.

Amendments may be offered when a bill is in either house. For example, a Senate amendment may be offered to an Assembly bill after it has passed the Assembly and been messaged to the Senate. If the Senate amendment is adopted, the bill, as amended, must return to the Assembly for approval of the Senate amendment before the bill can be presented to the Governor. This is done so that the identical version of a proposal is adopted by both houses of the Legislature.

Occasionally, when the two houses are unable to agree on amendments to a bill, a conference committee consisting of members from both houses will be appointed to settle these differences. This committee's recommendation or "report" may be accepted or rejected by each legislative house, but it cannot be amended.

Resolutions and Joint Resolutions

Resolutions and joint resolutions are legislative proposals that do not propose changes to laws, other than constitutional amendments, as described below, and do not require the approval of the Governor. They are, nevertheless, formal legislative proposals that may achieve meaningful results.

A **resolution** is acted upon by the house of the Legislature in which it is introduced. Resolutions proposed in the Legislature may be proposed to achieve numerous purposes, including to:

- Adopt or modify procedural rules of the house.
- Request an opinion of the Attorney General on the legality of a legislative proposal.
- Recognize a particular event or occasion, or extend the commendations, condolences, or congratulations of the house to a particular person or group.

A **joint resolution** is acted upon and adopted by the house in which it is introduced and concurred in by the second house. A joint resolution may be prepared for a number of reasons, including to:

- Create the session schedule for each biennial session of the Legislature.
- Propose an amendment to the Wisconsin Constitution.

- Ratify an amendment to the U.S. Constitution.
- Adopt joint rules regarding the conduct of business involving both houses.
- Direct or request an agency or committee (frequently the Joint Legislative Council) to conduct a study of an issue of public concern.
- Recognize a particular event or occasion, or extend the commendations, condolences, or congratulations of the Legislature to a particular person or group.

Citations

Citations are also used by the Wisconsin Legislature to extend the commendations, condolences, or congratulations of the Legislature to a particular person or to recognize a particular event or occasion. Citations may be issued by Senate or Assembly resolution or by any member or group of members of a house, on behalf of the house. The latter types of citations may be used in place of resolutions and do not require a vote of the members of the house.

Laws and Administrative Rules

Laws, Acts, Session Laws, and Statutes

After both houses of the Legislature approve the identical form of a bill, the proposal is presented to the Governor for his or her action. The Governor may sign the bill into law or veto the bill or, unless the Legislature has adjourned, allow the bill to become law without his or her signature by not acting on the bill within six days (Sundays excepted) after the bill has been presented.

If the Governor approves a bill, or the Legislature overrides the Governor's veto of a bill (or a bill is allowed to become law without the Governor's approval), notice of the enactment is published in the official state newspaper. The official state newspaper currently is the *Wisconsin State Journal*. Unless the bill otherwise provides, the bill takes effect on the day after its publication.

The Legislative Council staff prepares memoranda on each Act. These Act Memos are available at:

http://www.legis.wisconsin.gov/lc

After a bill is signed into law and published, it is called an **Act**. The Secretary of State numbers the Acts of each legislative session chronologically in the order of their approval by the Governor (or their becoming law without such approval). For example, 2013 Wisconsin Act 1 was the first law enacted in the 2013-14 Legislative Session. At the end of the biennial legislative session, all Acts are published in one or more volumes called the **Laws of Wisconsin** (also referred to as "**Session Laws**").

The LRB incorporates new laws into the electronic version of the **Wisconsin Statutes** as they are enacted during the legislative session. Biennially, after completion of the legislative session, the LRB updates and publishes the hard copy version of the Wisconsin Statutes. The Wisconsin Statutes are available online at: https://docs.legis.wisconsin.gov/statutes/prefaces/toc.

Administrative Rules

Administrative rules are promulgated by executive branch agencies and have the force and effect of law. Rules are issued to implement, interpret, or make specific the laws that are enforced or administered by the agency, or to govern agency procedures. Rules are published in the Wisconsin Administrative Code, available online at: https://docs.legis.wisconsin.gov/code/prefaces/toc. For more information about administrative rules, see Chapter 5, *Administrative Rulemaking*.

Like statutes, administrative rules have the force and effect of law.

Informational Documents

The informational documents about the legislative process include publications from various sources that describe legislative proposals, current laws, and other matters of interest to the Legislature, and official legislative publications that allow legislators, their staff, and the public to keep track of legislation as it moves through the legislative process as well as other legislative actions.

Sources

Informational documents about the legislative process are available electronically from a number of different sources, including:

- **Wisconsin Legislature's homepage**. The Legislature's homepage provides easy public access to:
  - A quick-search field for **legislative proposals**.
  - The **Documents** infobase, which is a publicly accessible, searchable database of bills and amendments, statutes, acts, the Administrative Code, and many other legislative documents.
  - A **Notification Service**, which provides e-mail tracking of legislative activities on proposals, committees, authors, and subjects.
  - The **Committee Schedule** link, which provides a calendar for all scheduled public hearings and executive sessions for legislative committees.
  - The Senate Session and Assembly Session links, which access the **InSession** website, give the floor agenda, and provide links to live audiovisual coverage of floor sessions.
  - The links to each **legislative service agency's** website, as described below.

- **Legislative service agency websites.** The legislative service agency websites provide access to each agency's publications and services. The following list highlights some examples:

The legislative service agency websites are available under the "Legislative Service Agencies" tab at:

http://www.legis.wisconsin.gov

  - The **Legislative Audit Bureau** website includes audit reports from 1993 to the present, audio archives of Joint Legislative Audit Committee hearings, best practice reviews, and information about the Fraud, Waste, and Mismanagement Hotline.
  - The **Legislative Council** website includes Act Memos and Amendment Memos, informational reports and memoranda describing various areas of the law, study committee records and materials from 1998 to the present, Law Revision Committee records, administrative rules and Rules Clearinghouse reports, materials submitted to legislative standing committees during hearings, and this Briefing Book.
  - The **Legislative Fiscal Bureau** website includes budget papers that provide plain language analyses of the budget bill, informational papers describing various state programs, bill summaries, and revenue estimates.
  - The **Legislative Reference Bureau** website includes bill drafting records, statutes, the Administrative Code and Register, the *Wisconsin Blue Book*, budget briefs, budget indices, census data, informational bulletins and memoranda, and legislative briefs.
  - **Folio database**. The Folio database contains current and archived statutes, bill histories, journals, Assembly and Senate floor calendars, committee records, Clearinghouse Rules, Attorney General opinions, acts, and indices to proposals and acts. Folio is only available to legislators and legislative staff on the legislative network.
- **WisconsinEye**. WisconsinEye maintains audiovisual recordings of many (but not all) committee hearings and all floor sessions, and coverage of campaigns and other events. WisconsinEye can be found at: http://www.WisEye.org.

Official Legislative Publications

Calendar. Each house must print a calendar covering each day on which the house meets. The matters to be considered by the house on that day are listed and serve as an agenda for the business of the day. If a bill has been considered by a standing committee or joint committee, the report of the committee appears on the calendar with the notation of the bill. All amendments offered to the bill prior to the printing of the calendar are also included.

Journal of Proceedings. The Wisconsin Constitution requires each house to keep and publish a Journal of Proceedings. These journals contain a daily record of the actions of the house and are generally available to members before the next daily meeting of the house. The journal is prepared under the direction of each Chief Clerk and constitutes the official record of each house. The journals reflect actions on bills, resolutions, and joint resolutions, and on amendments and substitute amendments to these proposals. They also record roll

call votes, committee assignments and reports, procedural motions, messages from the other house, and executive communications.

Bulletin of Proceedings. The Bulletin of Proceedings is a cumulative summary of the status of each proposal before the Legislature. The bulletin contains the relating clause and the list of authors and cosponsors of each proposal and the date on which it was introduced. It also gives a chronological list of each action taken on the measure up to the date of the bulletin's publication. All information in the bulletin is cross-referenced to the page in the daily journals at which the details of the Legislature's action are noted.

The bulletin also contains a separate booklet on all administrative rules submitted to the Legislative Council Rules Clearinghouse. The booklet contains a chronological list of actions taken on a rule by legislative committees. The bulletin is published four times during each biennium and is available from the LRB.

The *Wisconsin Blue Book*. The Blue Book is compiled, edited, and published in each odd-numbered year by the LRB. It is also available electronically on the Legislature's website. The Blue Book is an encyclopedia of information regarding Wisconsin state government.

Each Blue Book contains at least one major article on some aspect of Wisconsin government of special current interest. In addition, it contains a wealth of information about Wisconsin, including the following:

- Biographies and pictures of elected officials and the officers of each house.
- A copy of the Wisconsin Constitution, along with the history of amendments that have been proposed and adopted.
- A description of the framework of Wisconsin state government.
- Descriptive materials and data relating to the organization of each branch of Wisconsin state government.
- Information on Wisconsin political parties and party platforms.
- Information on recent elections in Wisconsin.

GLOSSARY OF TERMINOLOGY

Many terms are unique to the Legislature or have a different meaning in a legislative setting than in other contexts. Below are terms that are commonly used in the Legislature.

Address: A legislative procedure to remove any justice or judge from office. Any justice or judge may be removed from office by "address" of both houses of the Legislature, with the concurrence of two-thirds of all the members elected to each house.

Adjourn: To conclude a legislative day's business, a floorperiod, or a legislative session (regular, special, or extraordinary). See also "*Sine Die* Adjournment."

Administrative rules: Regulations, standards, or policies promulgated by executive branch agencies to implement statutes and administer agency programs. Administrative

rules have the force and effect of law and are compiled in the Wisconsin Administrative Code. See also, "Clearinghouse Rule."

Amendment: A suggested change to a bill or other proposal that has been introduced into the legislative process. An amendment may propose the addition, deletion, or substitution of language in a proposal. See also, "Simple Amendment" and "Substitute Amendment."

Annual appropriation: A sum certain appropriation that is authorized within the indicated fiscal year. Any unused funds remaining in the appropriation at the end of the indicated fiscal year lapse (revert) back to the fund or account balance from which they were appropriated. See also, "Appropriation," "Biennial Appropriation," "Continuing appropriation," and "Sum sufficient appropriation."

Apportionment: The process by which the seats in the U.S. House of Representatives are allocated to the states according to the relative population of the states. Reapportionment of House seats among the states occurs every 10 years following the U.S. Census. See also, "Redistricting."

Appropriation: A legislative authorization for the expenditure of funds.

Assembly: One of the two houses of the Wisconsin Legislature. The 99 members elected to the Assembly are referred to as State Representatives.

Assembly Committee on Rules: The Assembly Committee on Rules (often referred to as the "Assembly Rules committee") functions as a standing committee and as the calendar scheduling committee for the Assembly. The Assembly Rules committee consists of the speaker, speaker *pro tempore*, majority leader, assistant majority leader, majority caucus chairperson, minority leader, assistant minority leader, minority caucus chairperson, and two members from the majority party and two members from the minority party appointed by the speaker.

Assembly Organization, Committee on: The Committee on Assembly Organization, or "Assembly Org," performs various functions such as directing the enrolling or engrossing of proposals by the Assembly Chief Clerk; human resources management; addressing grammatical, structural, or other errors in legislative proposals; managing Assembly publications; review of legislative citations; and other tasks. Assembly Org consists of the speaker, majority leader, assistant majority leader, speaker *pro tempore*, majority caucus chairperson, minority leader, assistant minority leader, and minority caucus chairperson. As compared to the Senate Committee on Organization in the Senate, Assembly Org plays a more limited role in the operations of the Assembly.

Assembly Rules Manual: The official procedural rules of the State Assembly adopted and from time to time amended by Assembly Resolution. The Assembly Rules are published in a manual by the Assembly Chief Clerk.

Assembly Speaker: see "Speaker."

Assembly Speaker *Pro Tempore*: see "Speaker *Pro Tempore*."

Author: The legislator or legislative committee that introduces a bill or resolution. Members of the same house who "sign on" to the proposal are referred to as "co-authors." Members of the other house who sign on are called "co-sponsors."

Bicameral: A body having two branches, chambers, or houses. The Wisconsin Legislature is bicameral, consisting of the Senate and the Assembly.

Biennial: Lasting for two years. The Wisconsin Legislature uses a biennial session system.

Biennial appropriation: A sum certain appropriation that is authorized within the indicated biennium. Although the appropriations schedule in the statutes contains an identification of an estimated expenditure level for each year of the biennium, these figures are not controlling by year and expenditures are limited only by the total amount appropriated for the biennium. Any unused funds remaining in the appropriation at the end of the indicated biennium lapse (revert) back to the fund or account balance from which they were appropriated. See also, "Appropriation," "Annual appropriation," "Continuing appropriation," and "Sum sufficient appropriation."

Bill: A proposed change in state law originating in either house of the Legislature and, to become effective, requiring approval in identical form by both houses and approval by the Governor (or passage notwithstanding a gubernatorial veto or inaction).

Blue Book: Published since 1853, the Blue Book is an "almanac" of Wisconsin state government and includes comprehensive information about the organization and functions of Wisconsin state government and about elected and appointed officials.

Budget: A bill first proposed by the Governor and then introduced in the Legislature that outlines the expected state revenues and proposed expenditures for the upcoming fiscal biennium.

Bulletin of Proceedings: A multivolume publication specific to a particular legislative biennium containing procedural histories for all introduced proposals; a subject index to all bills, resolutions and session laws; a listing of the statutory sections affected by the session laws; and legislators' names and committee assignments.

Calendar: The "Session Calendar" is the schedule of floorperiods, and other actions for a biennial session, as laid out in the biennial scheduling resolution. The "Daily Calendar" is the Assembly or Senate agenda for a legislative day.

Caucus: A meeting of members of the same political party in a particular house of the Legislature. A caucus can be closed or open to the public.

Censure: In cases that do not merit expulsion, a legislative house may discipline one of its members through censure or reprimand by a majority vote of that house. Each house may determine its own rules of proceedings for censure.

Chair: The head of a committee or, with respect to floor session, the position that the presiding officer fills.

Chief clerk: The officer elected by a house of the Legislature to perform and direct the clerical and personnel functions of that house.

Clearinghouse Rule: A proposed administrative rule that has been assigned a Clearinghouse Rule number by the Legislative Council Rules Clearinghouse. See also, "Administrative rules."

Committee: A group of legislators appointed to consider and make recommendations on proposals related to particular subject areas, among other functions. Committees hold informational sessions, public hearings on proposals, and executive sessions.

Committee clerk: A member of a committee chair's staff who performs the clerical duties for a legislative committee.

Committee report: A report to the house by a committee on the committee's action on a proposal, administrative rule, or appointment. The process of a committee sending a proposal to the scheduling committee for floor action is referred to as "reporting" the proposal out of committee. Committee reports are reproduced in the legislative journals. See also, "Minority Report," "Joint Survey Committees," and "Conference Committee."

Committee work period: The days designated by the biennial scheduling resolution for committee activity, usually comprised of all days not reserved for organizational business or floorperiods.

Concurrence: A motion in the second house to approve of (concur in) an action of the first house. See also, "Passage."

Conference Committee or Committee of Conference: A committee consisting of members from both houses of the Legislature that can be formed to resolve differences between different versions of the same proposal passed in the Senate and Assembly. A report of a committee of conference may not be amended and may not be divided in either house.

Confirmation: Ratification by a house of the Legislature of a nomination for appointment by the Governor. In Wisconsin, most legislative confirmation is conducted by the Senate.

Constitution, United States: The document that establishes and organizes the structure and principles of the U.S. Government. The U.S. Constitution limits federal power by providing in the Tenth Amendment that powers not granted to the federal government nor prohibited to the states are reserved to the states or the people.

Constitution, Wisconsin: The document that establishes and organizes the structure and principles of the government of the State of Wisconsin. The Wisconsin Constitution shares many similarities with the U.S. Constitution, but it also provides much more detail about the structure and process of government than does the U.S. Constitution.

Constitutional amendment: An amendment to the state or federal constitutions. In Wisconsin, a constitutional amendment is accomplished by the passage of identical joint

resolutions by two successive Legislatures and ratification by the people by a referendum vote.

Continuing appropriation: An appropriation under which an agency may expend the amounts that have been made available by the Legislature at any time until the funds are exhausted or the appropriation is repealed. See also, "Appropriation," "Annual appropriation," "Biennial appropriation," and "Sum sufficient appropriation."

Dipping a bill in Joint Finance: The practice of satisfying the requirement under s. 13.093, Stats. (that proposals involving appropriations, revenue, or taxation be referred to the Joint Committee on Finance), by Senate or Assembly floor action temporarily referring a proposal to the Joint Committee on Finance and then "pulling" the proposal back to the floor for subsequent action.

District: The area of the state represented by a Representative or Senator.

Draft: A preliminary version of a legislative proposal. Also, the process of writing a legislative proposal. See also, "Slash number" and "Preliminary draft or P-Draft."

Drafter: The person who writes a legislative proposal in official LRB drafting format. The drafter is different than the "author," who is the legislator with the idea for a bill. The drafter of a proposal is generally an attorney employed by the LRB.

Drafter's note: An official note from the drafter to the requestor of the draft that provides additional information about the draft or raises questions or concerns for consideration by the requester.

Engross: To incorporate all amendments and corrections to the original proposal in the house of origin before consideration by the second house.

En masse: To do a number of things together, in a group. Wisconsin legislative committees routinely take up motions on less controversial matters "en masse," which allows them to vote on a number of items at once.

Enroll: To incorporate all amendments and corrections to a proposal that were passed, adopted, and concurred in by both houses.

Executive session or "exec": A legislative committee meeting during which the committee votes, or takes "executive action," on a bill or other proposal. The public is generally not allowed to testify at an executive session. The word "Exec" is also used to mean holding a committee vote on a proposal during an executive session.

Ex officio: A member of a board, committee, council, or other body who holds that membership because of holding another office. Many legislative leadership offices and other legislative positions include *ex officio* memberships on other bodies.

Expulsion: To remove a legislator from office. Each house may expel a member with the concurrence of two-thirds of all members elected. The rules of proceedings are set by each house. A member cannot be expelled a second time for the same cause.

Extraordinary session: The convening of the Legislature to accomplish specific business identified in the action calling the session. Extraordinary sessions can be called by the Assembly and Senate committees on organization, by petition, or by joint resolution of the Legislature. When used to continue a floorperiod of the regular session for a limited purpose, the extraordinary session is referred to as an "extended session."

First reading: The formal recognition by a legislative body that a bill or other proposal has been introduced.

Floorperiod: Periods of time identified in the legislative session calendar as available for consideration of proposals by the full Assembly and Senate.

General fund: A fund that is not segregated for a particular purpose from which the state makes general expenditures for various programs.

Government Accountability Board (GAB): A board charged with oversight of Wisconsin's campaign finance, elections, ethics, and lobbying laws. Both the GAB and its staff must be nonpartisan.

Hearing: A legislative committee meeting during which the committee gathers information about proposals under consideration by the committee or other topics related to the committee's assigned issue areas. Public testimony is generally accepted at legislative hearings.

Impeach: To charge a public official with misconduct. The Assembly may vote to impeach civil officers of this state for corrupt conduct in office, crimes, or misdemeanors. An affirmative impeachment vote in the Assembly requires the majority of all the members elected to the Assembly and serves as a formal accusation. Impeachment trials are conducted by the Senate, with conviction requiring an affirmative vote of two-thirds of the Senators present and constituting a quorum. An impeachment trial may result in removal from office and disqualification for other state office, but does not result in criminal liability.

Incumbent: The holder of an office or post.

Interim: A period of time of a legislative session beginning after the adjournment of the last regularly scheduled general-business floorperiod.

Interstate compact: An agreement between two or more states that is ratified by Congress.

Introduction: The formal offering of a legislative proposal, for consideration by the house in which it is introduced, by a legislator or a legislative committee. Once introduced, a legislative proposal is assigned a number, for example 2015 Senate Bill 1.

Jacket: The folder for an introduced bill that contains the official history file for that proposal. Assembly bill jackets are printed in black and Senate bill jackets are printed in red.

Jefferson's Manual: A manual of parliamentary procedure authored by Thomas Jefferson.

JCLO: The Joint Committee on Legislative Organization. JCLO consists of the Assembly speaker, the Senate president, the majority and minority leaders of each house, and the assistant majority and minority leaders of each house. Among other tasks, JCLO is responsible for adopting the compensation and classification plan for legislative employees.

JCOER: The Joint Committee on Employment Relations. JCOER consists of the Senate president, the Assembly speaker, the majority and minority leaders of each house, and the co-chairs of the Joint Committee on Finance. JCOER reviews and approves the compensation plan for state employees and reviews collective bargaining agreements for state employees and, if it approves such contracts, introduces legislation for their ratification.

JCRAR: The Joint Committee for Review of Administrative Rules. JCRAR consists of five Senators and five Representatives, appointed in the same manner as are the members of standing committees in each house. Prior to promulgation, all proposed administrative rules are referred to JCRAR following standing committee review. Additionally, JCRAR has the authority to temporarily suspend existing administrative rules.

JFC or Joint Finance Committee: The Joint Committee on Finance, a joint committee that is charged with review of all state appropriations and revenues and, in particular, the biennial budget recommendations of the Governor.

Joint Legislative Audit Committee: A joint committee comprised of five Senators and five Representatives, including the Co-Chairs of the Joint Finance Committee. The Joint Audit Committee oversees the work of the nonpartisan Legislative Audit Bureau and directs the Bureau to conduct audits and evaluations of state programs.

Joint Legislative Council: A joint committee comprised of 11 Senators and 11 Representatives that, among other actions, establishes study committees to examine major issues and problems identified by the Legislature and provides symposiums on topics of interest to the legislative branch.

Joint Rules Manual: The official joint procedural rules of the Assembly and Senate adopted and from time to time amended by joint resolution.

Joint survey committees: Statutory committees consisting of membership drawn from both houses of the Legislature, responsible for the review of legislation relating to subjects including criminal penalties, tax exemptions, and retirement systems.

Journal: The official records of legislative proceedings prepared by each house of the Legislature. The preparations of legislative journals is required under the Wisconsin Constitution.

Leadership: Officers of the Legislature responsible for its operation and management of each political caucus. Examples of legislative leadership positions include the Senate

president, the Senate president *pro tempore*, the Assembly speaker, the Assembly speaker *pro tempore*, the majority and minority leaders of each house, the assistant majority and minority leaders of each house, and the chairperson for each caucus.

Legislation: A proposed or enacted law or change to a law.

Legislative Audit Bureau or "LAB": A nonpartisan legislative service agency that conducts financial and program evaluation audits of state agency operations.

Legislative Council Staff or "LC": A nonpartisan legislative service agency that staffs all standing committees except the Joint Finance Committee, provides legal, research, and administrative support services to Joint Legislative Council study committees, and assists individual legislators and staff, and others.

Legislative Fiscal Bureau or "LFB": A nonpartisan legislative service agency that provides fiscal and program information and analyses to the Wisconsin Legislature, its committees, and individual legislators, and serves as staff to the Joint Finance Committee.

Legislative Reference Bureau or "LRB": A nonpartisan legislative service agency that provides professional and confidential bill drafting, legal publishing, research, and library services to the Legislature and the public.

Legislative rules: The detailed code of parliamentary procedure adopted by each house at the beginning of each legislative session to prescribe how the Legislature and legislative committees operate. In addition to the rules of each house, there are joint rules. The rules are published in an Assembly Rules Manual, a Senate Rules Manual, and a Joint Rules Manual.

Legislative Technology Services Bureau or "LTSB": A nonpartisan legislative service agency that provides comprehensive technological services and support to the Wisconsin Legislature.

Legislator: An elected member of the Legislature.

Lobby: To attempt to influence an elected official on an issue. Lobbying is strictly regulated in Wisconsin and lobbying laws are administered by the Government Accountability Board.

Local law: See "Special, private, and local laws."

Minority report: A report of a member or members dissenting from a report of a committee stating the reasons and conclusions for that dissent.

Motion: A formal request made for a specific action to be taken in legislative committee executive sessions or during floor debate. Appropriate motions are determined by the applicable rules of procedure.

Motion for Adoption: A motion seeking approval of an amendment to a proposal or of a resolution. See also, "Motion for Rejection."

Motion for Passage: A motion seeking approval of a legislative proposal that originated in the house considering the motion. See also, "Concurrence."

Motion for Rejection: A motion seeking disapproval of an amendment to a proposal or of a resolution. See also, "Adoption."

Nonpartisan: Not based on, biased towards, influenced by, affiliated with, or supporting the interests or policies of a political party.

Nonstatutory law or "nonstat": A provision in a bill or act that has a temporary application that is not continuing, and therefore is not included in statutory revisions.

Notice: A formal notification under the state's Open Meetings Law of when and where a public meeting will occur and what issues will be addressed, provided in advance of the meeting.

Notification service: A service available on the Wisconsin Legislature's Internet site that allows users to receive email notifications about specified legislative items and activities.

Open meetings law: A state law requiring that public meetings generally be open and made accessible to the public and that public notice be provided in advance of meetings.

Open records law: A state law requiring that governmental records generally be open and made available upon request.

Paired voting: A written agreement between two members of a house of the Legislature who are on opposite sides of a question not to vote on the question when one or both of those members are absent.

Parliamentary procedure: Rules, precedents, and practices used to guide discussion and deliberation and to maintain order during committee meetings and legislative floor sessions.

Per diem: An allowance for daily expenses.

Point of order: A request that the presiding officer rule on some matter of parliamentary procedure.

Preliminary draft or "P-draft": A draft of a legislative document prepared for a legislator by the LRB that is preliminary in at least some respect, denoted by a "/P" after the LRB number on the document.

Presiding officer: The person presiding over the Senate or Assembly in a legislative session.

Private law: See "Special, private, and local laws."

Privilege: Motions and requests related to the meetings, organization, rules, rights, and duties of the Senate or Assembly and its members. Privileged motions or requests take precedence over other questions before the body.

Proposal: A bill, amendment, or resolution before a legislative house awaiting action.

Public hearing: See "Hearing."

Pulling motion: A motion requesting that the rules of a legislative body be suspended and a proposal be removed from a committee and placed before the body for consideration.

Quorum: The minimum number of members of a committee or legislative body that must be present for business to be conducted.

Ratification: Approval, consent, adoption, or sanction. For example, voters must ratify, by binding referendum vote, any change to the Wisconsin Constitution, and the states must ratify a proposed federal constitutional amendment.

Reapportionment: See "Apportionment."

Recall election: A vote to decide whether an elected official will remain in office.

Recess: See "Interim."

Recommendation: The result of a legislative committee vote on a proposal, for instance, recommending passage of or concurrence in a bill.

Reconsideration: A motion to revisit an action of a committee or legislative body.

Redistricting: The process of changing the boundaries of legislative districts every 10 years following the U.S. Census, to reflect changes in population.

Referendum: A final vote by the public on a measure that is passed by a legislative body. A referendum can be binding or only advisory.

Referral: Assignment of a proposal to a legislative committee for its review.

Relating clause: The part of a proposal that identifies the general subject matter of the proposal.

Reprimand: See, "Censure."

Resolution: A formal statement of opinion or intention passed by a legislative body. Resolutions in the Wisconsin Legislature can be proposed to both houses through a joint resolution. Amendments to the state constitution must be proposed by a joint resolution. Proposals to create, amend, or repeal a legislative rule and to set the Legislature's session calendar are also made by resolution.

Roll call: The calling of the names of each member of a body to ascertain the members' votes, to determine whether a quorum is present, or for other purposes.

Second: Support of a motion by an additional member, typically required for a motion to be recognized.

Second reading: The stage of consideration of a proposal during a floor session during which amendments to the proposal may be considered.

Senate: One of the two houses of the Wisconsin Legislature. The 33 members elected to the Senate are referred to as State Senators.

Senate Organization, Committee on: The Committee on Senate Organization, or "Senate Org," has broad authority over the operations of the Senate. Senate Org generally consists of the majority leader, president, assistant majority leader, minority leader, and the assistant minority leader. As compared to Assembly Org, Senate Org plays a broader role in the supervision and management of the Senate.

Senate President: A member of the Senate elected by the membership to preside over the Senate and perform other duties specified in statutes and legislative rules.

Senate President *Pro Tempore* or "President *Pro Tem*": A member of the Senate elected by the membership to carry out the duties of the Senate president in his or her absence.

Senate Rules Manual: The official procedural rules of the State Senate adopted and from time to time amended by Senate Resolution. The Senate Rules are published in a manual by the Senate Chief Clerk.

Sergeant-at-Arms: The officer elected by the members of one house of the Legislature to perform and direct the police and custodial functions of that house.

Service agencies: The LRB, LFB, LAB, LC, and LTSB.

Simple amendment: An amendment that makes changes in the underlying proposal if adopted. See also, "Amendment" and "Substitute Amendment."

***Sine die* adjournment**: The adjournment of the last regularly scheduled general-business floorperiod of a legislative session.

Slash number: The number signifying the version of a document drafted by the LRB. The "slash number" of a draft is the number following the "/" (slash) in the LRB number on the proposal, with the highest numbered version being the newest version.

Speaker: A member of the Assembly elected by the membership to preside over the Assembly and perform other duties specified in statutes and legislative rules.

Speaker *Pro Tempore* or "Speaker *Pro Tem*": A member of the Assembly elected by the membership to carry out the duties of the Assembly speaker in his or her absence.

Special, private, and local laws: Enactments of the Legislature that relate to a closed classification or are specific to a person, place, or thing and do not relate to a state responsibility of statewide dimension and do not have a direct and immediate impact on a statewide concern or interest. The Wisconsin Constitution generally prohibits private or local enactments unless forwarded in a single subject bill with that subject expressed in the title of the bill. The constitution also prohibits such enactments in specific instances even if the above requirement would be met.

Special order of business: A proposal ordered by the Senate or Assembly to be given consideration at a specified time and taking precedence over the regular orders of business at that time.

Special session: A session of the Legislature convened by the Governor to accomplish a special purpose.

Spill draft: A portion of a bill drafted separately from other parts of the bill. The state budget bill is a compilation of many separate spill drafts.

Stand informal: A brief informal recess of legislative proceedings, expected to be short in duration, during which members are advised to remain in the room rather than depart with plans to return at a certain time. Generally, if members intend to break for a longer period or if either legislative party wishes to convene in caucus, a member will request a recess.

Statutes: The compiled general laws of the state created by legislation.

Stripes: The cover sheet for the official copy of an introduced amendment that contains the official history of that proposal. Assembly "stripes" have black margins and printing and Senate "stripes" have red margins and printing.

Study committee or special committee: A committee appointed by the Joint Legislative Council to examine major issues and problems identified by the Legislature. Study committees are made up of legislators and citizens who are interested in or knowledgeable about the study topic and usually do most of their work when the Legislature is in recess. Study committees are staffed by the Legislative Council staff and make legislative recommendations to the Joint Legislative Council.

Substitute amendment or "sub": An amendment that replaces the underlying proposal if adopted. See also, "Amendment" and "Simple Amendment."

Sum sufficient appropriation: An appropriation under which an agency may expend any amount necessary for the program subject only to any other specific program restrictions. An estimate of the amount that will be expended by the agency in each fiscal year is included in the appropriations schedule in the statutes, but an agency may spend more or less than the amount indicated. See also, "Appropriation," "Annual appropriation," "Biennial appropriation," and "Continuing appropriation."

Summary of Proceedings: See "Bulletin of Proceedings."

Suspension of the rules: A motion to take a temporary action otherwise prohibited by rule that requires the support of two-thirds of the members present.

Table: A motion to temporarily set aside a proposal and move to other business.

Testimony: Oral or written remarks provided by interested persons about a proposal being considered during a public hearing of a legislative committee.

Third reading: The stage of consideration of a proposal during a floor session during which bills and other proposals come up for final discussion and possible passage. No amendments may be considered at this point.

Twenty-four hour rule: A rule sometimes imposed by legislative committee chairs requiring that any amendments to be considered in executive session must be distributed to the committee members at least 24 hours prior to the executive session.

Unanimous consent: A motion asking for unanimous approval of a question without a roll call vote. If an objection is not heard, it is assumed that the request has the consent of all members present.

Uniform act: A proposal sponsored by the Uniform Law Commission that is designed to be adopted in whole or substantially, by all the states (at their option) so that the law on the subject of that proposal will be the same from state to state.

Veto: The action by which all or a part of a bill is rejected by the Governor.

Veto override: A vote of both houses of the Legislature to overturn a gubernatorial veto. To be successful, such a vote must receive a two-thirds vote in both houses.

Voice vote: A vote taken by asking members in favor to say "aye" simultaneously and then asking those opposed to say "no" or "nay" simultaneously, with the presiding officer deciding which side prevails.

WisconsinEye: A statewide, independent, multimedia public affairs network that focuses on state government, public policy, and civic life. WisconsinEye records and archives all legislative sessions and many legislative committee meetings.

Withdraw: A request by the person who made a motion to remove the motion from consideration.

Zoom calendar: A portion of a day's legislative calendar for which procedures are expedited by prior agreement of the leadership teams of both political caucuses.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 3 – LEGISLATIVE SERVICE AGENCIES AND STAFF

The most well-known and visible activity of the Legislature is its deliberations on legislation. The Legislature is involved in many more activities than simply the passage of legislation, however. Legislative committees hold public informational hearings, oversee the activities of state administrative agencies, and conduct studies. Individual legislators respond to constituent inquiries and serve as members of a wide variety of committees in state government. All of the functions of the Legislature require some degree of support from the legislative staff employed by the Legislature.

Anne Sappenfield, Principal Attorney
Wisconsin Legislative Council

Table of Contents

Legislative Service Agencies 1
- Legislative Audit Bureau 1
- Legislative Council 2
- Legislative Fiscal Bureau 2
- Legislative Reference Bureau 3
- Legislative Technology Services Bureau 3

Chamber Assistance 4
- Chief Clerks 4
- Sergeants-At-Arms 5

Legislator Office Assistance 5
- Administrative, Legislative, and Committee Research Assistants 5

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Legislative staff who serve the Legislature as a whole can be divided into legislative service agencies, chamber assistance, and legislators' personal staff. The service agencies have nonpartisan staffs, four of which focus attention on analysis and research regarding issues of interest to the Legislature; the fifth provides technical support. Chamber staff work to prepare records of legislative action and provide other services. Legislators' personal staff assist legislators in their committee work, policymaking, constituent services, and managing their personal offices.

Legislative Service Agencies

Although the legislative service agencies are established and managed separately, there are many points of contact among the agencies, both formal and informal. Many legislative issues require the involvement of staff from more than one agency, and the staffs of legislative service agencies collaborate on many issues. Often, a contact with one agency may lead to a referral to another agency. Also, although each of the nonpartisan service agencies has a specifically defined function, these agencies are available to assist any individual legislator.

Legislative Audit Bureau

The Legislative Audit Bureau:

- Performs audits of the accounts and records of state agencies and certain nonstate agencies and organizations to ensure that all financial and management transactions have been made in a legal and proper manner.

Any legislator may request an audit by writing to the co-chairs of the Joint Legislative Audit Committee. Legislators are encouraged to discuss their requests with the State Auditor before submitting them to the Audit Committee co-chairs.

Contact:

Joe Chrisman, State Auditor
22 East Mifflin St., Ste. 500
(608) 266-2818

http://www.legis.wisconsin.gov/lab

Toll-Free Fraud, Waste, and Mismanagement Hotline:

1-877-FRAUD-17 or 1-877-372-8317

- Reviews and evaluates the performance and program accomplishments of state agencies to determine whether the agencies have carried out the objectives of the Legislature and whether the programs are efficient, cost-effective, and not duplicative.
- Investigates allegations of fraud, waste, or mismanagement reported to a toll-free hotline.
- Conducts best practices reviews of governmental service delivery by counties and municipalities.

Audit reports are submitted to and acted upon by the Joint Legislative Audit Committee, which has advisory responsibilities for the Legislative Audit Bureau.

Legislative Council

The Legislative Council:

- Serves as staff for the standing committees of the Legislature (other than the Joint Committee on Finance).
- Prepares Amendment Memos that describe the changes made to a bill by amendments that are adopted by a standing committee or on the floor of either house of the Legislature and Act Memos to describe enacted legislation.
- Staffs study committees created by the Joint Legislative Council; Legislative Council staff create research documents and prepare implementing legislation related to such studies.
- Prepares reports on all proposed administrative rules and assists standing committees in their oversight of the administrative rulemaking process.
- Provides staff services to the Joint Committee on Legislative Organization and the Joint Committee on Employment Relations.
- Responds to information and legal and policy research requests from legislators, other legislative service agencies, legislative staff, and the public.

The Legislative Council staffs every standing committee except the Joint Committee on Finance, which is staffed by the Legislative Fiscal Bureau.

Contact:

Terry C. Anderson, Director
One East Main St., Ste. 401
(608) 266-1304

http://www.legis.wisconsin.gov/lc

Legislative Fiscal Bureau

The Legislative Fiscal Bureau:

- Staffs the Joint Committee on Finance.
- Develops information on fiscal matters for the Legislature.
- Analyzes state agency budget requests and suggests alternatives to the Joint Committee on Finance and the Legislature.
- Responds to requests for fiscal information from individual legislators.
- Prepares, upon request, independent estimates of the fiscal effect of legislative proposals.
- Prepares independent estimates of state revenues and reviews, on a continuing basis, factors influencing the state's financial affairs and activities.
- Evaluates state agency programs.

The Legislative Fiscal Bureau provides extensive information and analysis of the biennial budget bill and other legislation that has a fiscal effect.

Contact:

Robert Wm. Lang, Director
One East Main St., Ste. 301
(608) 266-3847

http://www.legis.wisconsin.gov/lfb

- Conducts in-depth studies on specific subjects or program areas as directed by the Joint Committee on Finance or the Legislature.

Legislative Reference Bureau

The Legislative Reference Bureau:

- Prepares the drafts of all legislative proposals; prepares an analysis for inclusion in drafts of bills and joint resolutions; and maintains drafting records.

The Legislative Reference Bureau drafts all bills, resolutions, and amendments that are introduced and provides research services to legislators.

- Indexes, by subject and author, all legislation considered by the Legislature and publishes the *Index* volume of the Legislature's *Bulletin of Proceedings*.
- Researches topics relating to state government and issues studies and reports.
- Maintains a reference library of public documents and the Legislature's website.
- Prepares and edits the *Wisconsin Blue Book*.
- Publishes all acts, both at the time of enactment and as the compiled *Laws of Wisconsin*.
- Responds to information requests relating to legislation and state government from legislators and staff, government agencies, the media, students, and the general public.

Contact:

Stephen R. Miller, Chief
One East Main St., Ste. 200
(608) 266-3847

http://www.legis.wisconsin.gov/lrb

- Edits and publishes the *Wisconsin Statutes*, the *Wisconsin Administrative Register*, and the *Wisconsin Administrative Code*.
- Develops and distributes the Wisconsin Statutes, the Wisconsin Administrative Code, and other sources of Wisconsin law in electronic (CD-ROM) form.
- Examines the statutes and session laws to identify provisions that have defects, anachronisms, conflicts, ambiguities, and unconstitutional or obsolete provisions. Prepares technical revision and corrections bills for introduction into the Legislature.

Legislative Technology Services Bureau

The Legislative Technology Services Bureau:

- Provides and coordinates information technology services and support to the legislative branch of state government.
- Manages and supports the Legislature's office automation system, which provides computers and software to each legislative office.

Contact:

Jeff Ylvisaker, Director
17 West Main St., Ste. 200
(608) 267-9528

http://www.legis.wisconsin.gov/ltsb

- Manages and supports the specialized software used to produce legislative branch documents and publications.
- Provides computer support to legislative support staff and provides computer training.
- Manages legislative branch access to the Internet.
- Provides technical support for legislative redistricting and Forward, a constituent tracking database application.

CHAMBER ASSISTANCE

Chief Clerks

The Chief Clerks:

- Supervise the general business functions of each house, such as the processing of travel vouchers and payrolls and the purchasing of supplies.
- Assist the presiding officer in the conduct of sessions of the house.
- Prepare the official *Journal* of each day's proceedings, the daily *Calendar*, the *Bulletin of Proceedings*, and the weekly *Bulletin of Hearings* for each house.
- Record all legislative actions in the official record books and make required entries on the jackets of bills, resolutions, joint resolutions, and administrative rules.
- Present to the Governor for action all bills that have passed both houses.
- Deposit with the Secretary of State at the close of each session of the Legislature the full record of action and disposition of all bills, resolutions, and joint resolutions.

Contact:

Jeff Renk, Senate Chief Clerk
B20 Southeast, State Capitol
(608) 266-2517

http://www.legis.wisconsin.gov/senate/scc/

Patrick Fuller, Assembly Chief Clerk
17 West Main St., Rm. 401
(608) 266-1501

http://www.legis.wisconsin.gov/assembly/acc/

Sergeants-At-Arms

The Sergeants-at-Arms:

- Execute orders of the house or its presiding officer.
- Supervise access of all persons to and from the house chamber.
- Supervise the distribution to members of all legislative documents.
- Supervise the delivery of bills, resolutions, and other communications to the chief clerk's desk, presiding officer's rostrum, or other required places.
- Maintain order and quiet in and about the chamber.
- Assist committees of the house in conducting orderly public hearings.
- Carry out the instructions of the presiding officer in compelling the attendance of absent members and securing the chamber during a call of the house.

Contact:

Ted Blazel, Senate Sergeant-At-Arms
B35 South, State Capitol
(608) 266-1801

http://www.legis.wisconsin.gov/senate/ssgt/

Anne Tonnon Byers, Assembly Sergeant-At-Arms
411 West, State Capitol
(608) 266-1503

http://www.legis.wisconsin.gov/assembly/asgt/

Legislator Office Assistance

Administrative, Legislative, and Committee Research Assistants

Each Senator has a specific allotment for the biennium for salaries for any combination of full-time or part-time staff, as determined by each individual Senator. The Committee on Senate Organization determines the number of benefited staff positions allocated to each Senator.

Each Representative who is not a committee chair and who has served more than one term has one and one-half employees from the legislative assistant and research assistant categories. Representatives serving their first term have one legislative assistant.

The responsibilities of a legislator's staff include:

- Researching and analyzing issues pending in the Legislature.

A legislator's staff are employed and supervised by the individual legislator, although payroll and other administrative matters related to employment are handled by the chief clerks.

- Communicating for the legislator with other legislators, other branches of government, news media, lobbyists, and legislative service agencies.
- Responding to constituent inquiries.
- Preparing speeches and news releases.
- Researching and developing legislation and work with legislators, committee staff, and others regarding legislation referred to the committee.
- Serving as the committee clerk if working for a standing committee chair.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 4 – BUDGET PROCESS

The state budget is the most comprehensive bill the Legislature passes during the biennium. It is the legislative document that sets the level of authorized state expenditures for the next fiscal biennium and the corresponding level of revenues projected to be available to finance those expenditures. The budget bill affects all state agencies and involves significant interplay between the executive and legislative branches.

Brian Larson, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Biennial Budget 1
Executive Branch Preparation and Presentation of Budget Bill 1
Legislative Branch Consideration of Budget Bill 2
Joint Finance Committee Review 2
Joint Survey Committee Reports 3
Party Caucuses 3
Floor Debate 3
Conference Committee and Report 4
Governor's Partial Veto Authority; Legislature's Veto Override Authority 4
Partial Veto Authority 4
Override of Partial Veto 5
Continued Operation in Case of Delay 5
Additional Key Concepts Related to State Budget Process 5
Appropriations in Ch. 20, Stats. 5
Program Budget 5
Incremental Budgeting 6
Fiscal Years 6
Interim Changes in the Authorized Budget 6
Non-Budget Fiscal Bills 6
Additional References 7

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Biennial Budget

The state's budget is a biennial budget, covering a two-year period ("fiscal biennium") starting July 1 of an odd-numbered year and ending June 30 of the next odd-numbered year (e.g., July 1, 2015 through June 30, 2017).

The state budget is the legislative document that establishes:

Current Fiscal Biennium:
July 1, 2013 to June 30, 2015

Next Fiscal Biennium:
July 1, 2015 to June 30, 2017

- The level of authorized state expenditures for the fiscal biennium in Wisconsin.
- The level of revenues derived from taxes and other sources projected to be available to pay for those expenditures.

The establishment of a state budget is required by the Wisconsin Constitution. Wisconsin Constitution, Article VIII, Section 2 provides that: "No money shall be paid out of the treasury except in pursuance of an appropriation by law." Section 5 of Article VIII is the so-called "balanced budget requirement." Section 5 of Article VIII states that:

> The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year; and whenever the expenses of any year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses of such ensuing year.

The state budget is the most significant and comprehensive bill the Legislature passes during the biennium, covering the major fiscal and operational aspects of all state agencies and local government entities (municipalities, schools, and others).

Executive Branch Preparation and Presentation of Budget Bill

At the start of the budget process, the State Budget Office in the Department of Administration (DOA) instructs state agencies to submit their budget requests for the next biennium, consistent with any fiscal policy directives the Governor directs agencies to follow in developing budget requests. The requests include estimates of the costs to continue or improve current agency services or to create new programs or services. Agencies must submit their budget requests to the State Budget Office no later than September 15 of each even-numbered year (that is, the year before the budget is enacted).

By November 20 of each even-numbered year, the Secretary of the DOA must provide the Governor, or the Governor-elect, and each member of the next Legislature, a document compiling the total amount of each state agency's biennial budget request. Summary information on actual and estimated revenues for the current and forthcoming biennium must also be provided.

On or before the last Tuesday in January of each odd-numbered year (unless a later date is agreed upon by the Governor and both houses of the Legislature), the Governor is then required to deliver the biennial budget message to the Legislature. With the message, the Governor must also provide a biennial state budget report, the executive budget bill, and suggestions for the best methods for raising the needed revenues.

EXECUTIVE BRANCH BUDGET DEADLINES

September 15 (even-numbered year): Agencies submit budget requests to State Budget Office in DOA.

November 20 (even-numbered year): Secretary of DOA provides a report to Governor and legislators detailing agency budget requests.

January, last Tuesday (odd-numbered year): Governor delivers biennial budget message to the Joint Session of the Legislature.

LEGISLATIVE BRANCH CONSIDERATION OF BUDGET BILL

Joint Finance Committee Review

In connection with the delivery of the Governor's budget message, the Governor prepares budget recommendations and incorporates them into an executive budget bill. The bill is drafted by the Legislative Reference Bureau (LRB), with the assistance of the DOA. The executive budget bill must be introduced, without change, into one of the two houses of the Legislature, or in both houses as companion bills, by the Legislature's Joint Finance Committee (JFC). Upon introduction, the bill must be referred to the JFC for its review. The nonpartisan Legislative Fiscal Bureau (LFB) staffs the JFC and assists the committee in its budget deliberations.

The development and legislative work on the budget bill is intense and complex. The content of budget bills varies from session to session. The bill takes a lengthy and often varying procedural road as it winds through the legislative branch.

As part of its review process, the JFC may hold public hearings on the proposed budget with representatives of the state agencies involved (informational hearings) and hearings open to the general public (public hearings). Other standing committees of the Legislature may also hold hearings to review provisions of the budget. These hearings, conducted at the discretion of the standing committee chairs, inform the committee's members of those parts of the budget that may impact or affect matters dealt with by the committee.

After the public hearings, the JFC begins executive sessions on the recommended budget, deciding whether certain provisions in the budget should be modified or deleted and whether additional provisions are needed. The LFB drafts budget motions requested by the committee to modify provisions of the bills.

Joint Survey Committee Reports

Depending on its content, the budget bill may also be referred to one or more joint survey committees, such as the Joint Survey Committee on Retirement Systems or the Joint Survey Committee on Tax Exemptions. No bill or amendment that creates or modifies a public retirement system may be acted on by the Legislature until the Joint Survey Committee on Retirement Systems has submitted a written report on the bill or amendment. No bill that affects any existing statutes or creates any new statute relating to the exemption of any property or person from taxation may be considered by either house of the Legislature until the Joint Survey Committee on Tax Exemptions has submitted a written report on the bill.

KEY LEGISLATIVE STEPS IN BUDGET PROCESS*

Executive budget bill introduced by JFC

↓

JFC hearings and executive sessions on bill

↓

Bill referred to first house; parties caucus on JFC version.

↓

Majority party version of budget bill introduced.

↓

First house debates, amends, and passes budget bill.

↓

Second house debates, amends, and passes its version.

↓

If necessary, conference committee resolves any differences between the two versions.

*** The process may vary in some respects, particularly if companion bills are introduced and the two houses act concurrently, rather than sequentially.**

Party Caucuses

Once the JFC has completed its action on the budget, the house in which the budget bill was introduced generally moves to commence party caucuses on the budget. If companion bills were introduced, each house may act concurrently. During this and subsequent phases of revising the budget bill, any changes proposed for consideration by the full Assembly or Senate must be offered by legislators as formally drafted amendments to the bill.

Floor Debate

After the individual caucuses have finished deliberations on the budget, the majority party budget package is introduced and scheduled for floor debate as a special order of business.

A budget bill is adopted by a majority vote of each house. Differences between the two versions are then resolved so that the same bill is ultimately passed by both houses, as described below.

Conference Committee and Report

If the two houses pass different versions of the budget, a conference committee may be convened. The conference committee consists of a specified number of members from each house, as designated by their respective houses, to represent that house and meet as a bargaining committee. The goal of the bargaining committee is to produce a report reconciling the differences between the two versions of the budget. Once the conference committee procedure is completed, a conference report is submitted to each house as an unamendable document. Each house then votes on the conference report.

Governor's Partial Veto Authority; Legislature's Veto Override Authority

Partial Veto Authority

Once the Legislature passes a final budget bill, the bill is prepared for the Governor's consideration. The bill is not officially sent to the Governor until it is called for by the Governor. The delay allows the Governor time to consider possible partial vetoes of the bill. Under the Wisconsin Constitution, the Governor has an extensive partial veto power, with the authority to partially veto any item in an appropriation bill, including the biennial budget bill. Thus, instead of having to accept or reject a bill in its entirety (as is the case with nonappropriation bills), the Governor may, in accordance with the following summary, selectively delete provisions of the budget bill, vetoing either language or dollar amounts, or both, in any given provision:

The Governor may selectively delete provisions of a bill that includes an appropriation. The resulting provisions must relate to the same subject matter as the vetoed provision.

- Although the Governor may exercise the partial veto only on bills that include an appropriation, nonappropriation parts of appropriation bills may be partially vetoed.
- The part of the bill remaining after a partial veto must constitute a complete, entire, and workable law.
- The provision resulting from a partial veto must relate to the same subject matter as the vetoed provision.

- Entire words and individual digits may be stricken; however, individual letters in words may not be stricken.
- Appropriation amounts may be stricken and a new, lower amount may be inserted to replace the stricken amount.
- The Governor may not create a new sentence by combining parts of two or more sentences of the enrolled bill.

Override of Partial Veto

The budget bill, minus any items deleted by the Governor's partial veto, becomes the state's fiscal budget document for the biennium. However, as in the case of the Governor's veto of a bill in its entirety, the Legislature is permitted to review the Governor's partial vetoes and may, with a 2/3rds vote by each house, enact any partially vetoed portion into law, notwithstanding the objections of the Governor.

Continued Operation in Case of Delay

Because the state's biennial budget cycle begins on July 1 of the odd-numbered year, the budget law should, technically, be enacted and in effect by that date. However, if there is a delay in the process and the budget does not take effect by that date, state agencies may continue to operate at the same appropriation levels from the preceding budget until the new budget law takes effect.

Additional Key Concepts Related to State Budget Process

Appropriations in Ch. 20, Stats.

The Wisconsin Constitution allows money to be paid out of the State Treasury pursuant only to a legislative appropriation. [Wis. Const. art. VIII, s. 2.] Most appropriations are codified into a single schedule in ch. 20, Stats. This schedule is termed the "Chapter 20" schedule because the listing of those appropriations is biennially published in that statutory chapter.

Program Budget

The budget in Wisconsin is termed a "program budget." This means that the structure of both the appropriations schedule and the individual appropriations are generally based on specific "programs" in state government. Individual state agencies are placed under a general functional heading, such as education or transportation. Under each functional heading, agencies are set forth in alphabetical order and appropriations for the agency are

then set forth under the agency heading, with one or more appropriations for the programs under that agency.

Incremental Budgeting

The general budget process in Wisconsin is an incremental budget process. Agencies develop their budgets by identifying requested changes from the existing budget level (referred to as "the base budget"). Thus, the budget decision items in agency requests represent increments of change over the existing level of spending.

Fiscal Years

The biennial state budget incorporates two annual periods or fiscal years. Fiscal years run from July 1 to June 30. The biennial budget period runs from July 1 of the odd-numbered year to June 30 of the subsequent odd-numbered year. The biennial budget thus involves appropriations for both fiscal years (for example, fiscal year 2015-16 and fiscal year 2016-17).

Interim Changes in the Authorized Budget

Once adopted, the biennial budget may be modified in the following ways:

1. **Separate legislation**. By separate legislation authorizing an additional appropriation or eliminating or modifying an existing appropriation.

2. **Budget adjustment bill**. By request of the Governor for introduction of a budget adjustment bill to make changes in the adopted biennial budget.

3. **Action of the JFC**. By JFC under a number of statutory provisions that allow the JFC to modify or supplement agency budgets and position authorizations. A list of these may be found in Appendix III to the LFB Informational Paper on the JFC, referenced below.

Non-Budget Fiscal Bills

During the legislative session, there are bills outside the biennial budget bill that request funds for specific limited purposes, such as a new program or to modify the operation of an existing program. These bills, introduced during the regular legislative session, are termed fiscal bills and have specific requirements related to them as they proceed through the legislative process.

Additional References

1. The LRB presents information sessions on numerous topics, including topics related to appropriations and the budget process. Copies of those presentations may be viewed at: http://lrb/intralrb/SeminarShows/index.htm.

2. At the beginning of each biennial legislative session, the LFB publishes Informational Papers that describe aspects of state government including the state budget process and the Joint Finance Committee. The LFB also prepares budget summaries and budget papers throughout the budget process. All of these documents are available at: http://www.legis.wisconsin.gov/lfb.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 5 – ADMINISTRATIVE RULEMAKING

The Legislature has conferred on state agencies the authority for promulgation of administrative rules, while retaining oversight of the rulemaking process. Standing committees in each house of the Legislature and the Joint Committee for Review of Administrative Rules, as well as the Legislative Council's Administrative Rules Clearinghouse, play a significant role in the review of proposed administrative rules. In addition to the requirements for legislative review of rules, the Governor has broad authority to review and approve or disapprove proposed rules.

Scott Grosz and Jessica Karls-Ruplinger, Senior Staff Attorneys
Wisconsin Legislative Council

Table of Contents

Administrative Rulemaking 1
Agency Rulemaking Authority 1
Executive Order #50 2
Rule Promulgation Process 3
Committee Review Process 6
Emergency Rules 9
Treatment of Rules by Legislative Initiative 9
Judicial Review of Validity of Rule 9
Treatment of Rules in Effect 10
Action on Current Rules and Guidelines 10
Additional References 11
Glossary 11

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

ADMINISTRATIVE RULEMAKING

State agencies promulgate administrative rules pursuant to rulemaking authority conferred by the Legislature. The Legislature retains oversight of the rulemaking process through the review of proposed rules by the Legislative Council's Administrative Rules Clearinghouse, legislative standing committees in each house, and the Joint Committee for Review of Administrative Rules (JCRAR).

Administrative rules are promulgated by state agencies to implement or interpret statutes enforced or administered by the agency.

Statutes governing the rulemaking process are contained in subch. II of ch. 227, Stats. The statutes define an administrative rule as a regulation, standard, policy statement, or order of general application promulgated by a state agency:

- To make specific, implement, or interpret provisions of statutes that are enforced or administered by the agency; or
- To establish procedures for the agency to follow in administering its programs.

An agency undertakes rulemaking when it seeks to create new rules or to amend or repeal existing rules. Administrative rules have the force and effect of law.

This chapter describes agency rulemaking authority and the rule promulgation and review process.

Agency Rulemaking Authority

All authority for administrative rulemaking is conferred by statute. An agency may promulgate rules interpreting the provisions of a statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. No agency may promulgate a rule that conflicts with state law. All of the following apply to an agency's promulgation of a rule that interprets the provisions of a statute enforced or administered by the agency:

- An agency may not impose any standard, requirement, or threshold, in a rule or as a license condition, unless the standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by another properly promulgated rule.
- An agency may not find rulemaking authority in a legislative statement of intent, purpose, findings, or policy, or in a statutory provision describing the agency's **general**

powers or duties. The agency is limited to rulemaking authority that is explicitly conferred by the Legislature.

- With respect to a specific standard, requirement, or threshold, an agency may not promulgate a rule that is more restrictive than a statute.

Executive Order #50

The Governor has prescribed, by executive order, guidelines to ensure that rules are promulgated in compliance with the requirements of the statutes. On November 2, 2011, Governor Walker issued Executive Order #50, which sets forth requirements for agency rulemaking in addition to those specified in the statutes, as well as detailed rule promulgation instructions to agencies. The order also establishes an Office of Regulatory Compliance in the Governor's office as the point of contact for administrative rulemaking. The Office of Regulatory Compliance in the Governor's office may be contacted at 267-3672 or at: administrativerules@wisconsin.gov.

Executive Order #50 contains rulemaking requirements in addition to those specified in the statutes.

Publication of Administrative Rules

For questions about the rulemaking process or specific Clearinghouse Rules, contact the Legislative Council Rules Clearinghouse staff:

Scott Grosz, Co-Director (266-1307)

Jessica Karls-Ruplinger, Co-Director (266-2230)

Administrative rules are published in the Wisconsin Administrative Code. The Legislative Reference Bureau (LRB) publishes and edits the Code, as well as the Wisconsin Administrative Register. The Register is published bimonthly, but, beginning in January 2015, the Register will be published every Monday. All final administrative rules are initially published in the Register and are then compiled, maintained, and updated in the Administrative Code. Each issue of the Register contains a section with notices and other items that are required to be published during the rulemaking process. The Administrative Code and Administrative Register are online at: http://www.legis.wisconsin.gov/rsb/code/htm. Beginning in January 2015, printing and distribution of the Code and Register will discontinue, but the Code and Register will continue to be available in an electronic format online.

For questions about the Administrative Code and Register, and rule promulgation and publication, contact: Bruce Hoesly, Senior Revising Attorney and Code Editor, LRB (266-7590).

Rule Promulgation Process

Agencies typically promulgate **permanent** rules, which are subject to the rule promulgation and legislative review procedures discussed throughout this chapter. On occasion, however, 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. Some of the rule promulgation steps discussed in this section pertain only to proposed permanent rules, while others, where indicated, also apply to emergency rules.

The Governor has specific authority to approve or disapprove agency scope statements and final draft rules.

Preparation and Approval of Scope Statement

The first step in the rule promulgation process is preparation of a scope statement that sets forth information about the agency's intended rulemaking, including the objective of the proposed rule, the statutory authority for the rule, and a description of all entities that may be affected by the rule. Scope statements must be prepared for both proposed permanent rules and emergency rules.

Before work may commence on actual rule drafting, the agency must submit the scope statement to the Governor for approval in writing. If the scope statement is approved by the Governor, it is then submitted to the LRB for publication in the Wisconsin Administrative Register. Executive Order #50 provides that an agency must submit an approved scope statement to the LRB for publication within 30 days of the Governor's approval, or else the scope statement will be considered to have been withdrawn. Following publication, the scope statement must be approved by the individual or body with policy-making powers for the agency.

Rule Drafting

Once the scope statement is approved, agency staff may then begin drafting the rule. Agencies are directed, to the extent possible, to adhere to the format and drafting style of bills prepared for the Legislature and to draft rules in concise, simple sentences, using plain language that can be easily understood.

The *Rules Manual* is available online at:
http://www.legis.wisconsin.gov/lc

The Legislative Council staff and the LRB jointly publish an *Administrative Rules Procedures Manual* to provide agencies with information on drafting, promulgation, and legislative review of rules. The *Manual* sets forth detailed instructions regarding the format and style to be used by agencies in drafting rules.

Preparation of Economic Impact Analysis

An agency must prepare an economic impact analysis (EIA) for every rule before the rule is submitted to the Legislative Council staff for review. This requirement does **not** apply to emergency rules. The EIA must include information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. It must also explain: the policy problem the rule is intended to address; the approach to the problem the rule takes; a comparison to approaches taken by the federal government and by Iowa, Minnesota, Illinois, and Michigan; and any reasons (for the agency choosing) a different approach.

If an EIA indicates that a total of $20 million or more in implementation and compliance costs are reasonably expected to be incurred or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, the Department of Administration (DOA) must review the rule and issue a report. The agency may not submit the rule to the Legislature for review until the agency receives a copy of the DOA's report and the approval of the DOA secretary.

All agencies must prepare an economic impact analysis for every proposed permanent rule.

Executive Order #50 requires that, in preparing the EIA, agencies must accept public comments for a specified time period based on the degree of economic impact the rule is likely to have locally or statewide. The comment period is 14 days for a rule with no or minimal economic impact, 30 days for a rule with moderate economic impact, and 60 days for a rule with significant economic impact.

The EIA and a fiscal estimate must be submitted to the Legislative Council Rules Clearinghouse at the same time a rule is submitted to the Clearinghouse for review. The DOA has developed a template for agency use that combines the EIA and fiscal estimate in a single form.

Review by Legislative Council Rules Clearinghouse

When the agency has completed its work on an initial draft rule, the rule is submitted to the Legislative Council staff for review. This requirement does **not** apply to emergency rules. By statute, the Legislative Council staff functions as the Administrative Rules Clearinghouse. Upon receipt of a proposed administrative rule, the Clearinghouse staff assigns the rule a Clearinghouse Rule number, records the date of submission of the rule in the Bulletin of Proceedings of the Wisconsin Legislature, and prepares two numbered rule jackets (similar to bill jackets), one for the Assembly and one for the Senate.

The rule is assigned to a Legislative Council attorney or analyst for review and preparation of a Clearinghouse Report containing comments about the rule. The rule is then given a secondary review by a Clearinghouse co-director. The Legislative Council staff reviews the rule for form, style, and technical adequacy. Of particular importance to the legislative branch, the staff also specifically:

- Reviews the rule to determine whether there is statutory authority for the agency to adopt the rule.
- Reviews the text of the rule for clarity and use of plain language.

The Legislative Council staff review may show whether an agency is attempting to regulate matters beyond its legal authority or whether a lack of clarity and precision in the rule language could inappropriately affect persons regulated by the rule.

The Legislative Council Rules Clearinghouse reviews all proposed permanent rules and prepares a Clearinghouse Report containing comments about the rule.

The period for Legislative Council review is 20 working days following receipt of the proposed rule. With the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days (extensions are very rarely necessary). A Clearinghouse Report containing the staff comments is sent to the agency.

Agency Public Hearing

Generally, following Clearinghouse review, an agency must provide notice and hold a public hearing on a proposed rule. Notice of the hearing may be posted before the agency receives the Clearinghouse Report, but the hearing cannot take place until the agency has the Clearinghouse Report in hand or until the end of the initial 20-working day Clearinghouse review period, whichever comes first. There are some exceptions to the hearing requirement. For example, a public hearing is not required prior to promulgation of an emergency rule or if the rulemaking is undertaken to bring an existing rule into conformity with a statute or judicial decision. The agency's notice of public hearing must include, among other things, the text of the proposed rule, a plain language analysis of the rule, and the EIA and fiscal estimate.

Initial Regulatory Flexibility Analysis

For rulemaking purposes, "small business" is defined as a business entity that is independently owned and operated, that is not dominant in its field, and that employs 25 or fewer full-time employees or that has gross annual sales of less than $5 million.

If a proposed rule will have **any effect** on small business, the agency must prepare an initial regulatory flexibility analysis describing the types of small businesses that will be affected by the rule, the proposed reporting, bookkeeping, and other procedures required for compliance with the rule, and a description of the types of professional skills necessary for compliance with the rule. The agency's initial regulatory flexibility analysis must be included in the notice of public hearing. If the rule **may have an economic impact** on small business, the agency must submit the rule to the Small Business Regulatory Review Board (SBRRB) on

the same day the rule is submitted to the Legislative Council staff for Clearinghouse review.

The SBRRB must determine whether the rule will have a significant economic impact on a substantial number of small businesses. Unless the SBRRB determines that the rule will **not** have a significant impact on a substantial number of small businesses, the agency also must prepare a final regulatory flexibility analysis for submission to the Legislature with the rule,

Submission of Final Draft Rule to Governor

Following the public hearing on a proposed rule, the agency prepares a final draft rule. The agency must submit the final draft rule to the Governor for written approval before the rule may be submitted to the Legislature. This approval requirement also applies to emergency rules.

The Governor must approve all final draft permanent rules before their submission to the Legislature for committee review, as well as final draft emergency rules.

Committee Review Process

Submittal of Rule to Legislature

Once the Governor has approved a final draft rule, the agency may submit the rule, accompanied by a report, to the Chief Clerk of each house of the Legislature for referral by the presiding officer to a standing committee in each house. The report must contain a number of items including:

- A plain language analysis of the rule.
- An explanation of the basis and purpose of the proposed rule, including how it advances relevant statutory goals or purposes.
- The fiscal estimate, the EIA, and any DOA report regarding the EIA.
- Any recommendations or other material submitted to the agency by the SBRRB and the agency's response.
- A copy of the Clearinghouse Report and a response to the Clearinghouse recommendations, including the specific reasons for rejecting any recommendation.
- A summary of public comments on the rule, the agency's response to those comments, and an explanation of modifications made to the rule as a result of public comments or testimony.
- A list of persons who appeared or registered for or against the rule at any public hearing held by the agency.

- A final regulatory flexibility analysis, unless the SBRRB determined that the rule will **not** have a significant economic impact on a substantial number of small businesses.

Standing Committee Review

When a rule is referred to a standing committee, the committee chair notifies the committee members of the referral and the date on which the committee's jurisdiction ends. Generally, the standing committee review period extends for 30 days after referral of a proposed rule by the presiding officer. However, a committee review period may be extended for an additional 30 days if the committee chair, within the initial 30-day period, takes either of the following actions:

- Requests in writing that the agency meet with the committee to review the proposed rule.
- Publishes or posts a notice that the committee will hold a meeting or hearing to review the proposed rule and immediately sends a copy of the notice to the agency.

A standing committee may let its jurisdiction expire without taking any action or may waive its jurisdiction over the rule during the 30-day review period. The committee may request modifications to the rule or may, for specified reasons, object to the rule.

If a committee, by majority vote of a quorum of the committee, requests modifications to a proposed rule and the agency, in writing, agrees to **consider** making modifications, the review period is extended for both standing committees for 10 days from the time the modifications are received from the agency. An agency may also submit germane modifications on its own. Modifications are accepted under passive review.

A committee may object to all or part of a rule **only** for one or more of the following reasons:

- Absence of statutory authority.
- Emergency relating to public health, safety, or welfare.
- Failure to comply with legislative intent.
- Conflict with state law.
- Change in circumstances since enactment of the earliest law on which the proposed rule is based.
- Arbitrariness or capriciousness, or imposition of an undue hardship.

- For a proposed rule of the Department of Safety and Professional Services establishing standards for dwelling construction, that the rule would increase the cost of constructing or remodeling a dwelling by more than $1,000.

JCRAR Review

When a standing committee's jurisdiction over a proposed rule ends, the rule is referred to JCRAR.

All proposed permanent rules are referred by JCRAR, not just those receiving a standing committee objection. JCRAR is not required to take any action unless a rule received a standing committee objection.

As with the initial reviewing committee, the review period for JCRAR is 30 days, but may be extended for an additional 30 days. If a proposed rule received an objection in a standing committee, JCRAR is required to meet and take executive action and may either nonconcur in the objection, object to the proposed rule, or seek modifications to the rule in the same manner as the initial reviewing committee. JCRAR may, but is not required to, take executive action with respect to any proposed rule that did not receive a standing committee objection. JCRAR may request modifications to a rule and may object to a proposed rule for the same reasons for which the initial reviewing committee may object.

If JCRAR objects to a rule or part of a rule, it must meet and take executive action within 30 days regarding introduction in each house of a bill to support the objection. If either bill becomes law, the agency may not promulgate the rule, or part of the rule, that was objected to, unless a later law specifically authorizes promulgation of the rule.

Late Submission of Rules to Legislature

If the Legislature receives a proposed rule for committee review after the last day of the Legislature's final general business floorperiod in the biennial session, the rule will be considered received on the first day of the next regular session of the Legislature. However, the presiding officers of both houses may direct referral of the rule before that day. In 2014, the last day of the final general business floorperiod was April 3.

Rules submitted to the Legislature after the last day of the final general business floorperiod in a biennium generally will not be considered until the next legislative session.

Emergency Rules

As noted, certain requirements that apply to permanent rules also apply to emergency rules, including the requirement for gubernatorial approval of the scope statement and of the final draft rule. Once the Governor has approved a final draft emergency rule in writing, the agency may publish the rule in the official state newspaper, at which time the rule takes effect, unless the rule specifies another effective date. The agency must also file a certified copy of the rule with the LRB in order for the rule to be valid. On the day an agency files an emergency rule with the LRB that may have an economic impact on small business, the agency must also submit the rule to the SBRRB. Just as for proposed permanent rules, the SBRRB must determine whether the emergency rule will have a significant economic impact on a substantial number of small businesses. If it determines that the rule will have such an impact, the board may submit suggested changes to the agency to minimize the economic impact of the rule.

The Governor must approve final draft emergency rules before they may be published and filed with the LRB.

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.

Treatment of Rules by Legislative Initiative

During the 2013-14 Legislative Session, several bills were enacted that modified administrative rules through legislation rather than by the traditional agency-initiated process. Additionally, ch. 227, Stats., was amended to recognize the treatment of rules by legislative initiative and to reconcile this treatment with other aspects of the rulemaking process. In particular, s. 227.265, Stats., specifies that rules treated by legislative initiative may be subject to future agency-initiated treatment in the same manner as other administrative rules.

Judicial Review of Validity of Rule

The exclusive means of judicial review of the validity of a rule is an action for declaratory judgment brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business. If that party is a nonresident or does not have its principal place of business in Wisconsin, venue is in the circuit court in the county in which the dispute arose.

Challenges of the validity of a rule are brought in the county where the challenging party lives or has its principal place of business.

When a circuit court enters a final order in a declaratory judgment action on the validity of a rule, the court must notify the LRB of the court's determination as to the validity or invalidity of the rule. The LRB must publish a notice of that determination in the Administrative Register and insert an annotation of that determination in the Administrative Code.

JCRAR may suspend an existing rule for specified reasons.

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 and JCRAR may not suspend 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.

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 issuing rules to hold a public hearing with respect to general recommendations of JCRAR and to report its actions to JCRAR within a specified time.

JCRAR may require agencies to promulgate their policies or statutory interpretations as emergency rules.

Action on Current Rules and Guidelines

The SBRRB is authorized to review any **current** agency rule or guideline to determine whether it places an unnecessary burden on small businesses. If the board so determines, it must submit a report and recommendations regarding the rule or guideline to JCRAR. JCRAR may refer the report to the presiding officer of each house of the Legislature for referral to a committee, or JCRAR may itself undertake a review of the rule or guideline.

If JCRAR reviews the report, it must consider all of the following:

- The continued need for the rule or guideline.

- The nature of the complaints and comments received from the public regarding the rule or guideline.
- The complexity of the rule or guideline.
- The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.
- The length of time since the rule or guideline has been evaluated.
- The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since it was promulgated.

The SBRRB may review all current rules and guidelines for an unnecessary burden on small business.

Additional References

1. Information Memorandum 11-15, *Changes to Laws Relating to Administrative Rules*, at: http://www.legis.wisconsin.gov/lc. The Memo provides a detailed description of 2011 Wisconsin Act 21 and other legislation making changes to the rulemaking process.
2. State administrative rules website: https://health.wisconsin.gov/admrules/public/Home. This DOA site allows for searching for rules, viewing the status of current rulemaking, viewing documents associated with rulemaking, submitting and reviewing comments on rules, and subscribing to receive notification of rulemaking.
3. LRB administrative rules website: http://legis.wisconsin.gov/rsb/code.htm. This site provides a link to the entire Administrative Code and current and past issues of the Administrative Register. It also has links to emergency rules in effect and final administrative rule orders filed for publication, as well as to proposed rules, Clearinghouse Reports, and agency reports, searchable by Clearinghouse Rule number.
4. 2013 Annual Report of the Legislative Council Rules Clearinghouse, February 2014: http://www.legis.wisconsin.gov/lc. This statutorily required Annual Report to the Governor and Legislature explains the rule review functions and related responsibilities of the Rules Clearinghouse, and activities of the Clearinghouse in 2013. It also includes a sample Clearinghouse Report and rule processing instructions for agency heads.

Glossary

Executive Order #50: An executive order issued by Governor Walker in November 2011, to impose additional rulemaking requirements and provide detailed rule promulgation guidance to state agencies.

JCRAR: The Joint Committee for Review of Administrative Rules is a joint legislative committee that plays a key role in reviewing administrative rules, including emergency rules. Among other functions, JCRAR may grant extensions for emergency rules and suspend current emergency or permanent rules in specified circumstances.

Legislative Council Rules Clearinghouse: The Rules Clearinghouse is housed at the Legislative Council and reviews all proposed permanent rules for statutory authority, clarity and use of plain language, form, and style.

SBRRB: The Small Business Regulatory Review Board is comprised of seven representatives of small business, and a Senator and a Representative involved with legislative committees relating to small business. Agencies must refer rules that may have an economic impact on small business to the SBRRB for review. The board also has authority to review **current** agency rules to determine whether they place an unnecessary burden on small businesses.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 6 – OPEN MEETINGS LAW

The Open Meetings Law was created in 1959 and revised substantially in 1976. The law requires that meetings of governmental bodies be conducted in open session, with certain exceptions, and be preceded by a notice of the meeting. The law is set forth in ss. 19.81 to 19.98, Stats.

Margit Kelley, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Purpose 1
Definitions 1
Requirements of the Law 2
Open Session 2
Notice 3
Voting 3
Recording Devices 4
Requirements for Legislative Meetings 4
Specific Exceptions to Open Meetings Requirements 4
Limited Notice Allowed 4
Closed Session Allowed 5
Closed Session Procedure 6
Enforcement and Penalties 6
Enforcement 6
Penalties 7
Glossary 7

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

PURPOSE

The Open Meetings Law contains a declaration of policy, stating that:

- A representative government of the American type is dependent upon an informed electorate.
- The public is entitled to the fullest and most complete information regarding governmental affairs as is compatible with the conduct of governmental business.
- To implement and ensure this policy, all meetings of state and local governmental bodies must be publicly held in places reasonably accessible to the public and must be open to all citizens at all times, unless otherwise expressly provided by law.

The declaration of policy further prescribes that the Open Meetings Law is to be liberally construed in order to achieve its purposes.

DEFINITIONS

The Open Meetings Law provides specific definitions for the terms "governmental body," "meeting," and "open session."

Governmental Body

A governmental body is any state or local agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, statute, ordinance, rule, or order; a governmental or quasi-governmental corporation (except for the Bradley Center Sports and Entertainment Corporation); a local exposition district; or a long-term care district.

The term includes a formally constituted subunit of any of these bodies. The term excludes a committee or subunit that is formed for or meeting for the purpose of public employee collective bargaining.

Meeting

A "meeting" is defined as the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power, or duties delegated to or vested in the body.

The definition creates a rebuttable presumption that if half or more of the members of a governmental body are present, the meeting is presumed to be for the purpose of exercising the powers vested in that governmental body.

The definition excludes any social or chance gathering or conference that is not intended to avoid the Open Meetings Law. In addition, the definition excludes gatherings of members of a town board, town sanitary district, or drainage board, for inspecting, observing, or

supervising at the site of a public works project, although limited notice and reporting may be required.

Open Session

An "open session" is defined as a meeting that is held in a place that is reasonably accessible to members of the public and is open to all citizens at all times. In the case of a state governmental body, it means a meeting that is held in a room, and a building, that enables access by persons with physical disabilities.

REQUIREMENTS OF THE LAW

Open Session

The law generally requires every meeting of a governmental body to be held in open session. Consequently, all discussions of a governmental body, and any action, whether formal or informal, must be initiated, deliberated upon, and acted upon only in open session, except as specifically exempted by statute.

The law presumes that if one-half or more of the members are present, the gathering is a meeting to exercise the authority and duties vested in the body.

A duly elected or appointed member of a governmental body may not be excluded from any meeting of that body. Likewise, a member of the full governmental body may not be excluded from any meeting of a subunit of that body, unless the body's rules provide otherwise.

Negative Quorum

The applicability of the Open Meetings Law to a gathering of less than one-half of the members of a governmental body has been addressed by the Wisconsin Supreme Court. The case involved an unannounced, private meeting of four members of the 11-member Milwaukee Metropolitan Sewerage Commission. The subject of the meeting was the commission's proposed operating and capital budgets. Adoption of these budgets required a 2/3rds vote of the commission (i.e., eight votes), and four members was a sufficient number to block adoption. Such a gathering of enough members that could be sufficient to block an action of the full body was labeled as a "negative quorum." [*State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77 (1987).]

The court provided a two-part test to determine when a gathering constitutes a negative quorum and triggers the Open Meetings Law. Under the test, such a meeting is subject to the law if: (1) the members have convened for the purpose of engaging in governmental business, whether discussion, decision-making, or information gathering; and (2) the number of members present is sufficient to determine the governmental body's course of action on the subject under discussion.

Walking Quorum

The applicability of the Open Meetings Law to a series of informal discussions between small numbers of the body's members has been addressed by the Wisconsin courts and the state Attorney General. This is commonly referred to as a "walking quorum," and such series of small-group meetings that occur with the implied or express agreement to act uniformly in a sufficient number to reach a quorum may only be held with proper notice and accessibility.

The essential danger identified by the courts with a walking quorum is that it may produce a predetermined outcome and simply render the public meeting a mere formality. According to an informal opinion by the Attorney General, use of administrative staff to individually poll members regarding how they would vote on a proposed motion is a prohibited walking quorum.

If, however, there is no implied or express agreement to act uniformly in sufficient number to reach a quorum, a series of informal exchanges among separate groups of members may occur without violating the Open Meetings Law.

Notice

Public notice of meetings must be given by the governmental body's chief presiding officer, or a designee, to news media that have filed a written request for notice, and to the governmental body's official newspaper. If no official newspaper exists, notice must be communicated to a news medium likely to give notice in the area.

Generally, notice must be given at least 24 hours in advance of a meeting. In some circumstances, shorter advance notice may be given, if given at least two hours before a meeting.

The meeting notice must specify each meeting's time, date, place, and subject matter. Notice must be given at least 24 hours before the commencement of the meeting. If there is good cause why a 24-hour notice is impossible or impractical, a shorter notice may be given; however, in no case may notice be provided less than two hours before the meeting.

Voting

Unless otherwise specifically provided by statute, a secret ballot may not be used to determine elections or the decisions of a governmental body, except for the election of officers. A member of a governmental body may require that each member's vote on any question be ascertained and recorded, other than a vote for election of officers. Motions and roll call votes of each

Meetings called solely to schedule business before a legislative body do not have to comply with the public notice requirements of the law.

governmental body meeting must be recorded, preserved, and open to public inspection to the extent required by the Open Records Law.

Recording Devices

A governmental body holding a meeting in open session must make a reasonable effort to accommodate anyone who wishes to record, film, or photograph the meeting, unless these activities interfere with the conduct of the meeting or the rights of the participants.

Requirements for Legislative Meetings

The Wisconsin Constitution, Article IV, Section 10, provides that for legislative proceedings the "doors of each house shall be kept open except when the public welfare shall require secrecy." The statutes declare that in conformance with this constitutional provision it is the intent of the legislature to comply to the fullest extent with the Open Meetings Law. Accordingly, the statutes provide that meetings of the Senate, Assembly, committees, and subcommittees are subject to the Open Meetings Law, except in certain circumstances.

The statutes specifically provide that if a provision of the Open Meetings Law conflicts with a Senate or Assembly rule or a joint rule of the Legislature, and the legislative meeting is conducted in compliance with that rule, the conflicting provision of the Open Meetings Law does not apply. On this issue, the Wisconsin Supreme Court has held that the Legislature may interpret its own rules of proceedings, and the Court will generally decline to review the validity of the procedures used by the Legislature. [*State ex. rel. Ozanne v. Fitzgerald*, 2011 WI 43; citing *State ex. rel. La Follette v. Stitt*, 114 Wis. 2d 358 (1983).]

Under the law, meetings called solely for the purpose of scheduling business are not subject to the notice requirements.

In addition, the Open Meetings Law does not apply to a partisan caucus of the Senate or Assembly, except as provided by legislative rule. The Wisconsin Supreme Court has interpreted this to mean that the Open Meetings Law also does not apply to a partisan caucus of a legislative committee, except as may be provided by legislative rule. [*State ex. rel. Lynch v. Conta*, 71 Wis. 2d 662 (1976).]

Specific Exceptions to Open Meetings Requirements

Limited Notice Allowed

Departments and subunits of the University of Wisconsin System are exempt from the specific public notice requirements set forth above. These entities must, however, provide notice

A governmental body meeting for the purpose of negotiating or formulating strategy for collective bargaining may meet in closed session. However, a governmental body may not consider the final ratification or approval of a public employee collective bargaining agreement at a closed meeting.

reasonably likely to inform interested persons, as well as news media that have filed written requests for notice.

A subunit of a governmental body (such as a subcommittee) may conduct a meeting during a lawful meeting of its parent body, during the meeting's recess, or immediately after the parent body meets, for the purpose of discussing or acting on a subject that is also the subject of the meeting of the parent body, without a separate public notice. The parent body's presiding officer must publicly announce the time, place, and subject matter of the subunit's meeting in advance at the parent body's meeting.

Closed Session Allowed

A meeting of a governmental body may be convened in closed session only for specific enumerated purposes. These purposes are:

- Deliberating concerning a case that was the subject of any judicial or quasi-judicial trial or hearing before the particular governmental body.
- Considering dismissal, demotion, licensing, or discipline of a public employee or a person licensed by a board or commission, the investigation of charges against such a person, or considering the grant or denial of tenure for a university faculty member, and taking formal action on any such matter. Under the law, the affected person must receive actual notice of any evidentiary hearing and of any meeting at which final action may be taken. The notice must state that the person has a right to demand that the evidentiary hearing or meeting be held in open session.
- Considering employment, promotion, compensation, or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- Considering specific probation, extended supervision, or parole applications, or considering strategy for crime detection or prevention.
- Deliberating or negotiating the purchasing of public properties, investing public funds, or conducting other specified public business, if competitive or bargaining reasons require a closed session.
- Deliberating in a meeting by the Unemployment Compensation Advisory Council or the Worker's Compensation Advisory Council at which all employer members of the Council or all employee members of the Council have been excluded.
- Deliberating the preservation of burial sites if the location of a burial site is a subject of the meeting and if discussing the location in public would be likely to result in disturbance of the burial site.
- Considering financial, medical, social, or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems, or the investigation of charges against specific persons, in which public discussion would likely

have a substantial adverse effect on the reputation of any person referred to in the histories or data, or involved in the problems or investigations.

- Conferring with the governmental body's legal counsel who is rendering oral or written advice concerning strategy to be adopted regarding litigation in which the body is or is likely to become involved.

- Considering a request for confidential written advice from the Government Accountability Board (GAB) or from a local governmental ethics board.

In addition, the law requires the GAB to meet in closed session for the purpose of deliberation concerning an investigation of any violation of the law under the jurisdiction of the GAB's Ethics and Accountability Division, after a proper vote to convene in closed session.

Closed Session Procedure

The Open Meetings Law establishes a procedure that must be followed when a meeting of a governmental body goes into closed session. The requirements are as follows:

- The chief presiding officer of the governmental body must announce to those present at an open meeting the nature of the business to be considered in a closed session and the specific exemption under which the closed session is claimed to be authorized. The announcement must be made part of the record of the meeting.

- A motion to convene in closed session must be made and adopted by majority vote. The vote must be conducted in such a manner that each member's vote is ascertained and recorded in the meeting's minutes.

- The business to be taken up at the closed session is limited to the matters contained in the presiding officer's announcement of the closed session.

- A governmental body may not commence an open meeting, then convene in closed session, and thereafter reconvene in open session within 12 hours after completing the closed session, unless public notice of the subsequent open session was given at the same time and in the same manner as the public notice of the meeting held prior to the closed session.

Enforcement and Penalties

The Department of Justice's *Open Meetings Law Compliance Guide* is available at:

http://www.doj.state.wi.us/dls/open-government

Enforcement

The Open Meetings Law is enforced by the Attorney General in the name and on behalf of the state, or by the district attorney of any county on the complaint of any person that a violation may have occurred. Any person may request advice

from the Attorney General as to how the Open Meetings Law applies under any circumstance.

The Attorney General or district attorney may commence an action, separately or in conjunction with a forfeiture action, to obtain appropriate legal or equitable relief, including mandamus, injunction, or declaratory judgment. A court may hold an action void only if it finds that, under the facts of the particular case, the public interest in enforcing the Open Meetings Law outweighs any public interest in sustaining the validity of the action taken at the meeting.

If a district attorney refuses or fails to begin a lawsuit to enforce the Open Meetings Law within 20 days after receiving a verified complaint, the person making the complaint may commence a lawsuit in the name and on behalf of the state. The court may award actual and necessary costs of prosecution, including reasonable attorney fees, to the person who commenced the lawsuit if the person prevails. Any forfeiture imposed is paid to the state.

Penalties

A member of a governmental body who knowingly attends a meeting of the body held in violation of the Open Meetings Law, or who violates the law by some other act or omission, is subject to a nonreimbursable forfeiture of not less than $25 nor more than $300 for each violation.

A member of a governmental body is not liable for attendance at a meeting held in violation of the law if the person makes or votes in favor of a motion to prevent the violation from occurring, or if, on any relevant motions prior to the violation, the person's votes are inconsistent with the circumstances causing the violation.

Any forfeitures recovered, together with reasonable costs, are awarded to the state in actions brought by the Attorney General and to the county in actions brought by a district attorney.

GLOSSARY

Governmental business: Formal or informal action, including discussions, decision-making, and information-gathering on matters within a governmental body's realm of authority.

Negative quorum: A gathering of a number of members sufficient to affirmatively or negatively affect a governmental body's course of action, if the gathering is for the purpose of engaging in governmental business.

Open Meetings Law: The Wisconsin statutes that require a governmental body to open its meetings to public access. [ss. 19.81 to 19.98, Stats.]

Quorum: Usually, a majority of the current membership of a governmental body that constitutes a sufficient number for the transaction of business, unless a higher number is specifically required for certain business.

Walking quorum: A series of discussions between small numbers of a governmental body's members, with the implied or express agreement to act uniformly in a sufficient number to reach a quorum.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 7 – OPEN RECORDS LAW

The Wisconsin Open Records Law governs public requests for government information. The declared policy of the Open Records Law is to entitle the public to the "greatest extent possible information regarding the affairs of government and the official acts of those officers and employees who represent them" in order to ensure an informed electorate. The Open Records Law further indicates that providing the public with such information is an "essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information."

Dan Schmidt, Principal Analyst
Wisconsin Legislative Council

Table of Contents

Open Records Law 1
Responding to Open Records Requests 2
Clarify, in Advance, Who is the "Custodian" of the Office's Records 2
Respond Reasonably Promptly to a Request 2
Respond to a Request in Kind 3
Demand That a Request be Reasonably Specific 3
Seeking Identity of Requester; Purpose of Request 3
Decide if the Requested Material is a "Record" 4
Make a Decision on the Request 4
Denial of a Request 5
Partial Denial 6
Provide Copies on Request 7
Additional References 7
Glossary 7
Sample Letters 8

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Open Records Law

Much of the material in a legislator's office or kept by a legislator qualifies as a public "record" under Wisconsin's Open Records Law. [ss. 19.31 to 19.39, Stats.] This material is required to be available for inspection and copying by the public, including the news media.

As an example, correspondence from and to a constituent is a public record and generally is open to inspection. Although personal correspondence between individuals is usually thought to be private, legislators are public officials and correspondence with them is public, unless the Open Records Law provides a reason to deny access. For example, in certain circumstances, a legislator may redact from a letter personally identifiable information about a constituent.

Legislators are advised, prior to responding to a request to inspect records, to seek additional advice beyond that set out in this chapter. Legislative leaders can provide pragmatic and political advice. Legislative Council staff can provide procedural advice, as can the Wisconsin Department of Justice (DOJ). DOJ publishes a *Wisconsin Public Records Law Compliance Outline*, available at:

http://www.doj.wisconsin.gov/site/ompr.asp

The general rule under the Open Records Law is that all records held by a legislator are open to the public unless a specific provision in the law allows the records to be kept confidential. This rule embodies the public policy of the state that all persons should have the greatest possible information about the decisions and activities of state and local government. In practice, very few requests to inspect or copy records are denied.

The purpose of this chapter is to set forth the steps a legislator may take to deal with an open records request.

A decision to deny access to a record should be made very carefully, since it may be challenged--in court, in the news media, or in partisan debate. Not only are decisions to deny access to records legally and politically sensitive, but the law on public records is complex and difficult to apply in specific instances. This document describes the statutes that constitute the Open Records Law. In addition to the statutes, the Wisconsin courts have interpreted and applied the Open Records Law in a number of cases. Certain constitutional provisions also may apply to a given request for access to legislative records. The constitution, statutes, and cases constitute the legal basis for decisions to release or deny access to records.

The Open Records Law and the court cases are technical and do not provide a straightforward guide to decisions on record requests. This document describes the statutes in plain language, but even this document cannot fully guide a legislator's decisions in the variety of situations that may arise.

Responding to Open Records Requests

Clarify, in Advance, Who is the "Custodian" of the Office's Records

The custodian is the person in a legislator's office who responds to a request to inspect records.

The custodian is the person who responds to a request to inspect records. Each legislator is automatically the custodian of his or her records, unless an office staff member is designated as custodian. A legislator and his or her staff should have a clear understanding of who makes the decisions when responding to a request to inspect records.

In most cases, it appears preferable that a legislator retain the role of custodian of his or her records, since the legislator is the person directly affected by an inappropriate release or denial of records. Note, however, that in the event that a request is made during a period of time that a legislator is unavailable (e.g., a vacation), action on the request will be delayed. The law makes no provision for appointment of a temporary custodian under such circumstances.

Respond Reasonably Promptly to a Request

A response to a record request must be made "as soon as practicable and without delay." Simple requests should be answered within 10 working days.

A response to a record request must be made "as soon as practicable and without delay" under the law. In practical terms, a custodian may need some amount of time to retrieve and inspect the record before formulating a response. The Attorney General has indicated that 10 working days is a reasonable time period for a simple request for easily identifiable records. Complex or extensive requests may take considerably longer.

An oral request may be responded to orally. A written request must be responded to in writing.

The response to a request for a record is either: (1) to provide the record; or (2) to deny the request in whole or in part. If a written request is denied, the reasons for the denial must be given in writing.

Respond to a Request in Kind

If the request is made orally, and is going to be denied, the denial may be made orally. If a requester who was orally denied a request later demands a written statement of denial, and the demand is made within five business days of the oral denial, the written statement must be provided.

If a request is made in writing, the response must be in writing giving the reasons for the denial. Written responses denying or redacting from written requests must include this statement: "This determination is subject to review by mandamus under s. 19.37 (1), Stats., or by application to the Attorney General or a district attorney."

Demand That a Request be Reasonably Specific

A request must be honored if it "reasonably describes the requested record or the information requested." However, requests to go through an office's files (a "fishing expedition") do not have to be honored.

For example, requests such as the following must be given a response: "All constituent mail on Assembly Bill 000" and "all correspondence on the Highway XO project in your district."

There is no blanket exemption for constituent mail. In most cases, it is a "record," although in certain circumstances, a legislator may redact from a letter personally identifiable information about a constituent.

Also, there is no blanket exemption for constituent mail--in most cases, it is a "record," although in certain circumstances a legislator may redact from a letter personally identifiable information about a constituent.

Seeking Identity of Requester; Purpose of Request

A record request may not be denied because the requester refuses to provide identification or to state the purpose of the request. However, if the record is at a private residence, or valid security reasons exist, a requester may be required to show acceptable identification. Also, if it is known that a person making a record request is an incarcerated person or a person committed to an inpatient treatment facility, a legislator is under no obligation to respond to the request, unless:

A request may not be denied because the requester refuses to provide identification or to state the purpose of the request.

- The record contains specific references to the person or to his or her minor children to whom he or she has not been denied physical placement.
- The record is otherwise accessible to the person by law.

Decide if the Requested Material is a "Record"

A "record" is any material which bears information, regardless of form ("written, drawn, printed, spoken, visual, or any other medium on which electronic data is stored") and which was created by or is being kept by a custodian, except any of the following:

- Personal property of the legislator that has no relation to his or her office of legislator.
- Drafts, notes, preliminary computations, and similar material prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working.
- Material to which access is limited by copyright, patent, or bequest.
- Published materials that are available for sale or are available at a public library.

A "record" is any material which bears information, regardless of form and which was created or is being kept by a custodian.

If the requested material falls into one of the above exceptions, it is not a "record" and the request may be denied for that reason.

Make a Decision on the Request

It is the public policy of the state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. The open records law is to be construed with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest. Access may be denied only in exceptional cases--that is, under specific statutory or common law exemptions and in cases where it can be demonstrated that the harm done to the public interest by disclosure outweighs the right of access to public records. The measurement of harm done to the public interest by disclosure versus access to public records is commonly called the "balancing test."

The "balancing test" seeks to measure harm done to the public interest by disclosure against the right of access to public records.

If a record requester appears in person, a legislator may permit the person to photocopy the record or provide the person with a copy substantially as readable as the original. Similar provisions apply to records in an audio, video, photographic, or computer format. The legislator must provide a record requester with facilities comparable to those used by employees to inspect, copy, and abstract the record during established office hours.

However, the legislator is not required to purchase new equipment or provide a separate room for a record requester.

If a legislator decides to provide access to a record, a person identified in the record must be given an opportunity to seek judicial review of the decision prior to release of the record if any of the following apply:

- The record is the result of an investigation into an employee disciplinary matter.
- The record is obtained through a subpoena or search warrant.
- The record is prepared by an independent contractor and it contains information relating to an employee of the independent contractor.

See sample letter #1 at the end of this chapter for an example of a letter granting an open records request.

However, in the case of any record containing information identifying a state or local public official, a legislator, prior to the release of the record, must provide the official with an opportunity to augment the record with written comments and documentation.

Denial of a Request

In some instances, access to records may be denied. However, any written denial must specifically cite a statutory or common law exemption or demonstrate that there is a need to restrict public access at the time the request is made. The exemptions in the Open Meetings Law are used as a guide for denial. The applicable exemptions in that law are:

- Deliberating concerning a case that was the subject of any judicial or quasi-judicial trial or hearing before the particular governmental body.
- Considering dismissal, demotion, licensing, or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such a person and taking formal action on any such matter.
- Considering employment, promotion, compensation, or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- Deliberating or negotiating purchasing of public properties, investing public funds, or conducting other specific public business, if competitive or bargaining reasons require a closed session.

- Considering financial, medical, social or personal histories, or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons, in which public discussion would likely have a substantial adverse effect on the reputation of any person referred to in such histories or data, or involved in the problems or investigations.

Legislative Council staff can advise a legislator of the exemptions in the Open Records Law.

- Conferring with the governmental body's legal counsel who is rendering oral or written advice concerning strategy to be adopted regarding litigation in which the body is or is likely to become involved.

- Considering a request for confidential written advice from the Government Accountability Board, or from any local government ethics board.

- Considering matters related to acts by businesses under the state's Economic Adjustment Program (where a business is shutting down or laying off employees) in which public discussion could adversely affect the business, its employees, or its former employees.

See sample letter #2 at the end of this chapter for an example of a denial of a request.

(In addition to the above, meetings can also be closed to discuss probation or parole applications, crime fighting strategy, burial sites, and certain Unemployment Insurance Advisory Council and Worker's Compensation Advisory Council matters. In specific situations, these less-common grounds may be applicable to a record request made to a legislator.)

The Wisconsin Supreme Court has stated that access to information collected under a pledge of confidentiality, where the pledge was necessary to obtain the information, may be denied. The Open Records Law also exempts records from access if: (1) federal or state law requires nondisclosure; (2) the record is a computer program; (3) the record is a trade secret; or (4) the record contains specified personal information regarding an employee. Other statutory and common law exemptions exist--a legislator can be advised of the exemptions in the Open Records Law by Legislative Council staff.

Partial Denial

If a portion of a record qualifies for confidential treatment, the remainder must be released. In those instances, a legislator should either separate the confidential information, or delete it and release the remainder.

Provide Copies on Request

Persons having a right to inspect a record are entitled to a copy, if they ask for it. The custodian should copy the record in order to retain control over the original record. A fee for copying, which does not exceed the actual copying cost, may be charged based on per copy charges established by the chief clerk in each house. A search fee also may be imposed, but only if the cost of the search is $50 or more.

A fee may be charged for copies based on copying charges established by the chief clerk in each house.

In 2012, the Wisconsin Supreme Court released a decision [*Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65] that altered the way legislative offices may respond to open records requests. Prior to this decision, Legislative Council staff had indicated that legislative offices could charge open records requesters for the costs associated with the redaction of data that was determined to be closed under the Open Records Law. This recommendation was based on the lower court decision that permitted a record custodian to charge for the costs associated with the time spent redacting nonreleasable data from records. The Supreme Court reversed this decision, concluding that the City of Milwaukee, as record custodian in this case, "may not charge the Newspaper for the costs, including staff time, of redacting information." The Court further clarified that it came to its decision because redaction costs do not fit within the fees permitted to be charged under s. 19.35 (3), Stats. Therefore, it is no longer permissible for record custodians to charge for the cost of redaction.

Additional References

Wisconsin Public Records Law Compliance Outline, Wisconsin Department of Justice (August 2012), http://www.doj.state.wi.us/dls/open-government.

Wisconsin Open Meetings Law Compliance Outline, Wisconsin Department of Justice (August 2010), http://www.doj.state.wi.us/dls/open-government.

Glossary

Balancing test: Seeks to weigh the harm done to the public interest by disclosure of records against the right of access to public records.

Custodian: The person in a legislator's office who responds to a request to inspect records.

Record: Any material which bears information, regardless of form and which was created or is being kept by a custodian.

SAMPLE LETTERS

1. Granting a Request

Dear ___ _____:

This letter is written in response to your open records request addressed to me, dated ____ __, ____, in which you request:

_____<Insert Request>_____

Your request has produced _____records. At the rate of $.15 per page for copying, the copying cost is $_____. Please make payment in the form of a check to "State of Wisconsin" and send it to:

Wisconsin State Senate
c/o Jeff Renk, Assistant Chief Clerk
P.O. Box 7882
State Capitol, Room B20SE
Madison, WI 53707

You may pick up the results of your request at my office following payment. If you have any questions concerning this response, please feel free to contact me.

Sincerely,

Senator _____
___ Senate District

2. Denying a Request on the Basis of Overbreadth

Dear ___ _____:

This letter is written in response to your open records request addressed to me, dated ____ __, ____, in which you request:

All emails received by my office.

I am denying this request on the basis of s. 19.35 (1) (h), Stats., which requires that a record request must have a "reasonable limitation as to subject matter or length of time represented by the record." Your request specifies neither of these factors and is therefore, in my estimation, overbroad.

If you have any questions concerning this response, please feel free to contact me. Pursuant to s. 19.35 (4) (b), Wis. Stats., this reply is subject to review by mandamus under s. 19.37 (1), Wis. Stats., or by application to the Attorney General or a district attorney.

Sincerely,

Representative _____
___ Assembly District

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 8 – INTERSTATE LEGISLATIVE ORGANIZATIONS

State legislatures across the country face many similar challenges and policy decisions. As a result, legislators frequently ask for information about legislative approaches used in other states when developing policy for the State of Wisconsin. Wisconsin is a member of several national legislative organizations that serve as good resources for obtaining this type of information. The organizations also host conferences and briefings for legislators and legislative staff to provide information about policy issues and to build connections between legislators from different states.

Katie Bender-Olson, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Background 1
National Conference of State Legislatures (NCSL) 1
Purpose 1
Governance 2
Membership 2
Financial Support 2
Meetings 3
Council of State Governments (CSG) 3
Purpose 3
Governance 3
Membership 4
Financial Support 4
Meetings 4
The Uniform Law Commission (ULC) 4
Purpose 4
Governance 4
Membership 4
Financial Support 5
Meetings 5
Education Commission of the States (ECS) 6
Purpose 6
Governance 6
Membership 6
Financial Support 6
Meetings 7
Midwest Higher Education Commission (MHEC) 7
Purpose 7
Governance 7
Membership 7
Financial Support 8
Meetings 8

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

BACKGROUND

Interstate legislative organizations serve several functions on behalf of state legislatures. First, the organizations collect and provide information to aid in state policy development. Many of these organizations compile issue-based summaries of state legislation, offer briefings and background on various policy areas, and disseminate information directly to legislators and staff.

Second, interstate legislative organizations host conferences or meetings for legislators and legislative staff. These meetings provide seminars on policy areas and current topics faced by states. The meetings also provide an opportunity for legislators and staff to interact with their counterparts in other states, with representatives of non-legislative governmental institutions, and with private sector organizations.

Third, interstate legislative organizations represent the views of state legislatures at the federal level. The organizations may develop policy statements and take positions on federal issues that affect state governments, and convey these positions to federal lawmakers and agencies.

Finally, interstate legislative organizations promote and work toward state cooperation and consistency in state laws in areas where such uniformity is desirable.

This chapter provides an overview of the interstate legislative organizations to which Wisconsin belongs through a charter or a legislative appropriation.

NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL)

Purpose

NCSL CONTACT INFORMATION:

http://www.ncsl.org

Denver Headquarters
(303) 364-7700

Washington, D.C. Office
(202) 624-5400

STAFF CONTACT FOR WISCONSIN (Denver Office):

Wendy Underhill
wendy.underhill@ncsl.org

NCSL was founded in 1975 and resulted from the merger of three legislative groups: the National Legislative Conference, the National Conference of State Legislative Leaders, and the National Society of State Legislators.

The purposes and objectives of NCSL, as stated in its bylaws, are to: (1) advance the effectiveness, independence, and integrity of the legislatures in the states, territories, and commonwealths of the United States; (2) foster interstate cooperation and facilitate information exchange among state legislatures; (3) represent the states and their legislatures in the American federal system of government consistent with support of state sovereignty and state flexibility and protection

from unfunded federal mandates and unwarranted federal preemption; (4) improve the operations and management of the state legislatures and the effectiveness of legislators and legislative staff and encourage the practice of high standards of conduct by legislators and legislative staff; and (5) promote cooperation between state legislatures in the U.S. and legislatures in other countries.

NCSL is a nonpartisan organization that represents and supports state legislators from all political parties. The organization does not participate or intervene in any political campaign and is expressly prohibited from doing so by the organizational bylaws.

Governance

The NCSL Executive Committee is the governing body of the organization and is comprised of legislators and legislative staff. The executive committee and conference officers supervise and control the affairs of the conference, direct its committees and publications, implement policies, and supervise the disbursement of funds.

Membership

NCSL's membership consists of the legislatures of each of the 50 states, the District of Columbia, each of the territories of the United States, and the Commonwealth of Puerto Rico.

Financial Support

NCSL is financed by appropriations from member legislatures, as determined by the 60-member executive committee. Each state is assessed a flat-rate charge, plus an amount prorated based on population. NCSL also receives support from the NCSL Foundation for State Legislatures, a nonprofit tax-exempt 501 (c) (3) corporation.

NCSL offers several publications and research services:

***NCSL Today*, a daily e-newsletter that covers state-related news stories and research, publications, and multi-media from NCSL.**

***State Legislatures*, a national magazine of state government and politics published 10 times a year featuring articles on significant state and federal public policy issues from all 50 states.**

***LegisBrief*, two-page reports summarizing emerging issues facing state legislatures.**

***Capitol to Capitol*, an information service that provides updates to legislators and staff on federal legislation and events in Washington, D.C.**

***Bill Information Service* (BIS), a 50-state search engine containing the full-text of bills, bill status, and other bill information, as well as featured searches for selected current issues.**

Meetings

NCSL hosts an annual legislative summit in July or August, as well as a Fall Forum.

NCSL also conducts in-depth legislative training programs and seminars for legislators and staff on particular issues of importance to state legislatures.

Council of State Governments (CSG)

Purpose

CSG was founded in 1933 and is a nonpartisan interstate organization serving all three branches of state and U.S. territorial governments. The organization is a region-based forum that helps state officials exchange ideas to assist them in shaping public policy. Wisconsin is served by the Midwest forum, which includes 11 states as members and four Canadian provinces as affiliate members. CSG provides policy expertise and resources on best practices, facilitates multistate solutions, fosters leader to leader interactions, and advocates for the states at the federal level.

Governance

The CSG Executive Committee has general authority over the funds, property, and management of CSG. The committee is comprised of a variety of officials, including State Legislators, Governors, Chief Justices, Attorneys General, State Treasurers, and Secretaries of State.

CSG offers the following publications and research tools:

***The Book of the States*, an annual encyclopedia of information on state governments nationwide.**

***CSG's Suggested State Legislation*, a compilation of noteworthy legislation in the states.**

***CSG Knowledge Center*, an interactive website containing hundreds of policy reports, blogs, and other policy items.**

***Capitol Ideas*, a bi-monthly magazine and e-newsletter featuring articles and reports on key state and national public policy issues.**

***Stateline Midwest*, a monthly newsletter focused on key policies and trends of interest to the Midwest and its elected officials.**

Membership

CSG CONTACT INFORMATION:

http://www.csg.org

CSG Headquarters
Lexington, KY
(859) 244-8000

Midwest Office
Lombard, IL
(630) 925-1922

STAFF CONTACT FOR WISCONSIN:

Kate Tormey
ktormey@csg.org
Midwest Office

CSG's membership consists of all 50 states, the District of Columbia, and five U.S. territories.

Financial Support

CSG is supported, in part, through direct contributions by the states and other U.S. jurisdictions. Each state's assessment is calculated from a base fee amount and a population factor for that state. CSG administers federal and private foundation grants that support research and information-gathering projects on topics of interest to state officials. The organization also generates revenue from publication sales and by conducting workshops and conferences.

Meetings

CSG holds an annual National Leadership Conference, as well as annual meetings for the regional conferences.

The Uniform Law Commission (ULC)

Purpose

The ULC was founded in 1892 and is a nonprofit association that serves the states by drafting state laws on subjects where uniformity is desirable and practicable. The ULC drafts uniform or model acts for individual states to consider and enact.

ULC CONTACT INFORMATION:

http://www.uniformlaws.org

Chicago, IL
(312) 450-6600

STAFF CONTACT:

John A. Sebert
Executive Director
john.sebert@uniformlaws.org

Governance

The Executive Committee is responsible for implementing the policies adopted by the ULC at its meetings, as well as the duties and powers prescribed by the organization's constitution and bylaws.

Membership

The ULC is comprised of more than 300 commissioners from all 50 states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico. A commissioner is typically appointed by the Governor of his or her state or by the state's legislature. ULC commissioners must be attorneys and serve on a volunteer basis.

Wisconsin's ULC representatives are selected as specified in s. 13.55, Stats., which provides for eight commissioners: the Director of the Legislative Council staff or a designee (no specified term); the Chief of the Legislative Reference Bureau or a designee (no specified term); two Senators and two Representatives from the two major political parties (two-year term); and two public members appointed by the Governor (four-year term). If a Senator or Representative is unable to serve, a former Senator or Representative may serve instead as long as the person is from the respective house and political party and served as a commissioner during his or her term of office. Wisconsin's commissioners not only represent Wisconsin at ULC meetings, but also comprise a separate commission, the Wisconsin Commission on Uniform State Laws (WCUSL), authorized under s. 13.55, Stats. WCUSL meets at least once every two years and advises the Wisconsin Legislature on uniform laws and model laws and prepares uniform law legislation to be introduced into the Legislature.

Financial Support

The ULC is primarily supported by state appropriations. Every jurisdiction is also asked to fund its commissioners' participation at the ULC annual meeting. In addition, ULC seeks revenue from publication of uniform laws and grants from private foundations and public agencies.

Meetings

The ULC holds an annual meeting, usually in July or August. Drafting and study committees also meet at various other times throughout the year.

The following publications are produced by ULC:

***Guide to Uniform and Model Acts*, a guide to uniform acts designed to assist legislators, legislative drafting bureaus, commissioners, and others interested in state legislation in understanding acts promulgated by ULC and recommended for enactment.**

***Annual Report*, a year-end publication listing ULC's international efforts, tribal government activities, fiscal report, committee reports, and all uniform acts promulgated by ULC.**

***ULC Quarterly Report*, a report published four times a year highlighting drafting news from ULC's various drafting committees, study committees, and standing and governance committees.**

Education Commission of the States (ECS)

Purpose

ECS CONTACT INFORMATION:

http://www.ecs.org

Denver, CO
(303) 299-3600

STAFF CONTACT:

Heidi Normandin
hnormandin@ecs.org

ECS was founded in 1965 and helps states develop effective policy and practice for public education. ECS conducts policy research, tracks state education policy trends, provides advice and policy assistance to states, and fosters nationwide leadership and collaboration in education. ECS is a nonpartisan organization that works on issues at all levels of education from pre-K to postsecondary.

The commission's outreach and collaborative efforts serve two major purposes: (1) bringing information into ECS to better understand the issues and problems facing their constituents; and (2) providing the ECS with opportunities to assist policymakers with complex education decisions.

Governance

The ECS Executive Committee has day-to-day oversight of the organization and a Steering Committee of Commissioners maintains broad oversight of ECS.

Membership

Forty-nine states, three territories, and the District of Columbia have enacted the Interstate Compact on Education and are members of the commission. Each member state or territory has seven commissioners. The seven-member Wisconsin delegation consists of the Governor, the State Superintendent of Public Instruction, one member each from the Senate and Assembly, and three members appointed by the Governor.

ECS provides the following publications:

***E-Clips*, published electronically on a daily basis, listing education articles from newspapers around the country.**

***E-Connections*, a weekly newsletter with links to key research and reports.**

***The Progress of Education Reform*, a bimonthly publication addressing timely education issues based on the most recent studies and reports.**

Financial Support

ECS is financed by fees paid by member states and territories, as well as grants and sponsorship funding.

Meetings

ECS holds an annual meeting in mid-summer. The ECS steering committee, which consists of one commissioner from each of the member states, holds two additional meetings and other networks also hold various meetings throughout the year.

Midwest Higher Education Commission (MHEC)

Purpose

MHEC CONTACT INFORMATION:

http://www.mhec.org

Minneapolis, MN
(612) 677-2777

MHEC was established in 1991 under the statutorily-created Midwest Higher Education Compact. The purpose of the compact is to provide greater higher education opportunities and services in the Midwestern region, with the aim of furthering regional access to, research in, and choice of, higher education for the citizens residing in the member states.

MHEC is charged with promoting interstate cooperation and resource sharing in higher education. The commission seeks to improve access to a wide-variety of high-quality postsecondary education programs while maintaining affordability and maximizing return on investment for students and taxpayers.

Governance

The Executive Committee, made up of a subset of commissioners, acts for the Commission in the interim between annual meetings and oversees development of the Compact's short and long-range activities.

Membership

The Commission is comprised of five commissioners appointed by each state. The commissioners include: the Governor or the Governor's designee, a member of each chamber of the Legislature, and two at-large members, one of whom must have background in post-secondary education. The member states are: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

The following publications are available through MHEC:

***MHEC Annual Report to the States*, published annually addressing the commission's policy initiatives, research reports, and financial statements.**

***Compact eNews*, monthly electronic publication providing information on MHEC programs and events.**

***Research Briefs*, reports published periodically that provide information on higher education issues and policy research.**

Financial Support

MHEC is financed through member state dues, program fees, and foundation grants.

Meetings

The Commission meets annually in November and the Executive Committee meets during the interim.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Chapter 9. Agriculture

Chapter 10. Criminal Justice, Corrections, and Juvenile Justice

Chapter 11. Economic Development

Chapter 12. Education, Elementary-Secondary

Chapter 13. Education, Post-Secondary

Chapter 14. Environmental Protection and Natural Resources

Chapter 15. Ethics, Lobbying, Elections, and Campaign Finance

Chapter 16. Family Law

Chapter 17. Financial Institutions

Chapter 18. General Insurance

Chapter 19. Health Care and Health Insurance

Chapter 20. Housing and Landlord-Tenant Law

Chapter 21. Human Services and Aging

Chapter 22. Labor and Employment Law

Chapter 23. Military Affairs and Emergency Management

Chapter 24. Municipal and County Government

Chapter 25. Privacy

Chapter 26. State-Tribal Relations

Chapter 27. Taxes and Revenues

Chapter 28. Transportation

Chapter 29. Utilities and Energy

Chapter 30. Veterans

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 9 - AGRICULTURE

Generating an estimated $60 billion in annual economic activity in the state, agriculture is a vital industry in Wisconsin. Key programs, tax policies, and laws support growth in the agricultural sector and the preservation of agricultural land. Various state regulations also ensure food safety and prevent the spread of disease. The Wisconsin Department of Agriculture, Trade, and Consumer Protection is the agency with primary responsibility for administering state agricultural programs.

Anna Henning, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Introduction 1
State Programs 1
Technical and Legal Assistance 1
Marketing Assistance 2
Financial Assistance 3
Dairy-Specific Programs 3
Dairy 30x20 Initiative 3
Land Use and Environment 4
Livestock Facility Siting 4
Nonpoint Source Performance Standards 4
Pesticides 5
Farmland Preservation 5
County Farmland Preservation Planning 5
Purchase of Agricultural Conservation Easements 5
Farmland Preservation Tax Credit 6
Taxation 6
Property Taxation 6
Income Tax Credit for Agricultural Production Activities 6
Food Safety and Disease Prevention 7
Food Safety 7
Movement of Animals 7
Livestock Premises Registration 7
Deer Farm Registration 7
Raw Milk 8
Right to Farm 8
Fence Law 8
Additional References 8
Glossary 9

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Introduction

Wisconsin ranks among the top states in the production of agricultural commodities such as carrots, cheese, corn for silage, cranberries, snap beans, milk, milk goats, oats, and potatoes. In recent years, prices of several agricultural products produced in Wisconsin have risen, resulting in relatively high net income for Wisconsin farmers since 2011, including $3.75 billion in net income in 2013.

Financial success for Wisconsin farmers depends in part on national and international market forces. For example, the volume of agricultural exports typically increases when the U.S. dollar is weak. Nationally, the cost of agricultural inputs such as fuel and fertilizer, together with the market prices for agricultural products, plays a role.

Government at all levels also plays a role in agriculture, both in support of the industry and in its regulation. On the federal level, the U.S. Department of Agriculture (USDA) provides crop insurance to farmers, offers assistance to beginning farmers, and administers various programs relating to conservation, energy, and the development of agricultural markets. The 2014 Farm Bill (also known as the Agricultural Act of 2014) discontinued a program of direct payments to farmers based on crop yield but continued many other programs created under previous federal farm bills.

State Programs

The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) is the state agency with primary responsibility for administering agricultural programs. Other state entities, such as the University of Wisconsin (UW)-Extension and the Wisconsin Housing and Economic Development Authority (WHEDA), also provide significant assistance to farmers.

Technical and Legal Assistance

Wisconsin Farm Center

The Wisconsin Farm Center, housed within DATCP, provides information on the introduction of new agricultural technologies; offers financial counseling for farm businesses; coordinates a mediation program; assists with rewiring farms to update antiquated electrical wiring and minimize stray voltage; and answers general legal questions relating to issues such as taxation, estate planning, leases, and credit-debtor law. The center has a toll-free number, which farmers and small agribusiness owners may call with questions.

Wisconsin Farm Center's toll-free line: 1-800-942-2472.

UW-Extension Programs

The website for the UW-Extension Cooperative Extension is www.uwex.edu/ces

The UW-Extension has significant resources available to farmers and others who work in the agricultural sector. Many of the resources focus on agricultural practices. For example, the Extension provides tips on farm budgeting and energy use. Following the 2008 economic downturn, it also developed a series of tips and recommendations focused on farming during difficult financial times. In addition, the UW-Extension conducts research on pest management, sustainable agriculture, general business management, and farm safety.

Marketing Assistance

DATCP Agriculture Development Division

Through its Agriculture Development Division, DATCP provides assistance with product development, identifying new markets, developing product identities, and exporting products to other states and countries. The division has an International AgriBusiness Center, which facilitates connections between overseas buyers and Wisconsin agricultural suppliers and looks for export opportunities for Wisconsin agricultural products.

Collective Marketing

Some agricultural producers market products collectively, through state marketing boards.

Some of Wisconsin's agricultural producers market products collectively. One of the ways collective marketing is accomplished is through a system of agricultural marketing orders. Marketing orders are typically requested by producers of a specific commodity in a petition to DATCP. The marketing order levies a "check-off," which is an assessment on each producer that generates revenues for the program. A marketing order is issued by the DATCP Secretary following a referendum in which the marketing order is approved by a majority of the producers, and thereafter is legally binding on all producers. Revenues from the check-off are used for research and development, public education, and marketing efforts. There are currently seven active marketing boards in the state, including marketing boards for cherries, cranberries, corn, milk, soybeans, ginseng, and potatoes.

The Wisconsin Milk Marketing Board's website includes links to cheese recipes, maps, and more: http://www.eatwisconsincheese.com

Conflict Avoidance and Resolution

Through its farm mediation and arbitration program, DATCP assists in the resolution of a wide variety of farm-related disputes, such as creditor/debtor issues. These services are provided by volunteer mediators and arbitrators.

"Something Special from Wisconsin" Branding Campaign

DATCP authorizes specified products produced or manufactured in Wisconsin to be included in the state's "Something Special from Wisconsin" branding campaign. Approved products may bear the trademarked "Something Special from Wisconsin" logo. To be eligible, 50% of a product's value must be attributable to Wisconsin ingredients, production, or processing activities.

Financial Assistance

WHEDA Loan Guarantees

WHEDA administers the Credit Relief Outreach Program (CROP), which provides guarantees on agricultural production loans, and the Farm Asset Reinvestment Management (FARM) program, which provides loan guarantees for starting, expanding, or modernizing agricultural operations. The loan guarantees are available to Wisconsin farmers who are unable to obtain conventional financing at reasonable terms but have a positive projected cash flow and meet specified other criteria.

Agricultural Producer Security Fund Program

DATCP administers an agricultural producer security fund program under ch. 126, Stats. The program is intended to protect agricultural producers from financial default by those purchasing the producer's products. These programs, which affect dairy plant operators, vegetable processing plants, public warehouses, and grain dealers, provide a thorough review of the financial status of these purchasing entities and require them to provide financial assurances to protect the producers if payments are not made.

Dairy-Specific Programs

After the state's dairy production decreased throughout the 1990s, Wisconsin's dairy industry revived and expanded over the last decade. Various factors contributed to the revival, including the emergence of new markets for specialty cheese, changes in feed prices, and various state initiatives. Today, Wisconsin leads the nation in cheese production and is second only to California for milk production.

Various state programs and initiatives provide support to the dairy industry. In addition to the programs discussed below, DATCP provides cost sharing and assistance to organic dairy farms, assists with diagnosing problems with herd health, and offers support to dairy farmers interested in incorporating grazing on their farms.

Dairy 30x20 Initiative

The Dairy 30x20 initiative, also called the "Grow Wisconsin Dairy" initiative, aims to help Wisconsin dairy farms to produce 30 billion pounds of milk annually by 2020. The goal is prompted by a reality that demand by milk processors exceeds the amount of milk produced in the state each year. As part of the initiative, milk producers may apply to access cost-

sharing grants, loans, and technical assistance. Interested farmers may contact the program through a toll-free number, 855-WIDAIRY.

Wisconsin Center for Dairy Research

The Wisconsin Center for Dairy Research is located on the UW-Madison campus. It is one of the premier dairy research centers in the country. The center researches topics such as cheese making, dairy protein processing and separation, and product safety technologies.

Land Use and Environment

With its integral connection to land, agriculture must comply with laws regulating natural resources, land use, and the environment. Which laws apply to a given agricultural use depend on the nature of the agricultural practice and the characteristics of a given site. In addition to the laws described below, a particular agricultural operation may be subject to state or federal laws governing water use, waste management, or other environmental impacts.

Some of the regulatory programs, such as soil and water conservation requirements, animal waste regulations, and fertilizer and nutrient requirements, are imposed through a long-term management strategy rather than a traditional regulatory program. Some program requirements are imposed only when public funds are available to assist farmers in complying with the regulations.

Livestock Facility Siting

The livestock facility siting law, s. 93.90, Stats., establishes state water quality and odor management standards to regulate new and expanding livestock facilities. The law applies to livestock facilities with 500 or more animal units.[1]

The livestock siting law applies to livestock facilities with 500 or more animal units.

The siting law requires local government regulations relating to new or expanded livestock facilities to adhere to these standards within the local permitting process. The purpose of this law is to establish uniform standards statewide for livestock facility siting and expansion. The Livestock Facility Siting Review Board oversees challenges to local siting decisions.

Nonpoint Source Performance Standards

Nonpoint source pollution, or runoff pollution, is water pollution that is diffuse in nature, having no single, well-defined point of origin. Wisconsin law regulates nonpoint source pollution from farming activities, primarily with respect to manure storage activities and runoff from farm fields and pastures.

---

[1] "Animal units" are calculated according to formulas set forth in s. NR 243.05, Wis. Adm. Code.

Wisconsin law requires the Department of Natural Resources (DNR) to establish nonpoint source performance standards, and DATCP must write rules identifying practices that farmers should use to meet those standards. Specific performance standards include requirements related to nutrient management[2], erosion, tillage setbacks, phosphorus management, and manure storage and management. Cost sharing may be available to pay for the implementation of practices designed to meet these standards and, in some situations, must be provided before a farmer can be compelled to comply.

Pesticides

Pesticides are subject to comprehensive regulation by DATCP in a state-run program based on federal mandates. Pesticide regulation is intended to protect public health, including the health of agricultural workers and nearby residents, and to protect the environment, particularly groundwater. The regulations focus on application methods and rates and disposal of pesticide containers. Licensing and certification is required for most pesticide applicators. In certain cases, state law exceeds federal requirements. For example, Wisconsin has exceeded minimum federal regulations for atrazine, a herbicide that has been found in Wisconsin's groundwater.

Farmland Preservation

Relatively high prices for farm commodities in recent years have slowed a general trend toward selling agricultural land for non-agricultural purposes. However, market pressures have made the sale of agricultural land for non-agricultural uses attractive in some parts of the state. For example, increased activity in frac sand mining has created pressures for the sale of agricultural land in the Western part of the state.

County Farmland Preservation Planning

Counties may adopt agricultural preservation plans, which must be certified by DATCP. Other municipalities may also adopt farmland preservation ordinances, but they must be consistent with the county's certified plan.

Counties and other municipalities may adopt agricultural preservation plans.

Purchase of Agricultural Conservation Easements

Through the Purchase of Agricultural Conservation Easements (PACE) program under s. 93.73, Stats., the state may purchase and facilitate the purchase of conservation easements to preserve land for agricultural use. The PACE program provides up to 50% of the cost of

[2] "Nutrient management" is a method whereby farmers adopt a plan for all sources of nutrients (nitrogen and phosphorous) that are applied to the land. The plan covers fertilizer, legumes, and manure spreading. Nutrient management often reduces the costs of fertilizer application for farmers and reduces the amount of nutrients that can be washed away from the fields during rainfall and carried into surface waters and groundwater.

purchasing agricultural conservation easements from willing landowners. Land for which an agricultural conservation easement has been sold cannot be developed for any purpose that would prevent its use for agriculture. The seller of the agricultural conservation easement retains ownership of the land and may continue to farm the land. Agricultural conservation easements enable farmers to collect a significant portion of the market value of their land while continuing to farm the land. However, no funding was appropriated for the program in the 2013-15 Biennial Budget Act, and DATCP is not accepting applications for the program as of the writing of this chapter.

Farmland Preservation Tax Credit

Through the Farmland Preservation Tax Credit, the state provides an income and franchise tax credit to owners of land subject to agricultural use restrictions. The credits vary from $5 to $10 per acre. To be eligible, the land must be under a farmland preservation agreement and either in an area certified for farmland preservation zoning or in a designated agricultural enterprise area.

TAXATION

The state supports agricultural producers through its tax policies. These include a use-value assessment of agricultural land and an income tax credit that will be phased in over the next several years.

Property Taxation

Use-value taxation reduces farmers' property tax burden.

In Wisconsin, for purposes of determining property taxes, agricultural land is assessed at its value for use as agricultural land, rather than at its market value. Market value may reflect other considerations, such as the capacity to develop the property for nonfarm uses. This approach, commonly referred to as the "use-value assessment," has resulted in a major reduction in the amount of property taxes paid by Wisconsin farmers. The state policy in use-value taxation is to reduce the property tax burden on farmers and thus help a farmer to maintain the land in agricultural use, rather than to sell the property to a person who plans to use it for some other purpose.

Agricultural forest land is likewise assessed below market value under Wisconsin law for purposes of property taxes. Specifically, "agricultural forest land," defined as land that either is producing or is capable of producing commercial forest products and that meets one of several conditions, is assessed at 50% of its fair market value.

Income Tax Credit for Agricultural Production Activities

The 2011-13 Biennial Budget Act created a tax credit for qualified manufacturing and agricultural production activities for tax years beginning in 2013. Eligible activities are

qualified domestic production activities that are derived from property located in Wisconsin and assessed as manufacturing or agricultural property.

The amount of the credit will be phased in, from 3.75% for tax years beginning in 2014, to 5.526% for tax years beginning in 2015, and 7.5% for tax years beginning in 2016 or subsequent years. Once fully phased in, the credit will effectively eliminate state income tax liability arising from business operations for many agricultural producers.

Food Safety and Disease Prevention

Agriculture is subject to a wide variety of state and federal regulations intended to protect public health and safety. In general, food safety regulations apply to agriculture in the same manner as to any other industry.

Food Safety

DATCP and the Department of Health Services (DHS) share responsibility for the regulation of food safety, although DATCP has the primary responsibility for ensuring the safety of agricultural product production and processing.

Movement of Animals

DATCP administers a regulatory program that requires documentation of the movement of certain animals in Wisconsin, primarily to prevent the spread of disease. Imported livestock must be properly identified, and DATCP rules specify identification standards for each species. Animals entering Wisconsin require a certificate of veterinary inspection, and some may require a permit. Some livestock moved within the state must also be tested, and reporting requirements apply to certain animal diseases when discovered.

Animals entering the state must have a certificate of veterinary inspection.

Livestock Premises Registration

Each location where livestock are kept (such as farms, feedlots, livestock dealers and haulers, and even backyard poultry flocks) must be registered with DATCP. The registration program provides a database of information that is used to track the source and spread of animal diseases. Information provided by a premises owner is confidential, unless release of the information is necessary to control disease. Premises registration is not the same as individual animal identification.

Deer Farm Registration

In general, every person who keeps farm-raised deer in Wisconsin must register with DATCP. Keepers of farm-raised deer also must comply with requirements governing disease testing.

Raw Milk

The sale of unpasteurized (i.e., "raw") milk is generally prohibited in Wisconsin. However, raw milk produced on a dairy farm may be distributed directly to a raw milk producer or a family member or nonpaying household guest at the dairy farm. In addition, farms may make incidental sales of raw milk, provided that the milk is delivered directly to the consumer on the farm where the milk is produced; is consumed by the consumer or the consumer's family or nonpaying guests; and the farm does not advertise the sale of milk or sell the milk in the regular course of business.

Right to Farm

Wisconsin's "right to farm" law is set forth in s. 823.08, Stats. Despite its name, the law does not explicitly create a "right" to farm. Instead, the law directs courts to favor agricultural uses in certain legal disputes.

The law applies to civil suits in which a plaintiff alleges that a nuisance has occurred. A common law action for nuisance alleges that a given activity or property use substantially and unreasonably harms the plaintiff's interests in the use and enjoyment of his or her land. The right to farm law provides certain protections for agricultural land uses and practices in such suits. For example, in the absence of a substantial threat to public health or safety, the law limits the extent to which a nuisance suit may result in a restriction on a given agricultural use or practice.

Fence Law

Wisconsin's fence law is set forth in ch. 90, Stats. When one or both of two neighboring properties is used for farming or grazing, both neighbors are equally responsible for maintaining a fence along the boundaries between the properties. Unless the neighbors agree to an alternate arrangement, the general rule is that each owner is responsible for the half of the fence that he or she views on the right when looking toward the property line from his or her property. If one of the property owners refuses to construct or maintain the portion of the fence for which the owner is responsible, "fence viewers" may be called upon to observe the situation and determine whether repairs are necessary. Town supervisors (or village board or city council members) typically serve as fence viewers.

Neighbors share the responsibility for maintaining fences along agricultural land.

Additional References

1. USDA, National Agricultural Statistics Service, 2013 Wisconsin Agricultural Statistics Bulletin,

www.nass.usda.gov/statistics_by_state/Wisconsin/publications/annual_statistics_bulletin/.
2. Wisconsin Farm Center, *Legal Guide for Wisconsin Farmers*, http://www.datcp.wi.gov/Farms/Wisconsin_Farm_Center/Legal_Guide/index.aspx
3. Legislative Audit Bureau audit reports at http://www.legis.wisconsin.gov/lab:
    - Letter Report, *Use Value Assessment of Agricultural Land* (July 2010).
    - Audit Report 08-6, *Food and Dairy Safety Program*.
4. UW-Extension:
    - *Farming Through Difficult Times*, http://fyi.uwex.edu/farmfinances
    - *Fact Sheet No. 13, Fences in Agricultural Areas*, http://lgc.uwex.edu/program/pdf/fact13.pdf
    - *Status of Wisconsin Agriculture 2014*, http://www.aae.wisc.edu/pubs/status/docs/status2014.pdf
    - Deller, Steven C. and Williams, David, *Wisconsin and the Agricultural Economy* (July 2009), http://www.uwex.edu/ces/ag/wisag/documents/Ag_Impacts_2007_FINAL_7%2031%2009.pdf

GLOSSARY

Conservation easements: Property rights requiring land to be used only for specified purposes. They are a tool for preserving land for agricultural use in the state.

Farming: Defined broadly, to mean not only planting and harvesting crops and raising livestock or other animals, but also activities such as processing, drying, packing, packaging, freezing, grading, or storing agricultural products.

Nonpoint source pollution: Water pollution that does not have a single, well-defined point of origin. Runoff from agricultural land is a common source of nonpoint source pollution.

Use-value taxation: For property tax purposes, land in agricultural use in Wisconsin is assessed based on its value for agricultural production rather than its market value.

Value-added agriculture: Processing of an agricultural commodity beyond the basic production of the commodity.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 10 – CRIMINAL JUSTICE, CORRECTIONS, AND JUVENILE JUSTICE

In the United States, criminal justice, corrections, and juvenile justice are generally under the jurisdiction of the states. Each state determines what constitutes a crime in that state, determines the penalties for each crime, and operates prisons and facilities to house individuals who have committed criminal offenses in that state. Each state also develops its own juvenile justice system and determines if a minor who commits a criminal offense is treated as a child or as an adult for purposes of prosecution and punishment.

Melissa Schmidt, Senior Staff Attorney, and Katie Bender-Olson, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Criminal Justice 1
- Jurisdiction 1
- Criminal Procedure 1
- Classes of Crimes 4
- Sentencing 6
- Rights of Victims and Witnesses 8

Treatment of Past Convictions 9
- Expunction 9
- Expunction of Juvenile Record 9
- Pardons 10

Corrections 11
- Correctional Facilities 11
- Prison Work and Study Assignments 13
- Community Corrections: Probation, Parole, and Extended Supervision (ES) 14

Sex Offenders 14
- Sex Offender Registry 14
- Sex Offender Placement 16

GPS Tracking by DOC 16
- Tracking of Sex Offenders 17
- Tracking of Restraining Order Violators 17

Juvenile Justice 18
- Juvenile Justice Code 18
- Adult Court vs. Juvenile Court 18
- Dispositions for Juvenile Offenders 20

Additional References 21
- Criminal Justice 21
- Corrections 21

Glossary 22

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

CRIMINAL JUSTICE

Criminal justice is a system of practices and institutions primarily directed at controlling crime in order to protect the public. The system attempts to achieve public safety through deterrence, incapacitation, rehabilitation, and reinforcement of norms. The criminal justice system also serves to impose punishment for the violation of laws.

Jurisdiction

The criminal justice system in the United States is comprised of several overlapping national, state, and local jurisdictions. The federal government, the state governments, and various local and tribal governments all have authority to criminalize behaviors and to make legal decisions and impose punishment through their individual court systems. Most violations that are commonly characterized as "crimes" are violations of federal or state criminal laws. Violations of federal law are prosecuted in the federal courts and violations of state law are prosecuted in the state courts. However, an individual whose act violates both state law and federal law, or the laws of multiple states, can be separately charged and tried in each jurisdiction. The remainder of this chapter focuses on Wisconsin's state criminal justice system.

Criminal Procedure

The criminal justice system enforces laws and punishes violations through a series of proceedings, sometimes referred to as criminal procedure. The process generally begins with the investigation and prosecution of a crime. The primary actors responsible for investigating criminal acts in Wisconsin are local police departments, county sheriffs, and various state agencies (e.g. the Department of Justice (DOJ), the Wisconsin State Patrol, the Department of Agriculture, Trade and Consumer Protection, and the Department of Natural Resources). Following an investigation by one of these investigating authorities, a case may be referred to a county district attorney or the DOJ for prosecution. The prosecuting authority generally has discretion to either file formal charges against the defendant or choose not to proceed with the case. Once criminal charges have been filed, the case advances through a number of court proceedings in which the defendant is informed of the charges, allowed to present a defense, and adjudicated by a court or jury.

The following charts provide an overview of the process that felony and misdemeanor criminal cases follow in Wisconsin.

Felony Cases

CRIMINAL COMPLAINT FILED
The state brings an action against the defendant by filing a criminal complaint in circuit court stating the essential facts of the offense.

WARRANT ISSUED
If the defendant has not been arrested, the judge or court commissioner issues a warrant for arrest.

INITIAL APPEARANCE
The defendant is brought before a judge or court commissioner and informed of the charges and the right to be represented by a lawyer. Bail (either a cash amount or a signature bond) may be set at this time to assure the defendant's appearance at future proceedings.

PRELIMINARY EXAMINATION AND ARRAIGNMENT
The defendant has a right to a preliminary examination. This is a hearing to determine whether the state has probable cause to charge the individual. If the court finds probable cause or if the preliminary examination is waived, an arraignment is held. At the arraignment, the defendant enters a plea of guilty, not guilty, no contest, or not guilty by reason of mental disease or defect.

PLEA AGREEMENT OR DECISION TO GO TO TRIAL
Most criminal cases are decided before trial, typically by a plea agreement. However, if the defendant decides to take the case to trial, the case is heard in circuit court in front of a judge or a jury (unless both parties waive the right to a jury trial).

JURY TRIAL OR BENCH TRIAL
The jury considers evidence presented and determines whether that evidence supports a verdict of guilty or not guilty. The state carries the burden to prove each element of the crime being charged beyond a reasonable doubt. If both parties waive the right to a jury trial, the judge determines whether the state has met its burden of proof. This is known as a bench trial.

ACQUITTAL OR CONVICTION
If a defendant is found not guilty, the defendant is cleared of the charges against him or her. This is known as being "acquitted." If a defendant is determined to be guilty, either through a plea or trial verdict, the court enters a judgment of conviction and determines the penalty (sentence) for the crime.

Misdemeanor Cases

CRIMINAL COMPLAINT FILED
The state brings an action against the defendant by filing a criminal complaint in circuit court stating the essential facts of the offense.

A SUMMONS TO APPEAR IS ISSUED

INITIAL APPEARANCE
The defendant is brought before a judge or court commissioner, and informed of the charges and the right to be represented by a lawyer. Bail (either a cash amount or a signature bond) may be set at this time to assure the defendant's appearance at future proceedings.

PLEA ENTERED
The defendant is asked to enter a plea of guilty, not guilty, no contest, or not guilty by reason of mental disease or defect. If a plea of not guilty is entered, a trial date is set.

PLEA AGREEMENT OR DECISISION TO GO TO TRIAL
Most criminal cases are decided before trial, typically by a plea agreement. However, if the defendant decides to take the case to trial, the case is heard in circuit court in front of a judge a jury of 12 (unless both parties waive the right to a jury trial).

JURY TRIAL OR BENCH TRIAL
The jury considers evidence presented and determines whether that evidence supports a verdict of guilty or not guilty. The state carries the burden to prove each element of the crime being charged beyond a reasonable doubt. If both parties waive the right to a jury trial, the judge determines whether the state has met its burden of proof. This is known as a bench trial.

ACQUITTAL OR CONVICTION
If a defendant is found not guilty, the defendant is cleared of the charges against him or her. This is known as being "acquitted." If a defendant is determined to be guilty, either through a plea or trial verdict, the court enters a judgment of conviction and determines the penalty (sentence) for the crime.

Classes of Crimes

Violations of Wisconsin law are categorized as felonies, misdemeanors, or forfeiture offenses. A felony is a crime punishable by imprisonment of one year or more, whereas a misdemeanor is a crime punishable by less than one year of imprisonment. The criminal penalties for felony and misdemeanor offenses include fines, imprisonment, or a combination of the two. A forfeiture offense is not defined as a "crime," because it is only punishable by a monetary forfeiture. These types of violations are sometimes referred to as "civil offenses."

Wisconsin has enacted several major revisions of its system for categorizing and punishing crimes. The state first attempted to create a uniform crime classification system more than 30 years ago. In 1978, legislation went into effect that placed crimes and forfeiture offenses appearing in the Wisconsin Criminal Code into uniform penalty classes. The 1978 law created five classes of felonies, three classes of misdemeanors, and four classes of forfeitures.

Wisconsin enacted another major revision of its crime classification system in 1997, by implementing a system referred to as "Truth-in-Sentencing." The system increased penalties for all felonies by 50%, or one year, whichever was greater. The provisions of the 1997 law apply to offenses committed on or after December 31, 1999, but before February 1, 2003.

The "Truth-in-Sentencing" system was revised in 2003. Crimes committed on or after February 1, 2003, are subject to a revised felony classification system that created nine classes of felonies and reduced certain penalties. One result of the multiple revisions over time is that the applicable penalties for a crime vary, depending upon the date a particular crime was committed.

The classes of misdemeanors and their penalties within the Criminal Code are as follows:

Maximum Penalties for Misdemeanors

Misdemeanor	Fine	Term of Imprisonment
Class A	$10,000	9 months
Class B	$1,000	90 days
Class C	$500	30 days

The classes of felonies and their penalties are as follows:

Maximum Sentence for Felonies
(Confinement in Prison Plus Parole or Extended Supervision)

Crimes Committed 2/1/03 and After		Crimes Committed 12/31/99 to 1/31/03		Crimes Committed Before 12/31/99
Class	**Sentence**	**Class**	**Sentence**	**Sentence**
Class A	Life	Class A	Life	Life
Class B	60 years			
Class C	40 years	Class B	60 years	40 years
Class D	25 years	Class BC	30 years	20 years
Class E	15 years			
Class F	12.5 years	Class C	15 years	10 years
Class G	10 years			
Class H	6 years	Class D	10 years	5 years
Class I	3.5 years	Class E	5 years	2 years

Maximum Fines for Felonies

Class	Crimes Committed 2/1/03 and After	Class	Crimes Committed Before 2/1/03
Class A	N.A.	Class A	N.A.
Class B	N.A.		
Class C	$100,000	Class B	N.A.
Class D	$100,000	Class BC	$10,000
Class E	$50,000		
Class F	$25,000	Class C	$10,000
Class G	$25,000		
Class H	$10,000	Class D	$10,000
Class I	$10,000	Class E	$10,000

Sentencing

A court can only sentence a person to imprisonment in the Wisconsin state prison system if the sentence requires a portion of confinement that lasts one year or longer. An offender serves either an indeterminate sentence or a determinate sentence, depending upon the date on which the offender committed the offense. A person who committed an offense prior to December 31, 1999 received an indeterminate sentence from the court; an offender who commits an offense on or after December 31, 1999, receives a determinate sentence.

Indeterminate Sentencing

Other than those persons serving a sentence of life in prison, a person serving an indeterminate sentence in a state prison is usually released from confinement in one of the following ways:

- **Discretionary parole after parole eligibility date**. An offender is generally eligible for parole after serving 25% of the court-imposed sentence or six months, whichever is greater. The Parole Commission determines whether the offender is released on discretionary parole. After release, an offender is placed on parole supervision for the remainder of his or her sentence.
- **Mandatory release**. Unless subject to additional time for misconduct, and subject to the exceptions described below, an offender is required to be released after serving 2/3rds of his or her sentence. This is termed the offender's mandatory release, or MR, date. After release, an offender is placed on parole supervision.

Forms of Release Under Supervision

Extended Supervision – Release of an offender as part of a bifurcated sentence or release of an offender sentenced to life imprisonment to the community under Department of Corrections (DOC) supervision.

Mandatory Release – Release from prison to parole supervision after serving 2/3rds of an indeterminate sentence established by the court for offenses committed before December 31, 1999.

Parole – Release of an offender sentenced under an indeterminate sentence to the community under DOC's supervision. DOC may discharge a person from parole prior to the person serving the maximum sentence imposed by the court.

Probation – Release of an offender under DOC supervision without first serving time in a state prison. An offender placed on probation is subject to conditions imposed by the court and/or DOC.

For indeterminate sentences, eligibility for parole and MR are as follows if a person is sentenced to the maximum term of imprisonment:

Felony Class	Eligible for Parole	Mandatory Release
Class A	Set by sentencing court	N.A.
Class B	10 years	26.6 years
Class B/C	5 years	13.3 years
Class C	2.5 years	6.6 years
Class D	1.25 years	3.3 years
Class E	0.5 year	1.3 years

Offenders who have committed serious felonies may be subject to different parole eligibility provisions than are outlined above. "Serious felony" is defined in s. 973.0135 (b), Stats. A person that has committed a serious felony may have his or her parole eligibility date changed in the following ways:

- **Later discretionary parole date**. If a serious felony offender has one or more prior convictions for a serious felony, a judge may set a discretionary parole eligibility date for the offender that is later than 25% of the sentence or six months, but that is not later than the MR date of 2/3rds of the sentence.
- **No automatic release on MR date**. Certain felony offenders need not be automatically released when they reach their MR dates. Instead, the Parole Commission may deny MR to such an offender in order to protect the public or because the offender refused to participate in counseling or treatment.

No person serving a sentence of life in prison for an act committed before December 31, 1999, is entitled to MR. Instead, a person serving a life sentence usually must serve 20 years in confinement, less time calculated under the MR formula, before the person is eligible for release on parole. However, a person's eligibility could be extended due to violation of prison rules, or if the court sets the parole eligibility date later than the usual parole eligibility date (e.g., 35, 75, or 100 years). Alternatively, a sentencing court may declare a person ineligible for parole.

Determinate Sentences

Determinate sentences apply to offenders who commit offenses on or after December 31, 1999. The sentences are bifurcated between a period of confinement and a period of extended supervision (ES). This system of sentencing is often referred to as "Truth-in-Sentencing."

The portion of the bifurcated sentence that imposes a term of confinement in prison may not be less than one year, is subject to any minimum sentence prescribed for the felony, and may not exceed the following:

Maximum Confinement in Prison for a Maximum Sentence

Felony Class	Release to ES for Crimes Committed 2/1/03 and After	Felony Class	Release to ES for Crimes Committed 12/31/99 to 1/31/03
Class A	ES eligibility date set by sentencing court	Class A	ES eligibility date set by sentencing court*
Class B	40 years		
Class C	25 years	Class B	40 years
Class D	15 years	Class BC	20 years
Class E	10 years		
Class F	7.5 years	Class C	10 years
Class G	5 years		
Class H	3 years	Class D	5 years
Class I	1.5 years	Class E	2 years

*The person must serve at least 20 years in prison. The court may also order that the person is not eligible for release on ES.

Additional information on the crime victim and witness rights, and services available, may be found on the DOJ's Office of Crime Victim Services website at:

http://www.doj.state.wi.us/ocvs/

Wisconsin Victim Helpline: (800) 446-6564; TTY: (800) 947-3529

Rights of Victims and Witnesses

The basic bill of rights for victims and witnesses, found in the Wisconsin statutes, gives numerous rights to victims and witnesses that are to be honored by law enforcement, prosecutors, and judges. They were created in recognition of the fact that victims and witnesses of a crime have a civic and moral duty to fully and voluntarily cooperate with law enforcement and district attorneys (DAs), and the importance of their cooperation with state and local law enforcement efforts. However, in order for a victim to be eligible for services afforded under the basic bill of rights for victims and witnesses, the crime must be reported to law enforcement authorities.

There are over 40 rights provided to victims in the basic bill of rights for victims and

Wisconsin Constitution, Article 1, Section 9m, requires that crime victims be treated with fairness, dignity, and respect for their privacy, and provides crime victims with enumerated constitutional privileges and protections.

witnesses. One example is the right to be treated with fairness, dignity, and respect for privacy. Another is the right to be notified of certain information, including the time, date, and place of upcoming court proceedings if requested. A victim also has the right to be notified about the decisions related to the case, such as a decision not to prosecute if an arrest was made or a decision to dismiss charges. Victim rights also include the right to a speedy disposition of the criminal case; to attend court proceedings in the case; and to provide a written or oral victim impact statement concerning the economic, physical and psychological effect of the crime on the victim to be considered by the court at sentencing.

The basic bill of rights also confers nine rights specific to witnesses. For example, a witness has the right to request information from the DA about the final disposition of the case. A witness also has the right to receive protection from harm and threats of harm arising out of his or her cooperation with law enforcement and prosecution efforts. Further, a witness has the right to certain information such as financial assistance and other social services available as a result of being a witness, including information on how to apply for the assistance and services. A witness also has the right to be notified that a court proceeding to which the witness has been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court.

Treatment of Past Convictions

Individuals who meet specific criteria may have their records expunged and individuals who apply to the Governor may be pardoned for their crimes. Expunction of criminal records and pardons, the focus of this section, are actions applicable to individuals who have already completed their sentences. There are other executive actions that may be taken related to convictions, such as reprieves and commutations.

Expunction

Expunction of a criminal record is only available in very limited circumstances. Many offenders are not eligible to have their records expunged.

A person's criminal conviction may be removed from his or her court record under certain circumstances, through a process known as expunction. The criteria for expunction vary depending upon whether the individual was an adult or a juvenile at the time of conviction.

Expunction of Adult Record

An adult's criminal court record may be expunged by the sentencing court if all of the following apply:

- The person was under the age of 25 when he or she committed the offense.
- The offense for which the person was found guilty has a maximum penalty of six years or fewer (this includes Class A, B, and C misdemeanors, and Class H and I felonies).

- The sentencing court determines that the person will benefit from having his or her record expunged.
- The sentencing court determines that society will not be harmed by the expungement.
- The sentencing court orders at the sentencing hearing that the offense be expunged upon the person's successful completion of the sentence.
- The person successfully completed his or her sentence.

There are some cases in which a Class H or I felony conviction may not be expunged from a person's criminal court record. A Class H felony may not be expunged if either of the following apply:

- The person has a prior felony conviction.
- The current offense is defined as a violent offense, or is a violation of stalking, intentional or reckless physical abuse of a child, or sexual assault by a school staff member or by a person who volunteers with children.

A Class I felony may not be expunged if either of the following apply:

- The person has a prior felony conviction.
- The offense is defined as a violent offense, or a violation of concealing the death of a child.

Expunction of Juvenile Record

A court may expunge a juvenile's adjudication record if the juvenile petitions the court after turning 17 years old and if the court makes certain findings. A court **may** expunge a juvenile's record if it finds that: (1) the juvenile has satisfactorily complied with the conditions of his or her dispositional order; (2) the juvenile will benefit from the expunction; and (3) society will not be harmed by the expunction.

There are certain circumstances under which a court must order an expunction of a juvenile's record. A court **must** expunge a juvenile's record if: (1) the adjudication was for an invasion of privacy offense; (2) the adjudication was the juvenile's first invasion of privacy offense; and (3) the juvenile has satisfactorily complied with the conditions of his or her dispositional order.

There is one case in which the court is required to order that the record of a person's criminal conviction be expunged. If a person committed an invasion of privacy offense while under the age of 18, the court must order that the person's record be expunged upon successful completion of his or her sentence.

Pardons

A pardon is official forgiveness for a crime and restores rights that were lost due to a conviction. For instance, a person who receives a pardon will generally regain his or her ability to possess a firearm, hold public office,

and obtain various licenses.

Only the Governor has the power to issue a pardon for conviction of a state crime in Wisconsin. The Governor possesses nearly unlimited discretion to grant or deny pardons, and may also grant conditional pardons that impose limitations or restrictions on the individual.

The Governor may choose to accept applications for pardon and may choose to appoint a Pardon Advisory Board to evaluate applications and make recommendations. Applications for felony pardons must be accompanied by specified documents, including court records, written statements by the judge and district attorney who tried the case (if obtainable), and a certificate from the prison where the applicant was confined that establishes good behavior.

A pardon restores an individual's rights but does not expunge or erase that individual's criminal record.

CORRECTIONS

In Wisconsin, the DOC is responsible for the care and treatment of adult offenders placed under state supervision by the courts. In 2014, the DOC was responsible for more than 21,860 incarcerated adults and more than 64,300 adults under supervision in the community.

The DOC legislative liaison can be reached at (608) 240-5056.

Correctional Facilities

The DOC operates 36 correctional facilities, including 21 adult prisons and 16 correctional centers.

Adult Males

Adult males sentenced to state prison are received at the Dodge Correctional Institution Reception Center in Waupun. After an assessment and evaluation period of four to six weeks, each inmate is classified according to security level, which is the degree of security risk he presents.

Male inmates who are classified as maximum risk may be placed at the following institutions:

- Dodge.
- Waupun.
- Columbia.
- Green Bay.
- Wisconsin Secure Program Facility.

Male inmates classified as medium risk may be placed at the following institutions:

- Oshkosh.
- Kettle Moraine.
- Fox Lake.
- New Lisbon.

- Redgranite.
- Jackson.
- Prairie du Chien.
- Stanley.
- Racine.

A medium risk inmate who is between the ages of 15 and 24 years may also be placed in the Racine Youthful Offender Correctional Facility. In addition, male inmates may be placed in the Milwaukee Secure Detention Facility.

Male inmates who are classified as minimum risk may be placed in the following facilities:

- Oakhill Correctional Institution.
- Chippewa Valley Correctional Treatment Facility.
- Sturtevant Transitional Facility.
- One of the 13 male minimum security correctional centers.
- Drug Abuse Correctional Center, which is located on the grounds of the Winnebago Mental Health Institute.

The DOC also operates the Wisconsin Secure Program Facility, the state's most secure facility, which is located in Boscobel. Male inmates may be transferred there only after being placed in disciplinary segregation or as a consequence of a disciplinary action. The facility also houses general segregation inmates and inmates in the general population.

Adult Females

Adult females sentenced to state prison are received at Taycheedah Correctional Institution for assessment and evaluation. Female inmates classified as maximum or medium security level are placed in the Taycheedah Correctional Institution. Female inmates who are classified as minimum security level may be placed at Taycheedah or the Milwaukee Women's Center, the Robert E. Ellsworth Correctional Center in Union Grove, or the St. Croix Correctional Center in New Richmond.

Other Facilities

Male and female inmates who are preparing for release into the community may be placed in one of 16 minimum security facilities in the Wisconsin Correctional Center System.

In addition to the state prisons and correctional centers, the DOC utilizes the following facilities:

- **Milwaukee Secure Detention Facility**. The Milwaukee Secure Detention Facility is a holding facility for probation and parole violators and accepts offenders 24 hours per day, like a county jail, in addition to housing medium security inmates.
- **County facilities**. DOC contracts with Wisconsin counties to house inmates, except for those inmates in the Inmate Retention Program. As of May 30, 2014, there were four state inmates being held in county jails.

- **Federal prison**. DOC contracts with the federal government to house approximately 17 inmates in various federal prisons.
- **Wisconsin Resource Center**. DOC contracts with the Department of Health Services (DHS) to house inmates with mental health needs at the Wisconsin Resource Center in Winnebago. As of May 31, 2014, there were 340 inmates being held at the Wisconsin Resource Center.

Prison Work and Study Assignments

Prison Labor

Inmates in correctional institutions are typically provided a work or study assignment. For work assignments in a prison, other than for Badger State Industries or correctional farms, an inmate may earn $0.12 to $0.42 per hour. Inmates who have been assigned to a school, vocational training, or other programs are paid an hourly wage of $0.15.

Inmates who are unable to work may be paid an hourly wage of $0.05, which is an involuntary unassigned compensation rate is applied to inmates who are eligible, available, and waiting for placement in approved work or program assignments where such work or program assignments exist, but are not currently available. Inmates who refuse or are negatively removed from a work or full-time paid program assignment will be placed on voluntary unassigned status for a minimum of 90 days and will not be compensated. A warden or superintendent can waive the 90-day requirement for an inmate negatively removed from a work assignment if a full-time paid program assignment becomes available to the inmate in those 90 days of voluntary unassigned status.

Q: Can DOC lease space to private businesses?

A: Under current law, DOC is authorized to lease space within state prisons and juvenile correctional institutions to not more than six private businesses to employ prison inmates to manufacture products or components or to provide services for sale on the open market. Currently, DOC does not lease space to any private businesses.

Badger State Industries (BSI) and Correctional Farms

BSI is DOC's prison industries program. BSI operates at each of the maximum and medium security state prisons, except Dodge, and at the minimum security Oakhill Correctional Institution and the Taycheedah Correctional Institution. Inmates in the BSI program engage in the following types of industry: laundry, wood and metal furniture making, upholstery, textiles, printing and graphics, data entry, silk-screening, and metal stamping. In addition, BSI operates a distribution center. The farms operated by Badger State Correctional Farms are located at Oregon, Waupun, Fox Lake, and Oneida. There are also computer, wheelchair, and sign blank recycling programs at various institutions across the state. The hourly wages for inmates working with BSI in medium and maximum

security institutions range from $0.20 to $1.00. In minimum security institutions, the range is $0.50 to $1.60. The hourly wages on the farms range from $0.20 to $1.60.

Community Corrections: Probation, Parole, and Extended Supervision (ES)

The Division of Community Corrections in the DOC provides community supervision for offenders on probation, parole, and ES. In addition to supervising offenders in the community, probation and parole agents provide investigative services to the courts, the Division of Adult Institutions, and the Parole Commission to aid in sentencing and community reentry planning. In 2014, the DOC was responsible for supervising more than 68,000 offenders on probation, parole, or ES.

SEX OFFENDERS

Sex Offender Registry

The DOC maintains a registry of convicted sex offenders residing in the state. The agency provides public Internet access to certain information contained in the registry, including the names and addresses of registered sex offenders and the qualifying crimes committed by each offender.

Sex Offender Registry: http://offender.doc.state.wi.us/public.

Who Must Register as a Sex Offender

In general, a person must register as a sex offender if he or she was convicted of a "sex offense," or if he or she is subject to a court order requiring registration.

- **Sex offense**. A person must register as a sex offender if he or she is convicted, adjudicated, or found not guilty by reason of a mental disease or defect of a "sex offense." The statutes enumerate 28 offenses in the definition of "sex offense," including crimes such as incest, child enticement, and first degree sexual assault.
- **Court order**. A person must also register as a sex offender if a court orders the person to register, even if he or she did not commit a "sex offense." A court may order a person to register if the court finds that the person's conduct was sexually motivated, meaning that the conduct was done for the person's sexual arousal or gratification.

Information Contained in the Registry

The registry contains the following information regarding each registered sex offender:

- **Name**. The person's name and any aliases.
- **Identifying information**. Information sufficient to identify the person, including birth date, gender, race, height, weight, and hair and eye color.
- **Offense**. The statute the person violated, date of conviction, county of conviction, or state of conviction if convicted outside of Wisconsin.
- **Dismissed sex offenses**. Any sex offense that was dismissed as part of a plea agreement if the sentencing court (or adjudication court if the offender is a juvenile)

ordered that the offender (or juvenile) be subject to the sex offender registry requirements.

- **Date of registration**. Date the person was required to register.
- **Address**. All addresses where the person is or will be residing.
- **Supervising agency**. The name of the agency supervising the person, the name of the office responsible for supervision, and the office telephone number.
- **Internet and social media accounts**. The name of every email account, Internet user name, Internet profile, and website the person creates or maintains.
- **Employment**. The name and address of the person's place of employment.
- **School location**. The name and location of any school where the person is enrolled.
- **Treatment during sexually violent person commitment**. A notation regarding treatment the person has received for his or her mental disorder.
- **Date of last update**. The most recent date on which the information was updated.

Not all information contained in the sex offender registry is publicly accessible. The DOC maintains a website where the public may access limited information about sex offenders by entering a zip code or by entering the name of a registrant.

Exception for Young Offenders

Certain young offenders who are close in age with their victims do not have to register as sex offenders. A court may exempt an offender from registration if he or she was 18 years old or younger at the time of the crime, and if the victim is no more than four years younger or older than the offender. The exemption only applies to certain offenses, and does ***not*** apply to an offender whose crime involved force or violence or whose victim was less than 12 years old.

Length of Time on the Registry

In general, a person must register as a sex offender for either 15 years after being discharged from supervision, or for the person's lifetime.

Lifetime sex offender registration applies to a person who has been: (1) convicted of a sex offense on two or more separate occasions; (2) convicted of certain sexual assault crimes; (3) committed as a sexually violent person under ch. 980, Stats.; or (4) ordered by the court to comply for life.

Failure to Comply With Registration Requirements

A registered sex offender who fails to report or update required registry information is subject to penalties. In general, a sex offender who intentionally fails to provide or update registry information is guilty of a Class H felony and faces penalties of imprisonment for six years or less, a fine of $10,000 or less, or both.

A registered sex offender who uses an alias or moves to a different residence without permission is also subject to penalties. State law prohibits a sex offender from changing his

or her name or identifying by a name not used by DOC. State law further prohibits a sex offender from establishing or changing his or her residence unless certain conditions have been met. In general, a sex offender who intentionally violates these prohibitions is guilty of a Class H felony and faces penalties of imprisonment of six years or less, a fine of $10,000 or less, or both.

Sex Offender Placement

The DOC must comply with state and local laws when the agency places a sex offender who is released into the community on probation, parole, or ES. State statutes and municipal ordinances impose limitations and requirements regarding the locations where the DOC may initially place a sex offender.

Wisconsin law requires the DOC to place a sex offender in one of three locations upon release to parole or supervised release: (1) the county where the person resided when he or she committed the sex offense; (2) the county where the person was convicted; or (3) a sex offender treatment facility. However, the DOC cannot parole serious sex offenders in any county that contains a prison that offers a specialized sex offender treatment program, unless the county is the offender's county of residence.

Q: Is an offender on lifetime GPS or PPS tracking charged a fee for the cost of tracking?

A: Yes. The offender bears as much of the cost for tracking as the offender is able, based on the offender's financial resources; present and future earning ability; needs and earning ability of the offender's dependents; any other costs the offender is required to pay in conjunction with his or her supervision by the DOC or the DHS; and any other factors that the DOC considers appropriate.

Municipal ordinances also limit the locations where sex offenders may be placed within a community. Such ordinances typically prohibit a sex offender from living within a specified distance from locations such as parks and schools.

GPS Tracking by DOC

Offenders who commit certain child sex offenses or violate a temporary restraining order (TRO) or injunction issued for domestic abuse or harassment may be subject to global positioning system (GPS) tracking. The DOC manages the GPS tracking system to actively monitor and identify an offender's location in real time. An offender wears specialized tracking equipment that uses wireless-based communications and geo-positioning satellites to actively track and timely report and record the offender's presence in an "exclusion zone," an area the particular offender is prohibited from entering, or in an "inclusion zone," an area the particular offender is prohibited from leaving.

Tracking of Sex Offenders

An offender who is convicted or found guilty by reason of mental disease or defect of a serious child sex offense or who is found to be a sexually violent person under ch. 980, Stats., is subject to lifetime GPS tracking. The DOC creates individualized exclusion and inclusion zones for these offenders, if necessary to protect public safety. The exclusion zones must focus on areas where children congregate and areas where the offender is prohibited from going as a condition of probation, parole, ES, conditional release, or supervised release.

For some offenders who are subject to lifetime GPS tracking, the DOC may alternatively use passive positioning system (PPS) tracking to passively track the offender with GPS tracking.

Once the offender who is subject to lifetime GPS tracking completes his or her sentence, including any probation, parole, or ES, the DOC may decide to passively track the location of the offender through PPS tracking. With PPS tracking, the offender's location information is monitored, identified, and recorded, but not necessarily in real time as is done with active GPS tracking.

Q: Who is a "juvenile in need of protection or services"?

A: A juvenile who is found to be uncontrollable, habitually truant from school, a school dropout, or a habitual runaway; who is determined to be not responsible for a delinquent act by reason of mental disease or defect; or who is under 10 years of age who commits a delinquent act.

Tracking of Restraining Order Violators

An offender who is convicted for violating a TRO or injunction issued for either domestic abuse or harassment may be subject to GPS tracking for a limited period of time. A court may order GPS tracking if the court finds it more likely than not that the offender will cause serious bodily harm to the person who petitioned for the TRO or injunction. However, if the court determines that another alternative, including imprisonment, is more likely to protect the petitioner, the court may not order GPS tracking. If the court orders GPS tracking, the DOC must then create exclusion zones for the offender, as necessary to protect the petitioner, and the GPS system must alert the DOC if the offender enters an exclusion zone. An offender is subject to GPS tracking for the duration of his or her probation, or for the period ordered by the court, if tracking is a condition of the offender's ES.

JUVENILE JUSTICE

Juvenile offenders are generally subject to the juvenile justice system, rather than the adult criminal justice system. The Juvenile Justice Code, ch. 938, Stats., governs delinquent juveniles and juveniles in need of protection or services (also known as "JIPS"). A person 17 years of age or older who commits a crime is prosecuted in the adult criminal justice system.

Juvenile Justice Code

The Juvenile Justice Code creates procedures and consequences for violations of the law that specifically apply to juveniles who commit offenses. These procedures and consequences differ from those contained within the criminal chapters of the Wisconsin statutes and employ a different vocabulary. The following terms have specific meanings in the context of the juvenile justice system.

Juvenile. A "juvenile" for purposes of criminal prosecution is a person who is 16 years old or younger and who has violated a criminal law, civil law, or municipal ordinance. A "juvenile" for all other purposes under the Juvenile Justice Code is a person who is 17 years old or younger.

Adjudicated. A juvenile is "adjudicated" under the Juvenile Justice Code, rather than convicted. Adjudicated means that the juvenile is "found to" have committed or not to have committed a violation.

Delinquent. A juvenile who is 10 years of age or older, and under 17 years of age, and who violates a criminal law is adjudicated "delinquent," rather than being found guilty and convicted.

Disposition. The Juvenile Justice Code provides "dispositions," which are consequences, for violations of the law that are imposed upon juvenile offenders, rather than sentences. The purpose of a disposition is to respond to the care and treatment of the juvenile's best interest and protection of the public, while being consistent with the prevention of delinquency.

Q: Who is considered to be a "delinquent juvenile"?

A: A juvenile who is 10 years of age or older, and under 17 years of age, and has violated any state or federal law.

Adult Court vs. Juvenile Court

Although juvenile courts customarily have jurisdiction over juvenile cases, these cases may proceed in adult criminal courts under certain circumstances. Juvenile cases are most frequently addressed in adult court when they involve the commission of a serious offense, such as armed robbery or homicide.

A juvenile's case may get to the adult criminal court system in one of two ways. A juvenile's case may begin in adult court, which occurs when the adult court has "original jurisdiction" over the

juvenile. Alternatively, the case may begin in juvenile court and then be transferred to adult court because the juvenile court waived its jurisdiction to hear the case. When this happens, the juvenile is "waived" to adult court.

Original Adult Court Jurisdiction – Juveniles Whose Cases Begin in Adult Court

A juvenile case **begins** in adult court when the juvenile meets certain criteria. The following types of juveniles may have their cases addressed in adult court based on the court's original jurisdiction:

- **Juveniles who commit battery and have a prior adjudication**. A juvenile who was previously adjudicated delinquent and is alleged to have committed battery or assault while placed in a secured correctional facility, secured detention facility, or secured residential care center for children and youth, or is alleged to have committed battery to a probation and parole agent or aftercare agent.
- **Juveniles aged 10 or older who attempt or commit first-degree intentional homicide or who commit any other homicide**. A juvenile who is alleged to have attempted or committed first-degree intentional homicide, or a juvenile who is alleged to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 10th birthday.
- **Juveniles with a prior adult court case**. A juvenile who is alleged to have committed a crime and who has been previously convicted in adult court or has a case pending in adult court.

A juvenile whose case begins in adult court may be "reverse waived" back into juvenile court if the adult court waives its original jurisdiction to hear the case.

Occasionally, a juvenile whose case begins in adult court may have his or her case "reverse waived" **back** into the juvenile court. This happens when the adult court waives its original jurisdiction to hear the case. A juvenile must prove the following before a court may reverse waive the juvenile's case: (1) that the juvenile could not receive adequate treatment in the criminal justice system; (2) that transferring the juvenile would not depreciate the seriousness of the offense; and (3) that it is not necessary to keep the case in adult court in order to deter juveniles from committing a similar violation.

Waiver of Juveniles to Adult Court – Juveniles Whose Cases Begin in Juvenile Court

A juvenile court case may begin in juvenile court and then be **waived** into adult court when the juvenile meets certain conditions. The following are circumstances under which a court may waive a juvenile case to adult court:

- **Commission of specific crimes after age 14**. The juvenile is alleged to have committed certain serious violent offenses, drug offenses, or gang-related offenses on or after the juvenile's 14th birthday.
- **Commission of any crime after age 15**. The juvenile is alleged to have violated any state criminal law on or after the juvenile's 15th birthday.

The court has discretion regarding waiver of a juvenile's case to adult court. However, the statutes specify the criteria upon which a court may base its decision. These criteria include: personality of the juvenile; prior record of the juvenile; type and seriousness of the offense; adequacy and suitability of facilities and services within the juvenile justice system; and ongoing proceedings in adult court against the juvenile's associates.

Dispositions for Juvenile Offenders

A juvenile adjudicated delinquent for violating a criminal law faces a variety of potential dispositions. These dispositions include the following, among others:

- Counseling.
- Supervision by DOC, another state agency, or a suitable adult.
- Participation in the teen court or Serious Juvenile Offender Program.
- Placement in a relative's home, a group home, or a residential treatment center.
- Placement in a juvenile detention facility.
- Electronic monitoring.
- Payment of restitution or forfeiture.
- Community service.
- Special treatment or care, such as medical or psychological treatment.
- Alcohol or drug treatment.
- Drug testing.
- Vocational training or participation in an education program.
- Restriction on driving privileges.
- Compliance with sex offender reporting requirements.

A juvenile who is tried and convicted in adult court is subject to adult criminal procedures and the criminal penalties provided for the crime he or she committed.

Additional References

Criminal Justice

1. The state DOC website is: http://www.doc.wi.gov.

2. The Sex Offender Registry, which may be searched by name or zip code: http://offender.doc.state.wi.us/public.

3. The state DOJ website contains information for victims of crime and information on crime prevention, background checks, and criminal investigations: http://www.doj.state.wi.us/.

4. Information and applications relating to expunction and pardons may be found on the Wisconsin State Law Library website: http://wilawlibrary.gov/topics/justice/crimlaw/pardons.php.

5. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau prepares Informational Papers on various criminal justice topics, including felony sentencing and probation, crime victim and witnesses services, and juvenile justice and the youth aids program, among others. The Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.

6. Legislative Audit Bureau report, *17 Year-Old Offenders in the Adult Criminal Justice System* (Audit Report 08-3), is available at: http://legis.wisconsin.gov/lab.

7. Information regarding law enforcement in Indian Country may be found in Information Memoranda on the Wisconsin Legislative Council website: http://legis.wisconsin.gov/lc.

Corrections

1. The state DOC website is: http://www.doc.wi.gov.

2. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on various corrections topics, including the adult corrections program. The Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.

3. The Legislative Audit Bureau report, *Inmate Mental Health Care* (Audit Report 09-4) is available at: http://www.legis.wisconsin.gov/lab.

4. DOC provides victim advocacy and support, and notifies enrolled victims of inmate release, parole, and other offender status changes. More information regarding DOC victim services and notification is available at the department's crime victim website https://www.wivictimsvoice.org.

5. DOC, in cooperation with Wisconsin county sheriffs, provides information, registration, and notification regarding offenders/defendants in the Wisconsin county jails online at: http://www.vinelink.com or by calling 1-888-944-8463.

GLOSSARY

Acquittal: A defendant is found not guilty by a circuit court or jury and released without any further prosecution for the previously charged act.

Arraignment: A formal reading of the criminal complaint to the defendant following the probable cause hearing in felony cases. In response to the charges, the defendant enters a plea.

Bail/bond: A monetary or other form of security given in exchange for release from jail or prison; meant to ensure the appearance of the defendant at further proceedings.

Bench trial: A trial held before a trial judge sitting without a jury.

Burden of proof: The duty placed upon a party to prove or disprove a disputed fact. In a criminal case, the accused is presumed to be innocent, so the state bears the burden to prove each element of the offense charged beyond a reasonable doubt.

Crime: An offense punishable by imprisonment, either in a county jail or a state prison.

Criminal complaint: A document that sets forth the charges against the defendant and the facts that support the charges.

Defendant: A person charged with having committed a crime.

District attorney: An elected officer with the duty to charge and prosecute those accused of committing crimes in his or her jurisdiction.

Felony: A criminal offense punishable by imprisonment of one year or longer.

Guilty: Being responsible for the commission of an offense. A defendant can either plead guilty to the commission of a crime or be found guilty by a court or jury.

Initial appearance: The first court appearance in a criminal case, at which the judge or court commissioner will set bail for the defendant to ensure the defendant's appearance at future court appearances. Defendants in misdemeanor cases at the initial appearance, in addition to having bail set, will be asked to enter a plea of not guilty, guilty, or no contest.

Judgment: The determination of a court upon matters submitted to it; the final decision in a case.

Jury: A sworn body of people responsible for reaching a verdict based on the evidence presented at trial.

Juvenile: For purposes of prosecution for criminal and civil offenses, a person who is younger than 17 years.

Misdemeanor: A criminal offense that is punishable by imprisonment of less than one year.

No contest: A plea with which the defendant does not admit guilt, but concedes that the state can prove him or her guilty.

Plea: An answer to a claim made by an adversary. A defendant may plead guilty, no contest, not guilty, or not guilty by reason of insanity.

Probable cause hearing/preliminary hearing: A hearing at which the State is required to show to a judge that the defendant committed a crime in a felony case. It is not unusual for a defendant to waive his or her right to this hearing.

Serious felony: Certain drug offenses that are punishable by a maximum prison term of 30 years or more; first- or second-degree intentional homicide; first-degree reckless homicide; felony murder; homicide by intoxicated use of a vehicle; performing partial-birth abortion; substantial battery; substantial battery to an unborn child; mayhem; first- or second-degree sexual assault; taking hostages; kidnapping; causing death by tampering with a household product; arson; armed burglary; carjacking; armed robbery; assault by a prisoner; first- or second-degree sexual assault of a child;

substantial physical abuse of a child; sexual exploitation of a child; incest; child enticement; soliciting a child for prostitution; child abduction; soliciting a child to commit a Class A or B felony; use of a child to commit a Class A felony; or solicitation, conspiracy, or attempt to commit a Class A felony.

Summons: A notice issued by the court, calling on a person to appear in court.

Truth-in-sentencing: Sentencing requirements that apply to offenses committed on or after December 31, 1999, under which the court must impose a bifurcated sentence consisting of a specified period of confinement in prison followed by a specified period of ES.

Verdict: The finding or decision of a jury on a matter submitted to it in trial.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 11 – ECONOMIC DEVELOPMENT

The state of the economy has been at the top of state and national agendas in the years since the 2008 financial crisis. At the state level, various tax credits, grant and loan programs, and incentives aim to encourage economic development. The Wisconsin Economic Development Corporation is the state entity with primary responsibility for economic development. Numerous local, regional, state, and federal entities also play a role.

Anna Henning, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Introduction 1

Wisconsin Economic Development Corporation 1

Tax Incentives for Businesses 2

- Jobs Tax Credits 2
- Economic Development Tax Credits 3
- Enterprise Zone Tax Credits 4
- Development Opportunity Zone Tax Credits 4
- Manufacturing and Agriculture Tax Credits 5
- Angel Investment and Early Stage Seed Investment Tax Credit Programs 5

Venture Capital 6

- CAPCO Program 6
- 2013 Wisconsin Act 41 6

Workforce Training 7

Grant and Loan Programs Administered by WEDC 7

Other State Programs and Initiatives 8

Tax Incremental Financing 8

Regional Economic Development Organizations 8

Evaluating State Economic Development Programs 9

- Audits of Economic Development Programs 9
- Reporting Requirements 10

Additional References 11

Glossary 11

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.wisconsin.gov/lc

Introduction

Although the United States economy has returned to its pre-recession size by some measures, economic growth continues to lag behind the pace required for a full economic recovery. In addition, job growth has been inconsistent across industries. For example, healthcare and biotechnology sectors have experienced significant job growth, whereas residential construction jobs have not rebounded. The result is that job seekers sometimes lack skills for the available jobs.

Given that backdrop, it is no surprise that economic development has been a key focus of legislative activity at the state level in recent years, with members of both major political parties emphasizing the importance of job creation, worker training, and access to capital. The broad concept of "economic development" encompasses myriad approaches to spurring economic growth, including, for example, favorable tax treatment, grant and loan programs, and incentives designed to encourage investment in new and growing businesses. There appears to be broad consensus that the state should play a role in economic development. The legislative debate often focuses on questions about which approaches are most effective.

In addition to the state tax incentives and programs discussed in this chapter, the federal government, local governments, and regional organizations contribute significant resources to economic development. For example, local governments encourage business development with tools such as tax incremental financing, and the U.S. Small Business Administration administers numerous programs to assist small businesses.

Wisconsin Economic Development Corporation

The Wisconsin Economic Development Corporation (WEDC), a semi-public corporate entity, is the state entity primarily responsible for economic development in the state.

WEDC is the state entity with primary responsibility for economic development.

WEDC is governed by a 15-member board chaired by the Governor and comprised of state officials and private sector representatives. State law directs the board to develop and implement economic programs to provide business support and expertise and financial assistance to companies that are investing and creating jobs in Wisconsin and to support new business start-ups and business expansion and growth in the state.

WEDC's website is:
http://www.inwisconsin.com

For each economic development program that it develops, the board must establish certain policies and benchmarks, establish methods for evaluating projected results, verify the accuracy of information submitted by grant and loan recipients, and report certain information to the Legislature. The board also has statutory responsibilities relating to the administration of certain tax credit and grant programs.

A May 2013 report by the Legislative Audit Bureau found that WEDC lacked sufficient policies to administer its programs effectively and had not performed certain oversight functions, such as the monitoring of loan repayments, adequately. The Legislature responded by including provisions in the 2013-14 Biennial Budget Act that conditioned the release of certain WEDC appropriations on WEDC's compliance with specified recommendations contained in the audit report. The WEDC board has since approved program policies and reported to the Legislature regarding the status of outstanding loans.

Tax Incentives for Businesses

Several state tax credit programs offer incentives to businesses for activities such as job creation, business relocation or expansion, capital investment, and production. Each of the tax credit programs is structured differently. For example, some tax credits are awarded based on a claimant's activity within a specified "zone," while others apply regardless of location.

For some tax credit programs, an individual or business must be certified as fulfilling specified criteria for eligibility to receive a tax credit before the Department of Revenue (DOR) will award the credit. WEDC is authorized to administer such certifications for the state's economic development-related tax credit programs.

Jobs Tax Credits

Jobs tax credits may be claimed by qualified businesses that create jobs in Wisconsin. The credits are refundable, meaning that if the credit exceeds a claimant's tax liability, the claimant may receive a check from the state.

WEDC may award jobs tax credits equal to up to 10% of qualified wages, and an amount determined by WEDC for job training. To receive the tax credit, a person who has been certified must have increased net employment in this state. In addition, the person must have either created jobs with wages in a specified range, improved employees' job-related skills, or provided other qualified training.

Jobs tax credits are available to employers who increase net employment in Wisconsin.

To qualify, new jobs must pay annual wages of at least 150% of the federal minimum wage for full-time hours (currently $22,620 in annual wages), or at least $30,000, depending upon

the classification of the county or municipality as a "tier I" or "tier II" county or municipality, as determined by WEDC based on factors such as the unemployment rate and median family income in the area.

Economic Development Tax Credits

The economic development tax credit program, created in the 2009-10 Legislative Session, replaced various tax credits that had been awarded based on the location of economic activity within specified "zones." Any person may apply to WEDC for certification to claim an economic development tax credit if the person is conducting or intends to conduct at least one eligible activity. Eligible activities include projects related to job creation, capital investment, employee training, and the location or retention of corporate headquarters. Additional consideration for credits may be granted if the claimant conducts activities in an economically distressed area, conducts activities with significant employment effects, or conducts training for members of targeted groups.

WEDC may certify businesses conducting certain job creation, capital investment, employee training, or headquarters location activities to receive economic development tax credits.

The total amount of tax benefits that may be provided under the program was initially limited to the total amount of tax benefits that had been authorized, but not allocated, to persons under the replaced development zones, enterprise development zones, agricultural development zones, airport development zones, and technology zones programs ($95.4 million). 2013 Wisconsin Act 20 increased the maximum amount of tax benefits that WEDC may allocate under the economic development tax credit program by $100 million. However, WEDC must obtain approval from the Joint Committee on Finance before allocating the last $39 million of that amount.

During the 2013 fiscal year, WEDC allocated over $40 million in economic development tax credits. WEDC expected recipients to create 4,831 jobs and retain 16,651 as a result of the economic activities for which the credits were allocated.

2013 Wisconsin Act 184 created a program to facilitate the transfer of economic development tax credits. The option to transfer credits is useful for businesses with no or minimal income tax liability in Wisconsin. The credits may only be transferred in exchange for a good or service other than money and in connection with the eligible activity for which the tax credits were initially awarded. WEDC may approve the transfer of economic development tax credits if the person to whom the tax credits are initially awarded meets one of several criteria demonstrating its business presence in Wisconsin.

Act 184 authorized WEDC to approve the transfer of up to $15,000,000 in economic development tax credits over a three-year period. If WEDC determines that an extension of the program will support significant economic development in Wisconsin, it may continue the program for up to an additional three years and authorize the transfer of up to an

additional $15,000,000 in economic development tax credits, subject to approval by the Joint Committee on Finance.

Enterprise Zone Tax Credits

WEDC may designate up to 20 enterprise zones.

The Enterprise Zone Program was first authorized by 2005 Wisconsin Act 361 and has expanded over time. WEDC may designate no more than 20 enterprise zones, each of which may remain in effect for no more than 12 years. Five enterprise zones must be in areas comprising political subdivisions with populations of less than 5,000 people, and two enterprise zones must be in areas comprising political subdivisions with populations of at least 5,000 but fewer than 30,000 people.

Although they are named "zones," enterprise zones are typically designated for individual, large-scale business ventures. Examples of business enterprises that have been designated as enterprise zones include Mercury Marine in Fond du Lac and Bucyrus International, Inc., and Quad/Graphics in the Milwaukee area.

Businesses located within an enterprise zone may be certified to receive enterprise zone tax credits if they take certain actions, such as beginning or expanding operations in the zone, relocating to an enterprise zone from outside the state, retaining jobs within the zone, purchasing specified products or services from Wisconsin vendors, or making a significant capital expenditure within the zone.

Enterprise zone tax credits are refundable, meaning that if the credit exceeds a claimant's tax liability, the claimant may receive a check from the state.

Development Opportunity Zone Tax Credits

Development opportunity zones are designated by statute. Three development opportunity zones – located in the Cities of Beloit, Janesville, and Kenosha – are in effect as of the writing of this chapter. Each of the zones is in effect for a total of five years unless extended by WEDC for an additional five years.

Any person who conducts or intends to conduct economic activity in a development opportunity zone is entitled to receive specified tax benefits relating to environmental remediation, jobs, and capital investment. Specifically, a person is entitled to receive benefits if he or she submits a qualified project plan in conjunction with the local governing body of the city in which the development opportunity zone is located. Project plans must include various components, including the amount the person proposes to invest, the number of full-time jobs that will be created, and other information required by WEDC or DOR.

Manufacturing and Agriculture Tax Credits

Beginning in 2013, qualified manufacturing and agricultural production activities became eligible for a tax credit that, once fully phased in, will effectively reduce manufacturers' and agricultural producers' state income tax liability to zero for income resulting from business operations. Eligible activities are qualified domestic production activities that are derived from property located in Wisconsin and assessed as manufacturing or agricultural property.

Manufacturing and agricultural production tax credits will essentially eliminate manufacturers' and agricultural producers' state income tax liability arising from business operations.

The amount of the credit is set to increase incrementally. For tax years beginning in 2014, the credit is equal to 3.75% of qualified production activities. It will increase to 5.526% of such activities for tax years beginning in 2015, and 7.5% for tax years beginning in 2016 and subsequent years.

Angel Investment and Early Stage Seed Investment Tax Credit Programs

Wisconsin's Angel Investment and Early Stage Seed Investment tax credit programs have been models for legislation in other states. The programs are intended to encourage venture capital investments in new and expanding businesses throughout the state.

Through the programs, venture capital investors receive tax credits for investing capital, either individually or through a fund manager, in businesses that participate in the programs. To participate, among other statutory criteria, a business must show that it has the potential for increasing jobs in this state, increasing capital investment in the state, or both.

The Angel Investment and Early Stage Seed Investment programs are intended to encourage venture capital investments in Wisconsin business ventures.

Businesses first applying to participate in the programs must have fewer than 100 employees and have been in operation in Wisconsin for fewer than 10 years. Those limitations do not apply after initial certification.

Angel investment tax credits equal 25% of an individual claimant's bona fide angel investment in a qualified new business venture. Early stage seed investment tax credits equal 25% of a claimant's investment paid to a fund manager that the fund manager, in turn, invests in a certified business.

Venture Capital

Partly because of the geographic location of investors, reports from various sources indicate that Wisconsin businesses receive a disproportionately small proportion of the venture capital funds invested nationally. Over the last few decades, the Legislature has debated the optimal role for the state in providing better access to venture capital in the state. It enacted the angel investment and early state seed investment tax credit programs, discussed above, in 2003. During the late 1990s and again during the 2013-14 Legislative Session, it also created programs that involve the investment of state funds.

CAPCO Program

A no longer operational program created during the 1997-98 Legislative Session, sometimes referred to as a "CAPCO" program, required venture capital companies certified by the state to invest 50% of funds received in Wisconsin businesses during the first five years of the program. Audits of the program and similar approaches adopted by other states noted a lack of benchmarks by which to measure the programs' successes. More recent proposals to establish a CAPCO model have included more accountability measures than did the 1997 program and have included provisions intended to decrease the financial risk to the state, but such proposals have not been enacted.

2013 Wisconsin Act 41

2013 Wisconsin Act 41 created a fund-of-funds venture capital investment program. The program is in the early stages of implementation as of the writing of this chapter.

2013 Wisconsin Act 41 created a venture capital investment program with an initial investment of $25 million in state funds.

The Act required the Department of Administration (DOA) to form a committee to select an investment manager for the program and to provide an initial $25 million in state investment for the program. The investment manager must invest capital in at least four venture capital funds. Contracts with the selected venture capital funds must include specified requirements. For example, within four years, each participating venture capital fund must make new investments in an amount equal to the capital it receives through the program in one or more businesses headquartered in Wisconsin.

The investment manager must hold gross proceeds from such investments in an escrow account until it has repaid the state's original $25 million investment in the program. After that happens, the investment manager must pay 90% of its gross proceeds from the program to the state for deposit into the state's general fund.

The DOA is required to submit progress reports regarding the program to the Joint Committee on Finance in 2015 and 2018. The reports must contain comprehensive

assessments of the program's performance and certain recommendations for improving the program.

Workforce Training

The need for a skilled, trained workforce has been a key focus of economic development efforts in recent years, particularly as employers report that job applicants lack the necessary skills for jobs in growing sectors such as advanced manufacturing. In response to that concern, 2013 Wisconsin Act 9 created a workforce development program, referred to as "Wisconsin Fast Forward," that provides grants for employer-led worker training, including training of unemployed and underemployed workers. The Department of Workforce Development (DWD) implements the program in consultation with WEDC and the Wisconsin Technical College System Board. Governor Walker proposed an expansion of the program during his 2014 State of the State address.

The Wisconsin Fast Forward program provides grants for employer-led training programs.

In Spring 2014, the DWD announced the availability of several specific types of worker training grants available through the program. As of the end of May 2014, the department reported that it had awarded over $6 million in grants through the program to provide training to approximately 6,636 workers at 172 businesses.

Act 9 also requires the DWD to develop and maintain a Labor Market Information System to collect, analyze, and disseminate information on employment opportunities in this state and other appropriate information relating to labor market dynamics. The department must make that information available to educational institutions and the public.

Grant and Loan Programs Administered by WEDC

WEDC has established various grant and loan programs pursuant to its statutory directive to provide support to companies that are creating jobs and expanding their businesses in the state. For example, it offers forgivable loans to businesses in certain sectors that create new, full-time positions or retain existing full-time positions as part of significant expansion projects. It also provides loans to businesses that create new, full-time positions or retain their existing full-time positions and grant funding to businesses that locate or expand into new markets or new technology in Wisconsin. Some of the programs are specifically targeted for businesses in certain sectors, such as advanced manufacturing or research and development sectors.

WEDC also administers the Capital Catalyst program, a grant program through which WEDC provides seed funding to organizations and communities that are able to provide matching funds. To participate, organizations and communities must demonstrate that they have programs in place to spur the development of new high-growth businesses.

Examples of grant recipients include regional economic development organizations, such as the Innovation Fund of Western Wisconsin, and community development organizations, such as the Whitewater Community Development Authority.

Other State Programs and Initiatives

For more information on WHEDA programs, see http://www.wheda.com

Several state agencies play a role in economic development in addition to WEDC and the DWD. For example, the Wisconsin Housing and Economic Development Authority (WHEDA) provides loan guarantees for small business, agricultural, and multi-family housing financing products.

In addition, the University of Wisconsin (UW)-Extension's Division of Entrepreneurship and Economic Development facilitates expert assistance for communities engaged in economic development efforts. The division operates Small Business Development Centers, which are funded in part through the U.S. Small Business Administration and provide low- and no-cost assistance to entrepreneurs. Small Business Development Center experts can be reached via the Wisconsin Business Answer Line at 800-940-7232.

Tax Incremental Financing

Tax incremental financing (TIF) is an important economic development tool for Wisconsin municipalities. A municipality may designate a tax incremental district to rehabilitate a particularly blighted area or to encourage economic development where it might not otherwise occur. That designation freezes the taxable value of the district at its current "base value." Public expenditures in the district are then financed by taxes on the "increment" of property value that exceeds the base value while the district is in effect.

Project costs for which a municipality may utilize TIF include, for example, costs for the construction of public works, costs for the removal of environmental contaminants, and costs for certain infrastructure improvements. Project costs generally may not include cash grants for developers, unless a cash grant is authorized by a development agreement.

Regional Economic Development Organizations

A map and links for the regional organizations are available at:

www.forwardwisconsin.com/map.php

Nine regional economic development organizations, each covering a multiple-county area, promote economic development and represent local economic development organizations throughout the state. The regional organizations are generally structured as nonprofit organizations, but some have formed through collaborations with

public entities, such as technical colleges. In addition, the regional organizations often serve as partners in state or local government economic development initiatives. Among other activities, the organizations develop brand identities for their regions; provide information regarding available commercial sites and facilities located within their regions; and actively recruit businesses in certain industry clusters.

Evaluating State Economic Development Programs

Efforts to measure the effectiveness of economic development programs face an ongoing challenge: in some cases, it is difficult to determine whether a particular tax incentive or other government program **caused** a specific new job, business expansion, or investment. Nevertheless, detailed reports compiled by WEDC provide useful information regarding jobs created by recipients of state tax credits, grants, and loans.

Audits of Economic Development Programs

The Legislative Audit Bureau (LAB) completed audits of all state economic development programs in 2006 and 2012.

For purposes of reporting and audits, Wisconsin law defines an "economic development program" as a program or activity having the primary purpose of encouraging the establishment and growth of business in the state, including the creation and retention of jobs, and that does both of the following:

- Receives funding from the state or federal government that is allocated through an appropriation under ch. 20, Stats.
- Provides financial assistance, tax benefits, or direct services to specific industries, businesses, local governments, or organizations.

Using that definition, the 2006 audit identified 152 economic development programs in the state. The 2012 audit identified 196 programs that had been authorized or operational at some point during the 2007-09 and 2010-11 biennia.[1] However, a number of the 196 programs were consolidated or eliminated during that period, and several other programs were sunsetted in the 2013-15 Biennial Budget Act.

The LAB audited Wisconsin's economic development programs in 2006 and 2012.

The 2012 audit estimated that state expenditures on economic development programs totaled $226.5 million during the 2009-11 fiscal biennium. That amount does not include foregone revenue from economic development tax incentives.

[1] In some cases, the agencies disagree with the characterization of particular programs as economic development programs.

Beginning in 2013, the LAB is required to conduct biennial audits of WEDC's financial management and the programs WEDC administers.

Reporting Requirements

The 2006 audit recommended improved coordination and accountability for the state's economic development programs. 2007 Wisconsin Act 125 ("Act 125") was the product of a working group established in response to the 2006 audit. In addition to eliminating and consolidating programs, the Act created new reporting requirements, which currently apply to WEDC and seven other state agencies.[2]

Under Act 125, as modified by subsequent legislation, each agency must establish clear and measurable goals tied to a program's statutory policy objectives and establish at least one quantifiable benchmark for each goal. The agencies also must establish a method for evaluating the projected results of each program with actual outcomes. State agencies must consult with WEDC when developing goals and accountability measures for economic development programs.

The WEDC board must also submit annual reports to the Legislature. The reports must include the following information regarding each economic development program:

- A description of the program.
- An accounting of the location, by municipality, of each job created or retained in the state in the previous fiscal year as a result of the program.
- An accounting of the industry classification, by municipality, of each job created or retained in the state as a result of the program.
- A comparison of expected and actual program outcomes.
- The number of grants made under the program.
- The number of loans made under the program.
- The total amount of tax benefits allocated, and the total amount of tax benefits verified to the DOR, under the program.
- The amount of each grant and loan made under the program.
- The recipient of each grant or loan made under the program.
- An identification of each recipient of a tax benefit allocated, and each recipient of a tax benefit that was verified to the DOR, under the program.
- The sum total of all grants and loans awarded to and received by each recipient under the program.
- Any recommended changes to the program.

[2] The agencies are the Department of Agriculture, Trade, and Consumer Protection; the Department of Natural Resources; the Department of Tourism; the Department of Transportation; the UW System; WHEDA; and the Wisconsin Technical College System.

Additional References

1. Legislative Audit Bureau audit reports are available at: http://www.legis.wisconsin.gov/lab
    - Audit Report 13-7, *Wisconsin Economic Development Corporation*
    - Audit Report 12-11, *State Economic Development Programs*
    - Audit Report 06-9, *State Economic Development Programs*
2. Wisconsin Economic Development Corporation, *Wisconsin's FY 13 Annual Report on Economic Development*, http://www.inwisconsin.com/content/uploads/2013/02/2013-Act125-WEB.pdf
3. Wisconsin Department of Revenue:
    - *Fact Sheet: Jobs Tax Credit*, http://www.revenue.wi.gov/taxpro/fact/jobstaxcr.pdf
    - *Fact Sheet: Wisconsin Manufacturing and Agriculture Credit*, http://www.revenue.wi.gov/taxpro/fact/manufandagr.pdf

Glossary

Economic development: Efforts by government and private entities to promote business development and spur economic growth. For purposes of state auditing and reporting, a more specific definition of "economic development program" is set forth in the statutes.

Loan guarantees: Assurances that a debt obligation will be satisfied. Their purpose is to increase private lending activity by lowering the risk assumed by lenders.

Tax credit: Money deducted from a claimant's tax liability. Most tax credits are nonrefundable, meaning that they are not awarded as cash in the event that the credit exceeds tax liability in a given year.

Tax incremental financing: A tool by which local governments finance the cost of new infrastructure and other improvements related to economic development projects. In general, the costs are financed with increased tax revenues in a tax incremental financing district over a given time period.

Venture capital: Money invested in start-up companies or companies preparing for significant expansion. Venture capital investments are considered relatively high-risk but are perceived as vital to economic growth.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 12 – EDUCATION, ELEMENTARY-SECONDARY

The state supervises and regulates elementary and secondary education through the Department of Public Instruction, headed by the State Superintendent of Public Instruction. The Department of Public Instruction oversees the operation of all public elementary and secondary schools in the state. In Wisconsin, the responsibility for the education of elementary and secondary students is shared among local school districts, the state, and the federal government. Funding is provided locally through the property tax, from the state through general purpose tax revenues, and from the federal government through federal taxes.

Anne Sappenfield, Principal Attorney
Wisconsin Legislative Council

Table of Contents

Constitutional Basis and History 1
School District Characteristics and Enrollment 1
Demographics of Pupils 2
Financing 2
General Financing Goals 2
Methods of Support 2
Categorical Aids 4
Federal Funding and Programs 6
Revenue Limit 6
District Governance and Programs 7
Requirements 7
Education Goals 7
Graduation Standards 8
School Accountability 8
Low-Performance Schools 10
Career and Technical Education 12
Parental Choice Programs 12
State Payments to Choice Schools 13
Requirements for Choice Schools 13
Open Enrollment 14
Compulsory School Attendance 15
Integration Aid 16
Charter Schools 17
Types of Charter Schools 17
Instrumentality and Non-Instrumentality Charter Schools 18
Requirements for Charter Schools 19
Additional References 19
Glossary 20

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.wisconsin.gov/lc

Constitutional Basis and History

Under Wisconsin Constitution, Article X, Section 3, the state Legislature is responsible for the establishment of public school districts which are to be "as nearly uniform as practicable" and "free and without charge for tuition to all children."

The Wisconsin Constitution requires all children to receive a free education that is as nearly uniform as possible.

Wisconsin Constitution, Article X, Section 1, assigns the supervision of public instruction to a state superintendent who is elected on a nonpartisan spring ballot for a term of four years. The Superintendent of Public Instruction ("State Superintendent") is charged under the statutes with the general supervision of public instruction and is required to ascertain the condition of the public schools, stimulate interest in education, and spread as widely as possible knowledge of the means and methods which may be employed to improve the schools.

Since the adoption of the Wisconsin Constitution, the Wisconsin public education system for elementary and secondary students has grown to a comprehensive and complex array of schools, districts, and state programs.

School District Characteristics and Enrollment

Wisconsin currently has 424 public school districts and more than 2,000 school buildings governed by more than 2,800 elected school board members. All territory in the state is required to be in a school district. In the 2013-14 school year, there were 873,531 public school students in pre-kindergarten through 12th grade programs, a slight increase from the previous year. In addition, there were approximately 119,726 students enrolled in private schools in the state, a decline from the previous year. The Department of Administration (DOA) has projected Wisconsin's school-age population to increase slightly between 2010 (the date of the last Census) and 2035.

Local school districts, through their elected boards, administer K-12 education. DPI provides oversight, technical assistance, and funding to the districts.

The Department of Public Instruction (DPI) provides direction and technical assistance for public elementary and secondary education in Wisconsin by offering a broad range of programs and professional services to local school administrators and faculty. The DPI distributes state school aids and administers federal aids to supplement local tax resources, advises on curriculum and school operations, ensures education for children with

disabilities, offers professional guidance and counseling, and develops school and public library resources.

The state currently relies on local school districts through their elected boards to administer its elementary and secondary programs. The number of school districts in the state has remained constant over recent history. In addition, 12 cooperative educational service agencies (CESAs) furnish support activities to the local districts on a regional basis.

Demographics of Pupils

Approximately 27% of the 2013-14 public school pupils in Wisconsin can be classified as minority. Current public school enrollment is approximately 3.7% Asian/American/Pacific Islander, 9.7% Black, 10.5% Hispanic, 1.2% American Indian/Alaskan Native, and 2.4% with two or more races or ethnicities.

In the 2013-14 school year, approximately 41.4% of pupils were classified as economically disadvantaged.

Wisconsin public schools provided services to approximately 120,172 special education pupils, or 13.8% of the public school enrollment, in 2013-14. This represents a slight decrease over the prior year. Schools also provided services to approximately 47,417 English language learners, or 5.4% of the public school enrollment, in the 2013-14 school year.

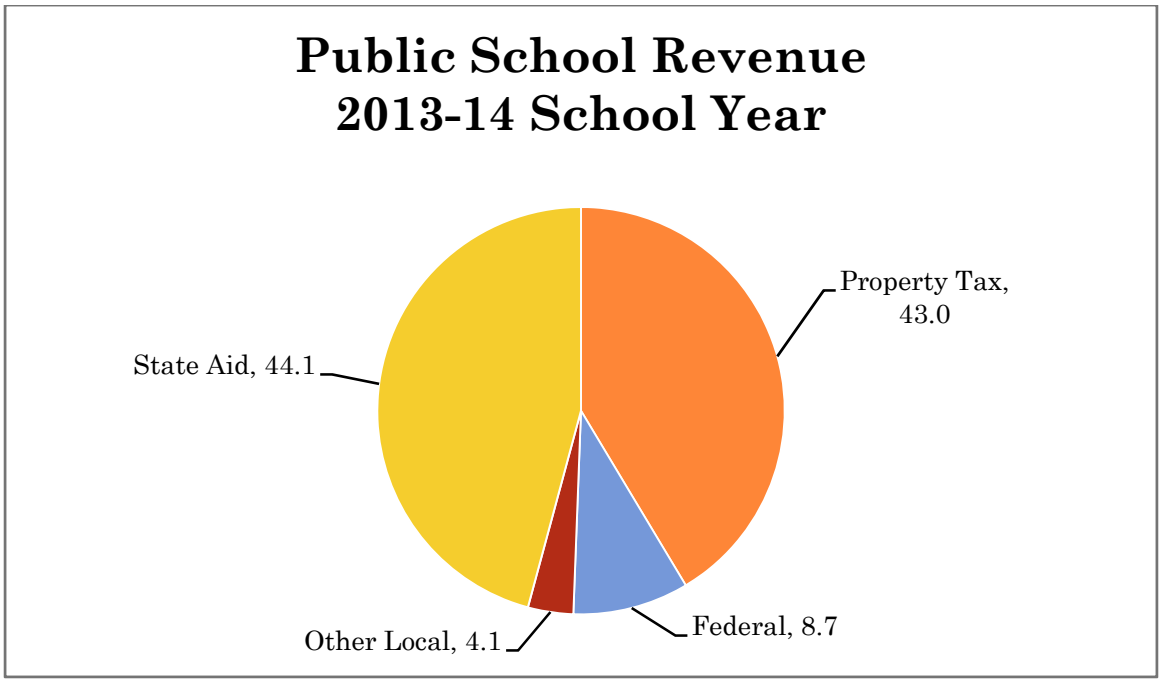
FINANCING

General Financing Goals

The state provides financial assistance to school districts to achieve two basic policy goals: (1) reduce the reliance on the local property tax as a source of revenue for educational programs; and (2) guarantee that a basic educational opportunity is available to all pupils regardless of the local fiscal capacity of the district in which they reside.

Methods of Support

The 424 public school districts derive their revenue through four major sources: state aid; property tax; federal aid; and other nonproperty tax revenue, such as fees and interest earnings. For fiscal year 2013-14, the share of each revenue source was as follows:



Source: DPI

The state funds elementary and secondary education through three different methods: (1) general school aids; (2) categorical aids; and (3) the school levy tax credit.

First, unrestricted general aids are provided through a formula that distributes aid on the basis of the relative fiscal capacity of each school district as measured by the district's per pupil value of taxable property. This formula generally is known as either the "general school aid formula" or the "equalization aid formula." In addition, the Legislature has established other general school aid programs that are associated with the equalization formula.

The second source of state support is categorical aid that partially funds specific program costs such as special education, class size reduction, pupil transportation, and driver education. Categorical aid is either paid on a formula basis or awarded as grants.

The third source of state support is the state school levy tax credit. Although the school levy tax credit is considered school aid, this aid is paid to municipalities to offset the property tax rather than being paid directly to school districts.

For the 2013-15 biennium, the Legislature appropriated over $11.9 billion in general and categorical school aid. More than 99% of this amount is funded through state general purpose revenues (GPR); the other 1% is supported with segregated revenues (SEG) and program revenues (PR). School aid represented approximately 34% of the state's total general fund budget for the 2013-15 biennium.

State aid is provided in a sum-certain appropriation and the funding level is determined through the budget process similar to most other state appropriations. State support for K-

12 education for the 2014-15 fiscal year is estimated to fund 61.8% of the total costs of public education statewide.

General or Equalization Aids

The current school aid formula operates under the principle of equal tax rate for equal per pupil expenditures. Generally, this means that a school district's property tax rate does not depend on the property tax base of the district, but rather, depends on the level of expenditures. The rate at which school costs are aided through the formula is determined by comparing a school district's per pupil tax base to the state's guaranteed tax base.

For a complete description of the state equalization formula, see the Legislative Fiscal Bureau's (LFB) 2013 Informational Paper, *State Aid to School Districts* at: http://www.legis.wisconsin.gov/lfb

Equalization aids are provided to make up the difference between the district's actual tax base and the state guaranteed tax base. Stated differently, there is an inverse relationship between equalization aids and property valuations; those districts with low per pupil property valuations receive a larger share of their costs through the equalization formula than districts with high per pupil property valuations.

Categorical Aids

The state also finances K-12 education through two types of categorical aids: (1) formula driven programs which are automatically provided to school districts based on the number of pupils meeting specific criteria or for costs devoted to a specific function; and (2) grant programs in which districts must submit a request in order to receive the funds. Unlike equalization aid, categorical aid programs are, in most cases, distributed without regard to the relative size of a school district's property tax base. Also, school district costs that are not reimbursed through a particular categorical aid program are included as shared costs under the equalization formula. Therefore, the state shares in these unreimbursed costs but only to the extent to which a school district is supported under the equalization formula. In addition, most of the programs are funded on a sum certain dollar basis which may not match school district expenditures. For these programs, if the appropriated amount in a particular year is insufficient to fully fund a categorical formula, aid payments are prorated.

Categorical aids, including aid for special education and SAGE, can be formula driven for specific students or functions or can be provided as grants.

Special Education

The major categorical aid program in Wisconsin is the special education program. State and federal law require that local school districts provide special education and related services to children with disabilities ages three through 20 who reside in the school district.

Under state law, a child with a disability is defined as a child who, by reason of any of the following, needs special education and related services:

- Cognitive disability.
- Hearing impairment.
- Speech or language impairment.
- Visual impairment.
- Emotional disturbance.
- Orthopedic impairment.
- Autism.
- Traumatic brain injury.
- Other health impairments.
- Learning disability.

In addition, under DPI rules, a school district may include a child with a significant developmental delay who needs special education services. Programs for special education are provided by school districts, either on their own or through cooperative arrangements with other districts, CESAs, or County Children with Disabilities Education Boards (CCDEBs). The state reimburses a portion of the costs for educating and transporting pupils enrolled in special education including school age parent programs. The total appropriation for special education programs in the state for 2013-14 was approximately $369 million for each fiscal year and is expected to cover 25% to 30% of eligible costs.

SAGE

The state also provides categorical funding for the Student Achievement Guarantee in Education (SAGE) Program for grades K through 3. This program, created in 1995, initially awarded five-year grants to school districts with at least one school with at least 50% low-income pupils in the previous school year. School districts were eligible on a phase-in basis to enter into a five-year achievement guarantee contract with the DPI on behalf of that school under certain circumstances.

Under SAGE, each school must do the following:

1. Reduce each kindergarten to grade three class size to 18 pupils, or to 30 pupils if two classroom teachers' classes are combined; although, in one or more years covered by the SAGE contract, a school district may choose not to comply with the requirements for reduced class size in grade two or three, or both, in one or more schools in the district.

2. Keep the school open every day for extended hours and collaborate with community organizations to make educational and recreational opportunities as well as community and social services available in the school to all district residents.

3. Provide a rigorous academic curriculum and design to improve academic achievement.

4. Create staff development and accountability programs that provide training for staff.

5. Encourage collaboration and require professional development plans and performance evaluations.

SAGE provided approximately $109 million in state aid to elementary schools in the program in fiscal year 2013-14. Each school district received approximately $2,027.25 for each student enrolled in the SAGE Program in that year.

Other Categorical Aids

Additional categorical aids are provided for activities such as school libraries, pupil transportation, bilingual/bicultural education, and Head Start supplements.

Federal Funding and Programs

The federal government provides funds to help support numerous educational programs in the state. For fiscal year 2013-14, federal funds provided approximately 8.7% of the funds expended on public elementary and secondary schools in the state. The two major programs of the federal government are those under the Elementary and Secondary Education Act (ESEA), which was reauthorized in 2002, and the special education program, Individuals with Disabilities Education Act (IDEA).

ESEA, since revised in 2002, is also referred to as the "No Child Left Behind Act" (NCLB). This federal legislation includes testing and accountability measures and standards that states, school districts, and individual schools are required to meet. In July 2012, Wisconsin was granted a waiver from certain NCLB requirements which allows the state more flexibility under the ESEA in exchange for the implementation of various accountability measures.

More information on federal education law and Wisconsin's ESEA waiver is available at: http://dpi.wi.gov/esea/index.html

Revenue Limit

Under current law, there is a limit on the annual amount of revenue per pupil that each district can raise through the combination of general school aids (defined as equalization, integration, and special adjustment aids), computer aid, and property taxes. This limit is commonly referred to as the "revenue cap." For fiscal years 2013-14 and 2014-15, there is a $75 increase to each district's base revenue per pupil for purposes of calculating the revenue cap.

District Governance and Programs

Requirements

Wisconsin school districts may be organized in different forms. Districts may be classified as:

- Common school districts and unified school districts. (Most school districts are common school districts. Unified school districts are generally in urban areas.)
- Kindergarten through grade eight (K-8).
- Union high schools.
- First-class city districts (only Milwaukee).

School districts are governed by elected school boards. The statutes specify the number of school board members based on the type of school district structure. The statutes provide for a means to change the number of school board members or plan of apportionment for school board members. The elections are held at the nonpartisan spring election for a term of three years.

School boards have broad authority to manage the school district and the power to supervise and tax for the maintenance of school and school district programs.

The statutes prescribe requirements for the annual meeting of school districts as well as for special meetings called for consideration of a specific topic. The statutes also lay out the powers of the annual meetings and special meetings in a common or union high school district and requirements for meetings and reports of school boards.

The statutes assign the management of the school district to the school board, as well as the power to supervise and tax for the maintenance of school and school district programs. School boards are generally authorized to adopt all policies reasonable to promote the cause of education, including the establishment, provision, and improvement of school district programs, functions, and activities for the benefit of pupils. Included in these general powers is the authority to make school government rules, to suspend and expel students, to enter into agreements with other governmental units, and to generally administer the school district. The statutes also spell out the duties of the school district president, treasurer, and clerk.

Education Goals

Wisconsin law provides that public education is a fundamental responsibility of this state and the statutes contain broad educational goals and expectations for the public schools. These goals cover broad areas under academic skills and knowledge, vocational skills, and citizenship. [s. 118.01, Stats.] The statutes also set forth the school district standards that each school board must meet. These standards create requirements relating to: (1) teacher

certification; (2) professional staff development; (3) remedial reading services; (4) kindergarten programming; (5) school schedules; (6) emergency nursing services; (7) provision of adequate instructional materials; (8) safe and healthful facilities; (9) required curriculum plans in specific subjects and regular instruction in specified grades; (10) access to an education for employment program; (11) children-at-risk plans; (12) distribution of performance disclosure reports; (13) compliance with high school graduation standards; (14) evaluation of school personnel; (15) standardized testing and examinations; and (16) gifted and talented program provisions. As a supplement to these standards, Governor Thompson issued an executive order (1998 Executive Order No. 326) setting out more specific academic standards which schools must meet. These can be found at the following website: http://www.dpi.state.wi.us/standards.

Graduation Standards

A school board may not grant a high school diploma to any pupil unless the pupil has earned the following:

- In the high school grades, at least four credits of English, including written and oral communication, grammar and usage of the English language, and literature; three credits of social studies, including state and local government; two credits of mathematics; two credits of science; and 1.5 credits of physical education.
- In grades 7 to 12, at least 0.5 credit of health education.

For high school diplomas granted in the 2016-17 school year and thereafter, at least three credits of mathematics and science will be required for high school graduation. In addition, the State Superintendent is directed to encourage school boards to require an additional 8.5 credits selected from any combination of vocational education, foreign language, fine arts, and other courses.

Q: How many credits are required for high school graduation?

A: The number required is determined by the school board. Wisconsin law requires 13 credits but encourages school boards to require an additional 8.5 credits.

School Accountability

To measure achievement and growth, current law requires statewide assessments for pupils enrolled in public schools. These assessments are in addition to those assessments carried out in individual schools and classes for the purposes of gaining academic credit.

Progress toward achieving the academic standards in language arts, mathematics, science, and social studies is measured through participation in the Wisconsin Student Assessment System (WSAS). At present, the WSAS includes both regular assessments taken by nearly

all students and alternate assessments taken by certain students with limited English proficiency or disabilities.

Beginning in the 2005-06 school year, the federal NCLB required all states to test all students in reading and mathematics in grades three through eight and once in high school (grade 10). Student performance on these assessments is reported in proficiency categories and used to determine the adequate yearly progress of students at the school, district, and state levels. The categories are advanced, proficient, basic, and minimal performance. The following table sets forth the percentage of pupils who have scored as proficient or advanced.

Wisconsin Student Assessment System
Performance For All Students – By Grade
Percent Scoring Proficient or Advanced

Mathematics	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**
Grade 4	51.3	45.5	51.2	48.0	50.2
Grade 8	42.5	44.4	44.5	45.0	46.4
Grade 10	46.8	46.7	48.1	48.1	48.6
Reading	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**
Grade 4	35.5	33.9	35.2	32.9	36.3
Grade 8	32.9	39.7	32.2	40.2	33.9
Grade 10	39.9	35.5	35.8	36.2	36.6

Source: DPI, http://dpi.wi.gov/files/eis/pdf/dpinr2014_47.pdf

Wisconsin has received a waiver to the NCLB and has replaced the concept of adequate yearly progress, as required under the NCLB, with a comprehensive accountability system. This system applies to all public schools and charter schools and began in the 2011-12 school year. Under the system, each school and each school district receives a report card showing at what level the school or district is performing. The priority areas for performance are:

- Student achievement in reading and mathematics on state assessments.
- Student growth measured by year-to-year improvements in achievement.

For more information, see http://acct.dpi.wi.gov/acct_home and the 2013 LFB Informational Paper, *Pupil Assessment*.

- Closing gaps in performance between specified groups of students.
- Rates of students on track to graduation and levels of postsecondary readiness.

Low-Performance Schools

Current law includes provisions to identify and improve low-performance schools.

General Provisions

Under current law, if the State Superintendent determines that a school district has been in need of improvement for four consecutive school years, the school board must do all of the following: (1) employ a standard, consistent, research-based curriculum; (2) use pupil academic performance data to differentiate instruction to meet individual needs; (3) implement a system of academic and behavioral supports and early intervention for pupils; and (4) provide additional learning time to address the academic needs of pupils who are struggling academically.

Current law provides that if the State Superintendent determines that a particular public school was in the lowest performing 5% of all public schools in the state in the previous school year and is located in a school district that has been in need of improvement for four consecutive years, the school board must do all of the following in the school: (1) use rigorous and equitable performance evaluation systems for teachers and principals; (2) adopt a policy establishing criteria for evaluating whether the distribution of teachers and principals within the affected schools relative to the distribution of teachers and principals throughout the school district, based on their qualifications and effectiveness, is equitable; (3) establish teacher and principal improvement programs; and (4) adopt placement criteria for principals that include performance evaluations and measures of pupil academic achievement.

Under Wisconsin law, there are consequences for low-performing public schools and for low-performing school districts.

If the State Superintendent determines that a **school district** has been in need of improvement for four consecutive years, the State Superintendent may direct the **school board** to implement any of the following: activities for low-performing school districts, described above; a new or modified instructional design; professional development; or changes in administrative and personnel structure in the school district after consulting with the school board, school superintendent, and collective bargaining units in the school district. In addition, the school board may be directed to adopt accountability measures to monitor the school district's finances or to monitor other interventions directed by the State Superintendent.

If the State Superintendent determines that a **public school** is located in a school district that has been in need of improvement for four consecutive years, and if the school has been

in need of improvement for five consecutive school years or was among the lowest performing 5% of all public schools in the state in the previous school year, the State Superintendent may, after consulting with the school board, the school district superintendent, and the collective bargaining units, direct the **school board** to do one or more of the following in the school: (1) implement a new or modified instructional design; and (2) create a school improvement council to make recommendations to the State Superintendent regarding improving the school.

If the State Superintendent issues a directive to a school board, he or she must notify each legislator whose district includes any portion of the school district and must provide a system of support and improvement, including technical assistance, to the board. If a school district receives a directive from the State Superintendent as provided under the Act, the school board must seek input from school district staff, parents, and community leaders on implementing the directive.

Provisions Applicable to Milwaukee Public Schools

Current law contains provisions that apply specifically to the Milwaukee Public Schools (MPS), as follows:

1. The MPS school board must evaluate all school buildings in the school district according to the criteria adopted by MPS, and must develop a master plan governing the use, repair, renovation, and demolition of buildings in the school district.

2. MPS must annually prepare a budget for each school in the school district.

3. MPS may collaborate with nonprofit organizations and government agencies to provide pupils with comprehensive social services and educational support, which may include a program that offers comprehensive services that address the needs of children and youth from before the time they are born through postsecondary education.

4. MPS is required to provide alternative methods of attaining a high school diploma for those pupils who are unlikely to graduate in a traditional manner, including a program allowing a pupil or former pupil to retake a course in which he or she was not originally successful.

5. If MPS determines that state or federal aid is available for the purpose, the board must participate in an educational research consortium, similar to the Consortium on Chicago's School Research and the Boston Plan for Excellence, to provide research and policy recommendations for the DPI, MPS, and the Legislature.

6. MPS is required to conduct a survey of parents of pupils enrolled in the school district and use the results of the survey to develop or modify parent involvement in school improvement plans, which may include school-based community resource centers, regularly scheduled public meetings, or parent education classes.

7. If MPS determines that state or federal aid is available, any school in the school district that enrolls pupils in kindergarten to grade five is eligible to apply to the board for funding to participate in a pilot program designed to develop innovative instructional programs in science, technology, engineering, and mathematics; support pupils who are typically under-represented in those subjects; and increase the academic achievement of pupils in those subjects.

Career and Technical Education

Career and technical education, or CTE, in Wisconsin is characterized by programs and curricular changes that are intended to better prepare secondary school pupils to enter the workforce, whether immediately following high school graduation or after some type of postsecondary education. Generally, state programs are aimed at encouraging students to plan for a career more thoroughly and at an earlier age; acquainting students with alternatives to a baccalaureate degree, such as an associate degree program; and forging partnerships between K-12 schools and technical colleges, universities, and businesses in order to provide distinct pathways from school to the workforce.

Additional information on school-to-work programs can be found at: http://cte.dpi.wi.gov and http://www.dwd.state.wi.us/

Wisconsin's career and technical education includes: apprenticeship programs; career centers; technical preparation programs (Tech-Prep); options to take courses at post-secondary, at-risk youth programs in Milwaukee; and opportunities to receive industry certifications.

Parental Choice Programs

The Milwaukee Parental Choice Program (MPCP) was established in 1989. Under this landmark program, state funds are used to pay for the cost of attendance at private schools located in the City of Milwaukee, so that low- to moderate-income children can attend, at no charge. Low-income pupils began attending private schools under this program in 1990-91.

When the MPCP was established, only nonsectarian (nonreligious) private schools could participate in the program. However, in 1995, the MPCP was expanded to include sectarian schools. Participation in the program has grown progressively from 300 students at seven private schools to 25,397 students at 108 private schools in 2013-14.

Parental choice programs allow eligible families to send their children to a participating private school at no charge.

2011 Wisconsin Act 32, the Biennial Budget Act, expanded the parental school

choice program to districts meeting specified criteria. Under the Act, school choice was made available in the Racine Unified School District beginning in the 2011-12 school year. Fifteen private schools are participating in the Racine Parental Choice Program in the 2014-15 school year. 2013 Wisconsin Act 20 created the statewide Wisconsin Parental Choice Program (WPCP). Twenty-six private schools will participate in the WPCP in the 2014-15 school year.

State Payments to Choice Schools

For the 2013-14 school year, the per pupil amount paid to schools participating in the program was the lesser of $6,442 or the private school's per pupil operating and debt service cost related to educational programming, as determined by DPI. In 2013-14, the total state payments for the program were approximately $161 million. The MPCP was funded 35.2% from a reduction in general state aid to MPS and 64.8% from state GPR. For the Racine Choice Program, there was $7.5 million in funding for 1,220 pupils in 2013-14, which was fully funded by GPR. The WPCP is also fully funded by GPR. In the 2013-14 school year, this program served 509 pupils at an estimated cost of $3.2 million.

Q: Where is school choice available?

A: Children in Milwaukee and Racine may participate in school choice. The Wisconsin Parental Choice Program is the newest program and expands school choice to 26 private schools that are located throughout the state.

Requirements for Choice Schools

Each private school participating in the school choice program must meet at least one of the following standards:

- At least 70% of the pupils in the program advance one grade level each year.
- The private school's average attendance rate for the pupils in the program is at least 90%.
- At least 80% of the pupils in the program demonstrate significant academic progress.
- At least 70% of the families of pupils in the program meet parent involvement criteria established by the private school.

Each private school participating in the program is also subject to uniform accounting standards established by the DPI and annually must submit to the DPI an independent financial audit and evidence of sound fiscal and internal control practices.

Wisconsin law requires each private school participating in the school choice program to do all of the following:

- Administer to any pupil attending the third grade in the private school under the school choice program a standardized reading test developed by the DPI.
- Adopt pupil academic standards.

- Ensure that any teacher's aide employed by the private school has graduated from high school, been granted a declaration of equivalency of high school graduation, or been issued a general educational development (GED) certificate of high school equivalency.
- Annually, schedule two meetings at which members of the governing body of the private school will be present and communicate with pupils, and the parents or guardians of pupils, applying to attend the private school or attending the private school.
- Maintain progress records for each pupil attending the private school under the school choice program while the pupil attends the school and, in general, for at least five years after the pupil ceases to attend the school.
- Upon request, provide a copy of the pupil's progress records to a pupil or the parent or guardian of a minor pupil who is attending the private school under the school choice program.
- Issue a high school diploma or certificate to each pupil who attends the private school under the school choice program and satisfactorily completes the course of instruction and any requirements necessary for high school graduation.
- If a private school ceases operating as a private school, immediately transfer all of the progress records to the school board unless the school transfers the records to an organization with which it is affiliated that will maintain the records for five years.

A private school may not require a pupil attending the private school under the school choice program to participate in any religious activities if the pupil's parent or guardian submits a written request that the pupil be exempt from such activities.

Open Enrollment

Additional information on the open enrollment program can be found on the DPI website at: http://www.dpi.wi.gov/sms/psctoc.html

Wisconsin has an open enrollment program that allows parents to apply for their children to attend school in a school district other than the one in which they reside, if certain conditions are met.

Wisconsin law creates two open enrollment application processes. The first system applies to the majority of pupils and requires that applications must be submitted between the first Monday in February and the last weekday in April. The second system, called the alternate application process, applies to pupils who have special circumstances. If the pupil satisfies at least one of the criteria described below, the parent of a pupil who wishes to attend a public school in a nonresident school district may, in lieu of applying as provided under the general open enrollment program, submit an application to the school board of the nonresident school district that the pupil wants to attend. Applications may be submitted to no more than three nonresident school boards in any school year.

In order to apply for open enrollment under the alternate application process, the pupil must meet one of the following criteria, and the parent must describe in the application the criterion that the pupil meets:

1. The resident school district determines that the pupil has been the victim of a violent criminal offense, as defined by the DPI by rule.

2. The pupil is or has been a homeless pupil in the current or immediately preceding school year.

3. The pupil has been the victim of repeated bullying or harassment. This criterion requires that the parent has reported the bullying or harassment to the resident school board and, despite reporting the circumstances, the repeated bullying or harassment continues.

4. The place of residence of the pupil's parent or guardian and of the pupil has changed as a result of military orders.

5. The pupil has moved into this state.

6. The place of residence of the pupil has changed as a result of a court order or custody agreement or because the pupil was placed in a foster home or with a person other than the pupil's parent, or removed from a foster home or from the home of a person other than the pupil's parent.

7. The parent of the pupil, the resident school district, and the nonresident school board agree that attending school in the nonresident school district is in the best interests of the pupil.

A parent may open enroll his or her child in a school in another district if there is room in the district and if an application is submitted in time. In specified circumstances, an application may be submitted at any time.

Compulsory School Attendance

A parent or other person who has under his or her control a child who is between the ages of six and 18 years who has not graduated from high school must require the child to attend school regularly during the full period and hours, except on religious holidays, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter, or semester of the school year in which the child becomes 18 years of age. In addition, any person who has a child who is **enrolled** in five-year old kindergarten under his or her control must also require the child to attend school regularly.

Each school board must establish a written policy specifying the reasons for which pupils may be permitted to be absent from school. However, parents may excuse their child's absence in writing before the absence. A child may not be excused for more than 10 days in a school year under this provision.

Children between the ages of six and 18 must be required to attend school. A child who is enrolled in five-year old kindergarten must also attend school regularly.

The board may excuse children who are temporarily not in proper physical or mental condition to attend school but can be expected to return to school upon termination or abatement of the illness or condition. An excuse must be in writing and must state the time period for which it is valid, not to exceed 30 days.

A family wishing to home school a child must register each year with the DPI. On or before each October 15, a family must submit, on a form provided by the DPI, a statement that the child is enrolled in a home-based private educational program. According to DPI, in the 2013-14 school year, 18,607, or 1.84%, of pupils were enrolled in home-based private education programs.

Integration Aid

Wisconsin provides aid aimed at encouraging school integration in the state. This program was initially enacted as Chapter 220 in 1975. The stated purpose of the program is to "facilitate the transfer of students between schools and school districts to promote cultural and racial integration and education where students and their parents desire such transfer and where schools and school districts determine such transfers serve educational interests." One of the primary goals of the law was to achieve racial balance on a voluntary basis and at no cost to local taxpayers. The program provides state funds, in the form of unrestricted aids, as an incentive to school districts to desegregate their schools. In the beginning, state funding for integration aid was provided through a separate appropriation. However, in 1979, this appropriation was deleted and instead funding for the program was made available through the general equalization aids appropriation.

During this 35-year history, integration aid payments have grown from $8 million in 1976-77 to over $68 million in 2013-14. This is the third largest form of state school aid after equalization aid and special education aid. Over the years, this program has been known by a variety of names. Statutorily, it is referred to as the Special Transfer Aid Program. It has also been called the Racial Balance Transfer Program. However, it is most commonly referred to as "Chapter 220" after the 1975 session law. A total of 2,061 full-time students participated in the interdistrict transfer portion of the program in 2012-13.

Integration aid under this program is calculated through two different formulas depending on whether a pupil is transferred within a school district (intradistrict) or from one school district to another (interdistrict). Thus, money is transferred within the City of Milwaukee

and it is also used to support transfers between Milwaukee and the outlying suburbs. Intradistrict transfer of payments is also made to other urban areas of the state including Beloit, Madison, Racine, and Wausau.

CHARTER SCHOOLS

A school district may create a charter school. In addition, several specified entities, such as the City of Milwaukee, are authorized to establish charter schools.

The movement for charter schools in the nation emerged in the 1980s as a strategy for educational reform. Minnesota enacted the first charter school law in 1991 and California followed suit in 1992. In 1993, Wisconsin was one of six states to pass charter school legislation. By the end of 2011, 41 states and the District of Columbia had enacted some type of charter school legislation. In 1993, when the Wisconsin Legislature created the charter school program, it permitted no more than 20 charter schools to be established statewide with no more than two schools per district. School boards needed the approval of the State Superintendent to establish these schools and the schools were required to show significant progress towards operating by the beginning of the following year. In 1995, the original law was amended by repealing the restrictions regarding the number of additional programs and removing several other restrictions.

During the 2013-14 school year, 243 charter schools were operating in the state. 211 of these schools are authorized by a local school board, as described below.

Types of Charter Schools

Under Wisconsin law, a public school district or one of four specific governmental entities may charter an unlimited number of charter schools. School districts were initially the only entities granted the authority to create charter schools. In 1997, the Legislature authorized the City of Milwaukee, the University of Wisconsin (UW)-Milwaukee, the UW-Parkside, and the Milwaukee Area Technical College to create independent charter schools. Charters created by these authorizers are commonly referred to as "2r" charter schools, as they are authorized under s. 118.40 (2r), Stats.

Charter schools established by a school board may be created by two different methods. First, a school board on its own initiative may contract with a person to operate a school as a charter school. This authority allows the board to convert all of the schools in the district to charter schools. However, pupils who do not wish to attend or are not admitted to a charter school must still be provided alternative public school attendance arrangements. Under the second method, a school board may authorize the establishment of a charter school upon the receipt and approval of a written petition requesting the board to do so.

Charter schools are funded through one of two mechanisms. Schools chartered by school districts throughout the state negotiate the level of funding with the district, which is specified in the charter school contract for each school year covered by the contract. The pupils enrolled in the charter school are included in the district's membership for purposes of both revenue limits and equalization aid, and the contract costs are eligible for state cost-sharing under the equalization aid formula.

Independent, or "2r", charter schools receive direct state funding. Under current law, the Common Council of the City of Milwaukee and the Milwaukee Area Technical College board are authorized to operate or contract to operate charter schools located within the boundaries of the Milwaukee Public School District. The Chancellor of the UW-Milwaukee is authorized to charter schools located anywhere in Milwaukee County or an adjacent county. Similarly, the Chancellor of UW-Parkside is authorized to operate or contract to operate one charter school located within the Racine Unified School District or an adjacent county. There are currently 23 independent charter schools. Twenty-two are in Milwaukee and one is in Racine. A total of 8,360 pupils attended these schools in the 2013-14 school year, and the aid per pupil was $7,925. In the 2014-15 school year, the per pupil aid for these students will be $8,075. The payments to the charter schools are fully offset by a proportionate reduction in the general school aids of all school districts in the state. Pupils attending schools participating in the Milwaukee and Racine charter school program are not counted by any school district for purposes of revenue limits and equalization aid.

Instrumentality and Non-Instrumentality Charter Schools

The statutes provide that in awarding charter school contracts, school boards are required to give preference to charter schools that serve at-risk children. The school district is also required to notify the DPI of its intention to create a charter school and include a description of this school in the notice. However, the DPI does not have the authority to approve or deny charter school requests.

The charter school law specifies that, unless a statutory exception applies, the school board of a school district in which the charter school is located must determine whether or not the charter school is an "instrumentality" of the district. If the board determines that the charter school is an instrumentality, then the board must employ all personnel for the charter school. If the board determines that a charter school is **not** an instrumentality, then the board may not employ any personnel for the charter school. Schools established under s. 118.40 (2r), Stats., by the City of Milwaukee, the UW-Milwaukee, the UW-Parkside, or the Milwaukee Area Technical College, are not covered by this provision; they are not eligible to be classified as an "instrumentality" of a district--with the exception of a school operated by a for-profit entity with which the City of Milwaukee contracts. Such an entity is an instrumentality of MPS. The second exception to this provision is that a private school located in the MPS district that is converted to a charter school (other than a charter school described in the prior sentence) is not an instrumentality of MPS.

Requirements for Charter Schools

A charter school must be nonsectarian in its programs, admissions policies, employment practices, and all other operations. Further, charter schools are prohibited from discriminating in admission or denying participation in any program or activity on the basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability.

The law sets out certain additional restrictions regarding the operation of a charter school. For example, a charter school may not be a converted private sectarian school and may not charge tuition.

Generally, a charter school is not subject to the provisions of chs. 115 through 121, Stats., which are the provisions that govern elementary and secondary education, except for certain specified requirements. Instead, the school's requirements are set forth in its charter or by contract between the school and the school's authorizer. Current law provides that a contract may be for any term not exceeding five years and can be renewed for one or more terms not exceeding five school years. Such a contract must include certain provisions and may include other provisions agreed to by the parties. These are set out in the statutes, as are the grounds for charter revocations and funding of charter schools.

Q: Must a charter school comply with state school laws?

A: Charter schools are generally exempt from school laws but are, instead, regulated by their charter.

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on education topics, such as state aid to school districts, open enrollment program, and pupil assessment. These Informational Papers may be found at: http://www.legis.wisconsin.gov/lfb.

2. The Legislative Audit Bureau has prepared the following reports that relate to elementary and secondary education. These reports may be found at: http://www.legis.wisconsin.gov/lab.

   - *Governor's Read to Lead Development Fund* (September 2013).
   - *Test Scores for Pupils in the Milwaukee Parental Choice Program (Report 5 of 5)* (August 2012).
   - *Open Enrollment Program Transfer Amount Alternatives (December 2011).*
   - *Milwaukee Parental Choice Program (Letter Report, August 2010).*
   - *Virtual Charter Schools* (February 2010).

3. The DPI has prepared numerous publications relating to the programs it operates and the information it collects. These may be found on the DPI website at: http://www.dpi.state.wi.us.

4. The U.S. Department of Education maintains a website that has information on all federal education programs, including "No Child Left Behind." The website is: http://www.ed.gov.

GLOSSARY

CESAs: Cooperative educational service agencies. Twelve CESAs provide support activities to local school districts on a regional basis. They are governed by ch. 116, Stats., and their services vary based upon the districts they serve.

DPI: Department of Public Instruction.

IDEA: Individuals with Disabilities Education Act. The term used to refer to the federal law relating to special education.

NCLB: Federal No Child Left Behind Act of 2001. A reauthorization of the Elementary and Secondary Education Act that was designed to improve gains in student achievement and to hold states accountable for students' progress. It includes requirements for annual testing of students.

SAGE: Student Achievement Guarantee in Education. A categorical aid program focused on reduced class sizes at the kindergarten to third grade level.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 13 – EDUCATION – POST SECONDARY

Wisconsin has a rich history in higher education. The University of Wisconsin System and the Wisconsin Technical College System are the two public higher education systems in the state. Wisconsin is also home to 23 private, nonprofit colleges and universities, two tribal colleges, and over 200 for-profit post-secondary schools.

Mary Matthias, Principal Attorney
Wisconsin Legislative Council

Table of Contents

University of Wisconsin System 1
- Campuses 2
- UW-Extension 3
- Governance of the UW System 4
- Admission 5
- Tuition Rates 6
- Fee Remissions 7
- General Principles Governing Transfer Admissions and Transfer of Credits 9
- UW Colleges Guaranteed Transfer 10
- UW System - WTCS Core General Education Transfer Agreement 10
- Distance Education 11
- Auditing Courses 11

Wisconsin Technical College System 12
- WTCS State Board 13
- District Boards 13
- Programs and Degrees 14
- Admission and Tuition 15
- Transfer of WTCS Credits to UW System 15

Private Colleges and Universities 16
- Admission, Enrollment, and Costs 17
- Wisconsin Association of Independent Colleges and Universities 17
- Tribal Colleges 18

Private Trade, Technical, Career, Distance Learning, and Degree-Granting Schools 18
- State Regulation 19
- Accreditation 19

Financing the Costs of Higher Education 19
- Academic Excellence Scholarship 20
- Technical Excellence Higher Education Scholarship Program 21
- EdVest 21
- Tuition Deduction 22
- Deduction for Interest on Student Loans 22
- Wisconsin GI Bill 22
- Grant Programs 22
- Loan Programs 24

Additional References 25

Glossary 26

University of Wisconsin System

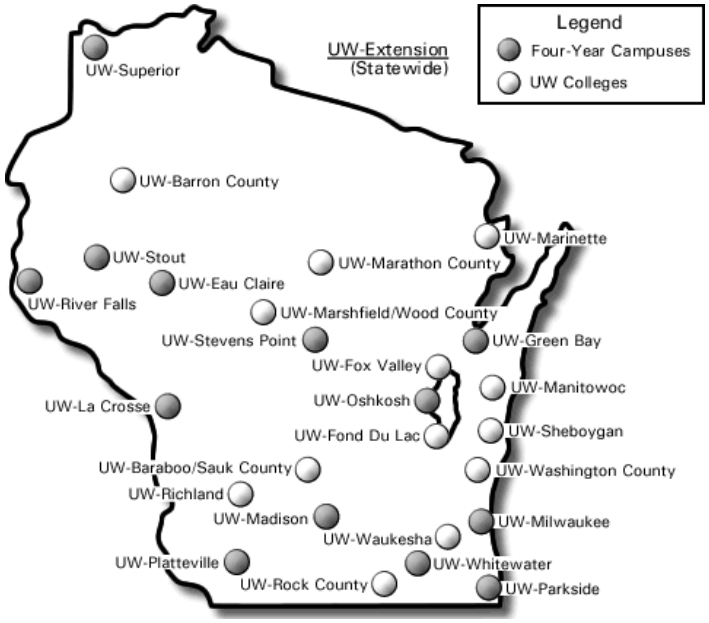
The University of Wisconsin System (UW System) consists of 13 degree-granting universities, 13 two-year colleges, and the statewide University of Wisconsin (UW)-Extension programs. The overall mission of the system includes the development of human resources and the discovery and dissemination of knowledge through teaching, research, public service, and the provision of extended education beyond the boundaries of the campus.

The guiding philosophy of the UW System is the "Wisconsin Idea," which is most often associated with University President Charles Van Hise and Governor (and U.S. Senator) Robert M. La Follette, Sr. The Wisconsin Idea is the concept that "the boundaries of the University are the boundaries of the state." In practice, this means making the resources of the UW available to people all across the state, not just those who are currently enrolled as students. The Wisconsin Idea began as an effort to use the knowledge of the UW faculty to assist the state Legislature in shaping government policies, but it soon expanded to helping teachers, farmers, and people of all ages and levels of education.

The statutory requirements applicable to the UW System are set forth in ch. 36, Stats., which grants broad authority and responsibility to the UW Board of Regents (BOR) to operate the UW System. In addition, ch. 36, Stats., contains provisions relating to faculty and student governance; eligibility for in-state tuition; faculty tenure; numerous special programs which the UW System must offer; and tuition remission programs.

Campuses

The UW System has 13 four-year campuses and 13 two-year campuses, referred to as "UW Colleges," as shown on the map below.



The total enrollment at each four-year campus in the Fall 2013 semester was:

- UW-Madison: 42,903
- UW-Milwaukee: 27,784
- UW-Eau Claire: 10,907
- UW-Green Bay: 6,667
- UW-La Crosse: 10,502
- UW-Oshkosh: 13,902
- UW-Parkside: 4,617
- UW-Platteville: 8,717
- UW-River Falls: 6,171
- UW-Stevens Point: 9,643
- UW-Stout: 9,286
- UW-Superior: 2,656
- UW-Whitewater: 12,015

Source: http://www.uwsa.edu/opar/ssb/single_year_hc_all.htm.

UW-Madison and UW-Milwaukee are doctoral campuses that offer bachelor's, master's, doctoral, and advanced professional degrees and conduct organized programs of research.

The other four-year campuses are known as "comprehensive campuses," and offer associate, bachelor's, and selected nondoctoral graduate programs. Their mission is to emphasize teaching excellence; provide a base of liberal studies as a foundation for degrees; offer programs of preprofessional curricular offerings; engage in outreach and continuing education for citizens in each service region; and engage in scholarly activity integral to, and supportive of, instructional programs and teaching excellence.

UW-Madison consistently ranks among the top recipients of federal research funding nationwide. The Wisconsin Alumni Research Foundation (WARF) supports research at UW-Madison by protecting and licensing the inventions of its scientists. The WiSys Technology Foundation provides research patent and licensing support to the other UW-System four-year campuses.

The mission of the UW System two-year campuses, known as the "UW Colleges," is to offer general education associate degrees; to serve primarily as freshman-sophomore liberal arts transfer institutions; to place major emphasis on teaching excellence and support the development, testing, and use of effective teaching methods; and to cooperate with other UW System institutions, technical colleges, private colleges, and public schools to maximize educational opportunity and resources for the citizens in the campus service area.

The UW Colleges are generally located in areas of the state that are not near a four-year campus. The colleges, and their locations, are as follows:

- UW-Barron County (Rice Lake)
- UW-Marinette County (Marinette)
- UW-Marathon County (Wausau)
- UW-Marshfield/Wood County
- UW-Fox Valley (Menasha)
- UW-Manitowoc
- UW-Fond du Lac
- UW-Sheboygan
- UW-Baraboo/Sauk County
- UW-Washington County (West Bend)
- UW-Waukesha
- UW-Rock County (Janesville)
- UW-Richland (Richland Center)

The total enrollment of all UW Colleges campuses in the Fall 2012 semester was 14,058.

UW-Extension

Each county extension office maintains its own website. A listing of county office websites can be found at:

http://www.uwex.edu/about/location-maps.html#maps

The UW-Extension is the outreach arm of the UW System, and has offices in every county. Its mission is to provide, jointly with the UW System institutions and the Wisconsin counties, a program to apply university research, knowledge, and resources to meet the educational needs of Wisconsin residents, wherever they live and work. This mission includes the programs of the four UW-Extension divisions: Cooperative Extension; Continuing Education, Outreach and E-Learning; Broadcasting and Media Innovations; and Entrepreneurship and Economic Development.

Wisconsin residents participate in UW-Extension programs through various delivery methods, including workshops, one-on-one counseling, interactive networks, and correspondence study.

Cooperative Extension staff, based in the 72 county Extension offices and on six UW campuses, apply university knowledge to address issues in rural, suburban, and rural settings. Cooperative Extension provides educational programming in all 72 counties and within three tribal nations. The Wisconsin Geological and Natural History Survey and Leadership Wisconsin are part of this division. **Continuing Education, Outreach and E-Learning Extension** coordinates the UW System continuing education programs at all 26 campuses, online, and in communities throughout the state. The **Broadcasting and Media Innovations Division** delivers Wisconsin Public Television and Wisconsin Public Radio, and also houses the National Center for Media Engagement, which helps public media build community connections, and Instructional Communications Systems. The **Entrepreneurship and Economic Development Division** supports the Wisconsin Entrepreneur's Network and maintains the Small Business Development Centers (SBDC's) at the 13 UW four-year campuses. It also houses the Center for Technology Commercialization and Community Technology Solutions.

Governance of the UW System

The UW System is governed by the BOR, which consists of 18 members: 14 citizen members appointed by the Governor and confirmed by the Senate for seven-year staggered terms; two students at UW System institutions who serve two-year terms, also appointed by the Governor; and the State Superintendent of Public Instruction and the President of the Wisconsin Technical College System (WTCS) Board, or by his or her designation, another member of the WTCS Board. At least one of the 14 citizen members of the BOR must be appointed from each of Wisconsin's eight Congressional districts. [s. 15.91, Stats.]

Biographies of current BOR members may be found at:
http://www.uwsa.edu/bor/bios

BOR policy documents may be found at:
http://www.uwsa.edu/bor/policies/rpd

The BOR is directed by law to: enact policies and promulgate rules for governing the UW System; plan for the future needs of the state for university education; ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers; and promote the widest degree of institutional autonomy within the UW System. Some of the specific powers of the BOR include:

- Appointing the president of the UW System.
- Appointing the chancellors and vice chancellors of the 13 universities, the 13 UW Colleges, and the UW-Extension.
- Determining the educational programs to be offered by the UW System.
- Determining admission policies.
- Granting degrees.

The president and chancellors of the UW System are charged with implementation of Regent policies and administration of the institutions. Under statutory "shared governance," the faculty of each institution, subject to the responsibilities of the BOR, the president, and the chancellor, have responsibility for the immediate governance of the institution and actively participate in institutional policy development. The faculty has primary responsibility for academic and educational activities and faculty personnel matters. Academic staff have similar responsibilities regarding policies and procedures concerning academic staff members. Likewise, the students of each institution have primary responsibility for the formulation and review of policies concerning student life, services, and interests.

Admission

Specific admission policies for each UW institution are developed by the individual campuses, taking into account their mission and resources and guidance from the BOR. However, in order to qualify for admission to any UW System institution as a freshman, an applicant must be a graduate of a recognized high school or complete the requirements for a high school equivalency certificate or diploma. All UW System institutions require a minimum of 17 high school credits in specified subjects. As an alternative, a student who attended a high school that has a non-traditional curriculum may submit a UW System Competency-Based Admission profile. Applicants must also submit ACT or SAT scores. Individual institutions have discretion to waive one or more of the minimum requirements for particular applicants when appropriate.

The online application to all UW System institutions may be found at: http://www.apply.wisconsin.edu

Profiles of admitted freshman showing average class ranks and tests scores for students admitted at each campus can be found at: http://www.uwhelp.wisconsin.edu/admissions/freshman/guidelines.aspx

Class rank is the primary determinant for admission to UW institutions. According to BOR policy, the UW System will admit all immediate Wisconsin high school graduates who ranked in the top quartile of their class, somewhere in the UW System. Most UW campuses establish automatic admission based on class rank or a combination of class rank and ACT/SAT scores if the applicant has satisfied the other basic requirements and has applied before a specified date. Additional applicants may be admitted upon further scrutiny as space permits. In addition, an applicant may seek consideration for special admission on the basis of minority group status, physical or learning disability, veteran status, age group, or economic or educational disadvantage.

For more information on the Youth Options program consult: http://www.youthoptions.dpi.wi.gov

Under Wisconsin's **Youth Options** program, public high school juniors and seniors who meet certain requirements may take post-secondary courses at a UW System or other post-secondary

institution and receive high school and college credit. Subject to a limit on the maximum number of credits, the school board must pay for the course if it determines that the course qualifies for high school credit and is not comparable to a course already offered in the school district. A student interested in participating should talk with staff at his or her high school and the post-secondary institution.

Under the **Course Options** program, pupils in public K-12 schools may take courses offered by other Wisconsin school districts, charter schools, the UW System, WTCS, tribal colleges and WAICU colleges, at no cost to the student. The Course Options program was created by 2013 Wisconsin Act 20, the Biennial Budget Act. A pupil may attend no more than two courses at any time under the program. The resident school district must pay tuition for the course and may reject an application by a pupil to attend a course under the program if it determines that the course does not satisfy a high school graduation requirement or does not conform to or support the pupil's academic and career plan.

More information about the course options program is available at: http://courseoptions.dpi.wi.gov/.

Tuition Rates

Under Wisconsin law, the BOR may establish differing tuition and fees for different classes of students, such as undergraduates, graduate students, and nonresident students.

2013 Wisconsin Act 20 specifies that during the 2013-14 and 2014-15 academic years, the BOR may not charge resident undergraduates at any UW institution or UW colleges campus tuition that is more than the tuition charged to resident undergraduates 2012-13 at the same institution or campus.

Since 1997, the BOR has had the authority to charge differential tuition. Differential tuition is an amount charged on top of base tuition to support additional services and programming for students at a particular institution, a particular category of students, such as all undergraduates, or only to students enrolled in certain programs. Program-specific differential tuitions are usually charged for programs that have high operating costs, such as the health sciences and engineering.

Under BOR policy, a chancellor may submit a differential tuition proposal to the UW System for review. Once the UW System has reviewed the differential tuition proposal, the UW System President may forward the chancellor's proposal to the BOR for approval. Chancellors do not have the ability to charge differential tuition without prior approval of the BOR. Differential tuition is subject to the tuition freeze described above for the 2013-14 and 2014-15 academic years.

Tuition and segregated fee rates for UW System institutions for the 2013-14 academic year are set forth in the table below. The term "segregated fees" refers to charges in addition to instructional fees assessed to all students for services, programs, and facilities that support the primary mission of the university. The table does not include rates of differential tuition.

2013-14 UW System Full-Time Undergraduate Tuition and Fees Per Semester

Campus	Resident	Nonresident	Minnesota Reciprocity
UW Colleges[1, 2]	$2,513 - $2,690	$6,005 - $6,182	$2,513 - $2,690
UW-Eau Claire[1, 2]	$4,354	$8,141	$4,355
UW-Green Bay[2]	$3,838	$7,625	$4,086
UW-La Crosse[1, 2]	$4,385	$8,171	$4,385
UW-Madison[1, 2, 3]	$5,202	$13,327	$6,595
UW-Milwaukee[1, 2, 4]	$4,650	$9,514	$6,465
UW-Oshkosh[1, 2]	$3,701	$7,487	$3,886
UW-Parkside[1, 2]	$3,658	$7,444	$3,905
UW-Platteville[1, 2]	$3,742	$7,529	$3,930
UW-River Falls[1, 2]	$3,861	$7,647	$4,043
UW-Stevens Point[1, 2]	$3,789	$7,575	$4,036
UW-Stout[1, 5]	$298.15	$557.14	$301.84
UW-Superior[2]	$3,973	$7,760	$4,102
UW-Whitewater[1, 2]	$3,789	$7,576	$3,926

1. Excludes United Council of UW Student Government's Fee Assessment of $2.00 per semester.
2. The tuition rate listed is for one semester of tuition at a full-time rate (12-18 credits).
3. Undergraduate business student tuition is an additional $1,700 and undergrad engineering student tuition is an additional $1,400. New freshmen pay an additional $200 SOAR fee. Transfers pay a $125 SOAR fee.
4. Students enrolled in the School of Business Administration, College of Engineering and Applied Science, College of Nursing, Peck School of the Arts, and the Department of Architecture may pay an additional per credit charge.
5. UW-Stout's tuition rates are per credit. The above tuition is based on a 15-credit semester.

Source: http://www.uwhelp.wisconsin.edu/paying/systemcosts.aspx.

The assessment of resident versus nonresident tuition is based on s. 36.27 (2), Stats., and ch. UWS 20, Wis. Adm. Code. Generally, to be considered a resident for tuition purposes, an adult student must have been a resident of Wisconsin for the 12 months prior to the beginning of the semester or session for which the student registers. For a minor student, the same requirement applies to his or her parent or parents. In determining residency, the intent of the person to establish and maintain a permanent home in Wisconsin is determinative.

There are several exceptions to this requirement, including special provisions for migrant workers and their children, members of the Armed Forces stationed in Wisconsin and their families, persons who relocated to Wisconsin for employment purposes, and persons who are citizens of countries other than the United States, among others.

Fee Remissions

Remission of tuition is available, under certain circumstances, for the children and surviving spouse of an ambulance driver, correctional officer, fire fighter, emergency medical services technician, or law enforcement officer who was killed in the line of duty or as the result of a duty disability in Wisconsin.

Remission of tuition is available, under certain circumstances, for the children and surviving spouse of a veteran who, while a resident of this state, died on active duty, died as the result of a service-connected disability, died in the line of duty while on active or inactive duty for training purposes or was awarded at least a 30% service-connected disability rating under federal law.

These fee remissions also apply to WTCS tuition.

The chancellor of each institution is required to develop procedures for residency determinations and provide for appeals from classifications of nonresidency. The appeals process must include the right to a hearing. Residency decisions are subject to judicial review.

Nonresidents must pay the nonresident tuition rate, with the exceptions described below. Nonresident students are charged tuition in excess of instructional costs, thus subsidizing resident students. The amount charged for nonresident tuition is not subject to any statutory limits. However, increases in nonresident tuition are limited by the amount nonresident students and their families are willing to pay. The UW System competes with other regional and, in some cases, national and international institutions for nonresident students. Setting nonresident tuition at a level that is not competitive with the rates charged by these institutions may result in decreases in nonresident enrollment and related revenues.

Under the Wisconsin-Minnesota Tuition Reciprocity Agreement, Wisconsin residents may attend Minnesota colleges and universities at the same tuition rates as Minnesota residents.

The Minnesota-Wisconsin reciprocity agreement allows residents of the two states to attend public post-secondary institutions in the other state without having to pay nonresident tuition. Participating students pay a reciprocal fee that cannot exceed the higher of two states' resident tuition rates. Prior to the 2012-13 academic year, Wisconsin residents paid UW tuition rates to attend Minnesota institutions. Beginning in the 2012-13 school year, Wisconsin residents are charged Minnesota resident tuition rates to attend Minnesota institutions. Minnesota resident tuition is higher than resident tuition at UW institutions. The change is being phased in so that only new students are charged the Minnesota rates. The reciprocity agreement is negotiated and administered jointly by the Higher Educational Aids Board (HEAB) and the Minnesota Higher Educational Services Office. [s. 39.47, Stats.] Wisconsin law specifies that the agreement is subject to the approval of the Joint Committee on Finance. While the current agreement does not contain a specific expiration date, it may be modified at any time upon mutual agreement of both states. There are also reciprocal tuition agreements for residents of Menominee County, Michigan, enrolled in the UW Center-

The Wisconsin-Minnesota Tuition agreement may be found at: http://www.heab.state.wi.us/docs/board/1112/rep1201.pdf

Marinette County, residents of Iron County, Wisconsin, enrolled at Gogebic Community College in Ironwood, Michigan, and residents of Marinette County, Wisconsin, enrolled at Bay de Noc Community College in Escanaba, Michigan.

Return to Wisconsin

Nonresidents may receive a 25% waiver of nonresident tuition under the "Return to Wisconsin" program. To be eligible, a parent, grandparent, or legal guardian must have graduated from the institution where the student will enroll. Participating UW campuses are UW-Eau Claire, UW-Green Bay, UW-La Crosse, UW-Oshkosh, UW-Parkside, UW-River Falls, UW-Stevens Point, and UW-Whitewater. In addition to being admitted to the campus of choice, the student will be required to complete an additional form attesting to the relationship with an eligible alumnus.

Midwest Student Exchange Program

Currently 12 UWS campuses participate in the Midwest Student Exchange Program (MSEP), which allows students from a participating state to attend public colleges or universities in other participating states at a tuition of no more than 150% of resident tuition. Wisconsin joined MSEP in 2005. UW campuses individually determine whether they will participate and identify factors for admission of students through the MSEP.

Tri-State Initiative

More information about nonresident student reduced tuition programs can be found at: http://www.uwhelp.wisconsin.edu/paying/nonresident.aspx.

UW-Platteville's Tri-State Initiative (TSI) is a program open to residents of Illinois and Iowa who are admitted to certain programs of study. TSI will pay in-state tuition plus an additional premium of $4,000 each eligible year up to five years. Programs of study include Engineering, Agriculture, Criminal Justice, and Education. There are limited openings in the TSI program each year. More information about the Tri-State Initiative can be found on the UW-Platteville website.

General Principles Governing Transfer Admissions and Transfer of Credits

The UW System Undergraduate Transfer Policy (UW System Regent Policy 7-1) sets general transfer policy for all UW System campuses and may be found at: http://www.uwsa.edu/bor/policies/rpd/rpd7-1.htm

Admission of students to the UW from other institutions of higher education is based on comprehensive, individualized admission review, consistent with the process for freshman admission. In awarding transfer credit, UW institutions consider the quality and comparability of the transfer student's coursework, and the applicability of that work to the receiving institution's degree requirements.

The BOR directs UW institutions to provide transfer students the same opportunities as continuing students to demonstrate their competence through the use of internally or externally developed tests, portfolio assessment procedures, and other competency-based alternatives.

In addition, students who transfer with a UW associate degree are considered to have satisfied university, college, or school general education requirements at their transfer campus.

The Transfer Information System (TIS) is a UW System website that provides potential transfer students with current course equivalencies and other important transfer information. The address is: http://www.uwsa.edu/tis

Most UW System institutions require all students to complete a specific number of credits at that institution in order to obtain a degree. Transfer students are responsible for fulfilling these credit requirements.

Upon being admitted to an institution, transfer students receive a credit evaluation showing how transferred courses equate to courses at their new campus. They also receive information showing how their courses apply toward a particular program and degree requirements. Students have the right to appeal credit evaluations.

UW Colleges Guaranteed Transfer

The UW System transfer policy provides for "UW Colleges Guaranteed Transfer," under which students are guaranteed admission to the transfer institution if they: (1) begin college at a UW Colleges campus; (2) submit a "Declaration of Intent to Participate" at any time prior to completing 30 credits at the UW Colleges campus; (3) earn the necessary credits (at the UW Colleges campus) for junior status at the UW campus they wish to attend; (4) have a 2.0 grade point average (GPA) (2.80 for UW-Madison); and (5) meet the same criteria for admission to specific majors or programs as continuing students. Additional requirements apply for guaranteed transfer to UW-Madison.

A student who begins as a freshman at a UW College two-year campus is guaranteed admission to a four-year campus as a junior under the "guaranteed transfer" program.

More information is available at: http://uwc.edu/admissions/transfer/guaranteed-transfer.

UW System - WTCS Core General Education Transfer Agreement

Wisconsin Act 20 requires the BOR and the WTCS Board to enter into and implement an agreement that identifies 30 credits of core general education courses that will be transferable between and within each institution participating in the agreement. The credits must be transferable without loss of credit towards graduation or toward completion of a specific course of study.

The UW and the WTCS entered into this agreement on June 6, 2014. More information about the agreement may be viewed here: http://www.wisconsin.edu/news/2014/r1406066.htm.

Flexible Option

The UW Flexible Option program allows students to earn credits and degrees without attending traditional classes. Students are assigned academic coaches and earn credits by passing assessments. Students may learn the material online or by using textbooks and may also earn credit for knowledge gained through experience if they can show through an assessment that they have mastered a subject area.

Students enroll in Flexible Option for three-month "subscription periods" during which they can access learning materials, receive academic support, and complete competency tests.

For each subscription period, students can choose between an "all-you-can-learn" option for $2,250, in which they try to master as many skill sets, and pass as many assessments, as they can, or a "single competency-set" option for $900, which allows a student to master one skill set.

The Flexible Option program is accredited by the Higher Learning Commission. More information on the program can be found at: http://flex.wisconsin.edu/faqs/.

A typical degree requires mastering eight to 15 competency sets under the flexible program. The competencies and assessments for each degree are determined by UW faculty.

Distance Education

The UW System provides courses via distance education using online, videoconference, print, and other media. Information about distance learning courses and programs at the UW System can be found at: http://distancelearning.wisconsin.edu. The UW Colleges offer an Associate of Arts and Sciences degree that is delivered completely online through http://www.online.uwc.edu.

About 2,000 students are enrolled in the program each term. Approximately 80 courses are offered at any given time.

Auditing Courses

Wisconsin statutes require the BOR to allow individuals aged 60 or older to audit courses free of charge. UW System Regent Policy 4-10 provides that Wisconsin residents age 60 or older, and disabled Wisconsin residents receiving disability benefits, may audit classes without charge; residents under the age of 60 must pay 30% of the normal per credit academic fee to audit a class. Nonresidents are charged 50% of the normal per credit academic fee. The right to audit a class is subject to general conditions, including approval of the instructor and sufficient classroom space.

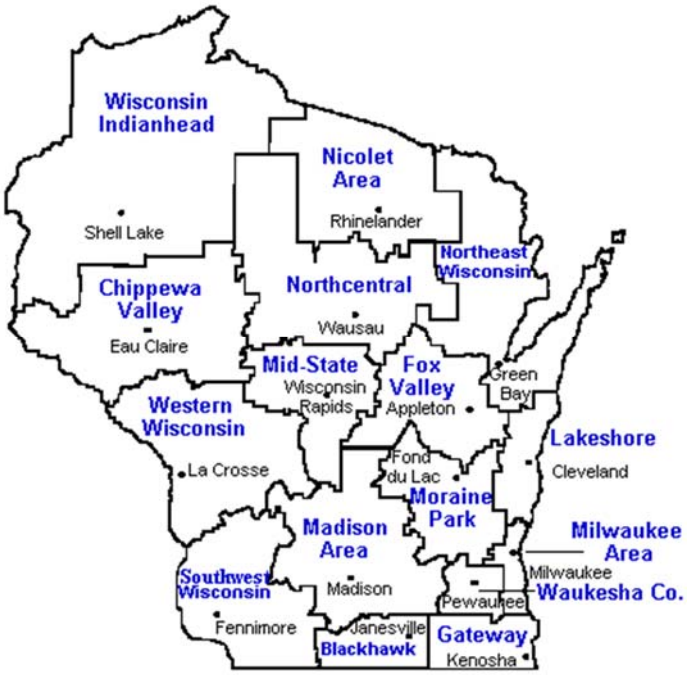
Wisconsin Technical College System

In 1911, Wisconsin became the first state to establish a system of state aid and support for industrial education. The current WTCS consists of 16 technical college districts which encompass every area of the state, with 48 main and satellite campuses that serve approximately 380,000 people annually.

State law establishes the principal purpose of the WTCS as providing occupational education and training and retraining programs along with customized training and technical assistance to business and industry in order to foster economic development and the expansion of employment opportunities. Additional purposes of the WTCS are to provide: educational opportunities for high school age students; a collegiate transfer program; community services and vocational or self-enrichment activities; basic skills education; and education and services to minorities, women, and handicapped or disadvantaged individuals to enable them to participate in the workforce.

Some of the instructional divisions in which courses are offered in the WTCS include: agriculture; business; television; graphics; home economics; industrial services; and health, technical, and general education.

Wisconsin Technical College Districts and Main Campuses



Source: WTCS.

WTCS State Board

The **WTCS State Board** is the coordinating agency for the WTCS. It consists of 13 members: an employer representative; an employee representative; a farmer representative; the State Superintendent of Public Instruction or a designee; the Secretary of the Department of Workforce Development or a designee; the president of the UW BOR or a designee from among the Regents; six public members; and one technical college student.

The WTCS Board establishes statewide policies and standards for the educational programs and services provided by the 16 technical college districts that cover the state. The WTCS Board supervises district operations through reporting and audit requirements and consultation, coordination, and support services. It sets standards for building new schools and adding to current facilities. It also provides assistance to districts in meeting the needs of target groups, including services for the disadvantaged, the disabled, women, dislocated workers, the incarcerated, and minorities.

District Boards

Each technical college district, other than Milwaukee Area Technical College, is headed by a local technical college **district board** of nine members, which includes two employers and two employees who are representative of the various businesses and industries in the district; a school district administrator; an elected state or local official; and three additional members. The district board members are appointed by district appointment committees, which consist of county board chairs in 13 districts and school board presidents in the other three districts.

The makeup of the Milwaukee Area Technical College District Board was modified by legislation enacted in early 2012. It consists of:

- Five persons representing employers: three of which represent employers with 15 or more employees; two of which represent employers with 100 or more employees; and at least two who represent employers who are manufacturing businesses.
- One elected official.
- One school district administrator.
- Two additional members.

The county executive of Milwaukee County and the chairpersons of the Milwaukee, Ozaukee, and Washington County boards of supervisors constitute the appointment committee for the Milwaukee Area Technical College Board.

The district boards are responsible for the direct operation of their respective schools and programs. They are empowered to levy property taxes (within certain statutory limits) and develop an annual budget; provide for facilities and equipment; hire a district director, staff, and teachers; determine programs to be offered (with WTCS Board approval); admit students; and provide financial aid, guidance, and job placement services.

Programs and Degrees

The WTCS offers several types of educational programs and degrees.

An **associate degree** is a two-year program, which combines technical skills with general education, such as math, communications, and social sciences.

One- and two-year technical diploma programs focus on hands-on learning of occupational skills and can take as little as one or two years to complete, depending on the particular program.

Short-term (less than one year) diploma programs focus on one particular occupation and can take less than a year to complete.

Certificates are designed to provide students with streamlined education to enhance their jobs skills.

The **liberal arts** program provides the first two years of a four-year baccalaureate college education. Seventy-two of the credits earned transfer to UW System four-year campuses. The Liberal Arts program is available at Milwaukee Area Technical College, Madison Area Technical College (also called Madison College), Nicolet Area Technical College, Chippewa Valley Technical College, and Western Wisconsin Technical College.

Apprentice-related instruction is a combination of on-the-job training and classroom-related instruction in which workers learn the practical and theoretical aspects of a highly skilled occupation in two to five years. There are hundreds of apprenticeship programs available in construction, service, and industrial occupations.

WTCS Website:

http://www.witechcolleges.org

Advanced technical certificates are used in response to employers' needs for highly skilled employees, and are offered as a small block of credits (9-12), with at least six of these credits having advanced content beyond the associate degree.

Adult secondary education consists of high school level instruction (grades 9-12) for adults. Students are typically working toward a high school credential such as the national General Educational Development (GED) test or the Wisconsin High School Equivalency Diploma (HSED). Technical colleges may also offer specific high school level courses to individuals who may need a few credits to complete their high school diploma.

Family literacy programs are designed to help parents become better learners while promoting their children's learning at home and achievement at school.

English as a second language programs train people whose native or dominant language is not English to read, write, and communicate in English.

Customized training is offered in partnership with employers. The training is delivered in various formats including:

- On-site training at the company or business during regular hours or various shifts.
- Training which uses the distance learning network and provides two-way audio and visual communication.
- Training that is interactive through a computer or video or on the Internet.

Training can be customized into any of the following:

- A quick-start training session on equipment or methods.
- A focused seminar format.
- An upgrade of employees' basic skills in math, reading, or communications.
- Long-term training to retain a quality workforce.
- Training in high-demand areas, such as technical skills training, computer-assisted applications, workplace assessment, quality processes, or supervisory development.
- Training to resolve specific technical problems, analyze workflow procedures, or evaluate employee performance.

The WTCS also offers part-time programs that are comprised of vocational, adult, basic skills education, and district and community services, which include vocational or hobby courses and activities offered with community groups.

Admission and Tuition

State law provides that, in general, every person who meets certain age requirements and who is a resident of Wisconsin is eligible to attend a technical college. Nonresidents may attend if the district board of attendance approves the enrollment. A district board may give priority in admitting students to residents of the district.

The 2012-13 tuition costs are the same for each of the 16 technical colleges. For Wisconsin residents, degree, diploma, and certificate programs cost $125.85 per credit and collegiate transfer programs are $170.35 per credit. For out-of-state residents, degree, diploma, and certificate programs are $188.80 per credit and liberal arts transfer programs are $255.55 per credit.

Transfer of WTCS Credits to UW System

Students attending the WTCS Collegiate Transfer program at Madison, Milwaukee, Chippewa Valley, Western Wisconsin, Southwestern Wisconsin, or Nicolet Area Technical College may generally transfer up to 72 credits to any UW System campus. Many of the technical colleges have articulation (transfer) agreements with four-year private colleges and universities in the UW System. These agreements may contain course-to-course equivalencies, while others provide for a total program transfer. There are nearly 1,100 program-to-program transfer agreements between the technical colleges and the UW System four-year universities.

In addition, as discussed above, the UWS and the WTCS entered into an agreement for guaranteed transfer of 30 credits of core general education courses in June 2014.

Private Colleges and Universities

Wisconsin has 23 private, nonprofit, accredited degree-granting colleges and universities. As shown on the map below, the institutions and their locations are as follows: Alverno College, Cardinal Stritch University, Columbia College of Nursing, Medical College of Wisconsin, Milwaukee Institute of Art & Design, Milwaukee School of Engineering, Mount Mary College, Wisconsin Lutheran College and Marquette University all in the Milwaukee area; Bellin College, Green Bay; Beloit College, Beloit; Carroll College, Waukesha; Carthage College, Kenosha; Concordia University Wisconsin, Mequon; Edgewood College, Madison; Lakeland College, Sheboygan; Lawrence University, Appleton; Marian University, Fond du Lac; Northland College, Ashland; Ripon College, Ripon; St. Norbert College, De Pere; Silver Lake College, Manitowoc; and Viterbo University, La Crosse.

Source: Wisconsin Association of Independent Colleges and Universities.

Each institution has a distinct mission, emphasis, and approach to teaching and learning. Some of the institutions are religiously affiliated but all accept students regardless of creed. A comparative review of private institutions, as well as links to the websites of each institution, can be found at: http://www.wisconsinsprivatecolleges.org/colleges.

Private colleges and universities receive no direct funding from the state. They are governed by private boards of trustees. All private colleges and universities in Wisconsin are recognized by the U.S. Department of Education and accredited by the North Central Association of Colleges and Schools.

Admission, Enrollment, and Costs

Enrollment and Costs

In 2012-13, the 23 private colleges and universities in Wisconsin together enrolled approximately 61,000 students. They awarded 24% of the bachelor's degrees in the state, including 29% of engineering degrees, 39% of health professions degrees, and 29% of business degrees. In addition, they produced 50% of all the state's new graduates with four year nursing degrees.

The average price for tuition and fees at a Wisconsin private college or university during the 2012-13 academic year was $27,739. However, more than 95% of the full-time undergraduates at private colleges in Wisconsin received financial aid, the majority of which was provided by the institutions themselves. 75% of the average private aid package consisted of grants, which do not have to be repaid. The average financial aid package provided to a freshman for the 2012-13 academic year was $22,529, leaving an average tuition cost of $5,210. The costs for room and board are roughly comparable in the public and private sectors.

In 2014-15, the Wisconsin Grant program provided $26.8 million in means-tested financial aid for low-income Wisconsin students who attend private colleges, with an average grant of approximately $2,800.

Each private institution sets its own admission policies. The admission policies for private colleges and universities tend to be somewhat more individualized than admission policies of the UW System. Generally, admissions are determined by a committee which considers a potential student's family situation, a written essay, a portfolio of the student's high school work, volunteer and job experience, and possibly notes on an interview with the student.

Wisconsin Association of Independent Colleges and Universities

Private colleges and universities in Wisconsin have organized themselves into the Wisconsin Association of Independent Colleges and Universities (WAICU). WAICU is recognized in state statutes as the official representative of Wisconsin's private colleges and universities. The president of WAICU or his or her designee, along with the president of the UW System and the president of the WTCS, is a member of the executive

Wisconsinsprivatecolleges.org is an on-line resource maintained by the WAICU to help students and their families select a private college or university and apply for admission. It contains information and admissions applications for all independent degree-granting colleges and universities within Wisconsin. The site is located at: http://www.wisconsinsprivatecolleges.org.

committee of the PK-16 Leadership Council, the Educational Communications Board, the Wisconsin Technology Council, the College Savings Board (EdVest), and the Council on College and Workforce Readiness.

Tribal Colleges

There are two tribal colleges in Wisconsin -- the College of Menominee Nation, located in Keshena and Green Bay (http://www.menominee.edu/) and the Lac Courtes Oreilles Ojibwa Community College (LCO) in Hayward (http://www.lco.edu/). The main campus of the College of the Menominee Nation is located in Keshena, and there is also a campus in Green Bay.

LCO's main campus is located in Hayward. LCO also has four Outreach Sites operating on nearby Ojibwe reservations: Bad River, Lac du Flambeau, Red Cliff, and St. Croix. LCO also provides research, education, and community outreach through its Community College Extension at the Hayward campus.

The LCO Extension is made up of three programs: the Increased Capacity Program, the Youth Development Program, and the Water Quality Program. The Extension also partners with the Wisconsin Nutrition Education Program. Extension operations are funded with grants from the USDA Extension Program.

Each college is operated as a nonprofit institution by the respective tribe, and both offer two-year associate degrees and less-than-two-year certificates, in a variety of fields. The colleges have an open enrollment policy meaning nontribal members may enroll. Both tribal colleges are accredited by the North Central Association of Colleges and Schools, Commission on Institutions of Higher Education.

In Spring of 2013, the total enrollment at the College of Menominee Nation was 758, 56% of whom are Native American. The programs with the largest enrollments were education, business, natural resources, public administration, and social services.

The total enrollment at the LCO in Fall of 2013 was 476; in Spring of 2014 total enrollment was 374. The most popular areas of study at the college were ethnic, cultural, and gender studies, health professions and related clinical sciences, business, and education.

Private Trade, Technical, Career, Distance Learning, and Degree-Granting Schools

There are about 230 private schools in Wisconsin which train people in a wide variety of occupations. The majority of the schools are for-profit businesses owned by an individual or a corporation. The schools vary greatly in size but most provide small classes and individualized instruction.

Some of these private schools issue certificates of completion; others issue associate's or bachelor's degrees. Credits earned from proprietary schools generally do not transfer to degree-granting schools.

State Regulation

The Educational Approval Board (EAB) regulates for-profit post-secondary schools (except cosmetology schools) and in-state nonprofit post-secondary institutions incorporated after January 1992. Most private post-secondary schools serving Wisconsin students, whether they are located within or outside the state, are required to obtain the EAB's approval prior to advertising or providing training. Training which leads to employment or ongoing education is approved.

A directory of EAB-approved schools is available on the EAB's website: http://www.eab.state.wi.us/

The following kinds of training are exempt from EAB oversight:

- Religious or strictly sectarian training.
- Professional development.
- Training provided for a business with limited access to nonemployees.
- Employers training their own employees.

Under Wisconsin law, if this type of school serves a Wisconsin resident, it must be EAB-approved unless the school is exempt. However, many schools offering programs and degrees via the Internet do not seek EAB approval. To protect themselves, consumers should contact the EAB before enrolling in schools offering distance learning programs.

A listing of all schools that have been approved by the EAB is available on the EAB's website at: http://www.eab.state.wi.us/. The site also contains information about submitting complaints about a school and what to do if an EAB-approved school closes. Some EAB-approved schools in Wisconsin are eligible to participate in the federal financial aid programs. Schools should be contacted directly to determine whether financial aid is available.

Accreditation

The State of Wisconsin does not accredit schools. Accreditation is obtained through an optional nongovernmental, voluntary peer review process. A school can choose to go through a self-study and then request an accrediting agency to send a team of experts to visit the school. If the team finds that the school is meeting the standards of the accrediting agency, the accrediting agency awards the label "accredited."

Financing the Costs of Higher Education

For more information about financial aid available to post-secondary students in Wisconsin, consult HEAB's website located at: http://www.heab.state.wi.us/

Wisconsin provides numerous forms of financial aid for higher education, including grant programs, loan programs, scholarships, and tuition reciprocity agreements. Eligibility criteria for these financial aid programs are set by statute. The Higher Educational Aids Board

(HEAB) has primary responsibility for administration of Wisconsin financial aid programs.

This chapter discusses only state-funded financial aid programs. Other financial aid may be available from the federal government, individual higher educational institutions, or private organizations.

Generally, a student must satisfy certain requirements in order to qualify for any of the Wisconsin State Financial Aid programs. With certain exceptions, a student must:

- Qualify as a resident of Wisconsin.
- Possess a high school diploma, GED, or equivalent.
- Enroll in an undergraduate degree or certificate program.
- Attend a nonprofit college or university located in Wisconsin.
- File the Free Application for Federal Student Aid (FAFSA). Paper applications are available from high school guidance offices or college financial aid offices. Students may file the FAFSA beginning on January 1, for the upcoming academic year.

The FAFSA form may be filed online at: http://www.fafsa.ed.gov.

- Register with the Selective Service, if required to register.
- Not appear on the statewide child support lien docket.

Academic Excellence Scholarship

The **Academic Excellence Scholarship** program provides scholarships to the seniors with the highest grade point average (GPA) from each high school in Wisconsin that enroll in a public or private institution of higher education in the state. Referred to as "scholars," the number of students that may receive these scholarships from each high school is based on the number of students in each respective high school as follows:

- For each high school with an enrollment of at least 80 pupils but less than 500 pupils, the senior with the highest GPA in all subjects as a scholar.
- For each high school with an enrollment of at least 500 pupils but less than 1,000 pupils, the two seniors with the two highest GPAs in all subjects as scholars.
- For each high school with an enrollment of at least 1,000 pupils but less than 1,500 pupils, the three seniors with the three highest GPAs in all subjects as scholars.
- For each high school with an enrollment of at least 1,500 pupils but less than 2,000 pupils, the four seniors with the four highest GPAs in all subjects as scholars.
- For each high school with an enrollment of 2,000 or more pupils, the five seniors with the five highest GPAs in all subjects as scholars.
- For each high school with an enrollment of 2,500 or more pupils, the six seniors with the six highest GPAs in all subjects as scholars.

In addition, scholarships may be awarded to the senior with the highest GPA from the school operated by the Wisconsin Center for the Blind and Visually Impaired and the school operated by the Wisconsin Educational Services Program for the Deaf and Hard of Hearing.

Also, not more than 10 scholarships statewide may be awarded to seniors with the highest GPA from high schools enrolling less than 80 pupils.

If a scholar under this program declines a scholarship, the high school must designate as alternate scholars any seniors with the same GPA as the scholar. If there is no other student with the same GPA, the school must designate a scholar from any of the remaining seniors with the next highest GPA of not less than 3.8.

If a student is awarded a scholarship and is enrolled full-time in a participating institution (UW System, WTCS, or independent college in Wisconsin), and maintains a GPA of at least 3.00, the student is eligible for a scholarship in the subsequent year. If a student does not enroll in a participating institution of higher education in the subsequent year, the student is eligible for the scholarship in the second year following the year in which they previously received the scholarship.

The value of the Academic Excellence Scholarship is currently $2,250 per year, not to exceed four years. Half of this amount is funded by the state, and the other half is matched by the institution of higher education.

Technical Excellence Higher Education Scholarship Program

2013 Wisconsin Act 60 created a Technical Excellence Higher Education Scholarship Program under which HEAB awards scholarships to certain scholars, designated on the basis of level of proficiency in technical education subjects, who enroll, on a full-time basis, in a technical college district school. Under this program, the number and amounts of scholarships awarded, the duration for which a scholarship may be awarded, the conditions for continued receipt of a scholarship, and the institutional match requirement are the same as under the Academic Excellence Higher Education Scholarship Program, described above. A person may not receive both an Academic Excellence Higher Education Scholarship and a Technical Excellence Higher Education Scholarship.

EdVest

The EdVest College Savings Program is administered by the Office of the State Treasurer and managed by TIAA-CREF, a private financial services firm. EdVest is designed to encourage parents and others to save money for a child's future post-secondary education expenses. EdVest is a "529 Plan," which is an education savings plan operated by a state or educational institution that offers certain tax advantages and is named after Section 529 of the Internal Revenue Code which authorized these types of savings plans in 1996.

Under EdVest, any person may open an account on behalf of a designated beneficiary. Contributions are placed in a trust fund established by the State of Wisconsin and are directed into special investment portfolios designed and managed specifically for the program. Earnings in an account grow federal and state tax-free in Wisconsin, as well as potentially tax-free in other states, until the time the beneficiary is ready to go to college. The funds are then available to be used to pay for qualified higher education expenses at

any eligible school--including two- and four-year colleges, technical, vocational, and graduate schools.

Qualified withdrawals from EdVest are federal, and potentially state, tax-free. Wisconsin residents owe no state income tax on qualified withdrawals. A qualified taxpayer may deduct from his or her taxable income up to $3,000 per year per beneficiary for amounts paid into an account in the EdVest program if the account beneficiary is the taxpayer or taxpayer's dependent child, or the taxpayer's grandchild, great-grandchild, niece, or nephew.

For more information on the EdVest program, consult http://www.edvest.com.

Tuition Deduction

A Wisconsin taxpayer may deduct from his or her taxable income allowable higher education expenses of up to $3,000 per student per year for tuition expenses incurred by the taxpayer or a taxpayer's dependent. Allowable expenses include tuition paid to any university, college, technical college, or a school approved by the EAB that is located in Wisconsin. The deduction also applies to tuition paid by a Wisconsin resident to attend a Minnesota school under the Minnesota-Wisconsin reciprocity program. The maximum amount of the deduction phases out as income increases and is eliminated when income exceeds $60,000 for single taxpayers and $100,000 for married taxpayers filing joint returns. Beginning in 2013, the income phase-out levels are increased each year based on the increase in the U.S. Consumer Price Index.

Deduction for Interest on Student Loans

An individual may deduct from his or her taxable income up to $2,500 for interest paid on student loans during the first 60 months in which interest payments are required. The deduction is reduced for single filers with taxable income between $40,000 and $55,000 and for joint filers with taxable income between $60,000 and $75,000. The deduction is not available for filers with incomes above these amounts.

Wisconsin GI Bill

For information regarding tuition benefits under the Wisconsin GI Bill, see Chapter 30, *Veterans*.

Grant Programs

The **Lawton Undergraduate Minority Retention Grant** program is administered by the UW and is available to minority undergraduates enrolled in the UW System. It is available to U.S. citizens who are Wisconsin residents who demonstrate financial need. Minnesota residents with tuition reciprocity are grandfathered in through 2015-16 to be eligible. A student must be a member of a statutorily underrepresented group (African American, Hispanic, American Indian/Alaskan Native, or Southeast Asian of Vietnamese, Cambodian, Laotian, or Hmong descent). The maximum grant award is $3,000 per year for up to four years.

The **Talent Incentive Program (TIP) Grant** program provides grants of $250 to $1,800 to the most financially needy and educationally disadvantaged resident students attending colleges and universities in the state. First-time freshmen students are nominated for the TIP Grant by the school financial aid offices or by counselors of the Wisconsin Educational Opportunities program. To continue to receive the TIP Grant, students must continue to show financial need. Eligibility cannot exceed 10 semesters and a grant may not be awarded to the same student more than six years after they receive the initial grant. Continuous enrollment is not required.

The **Wisconsin Grant** program provides grants to undergraduate residents enrolled at least half-time in degree or certificate programs at UW System, WTCS, and tribal institutions and nonprofit, independent colleges or universities in Wisconsin. Awards are based on financial need.

The **Hearing and Visually Handicapped Student Grant** program provides funding for residents enrolled at least half-time at an in-state or eligible out-of-state public or independent institution, show financial need, and have a severe or profound hearing or visual impairment. Students are eligible to receive from $250 to $1,800 per year for up to 10 semesters.

The **Indian Student Assistance Grant** program provides grants of $250 to $2,200 per year to residents who are at least 25% Native American or are recognized as a member of a tribe by the appropriate tribal government. A recipient must be enrolled at least half-time in degree or certificate programs at UW System, WTCS, independent colleges and universities, or for-profit educational institutions in Wisconsin. Awards are based on financial need with a limit of 10 semesters of eligibility.

The **Minority Undergraduate Retention Grant** program provides grants from $250 to $2,500 to resident minority undergraduates, excluding first-year students, enrolled at least half-time in independent, WTCS, or tribal institutions. "Minority student" includes a student who is an African American; American Indian; Hispanic; or Southeast Asian from Laos, Cambodia, or Vietnam. Awards range from $250 to $2,500 per year and are based on financial need and eligibility is limited to eight semesters or 12 quarters.

The **Contract for Dental Education** allows a finite number of Wisconsin residents to attend the Marquette University School of Dentistry at a "resident" tuition rate. Currently 160 students are able to participate each academic year. Students who meet the program criteria are awarded $8,753 in tuition subsidization.

The **Medical College of Wisconsin Capitation Program** provides tuition assistance to a finite number of Wisconsin residents enrolled full-time in the Doctor of Medicine (M.D.) program at the Medical College of Wisconsin.

The **Wisconsin Health Professions Loan Assistance Program** (HPLAP) was established to assist rural and underserved communities in recruiting and retaining primary care health and dental professionals. Health care providers who agree to work in

federally designated shortage area are eligible for up to $100,000 in education loan repayment assistance through this competitive program. Physicians working in rural, non-shortage areas are also eligible for $50,000.

The HPLAP has two funding sources, with slightly different criteria. One portion of the program is funded solely by State funds and another portion uses federal funds. Most of the specifications for the awards provided under these two funding sources are the same. However, those awards that are partially funded by federal matching dollars have some additional requirements.

The program is administered by the Wisconsin Office of Rural Health. More information is available at http://worh.org/loan-repayment.

Loan Programs

The **Minority Teacher Loan** program provides loans to resident minority undergraduate juniors or seniors who are enrolled full-time in programs leading to teacher licensure at an independent or UW System institution. Loans range from $250 to $2,500 per year, with an overall maximum of $5,000. A minority student is either an African American; American Indian; Hispanic; or Southeast Asian from Laos, Cambodia, or Vietnam. The recipient must agree to teach in a Wisconsin school district with at least 29% minority enrollment or a district participating in the inter-district pupil transfer (Chapter 220) program. For each year of such teaching, 25% of the loan is forgiven. If the student does not teach in an eligible district, the loan must be repaid at an interest rate of 5%.

The **Nursing Student Loan** program provides loans to residents who are enrolled at an eligible in-state institution that prepares them to be licensed as either registered nurses (RNs) or licensed practical nurses (LPNs) or to work as a nurse educator. The maximum annual award is $3,000 with an overall maximum of $15,000. For each of the first two years the recipient works as a nurse or nurse educator, 25% of the loan is forgiven. The balance remaining after forgiveness must be repaid at an interest rate not to exceed 5%. If the recipient does not work as a nurse or a nurse educator, the loan must be repaid at an interest rate not to exceed 5%.

The **Teacher Education Loan** program provides loans to residents enrolled in the teacher education programs at the Milwaukee Teacher Education Center. The loan amount ranges from $250 to $3,500 per year. A recipient must agree to teach in the Milwaukee Public Schools (MPS). For each year of teaching, 50% of the loan is forgiven. If the student does not teach in MPS, the loan must be repaid at an interest rate of 5%.

The **Teacher of the Visually Impaired Loan** program provides loans to residents enrolled in a program that prepares them to be licensed as teachers of the visually impaired or as orientation and mobility instructors. The maximum award per year is $10,000 with an overall maximum of $40,000. A recipient must agree to work as a licensed teacher or an orientation or mobility instructor in Wisconsin. For each of the first two years the student teaches and meets certain eligibility criteria, 25% of the loan is forgiven. For the third

year, 50% is forgiven. If the student does not teach and meet the eligibility criteria, the loan must be repaid at an interest rate of 5%.

The **Primary Care and Psychiatry Shortage Grant** program was created by 2013 Wisconsin Act 128. It is administered by HEAB and is designed to encourage primary care physicians and psychiatrists to practice primary care medicine or psychiatry in underserved areas in Wisconsin.

A physician or psychiatrist is eligible to participate in the grant program if he or she: (a) graduated from a graduate medical education training program in Wisconsin with an emphasis on primary care medicine or psychiatry in 2014 or any year thereafter; (b) practices primary care medicine or psychiatry in an underserved area in Wisconsin; and (c) does not appear on the statewide child support lien docket.

The Act provides $1.5 million general purpose revenue in 2014-15 for the program, to be divided equally between grants for physicians and grants for psychiatrists. The grants are for "financial assistance" for recipients. The Act does not specify any limitations on how the grant funds may be used by recipients.

The HEAB must award grants to up to 12 physicians and up to 12 psychiatrists annually. If more than 12 physicians or 12 psychiatrists apply for the grant in any fiscal year, HEAB must select program participants from among the applicants based on the order in which the applications were received and the health professional shortage area score of the underserved areas in which the physician or psychiatrist would be practicing.

Physicians and psychiatrists who are selected to participate in the program are eligible to receive grants for up to three years.

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs and agencies, including the WTCS, and the UW System. The Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.

2. The following Legislative Audit Bureau audits and letter reports are available at: http://www.legis.wisconsin.gov/lab:

    - *University of Wisconsin System* (Audit Report 14-3).
    - *Level of Commitment for University of Wisconsin System Program Revenue Balances* (Report 13-17).
    - *University of Wisconsin System's Financial Statements* (Auditor's Opinion, January 2013).

3. Additional information about the UW System may be found on its website at: http://www.uwsa.edu. A map with links to the individual website of each UW System campus may be found at: http://www.wisconsin.edu/campuses/.

4. Additional information about the WTCS may be found on its website at: http://www.witechcolleges.com/.

5. Additional information about private colleges and universities in Wisconsin may be found on the website of the WAICU at: http://www.wisconsinsprivatecolleges.org.

6. Additional information about proprietary schools in Wisconsin can be found on the EAB's website at: http://www.eab.state.wi.us/. A directory of all approved for-profit schools in Wisconsin may be found at: http://www.eab.state.wi.us/resources/schoolsprograms.asp.

7. Additional information about financial aid programs may be found on the HEAB website at: http://www.heab.state.wi.us/.

GLOSSARY

EdVest: A college savings "529" program administered by the State Treasurer and managed by TIAA-CREF.

FAFSA-Free Application for Federal Student Aid: Filing of this form is a prerequisite for obtaining financial assistance under the majority of financial aid programs offered in Wisconsin.

WAICU: Wisconsin Association of Independent Colleges and Universities.

Wisconsin Grants: The need-based grant program for students at the UW, WTCS, tribal colleges, and private colleges in Wisconsin.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 14 – ENVIRONMENTAL PROTECTION AND NATURAL RESOURCES

Environmental and natural resources laws result from a process shaped by each of the three branches of government – legislative, executive, and judicial. Major federal legislation, including legislation related to air and water, delegates part or all of the implementation or programs to the states. In Wisconsin, the Legislature has enacted legislation covering a wide range of environmental protection and natural resources issues. The Department of Natural Resources is the primary executive branch agency that administers these programs and promulgates administrative rules interpreting the applicable statutes. Courts have developed case law, or common law, that significantly impacts the scope and implementation of environmental and natural resources laws.

Rachel Letzing, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Navigable Water and Wetlands 1
The Public Trust Doctrine 1
Navigable Water Regulations 2
Wetlands Regulation 2
Wetland Mitigation 3
Shoreland Zoning 4
Water Pollution Discharge Permits 5
Nonpoint Source Water Pollution 5
Air Pollution Control 6
Solid Waste and Recycling 7
Solid Waste Disposal 7
Recycling 7
Groundwater Law and Public Water Supply 8
Groundwater Quantity 8
Groundwater Quality 9
Public Water Supply 10
Metallic Mining 10
Nonmetallic Mining 12
Natural Resources 12
Management of State Public Lands 12
Forest Tax Law Programs 13
Invasive Species 14
Wildlife Management 14
Deer 15
Gray Wolf 15
Wildlife Damage 16
Additional References 16
Glossary 17

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Navigable Water and Wetlands

A complex set of laws govern the ownership and use rights of Wisconsin's lakes, streams, and wetlands.

The Public Trust Doctrine

The Wisconsin Constitution, Article IX, Section 1, provides that the "river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor." That provision has been interpreted to mean that the Wisconsin Legislature is the trustee for the citizens' rights to navigate and enjoy recreational activities in the waters of the state. This interpretation is known as the "public trust doctrine." The Legislature is viewed as having generally delegated its trustee obligations to the Department of Natural Resources (DNR), except where statutes state otherwise. The Wisconsin Supreme Court has interpreted the public trust doctrine to encompass a broad range of public rights, including commercial and recreational navigation, water quality, fishing and hunting, other recreational uses, and enjoyment of natural scenic beauty.

The public trust doctrine is a body of common and statutory law that provides that the state holds title to navigable waters in trust for public purposes.

The existence of public rights in a lake or stream depends upon whether the water body is "navigable." A water body is considered to be navigable if it is capable of floating any boat for recreational purposes. Furthermore, the water body does not need to be continually navigable, but needs to be navigable only on a regularly recurring basis, such as during spring runoff periods. The trust also applies to artificial navigable waters that are directly and inseparably connected with natural, navigable waters.

The state owns the beds of natural navigable lake beds up to the ordinary high-water mark. The ordinary high-water mark is the point on the bank or shore where the water, by its presence, wave action or flow, leaves a distinct mark on the bank or shore. Riparian owners--people who own property adjacent to a navigable water body--hold title to stream beds to the center of the stream. Riparian rights include the use of the shoreline, the reasonable use of the water, and the right to build piers for navigation. When conflicts arise between riparian rights and public rights, riparian rights are secondary to the public interest.

In order to ensure that both public rights and riparian rights are protected, the Legislature has delegated to the DNR the authority to issue permits for various activities in and near in navigable waters under subch. II of ch. 30, Stats.

Navigable Water Regulations

Under subch. II of ch. 30, Stats., a person generally must obtain a permit from the DNR before conducting any of the following activities relating to navigable waters:

- Placing structures and deposits, including piers, in navigable waters;
- Constructing bridges and culverts;
- Enlarging and protecting waterways;
- Changing stream courses; and
- Removing material from beds of navigable water bodies.

Certain activities may be authorized by a general permit (a permit that applies statewide to any person authorized to engage in the specific activity covered by the permit). Each statutory section directs the DNR to promulgate rules regarding implementation and includes numerous exemptions for specific purposes. If an activity is not authorized under a general permit or explicitly exempted from regulation under state statute, an individual permit typically must be obtained. Each individual ch. 30 permit has specific requirements. Most, however, require that the applicant demonstrate that the activity will not materially impair navigation or be detrimental to the public interest or public rights. Many ch. 30 permits may be granted only to riparian owners. Prescribed timelines apply to the issuance of permits.

Information about the various types of, and application procedures for, ch. 30 permits is available on the DNR website at: http://dnr.wi.gov/permits/water/

Wetlands Regulation

Under state law, a wetland general permit or individual permit is required if an activity will result in a discharge of dredged material or fill material into wetlands, unless the activity is exempt from this requirement. The DNR may not issue either type of wetland permit unless it determines that the discharge authorized pursuant to the wetland permit will comply with all applicable water quality standards. Water quality standards for wetlands are narrative standards that describe "beneficial uses" or "functional values" of a wetland such as flood water retention, groundwater recharge or discharge, and fish and wildlife habitat. If the wetland is a "federal wetland," the applicant must also obtain a permit from the U.S. Army Corps of Engineers (ACE). Federal wetlands are wetlands that are subject to federal jurisdiction under the Clean Water Act. Nonfederal wetlands are

"nonnavigable, isolated, intrastate wetlands," which were removed from the ACE's jurisdiction by the U.S. Supreme Court in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001).

The DNR is required to establish wetland general permits for certain types of discharges, and may issue other wetland general permits to regulate other types of discharges. When drafting a wetland general permit, the DNR is required to impose requirements, conditions, and exceptions to ensure that the discharges that will occur under the permit will cause only minimal adverse environmental effects.

General permits and individual permits are available for applicants whose projects will have an impact on wetlands.

A wetland individual permit is required for a person to discharge dredged material or fill material into any wetland unless the discharge is authorized under a general permit or is exempt from permitting requirements. An application for a wetland individual permit must include an analysis of the practicable alternatives (reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project) that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences. The DNR is required to issue a wetland individual permit if it determines that all of the following apply:

- The proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.
- All practicable measures to minimize the adverse impacts to wetland functional values will be taken.
- The proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

A pre-application meeting with staff from the DNR is required for all wetland individual permit applications.

Wetland Mitigation

The term "wetland mitigation" refers to actions taken to offset the negative impacts of a project on wetlands. Examples of mitigation include restoring previously destroyed or

degraded wetlands, creating new wetlands, and purchasing credits from a wetland mitigation bank.

Wisconsin law requires the DNR to establish a mitigation program that applies only to the issuance of wetland individual permits. The mitigation program must allow mitigation to be accomplished by any of the following methods:

- Purchasing or applying credits from a mitigation bank in this state. The DNR is required to establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state.
- Participating in the in lieu fee subprogram, if established, under which payments are made to the DNR or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features.
- Completing mitigation within the same watershed or within one-half mile of the site of the discharge.

Wetland mitigation is required for all wetland individual permits.

For a comprehensive description of 2011 Wisconsin Act 118, which made numerous changes to state wetland law, see Information Memorandum 2012-05 on the Legislative Council website at: http://www.legis.wisconsin.gov/lc

The statutes provide that purchasing credits from a mitigation bank and participation in the in lieu fee subprogram are the preferred types of mitigation. The DNR is required to establish mitigation ratios that are consistent with the federal regulations that apply to mitigation and mitigation banks, but the minimum ratio must generally be at least 1.2 acres for each acre affected by a discharge.

Shoreland Zoning

State shoreland zoning laws regulate certain activities within shorelands, generally 1,000 feet from a lake, pond, or flowage and 300 feet from a river or stream. The statutes direct counties to zone by ordinance all shorelands in unincorporated areas. A county's shoreland zoning ordinance must meet statewide shoreland zoning standards promulgated by rule by the DNR. State law specifies that county shoreland zoning ordinances may not regulate the repair and maintenance of nonconforming structures (structures that existed lawfully before current shoreland zoning took effect) in a manner that is more restrictive than DNR rules. The DNR's shoreland zoning standards for counties are set forth in ch. NR 115, Wis. Adm. Code. Shoreland zoning restrictions in ch. NR 115 control lot size, require building setbacks and vegetative buffer zones, control modification or expansion of buildings, restrict

a lot's total impervious surfaces, require mitigation of certain activities, and restrict land divisions.

A significant set of revisions to ch. NR 115 went into effect on February 1, 2010 and counties were required to modify their shoreland zoning ordinances to comply with these changes by early 2014. As of the writing of this chapter, additional changes to ch. NR 115 have been promulgated and were submitted to and reviewed by the Legislature.

Water Pollution Discharge Permits

Under the federal Clean Water Act, the discharge of pollutants from a point source into a navigable water is prohibited without a permit. In Wisconsin, discharges from a point source are subject to the Wisconsin Pollutant Discharge Elimination System (WPDES) program permit requirements under ch. 283, Stats. Through the WPDES permit program, the DNR regulates stormwater and wastewater discharged by industries and municipalities and discharges from large animal feeding operations. The types of pollutants covered by the permits include total suspended solids (particles suspended in water), phosphorus, oil, and grease. Each permit contains monitoring, reporting, and operational requirements. The DNR determines whether a particular facility is appropriately covered by a general or individual permit.

Administrative rules regulating the discharge of phosphorus became effective in 2010.

The DNR promulgated administrative rules that became effective on December 1, 2010, regulating the discharge of phosphorus from point sources and establishing the procedures for incorporating new phosphorus water quality-based standards into WPDES permits. Any WPDES permittee may request a variance from the DNR from a water quality-based effluent (pollutant) limitation, including phosphorus. A permittee may also request authorization from the DNR to implement adaptive management, an approach which allows a permittee to reduce phosphorus discharges from other sources, including nonpoint sources, if doing so is more cost-effective than reducing its own discharge. 2013 Wisconsin Act 378 created the framework for a statewide variance from water quality-based phosphorus units for certain sources that cannot meet these limits. As with other variance requests to Clean Water Act requirements, the Environmental Protection Agency (EPA) must approve the statewide variance.

Nonpoint Source Water Pollution

Nonpoint sources of water pollution are sources that are diffuse in nature without a single, well-defined point of origin. Pollutants include fertilizers, nutrients, oil, and sediment from agricultural, urban, and residential areas. Wisconsin has numerous water bodies that are not meeting water quality standards and are therefore considered to be "impaired" as a

For more information on nonpoint source water pollution abatement programs, see the Legislative Fiscal Bureau's (LFB) 2013 Informational Paper, *Nonpoint Source Water Pollution Abatement and Soil Conservation Programs*, at:
http://www.legis.wisconsin.gov/lfb

result of nonpoint source pollution impacts. As required by the federal Clean Water Act, the DNR has established total maximum daily loads (TMDLs) for impaired water bodies. A TMDL is generally the amount of pollutant that the water body can assimilate and not exceed water quality standards. Once a TMDL is developed and approved by both EPA and DNR, federal and state laws require that the TMDLs not be exceeded.

Wisconsin implements TMDLs by regulating both point sources and nonpoint sources. The state regulates nonpoint discharges through agriculture performance standards and manure management requirements in ch. NR 151, Wis. Adm. Code, and nonagricultural performance standards in both ch. NR 151 and ch. NR 216, the stormwater discharge permit rule. Under their respective authorities, the DNR and the Department of Agriculture Trade and Consumer Protection (DATCP) offer technical assistance and cost-sharing grants to local governments to control nonpoint source pollution.

Air Pollution Control

Much of the state's air pollution program under ch. 285, Stats., is designed to implement the federal Clean Air Act. The U.S. EPA has established national ambient air quality standards for six principal pollutants: carbon monoxide (CO), nitrogen dioxide (NO_2), ozone (O_3), particulate matter, sulfur dioxide (SO_2), and lead. For a particular air pollutant, the EPA identifies regions within each state where the standard is not met based upon air quality monitoring data collected by the state. These areas are called "nonattainment areas." When a county is identified as not meeting a federal air quality standard based on monitored values of the outside air, it is designated by the EPA as a "nonattainment" area and given a target date to meet the standard. A state must then prepare a "state implementation plan," or SIP, that includes regulations for controls on emissions that are needed to reduce the air pollution and meet the standard. If at any time monitored values show that the air quality has improved and the county meets the standard, the DNR may request redesignation of the county.

Air permits limit the amount of air pollution a facility is allowed to emit and identify the regulatory requirements that facilities must meet. There are two major permit programs for stationary sources in Wisconsin: construction permits for new or modified sources, and operation permits for new, modified, or existing sources. Construction permits are required so that proposed projects meet air pollution standards before they are constructed. Operation permits set emission limits and establish monitoring, record-keeping, and reporting requirements. Operation permits are generally divided into two categories: minor source permits and major source permits. Major source permits are issued to sources

that have the potential to emit pollutants above certain levels. Minor source permits are issued to sources that do not have the potential to emit above these levels. Permit conditions may be revised as facilities expand, replace equipment, or change operations. Certain facilities with lower emissions may be exempt from construction or operation permit requirements.

Under ch. 285, Stats., the DNR also issues registration permits that have a more streamlined application process and flexible permit terms for smaller facilities that have lower emissions; and general permits for specific types of industry, such as rock crushing plants.

Solid Waste and Recycling

Solid Waste Disposal

Chapter 289, Stats., contains extensive licensing requirements and other regulations governing solid waste disposal facilities, which include traditional solid waste facilities such as incinerators and landfills. Wisconsin law also includes licensing requirements for solid waste treatment facilities, storage facilities, and transportation services.

State law prohibits the disposal or incineration of specified materials in a solid waste disposal facility. Materials banned from solid waste disposal facilities include lead acid batteries, major appliances, waste oil, yard waste, and aluminum containers; corrugated paper or other container board; glass containers; newspapers and used automotive oil filters and oil absorbent materials that contain waste oil. In addition, the disposal of electronic devices such as computers, televisions, video cassette recorders, digital video disc players, and cell phones in a landfill is prohibited.

Lists of electronics collection sites and registered electronics recyclers around the state may be found at:
http://dnr.wi.gov/topic/Ecycle/electronics.html

Recycling

State law requires each responsible unit of local government to operate, or contract with another entity to operate, a recycling program that manages solid waste generated within its jurisdiction in compliance with the landfill disposal restrictions that ban certain materials from landfills. A responsible unit may be a municipality, county, tribe, solid waste management system, or other unit of local government responsible for planning, operating, and funding a recycling program.

Responsible units must be approved by the DNR as operating an effective recycling program in order to apply for a grant under the Municipal and County Recycling Grant Program, which provides financial assistance to responsible units of local government for a

portion of eligible recycling costs. A responsible unit's effective recycling program must include several specific components, including an ordinance to require recycling of the materials subject to the landfill bans and curbside collection of certain recyclable materials in municipalities with a population of 5,000 or greater and a population density of greater than 70 persons per square mile.

Groundwater Law and Public Water Supply

Groundwater Quantity

High Capacity Wells

State law sets standards and conditions for approval of high-capacity wells by the DNR. A high-capacity well is defined as a well that, together with all other wells on the same property, has a capacity of more than 100,000 gallons per day. A high-capacity well may not be constructed or operated without DNR approval.

State law sets forth three specific situations in which the DNR is required to conduct a formal environmental review prior to approving construction of a high-capacity well:

- The well is located in a "groundwater protection area" (an area within 1,200 feet of a water body designated as an outstanding or exceptional resource water or a trout stream).
- More than 95% of the amount of water withdrawn by the well would be lost from the water basin in which the well is to be located.
- The well may have a significant environmental impact on a spring.

State law also authorizes the DNR to impose certain conditions on proposed wells in the categories described above and on proposed wells that may impair a public utility's water supply. The DNR may approve wells in those categories only if conditions will ensure that a well will not cause significant environmental impact or impair a public water supply.

Great Lakes Compact

The Compact establishes the legal framework for: (1) prohibiting or, in a few cases, authorizing and regulating new or increased diversions of water to places outside of the Great Lakes basin; and (2) regulating large withdrawals and consumptive uses of water within the basin. Under the Compact, "water" includes groundwater and surface water. In Wisconsin, approximately the eastern 1/4 of the state is in the Lake Michigan part of the Great Lakes basin, and a smaller area

The Great Lakes Compact took effect when it was ratified by Wisconsin and by the other seven Great Lakes states through legislation, consented to by Congress, and signed by President Bush, in 2008.

A series of Information Memoranda summarizing the Great Lakes Compact state legislation is available at the Legislative Council website: http://www.legis.wisconsin.gov/lc

More information about the City of Waukesha diversion application is available at: http://dnr.wi.gov/topic/WaterUse/WaukeshaDiversionApp.html

in the northern part of the state is in the Lake Superior basin. The remainder of Wisconsin is in the Upper Mississippi River basin, and is not subject to regulation by the Compact.

For purposes of the Compact, any person who withdraws water from the basin for use within the basin that exceeds specified amounts or diverts any amount of basin water to any place outside of the basin or between basins of the Great Lakes must, under the Compact, register with the state and provide information to the state about the withdrawal or diversion. With a few exceptions, new or increased diversions of water from the basin are prohibited under the Compact. Most proposals for diversions are likely to be from communities seeking a public water supply consisting of water from the Great Lakes basin.

In May 2010, the City of Waukesha submitted an application to the DNR to divert water from Lake Michigan. In response to DNR's request for additional information, Waukesha submitted an updated diversion application to DNR on October 14, 2013. As of the writing of this chapter, the DNR is conducting its technical review of the application to determine the application's compliance with the terms of the Compact and to evaluate the environmental effects of the proposed diversion.

Groundwater Quality

The state's regulatory system for groundwater quality protection is based on two primary concepts: numerical groundwater standards, which are expressed in concentrations, and a range of potential responses when the numerical standards are attained or exceeded. State law provides two sets of numerical criteria: enforcement standards (ES) and preventative action limits (PALs). PALs are a percentage of the ES and are intended to provide an early warning of groundwater contamination. Exceeding a PAL may trigger certain DNR responses to avoid exceeding the applicable ES. ES are the standards which trigger an enforcement response. ES are determined based on the type of substance being regulated and the availability of federally promulgated standards for the substance. Whenever available, federal standards are to be used in setting the state standard.

Public Water Supply

The federal Safe Drinking Water Act establishes maximum contaminant levels for all drinking water supplied from public water systems. The EPA sets national standards for drinking water, which establish enforceable maximum contaminant levels for particular contaminants in drinking water. In Wisconsin, the DNR is authorized to establish, administer, and maintain a safe drinking water program no less stringent than the requirements of the federal Safe Drinking Water Act. Under this authority, the DNR is required to: (1) prescribe, publish, and enforce minimum reasonable standards and methods to be pursued in obtaining pure drinking water for human consumption; and (2) establish all safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption. State law sets forth requirements for all types of public water systems, including requirements for general operation; sampling, testing and treatment; and reporting.

Private well owners are responsible for testing the quality of their water supply.

The DNR administers a number of regulatory, technical assistance, and grant programs to ensure the safety and reliability of public and private water supplies. Before a new community water system may be built or an existing community water system may be expanded, those plans must be reviewed and approved by the DNR.

The DNR has established standards for the construction of private wells and the installation of pumps in these wells. Under the Wellhead Protection Program, the DNR approval is required for wellhead protection plans for new wells serving municipal water systems in order to protect areas around a water well through which a contaminant may move toward and reach the well. The DNR and the Department of Administration jointly administer the Safe Drinking Loan Program, which provides loans to local governments and special purpose districts for projects to plan, design, construct, or modify public water systems. The DNR also administers the Well Compensation Program, which provides financial assistance to replace, reconstruct, or treat contaminated residential or livestock water supplies.

Metallic Mining

2013 Wisconsin Act 1 created an expedited process and modified permitting standards to facilitate permits for ferrous (i.e. iron) mining in the state. The DNR may issue a mining permit following a multi-stage process involving public hearings, preparation and public review of an environmental impact statement (EIS), and the approval of various state and federal permits and approvals relating to environmental and natural resources impacts resulting from mining and activities secondary to mining.

For more information on metallic mining regulations under 2013 Wisconsin Act 1, see Legislative Council Information Memoranda IM 2013-02 and IM 2013-03, available at the Legislative Council website at: http://legis.wisconsin.gov/lc

The new mining law recognizes three levels of activity related to mining metallic minerals: exploration, bulk sampling (excavation by removal of less than 10,000 tons of material for purposes of assessing a ferrous mineral deposit), and mining. Prescribed timelines apply to each phase of this process.

An applicant for an exploration license must apply to the DNR and provide specified information to the DNR, including an exploration plan and a reclamation plan, both of which require specific components.

An applicant may submit a plan to the DNR before conducting bulk sampling. The bulk sampling plan must include specific components and be accompanied by a pre-application description for the proposed project. The DNR must require the bulk sampling activity to be conducted at locations that result in the fewest overall adverse environmental impacts.

An applicant for a ferrous mining permit is required to submit an environmental impact report that includes specific components, together with the mining permit application, mining plan and reclamation plan, to the DNR. The DNR must hold an informational hearing, which covers the mining permit, all other environmental approvals for the project, and the EIS. Prior to the hearing, the DNR must make the relevant material available to the public. The DNR must hold an informational hearing and provide an opportunity for public comment within specific timelines.

An applicant is required to reimburse the DNR for costs related to the evaluation of a mining permit application. However, state law generally caps costs to be paid by an applicant at $2 million, plus the full cost of a competitively bid contract for preparation of an EIS and the DNR's costs in providing wetland boundary determination or delineation services, if the DNR provides such services at the applicant's request.

The DNR has created a webpage regarding the status of the Gogebic Taconite mining project at: http://dnr.wi.gov/topic/mines/gogebic.html

A net proceeds occupation tax is imposed on net income from the sale of "metalliferous" minerals extracted in the state. The tax rate is graduated, ranging from 0% to 15%, depending on the amount of net proceeds per year. The tax brackets are adjusted for inflation. For ferrous mines, 60% of the net proceeds occupation tax revenue is transferred to an investment and local impact fund, and 40% is transferred to the state's general fund. The investment and local impact fund is managed by an 11-member board, which makes specified mandatory payments to local governments in areas affected by mining.

State law generally requires the DNR to issue or deny a mining permit no more than 420 days after the day on which the application for a mining permit is deemed administratively complete, unless an extension to that timeline is approved. One extension, of no more than 60 days, is allowed. The DNR is also required to approve or deny all timely submitted environmental and natural resource permits required for a ferrous mining project by the same 420- to 480-day deadline required for processing the mining permit application.

As of the writing of this chapter, Gogebic Taconite, LLC has begun the process of applying for a ferrous mining permit from the DNR for a mining operation in an area of the state that straddles the boundary between Iron and Ashland Counties.

Nonmetallic Mining

Nonmetallic mining is the extraction of stone, sand, rock, or similar materials from natural deposits. State law does not require a person seeking to begin nonmetallic mining to obtain a state permit before mining, unless the proposed operation involves environmental impacts that are independently regulated, such as air pollution, wastewater, or stormwater runoff.

For more information about the regulation of sand mining in Wisconsin, see Legislative Council Information Memorandum 2013-04 available at the Legislative Council website at: http://legis.wisconsin.gov/lc

Chapter 295, Stats., establishes state standards for nonmetallic mining reclamation, defined to mean the rehabilitation of a nonmetallic mining site to achieve a land use in an approved nonmetallic mining reclamation plan. State law directs the DNR to promulgate rules regarding nonmetallic mining site reclamation requirements, but delegates the responsibility for adopting and administering such reclamation to local governments. All counties must, and towns, villages, and cities may, enact nonmetallic mining reclamation ordinances. Each ordinance must comply with the minimum reclamation standards in DNR rule. In general, no person may engage in nonmetallic mining or in nonmetallic mining reclamation without first obtaining a nonmetallic mining reclamation permit under the applicable local ordinance. Local governments are primarily responsible for regulating nonmetallic mining through nonmetallic mining reclamation ordinances, zoning ordinances, and ordinances enacted pursuant to general police powers to regulate public health, safety, and welfare.

Natural Resources

Management of State Public Lands

Public lands programs designed for the protection and management of the state's natural resources and scenic areas are administered by the DNR pursuant to ch. 23, Stats. Under this general authority, as well as specific statutes related to each type of property, the DNR

supervises various types of land designated for conservation or recreation. These lands include state natural areas, state parks, state forests, state recreation areas, wildlife and game refuses, and the Ice Age Trail.

Acquisition of Public Land

The LFB 2013 Informational Paper, *Warren Knowles-Gaylord Nelson Stewardship Program*, provides extensive information about this program, at:
http://www.legis.wisconsin.gov/lfb

The primary public land acquisition program in Wisconsin is the Warren Knowles-Gaylord Nelson Stewardship Program. Under the program, the DNR acquires land and provides grants to local units of government and nonprofit conservation organizations for land acquisition and property development activities. The state generally issues 20-year, tax-exempt general obligation bonds to support the program. 2013 Wisconsin Act 20, the Biennial Budget Act, specified that the DNR may not obligate more than $54,500,000 in fiscal years 2014-15 and 2015-16, and no more than $50,000,000 in each year from 2016-17 through 2019-20.

State law provides public access requirements related to nature-based outdoor activities for certain property acquired at least in part with funding from the Stewardship Program. For purposes of these requirements, "nature-based outdoor activity" means hunting, fishing, trapping, hiking, cross-country skiing, and other nature-based outdoor activity designated by rule by the DNR. For specified categories of property, public access for one or more of the listed types of nature-based recreation may be prohibited only if the Natural Resources Board determines that it is necessary to do so to protect public safety, protect a unique animal or plant community, or accommodate usership patterns. In general, stewardship projects greater than $250,000 are subject to passive review by the Joint Committee on Finance, which means that the proposal is approved unless a majority of committee members present at a meeting vote to modify or deny the proposal. 2013 Wisconsin Act 20, specifies that the DNR may not acquire any land with stewardship program funds outside the boundaries of projects established on or before May 1, 2013, unless the Joint Committee on Finance, by an affirmative vote of 12 members, approves a new project or an expansion of existing project boundaries beyond the May 1, 2013 boundaries. If the number of acres held by the DNR in fee simple exceeds 1.9 million acres, the DNR may not acquire more land unless the Joint Committee on Finance approves the acquisition under a 14-day passive review process.

Forest Tax Law Programs

Wisconsin's forest tax laws encourage sustainable forest management on private lands by providing a property tax incentive to landowners. The two forest tax law programs are the Managed Forest Land Program (MFL) and the Forest Crop Law (FCL). Both programs encourage management of woodlands in their purposes and policies, as well as through a

written management plan for a landowner's property. The management plan incorporates landowner objectives, timber management, wildlife management, water quality, and the environment as a whole to create a healthy and productive forest. In exchange for following a written management plan and program rules, landowners pay forest tax law program rates in lieu of regular property taxes.

Invasive Species

State law requires the DNR to establish a statewide invasive species control program in order to cut, remove, destroy, suppress, or prevent the introduction of nonindigenous species that are likely to cause economic or environmental harm or harm human health. The DNR has promulgated an administrative rule, ch. NR 40, Wis. Adm. Code, that classifies and identifies invasive species. In addition, the rules generally prohibit the transport, possession, transfer, and introduction of prohibited species. With landowner permission or a judicial inspection warrant, the DNR may inspect for, sample, and control prohibited species. The rules also contain preventive measures including requirements to remove aquatic plants and animals and drain water from boats and trailers upon removal from the water and to remove aquatic plants and animals from any vehicle, boat, trailer, or equipment before placing it in any navigable water or transporting it on a highway.

Certain prolific, nonnative types of plants, insects, animals, or other living things, referred to as invasive species, often lack natural controls, like predators, and may be able to out-compete native species for food, habitat, and other resources.

Wildlife Management

The legal framework for fish and game regulation is primarily found in ch. 29, Stats., and ch. NR 10, Wis. Adm. Code. Chapter 29, Stats., governs the regulations applicable to hunting, trapping, and fishing, and the licenses or approvals required for those activities. State law also regulates commercial activities regarding fish and game, such as commercial fishing, hunter education, and stocking of fish and game. One key statutory provision is s. 29.014, Stats., which is the broad grant of authority to the DNR to establish open and closed seasons and to adopt regulations regarding the taking of fish and game.

The enforcement of regulations regarding hunting, fishing, and trapping is done by the DNR wardens and is based on a citation system similar to that used for traffic law violations. The penalty for a citation is a civil forfeiture rather than a criminal penalty. Some of the more serious fish and game law violations have criminal penalties.

The final deer trustee report as well as information on DNR rule changes regarding the 2014-15 deer season, is available at: http://dnr.wi.gov/topic/wildlifehabitat/trustee.html

Hunting and trapping statutes and regulations are constantly evolving. Some of the many statutory changes that have occurred recently include the creation of a hunter mentoring program; expansion of crossbow hunting opportunities; the reduction of resident license fees for certain first-time hunting, fishing, or trapping approvals; and the general requirement that state parks be open to hunting, fishing, and trapping.

White-Tailed Deer

The DNR's deer management practices have been a controversial issue for many years. In October 2011, the state entered into a contract with Dr. James Kroll to conduct an independent review of these practices. Dr. Kroll's final report and recommendations were issued in July 2012. The report encouraged the DNR to increase public involvement in deer management and made a number of recommendations including recommendations relating to deer population management, hunting regulations and seasons, chronic wasting disease management and development of a deer management assistance program. 2013 Wisconsin Act 20, provided funding to and positions in the DNR to implement items identified in the 2012 Kroll report, including a deer management assistance program, under which the DNR is required to provide deer management assistance to participating landowners. The DNR is also implementing several of the report's recommendations by administrative rule.

Gray Wolf

The gray wolf was removed from the state threatened species list in 2004 and removed from the federal endangered species list on January 27, 2012. Subsequent to the federal delisting of gray wolves, 2011 Wisconsin Act 169 was enacted, which required the DNR to establish an annual wolf harvesting season from October 15 through the month of February. The Act directed the DNR to divide the state into wolf harvesting zones and specified that a wolf harvesting license authorizes hunting and trapping only in a specified zone. The DNR was authorized to limit the number of licenses issued and the number of wolves that may be harvested, and to close a wolf harvesting zone to both hunting and trapping of wolves if it determines that the closure is necessary to effectively manage the state's wolf population.

The Wolf Advisory Committee, comprised of DNR staff, tribes, and stakeholder groups, advises the DNR Natural Resources Board on a variety of issues related to wolf management. Advisory Committee notes are available at: http://dnr.wi.gov/topic/wildlifehabitat/wolf/committee.htm/

The Act specified the types of firearms that may be used for wolf hunting, allowed the use of dogs to track and trail wolves for part of the season, allowed the baiting of wolves, and allowed hunting at night for part of the season. 2013 Wisconsin Act 20 repealed the authorization to hunt wolves during nighttime. Due to a circuit court injunction, dogs were not used during the 2012 wolf hunting season; however, hunters were allowed to hunt wolves with dogs during a part of the 2013 season.

Act 169 also required the DNR to administer a wolf depredation program under which payments may be made for death or injury caused by wolves to livestock, to hunting dogs other than those being used in the hunting of wolves, and to pets, and to fund the wolf management program, during times when the wolf is not listed on the federal or state endangered species lists, with money collected as fees for wolf harvesting licenses. If, after making these payments, there was money remaining, the DNR was authorized to use it for wolf management and control activities.

Wildlife Damage

Wildlife damage claim payments and wildlife damage abatement assistance are funded by fees collected from hunters. Payments are available under these programs for damage caused by deer, bear, geese, turkey, and cougar. Land for which wildlife damage payments are made may be required to be open to hunting. State law also authorizes wildlife damage payments for sandhill cranes or elk, if hunting of either species is authorized by the DNR in the future.

Additional References

1. At the beginning of each biennial legislative session, the LFB publishes Informational Papers on a variety of environmental and natural resources topics. The Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
2. The DNR website contains useful information about environmental protection programs, natural resources management, hunting, fishing and trapping seasons, as well as information about Natural Resources Board meetings. The DNR website is: http://dnr.wi.gov/.
3. The DATCP website includes information regarding nonpoint source pollution and nutrient management plans. This information may be found at: http://datcp.wi.gov/Farms/Nutrient_Management/index.aspx.
4. The federal EPA maintains a website that has information on all federal environmental laws. The EPA website is: http://www.epa.gov/.
5. The U.S. Fish and Wildlife Service, a bureau of the Department of Interior, maintains a website that includes information on hunting, fishing, conservation, and endangered species programs. The website is: http://www.fws.gov/.

6. The ACE website includes information regarding permit requirements for activities in or near navigable waters and wetlands. The ACE website is: http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx.

GLOSSARY

ACE: The U.S. Army Corps of Engineers. A permit from the ACE may be required for activities in or near navigable waters or federal wetlands.

Nonattainment area: A nonattainment area is an area identified under the Federal Clean Air Act: (1) where the concentration in the ambient air of an air contaminant exceeds a national ambient air quality standard (NAAQS) for the contaminant; or (2) that contributes to ambient air quality in a nearby area that does not meet a NAAQS.

Nonfederal wetland: Under Wisconsin law, a wetland is identified as a nonfederal wetland if it is determined to be a nonnavigable, intrastate, and isolated wetland by ACE or by a court of competent jurisdiction. These wetlands are not subject to Federal Clean Water Act permit requirements.

Preventive Action Limit (PAL): A PAL is a type of state groundwater protection standard that represents a lower concentration for a substance than the enforcement standard for the substance. PALs are used by state regulatory agencies in establishing design requirements that are intended to prevent groundwater contamination from facilities, activities, and practices under their jurisdiction.

State Implementation Plan (SIP): These plans are required by the federal Clean Air Act. They set forth in detail the regulations and related programs that a state will use to meet its responsibilities under this Act; they are reviewed and approved by the EPA.

Total Maximum Daily Load (TMDL): The amount of a pollutant that a water body can assimilate and not exceed water quality standards. A TMDL is generally established for each pollutant.

WPDES: Wisconsin Pollution Discharge Elimination System permit. A discharge of water containing certain pollutants from a point source is generally prohibited without a WPDES permit from the DNR.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 15 – ETHICS, LOBBYING, ELECTIONS, AND CAMPAIGN FINANCE

The Government Accountability Board administers and enforces Wisconsin's ethics, lobbying, elections, and campaign finance laws. This chapter discusses the composition and duties of the Government Accountability Board, describes the Ethics Code and lobbying law requirements, particularly as they relate to legislators, and summarizes election and campaign finance laws.

Jessica Karls-Ruplinger, Senior Staff Attorney, and Katie Bender-Olson, Staff Attorney
Wisconsin Legislative Council

Table of Contents

The Government Accountability Board 1
Administrative Duties of the GAB 1
Enforcement Duties of the GAB 2
Advisory Opinions 3
Ethics Code 3
Disclosure of Financial Interests 4
Conduct Prohibited Under the Ethics Code 5
Conflicts of Interests Under the Code 7
Questions to Ask Concerning the Possible Application of the Code 8
Who Can Answer Questions Concerning Application of the Code 8
Civil Penalties for Violation of the Code 9
Criminal Penalties for Violation of the Code 9
Relationship of the Ethics Code to the Lobbying Law 9
Lobbying Law 10
Purpose of the Lobbying Law 10
Definition of Lobbying 10
Persons Subject to the Lobbying Law 11
Conduct Prohibited Under the Lobbying Law 11
Exceptions to the General Prohibition 12
Bribery 13
Legislator Advice to Constituents 14
Election and Campaign Finance Law 15
Elections 15
Campaign Finance 22
Additional References 25
Glossary 25

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

THE GOVERNMENT ACCOUNTABILITY BOARD

The Government Accountability Board (GAB) is responsible for administering the state ethics, lobbying, elections, and campaign finance laws and has enforcement responsibilities as well.

The GAB consists of six members, each of whom must formerly have served as an elected judge of a court of record in Wisconsin. Members serve six-year terms.

Names of prospective nominees to the GAB are submitted to the Governor by the Government Accountability Candidate Committee (Candidate Committee). The Candidate Committee consists of one court of appeals judge from each of the court of appeals districts, chosen by lot by the Chief Justice of the Wisconsin Supreme Court.

The GAB administers and enforces the ethics, lobbying, elections, and campaign finance laws.

The Candidate Committee is required to meet when a vacancy occurs in the membership of the GAB that requires that nominations be submitted to the Governor. The number of nominations the Candidate Committee is required to submit per vacancy is specified by statute. Members of the GAB are nominated by the Governor from names submitted by the Candidate Committee and appointed with the advice and consent of 2/3rds of the members of the Senate present and voting. No person may be nominated by the Candidate Committee unless the person receives unanimous approval of the committee.

Any action by the GAB requires the affirmative vote of at least four of the six members. GAB members are not paid a salary but are eligible for a per diem equal to the amount paid circuit court reserve judges and for reimbursement of actual and necessary expenses.

The GAB's website is:
http://www.gab.wi.gov/

State law imposes several limitations on GAB members relating to political activity. Members cannot hold another state or local public office, engage in specified partisan political activities, become a candidate for state or local elective office, make political contributions, or be a lobbyist or an employee of a person who employs a lobbyist. Limitations on political activities and certain contributions apply both during, and for the 12-month period preceding, a member's term. [ss. 5.05, 5.052, 15.07 (1) (a) 2. and (5) (m), and 15.60, Stats.]

Administrative Duties of the GAB

There are two divisions in the GAB, each of which is under the direction and supervision of an administrator appointed by the GAB: (1) the Ethics and Accountability Division; and (2) the Elections Division. The former has responsibility for administering campaign finance, lobbying, and ethics laws. The latter is responsible for the administration of

election laws. In addition, the GAB is required to employ, outside the classified service, legal counsel to perform legal and administrative functions for the board. [ss. 5.05 and 15.603, Stats.]

Enforcement Duties of the GAB

The GAB is required to investigate possible violations of laws it administers. If the GAB believes there is a reasonable suspicion that a violation has occurred, it may authorize a formal investigation, subject to specified conditions and procedures. The GAB, by rule, may prescribe categories of civil offenses that may be settled without formal investigation.

If the GAB finds probable cause that a violation has occurred, it may prosecute alleged civil violations of those laws. Alternatively, it may refer prosecution of alleged civil violations to the appropriate district attorney (which is the same prosecutor authorized to prosecute criminal violations).

The prosecution of alleged criminal violations investigated by the GAB may be brought only as follows:

- If the board finds there is probable cause to believe that a violation of laws it administers has occurred or is occurring, the board may refer the matter to the district attorney for the county in which the alleged violator resides.
- If the board discovers evidence of a potential violation of law that is not administered by the board arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation, the board may refer the matter to the district attorney for the county in which the alleged violator resides.
- If the district attorney to whom the potential violation is referred informs the GAB that he or she declines to prosecute or fails to commence a prosecution within 60 days of the board's referral, the board may refer the matter to the district attorney for a contiguous prosecutorial unit. If there is more than one such prosecutorial unit, the chair of the GAB must determine the district attorney to whom the matter is referred by publicly drawing lots at a meeting of the board. If the second district attorney declines or fails to prosecute, the GAB may refer the matter to the Attorney General.

Special provisions regarding who prosecutes apply if the defendant is a district attorney, circuit court judge, the Attorney General, or a candidate for those offices.

In general, a Wisconsin resident must be criminally or civilly prosecuted in the county of residence for violations of laws relating to the official functions of the subject of an investigation or to any matter involving elections, campaign finance, lobbying regulation, or ethics. However, a defendant may move to change the place of trial to the county where the offense was committed. [ss. 5.05 (2m), 801.50 (5t), 971.19 (12), and 971.223, Stats.]

Advisory Opinions

An important function of the GAB is to give advisory opinions. Any person may request an advisory opinion from the GAB regarding the propriety under the Ethics Code or lobbying law of any matter to which the person is or may become a party. The GAB may issue a formal advisory opinion or may authorize its legal counsel to issue an informal advisory opinion on behalf of the board. A person who disagrees with an advisory opinion may have a public or private hearing before the GAB for reconsideration of the opinion.

Any legislator may request written advice from GAB regarding the propriety of any matter to which the legislator is or may become a party.

No person acting in good faith upon an advisory opinion is subject to civil or criminal prosecution for so acting, if the material facts are as stated in the opinion request.

All requests for advisory opinions are confidential (unless confidentiality is waived). No member or employee of the GAB may make public the identity of the person requesting an advisory opinion on the application of the Ethics Code or of persons mentioned in the opinion. [s. 5.05 (6a), Stats.]

Ethics Code

Wisconsin legislators, as well as other state public officials, are subject to the Ethics Code, which is set forth in subch. III of ch. 19, Stats. The Ethics Code contains financial disclosure requirements, standards of conduct, enforcement procedures, and penalties for violations.

The GAB administers and enforces the Ethics Code. [s. 5.05, Stats.] The standards of conduct under the Code are stated in the form of general principles, rather than as specific, detailed regulations. Consequently, predicting the possible application of the Ethics Code in a specific situation requires consideration of all relevant facts.

GAB guidelines are available at:
http://www.gab.wi.gov/guidelines

The comments regarding the Ethics Code contained in this section should be viewed only as a general description of, and guide to, the statutory provisions. The pertinent statutes and administrative rules, GAB opinion summaries, GAB guidelines, the GAB website, and the board itself (through the Ethics and Accountability Division and its staff) should be consulted when questions arise.

The key provisions of the lobbying law that relate to legislators are described later in this chapter. Similar conduct is addressed by both the Ethics Code and the lobbying law.

In general, this chapter neither identifies nor discusses laws outside the Ethics Code and lobbying, election, and campaign finance laws which also may apply to the conduct of a

legislator. For example, other restrictions are found in the Criminal Code provisions applicable to public officers and employees.

Disclosure of Financial Interests

The Ethics Code requires legislators to disclose annually the following information regarding financial interests relating to themselves and, in most cases, their immediate family:

- Management and financial relationships with certain organizations, such as being a director, officer, or trustee, holding a 10% or greater ownership interest, or being an authorized representative or agent.
- Securities held having a value of $5,000 or more, categorized by whether the approximate value is less or greater than $50,000.
- Names of creditors to whom $5,000 or more is owed, categorized by whether the amount owed is less or greater than $50,000.
- Interests in real property holdings in Wisconsin, other than a principal residence.
- Identity of direct sources of income of $1,000 or more and certain indirect sources of income of $10,000 or more.
- Identity of donors (nonrelatives) of gifts having a value over $50.
- Lodging, transportation, money, or other items, having a value over $50, that are received for a published work, presentation of a talk, or participation in a meeting. (See, also, the discussion of transportation and lodging below.)

Legislators must annually file a Statement of Economic Interests, which discloses certain financial interests of the legislator.

Financial interests that must be disclosed under the Ethics Code are set forth in a form called the "Statement of Economic Interests." The GAB provides forms and instructions to incumbent legislators annually for updates and provides on its website or by mail forms and instructions for potential candidates.

For additional information on disclosure of financial interests, refer to GAB Guidelines GAB-1401, GAB-1402, GAB-1412, GAB-1421, and GAB-1422, available at:

http://www.gab.wi.gov/guidelines

A Statement of Economic Interests is retained by the board until three years after a person ceases to be a state public official; the board then destroys all of its copies of the filer's statements. The statement is open for public inspection at the GAB offices while on file. The GAB must notify the person who filed the statement of the full name and address of any person who inspects his or her statement.

A candidate for the Legislature must file the Statement of Economic Interests within three days after the deadline for filing nomination papers. Subsequent filings must be updated annually no later than April 30. [ss. 19.43, 19.44, and 19.48, Stats.]

Conduct Prohibited Under the Ethics Code

Summarized below are the general categories of conduct prohibited under the Ethics Code. The Ethics Code also separately addresses "conflicts of interests," discussed later in the chapter.

Use of Office for Private Benefit

A legislator is prohibited from using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator, the legislator's immediate family, or organizations with which the legislator is associated. [s. 19.45 (2), Stats.]

A legislator is prohibited from using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator; and from soliciting or receiving anything of value if it could reasonably be expected to influence or reward official actions.

"Anything of value" is defined under the Ethics Code as any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does **not** include: compensation and expenses paid by the state; fees and expenses otherwise allowed under the Code; political contributions that are reported under campaign finance law; or hospitality extended for a purpose unrelated to state business by a person other than an organization. [s. 19.42 (1), Stats.] While "anything of 'substantial' value" is not defined under the Code, the former Ethics Board has indicated that the term should be contrasted with the idea of "nominal," or "token" value to determine whether, under a specific factual setting, anything of substantial value is involved.

For additional information on prohibited conduct, refer to GAB Guideline GAB-1201, available at:

http://www.gab.wi.gov/guidelines

Improper Influence or Reward for Official's Actions

A legislator is prohibited from soliciting or receiving anything of value if it could reasonably be expected to influence or reward official actions. [s. 19.45 (3), Stats.]

Taking Official Action in Exchange for Political Contributions or Anything Else of Value ("Pay-to-Play")

A legislator or candidate for legislative office is prohibited from taking official action in exchange for political contributions or anything else of value for the benefit of a candidate, political party, or any person making certain candidate-related communications.

More specifically, no legislator may, directly or by means of an agent, give or offer or promise to give, or withhold or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action on any proposed or pending matter, in consideration of, or upon condition that, any other person make or refrain from making a political contribution or provide or refrain from providing any service or any other thing of value, to or for the benefit of a candidate, political party, other registrant, or any person making certain candidate-related communications. [s. 19.45 (13), Stats.]

Use of Confidential Information for Private Gain

A legislator is prohibited from using confidential information, obtained by reason of or in the course of legislative activities, for the private gain of the legislator, the legislator's immediate family, or any other person. [s. 19.45 (4), Stats.]

Use of Office for Unlawful Benefits, Advantages, or Privileges

A legislator is prohibited from using the position of legislator to influence or gain unlawful benefits, advantages, or privileges for the legislator or others. [s. 19.45 (5), Stats.]

Entering Into State Contracts or Leases

A legislator is prohibited from entering into a contract or lease involving payments of more than $3,000 within a 12-month period, which are made in whole or in part from state funds, unless certain written disclosure is made to the GAB and to the state department that is responsible for the contract or lease. This provision applies to state contracts or leases that may be entered into by the legislator, the legislator's immediate family, or any organization in which the legislator or any member of the legislator's immediate family has a 10% or greater interest. [s. 19.45 (6), Stats.]

Representation of Persons Before State Agencies

A legislator is prohibited from representing persons before state agencies in an unofficial capacity and for compensation, except under the following circumstances:

- In contested cases (as defined in ch. 227, Stats., Administrative Procedure and Review) that involve a party, other than the state, with interests adverse to the interests of the party represented by the legislator;
- At an open hearing at which a record is maintained;
- In a manner that involves only ministerial actions by the agency; or
- In a matter before the Department of Revenue or Tax Appeals Commission that involves representation of a client in connection with a tax matter.

The prohibition regarding a legislator's representation of persons before state agencies is of particular relevance to legislators who are lawyers and to other legislators whose occupation may involve representation of clients (e.g., accountants). [s. 19.45 (7), Stats.]

Acceptance or Retention of Transportation, Lodging, Meals, Food, or Beverage

A legislator is prohibited from accepting or retaining any transportation, lodging, meals, food, or beverage, except as expressly permitted under the Code. [s. 19.45 (3m), Stats.]

Conflicts of Interests Under the Code

A legislator may not take any official action substantially affecting a matter in which the legislator has a substantial financial interest; and may not use his or her office to produce a substantial benefit for the legislator.

In addition to the prohibited conduct summarized previously, the Ethics Code contains prohibitions on conflicts of interest. Under the Code, except in accordance with the GAB's advice, a legislator may not:

- Take any official action substantially affecting a matter in which the legislator, the legislator's immediate family, or an organization with which the legislator is associated, has a substantial financial interest.
- Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the legislator, the legislator's immediate family, or an organization with which the legislator is associated.

For additional information on conflicts of interest, refer to GAB Guideline GAB-1232 at:

http://www.gab.wi.gov/guidelines

The Code expressly provides that these prohibitions on conflicts of interests do not prohibit a legislator from:

- Taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses.
- Taking official action on any proposal to modify state law or administrative rules (e.g., voting).

[s. 19.46, Stats.]

Despite the plain statutory language stating that the conflict of interests prohibitions do not prohibit taking official action on any proposal to modify state law or administrative rules, the GAB takes the position that the Ethics Code may nonetheless prevent a legislator from taking official action, including voting, under certain circumstances.

In support of its position, the board cites the prohibition against using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator, the legislator's immediate family, or certain organizations with which the legislator or the legislator's immediate family is associated. The latter prohibition appears independently of the conflict of interests prohibitions. Under the board's interpretation, the prohibition against using the office of legislator to obtain financial gain or anything of

substantial value may prohibit a legislator from taking official action on a state law or administrative rule unless:

- The legislator's action affects a whole class of similarly situated interests and the legislator's interest is insignificant when compared to all affected interests in the class; and
- The effect of the legislator's actions on the legislator's private interests is neither significantly greater nor less than on other members of the class.

Assembly and Senate rules require legislators to vote when present unless excused for "special cause." [Assembly Rule 77; Senate Rule 73 (1).] When in doubt on the propriety of a vote or other official action, consultation with the GAB and legislative leadership is suggested. The board's advice on potential conflicts of interests can be obtained by seeking an advisory opinion of the board.

Questions to Ask Concerning the Possible Application of the Code

The Ethics Code's prohibitions may be difficult to apply on a case-by-case basis. One way legislators can ensure compliance is to be sensitive to those situations that might invoke the application of the Code.

The questions listed below should be kept in mind in evaluating the application of the Ethics Code to a specific action. An affirmative answer to any one of these questions should prompt further inquiry regarding the possible application of the Code.

- Am I, my immediate family, or an organization with which I am associated receiving anything of value for private benefit because I hold the office of legislator?
- Am I using the influence of my position as legislator to solicit something for the private benefit of me, my immediate family, or an organization with which I am associated?
- Am I taking official action in exchange for political contributions or anything else of value for the benefit of a candidate, political party, or any person making certain candidate-related communications?
- Am I, my immediate family, or an organization with which I am associated receiving from a nonrelative anything of value for which we have not paid?
- Will an official action on my part possibly result in private benefit to me, my immediate family, or an organization with which I am associated?
- Will the use of my staff or state facilities benefit me in my private capacity?
- Am I using the state's time, resources, or facilities in my campaign for elective office?

Who Can Answer Questions Concerning Application of the Code

If questions concerning the application of the Ethics Code relate to an event for which there is a sponsor, the sponsor should be asked whether the event, and participation by

legislators, has been cleared with the GAB. If there is no sponsor or if the sponsor has not cleared the event with the GAB, the GAB itself should be consulted directly.

Civil Penalties for Violation of the Code

A violation of the Ethics Code that is not an intentional violation is subject to a forfeiture of not more than $500 for each violation of the disclosure requirements and the provisions relating to reporting and acceptance of honorariums, fees, and expenses; or not more than $5,000 for each violation of other provisions of the Code relating to prohibited conduct, including the pay-to-play prohibition.

Also, if the court determines that the violator has realized economic gain as a result of the violation, the court may order the person to forfeit the amount gained as a result of the violation.

A civil forfeiture imposed by a court for violations of the pay-to-play prohibitions may also include an amount equal to the amount or value of any political contribution, service, or any other thing of value wrongfully obtained or, if nothing of value is obtained (because, for example, a campaign contribution was withheld as a result of the violation), an amount equal to the maximum contribution authorized for the office held or sought. [s. 19.579, Stats.]

The Ethics Code contains both civil and criminal penalties for violations.

Criminal Penalties for Violation of the Code

In addition to the civil forfeitures described in the previous section, the Ethics Code contains criminal penalties. Any person who intentionally violates the Ethics Code may be fined not less than $100 nor more than $5,000 or imprisoned not more than one year in the county jail, or both.

Violations of the pay-to-play prohibition are subject to a different penalty. An intentional violation is punishable as a Class I felony ($10,000 maximum fine; three years and six months maximum imprisonment; or both).

A criminal penalty under the Code does not limit the power of either house of the Legislature to discipline its own members or to impeach a public official. [s. 19.58, Stats.]

Relationship of the Ethics Code to the Lobbying Law

The lobbying law is generally concerned with who is involved in an activity (i.e., a lobbyist or a lobbyist's employer), while the Ethics Code is concerned with what is done and with the underlying purpose or result of particular conduct. If receipt and retention of expense reimbursement for the presentation of a talk or participation in a meeting related to state government issues is permitted under the Ethics Code, it is also permitted under the lobbying law, regardless of whether it is reimbursed by a lobbyist or an employer of a

lobbyist. However, receipt of any other thing of value, including an honorarium, from a lobbyist or the lobbyist's employer, is generally a violation of the lobbying law. [s. 13.625, Stats.]

If a lobbyist or employer of a lobbyist is involved in an action or activity, both the lobbying law and Ethics Code should be consulted. If a lobbyist or employer of a lobbyist is not involved, the lobbying law need not be consulted. (The lobbying law is described next in this chapter.)

Lobbying Law

Wisconsin legislators are directly and indirectly affected by the lobbying law, which is set forth in subch. III of ch. 13, Stats. The GAB is responsible for administering the state lobbying law. [s. 5.05, Stats.]

Legislators are directly affected by the prohibited practices section of the law, which prohibits a legislator from soliciting or accepting anything of pecuniary value from a lobbyist or the person employing the lobbyist (the principal). [s. 13.625, Stats.]

GAB guidelines that relate to lobbying are available at:

http://www.gab.wi.gov/guidelines/lobbying

Legislators are indirectly affected by the regulatory features of the law (registration, licensing, and reporting) because constituents may or may not be subject to these requirements if constituents attempt to influence the legislative process. Legislators need to understand the regulatory aspects of the law in order to answer questions from their constituents regarding whether constituents' lobbying activities are covered by the law.

Purpose of the Lobbying Law

The lobbying law is designed to maintain the integrity of state government decision-making by regulating the activities of persons who are hired to influence legislative and executive actions. The lobbying law also promotes open and responsible government by requiring public disclosure of the identity, expenditures, and activities of those persons. [s. 13.61, Stats.]

Definition of Lobbying

"Lobbying" is attempting to influence the legislative or administrative decisions of state government by oral or written communication with any elective state official, agency official, or legislative employee. Lobbying includes the time spent in preparation for such communication; appearances at meetings or public hearings; or service on a committee in which such preparation or communication occurs. [s. 13.62 (10), Stats.]

Persons Subject to the Lobbying Law

The persons directly subject to the regulatory requirements of the lobbying law are "lobbyists" and "principals."

A "lobbyist" is an individual who either: (1) is employed by a principal; or (2) contracts for or receives payment, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal. If an individual's duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least five days within a six-month reporting period. (The reporting periods are January 1 to June 30 and July 1 to December 31.)

A "principal" is any person, association, corporation, limited liability company, or partnership that employs a lobbyist. The individual officers, employees, members, shareholders, or partners of an association, corporation, limited liability company, or partnership that employs a lobbyist are not considered to be principals.

The law requires all lobbyists to be licensed by the GAB. Principals must be registered and must file semi-annual lobbying expense reports with the GAB.

Employees of state agencies who engage in lobbying also are subject to the lobbying law, and special restrictions and reporting requirements apply to them. Elective state officials, local officials, tribal officials, and employees of the Legislature are not subject to the licensing or reporting requirements of the lobbying law when acting in an official capacity. [ss. 13.62 (11), (12), and (12r), 13.621, 13.65, 13.68, and 13.695, Stats.]

Conduct Prohibited Under the Lobbying Law

The "prohibited practices" provisions of the lobbying law generally prohibit lobbyists and principals from giving anything of value to legislators and prohibit legislators from soliciting or accepting anything of value from lobbyists or principals. These provisions are described below according to the three categories of persons to whom they apply: legislators; private lobbyists and principals; and state agency lobbyists. There are certain exceptions to these prohibitions, which are set forth later in this chapter.

Actions of Legislators Prohibited or Restricted Under the Lobbying Law

A legislator may not solicit or accept anything of value from lobbyists or principals.

Under the lobbying law, a legislator may not solicit or accept anything of pecuniary value from a lobbyist or a principal, except as provided in the exceptions to the general prohibitions, as described below. Violation of this prohibition is punishable by a civil forfeiture not to exceed $1,000. [ss. 13.625 (3) and 13.69 (6), Stats.]

To protect himself or herself from violating this prohibition, a legislator should ask any person who offers something of value whether or not the person is listed as a lobbyist or principal in the registry maintained by the GAB.

Actions of Private Lobbyists and Principals Prohibited or Restricted Under the Lobbying Law

The lobbying law imposes numerous restrictions on lobbyists and principals. In particular, it prohibits lobbyists and principals from furnishing any of the items listed below to legislators or to other elective state officials, agency officials, legislative employees, or candidates for elective state office:

- Lodging.
- Transportation.
- Food, meals, beverages, or money.
- Any other thing of pecuniary value.

[s. 13.625 (1) (b), Stats.]

Actions of State Agency Lobbyists Prohibited or Restricted Under the Lobbying Law

Each state agency must file a semi-annual statement with the GAB identifying agency officers and employees whose regular duties include lobbying. These officers or employees are prohibited from using state funds to provide lodging, transportation, food, meals, beverages, money, or any other thing of pecuniary value to any legislator or other elective state official, legislative employee, or candidate for elective state office.

This restriction on agencies does not prohibit an agency officer or employee from doing any of the following:

- Authorizing salaries and other payments authorized by law.
- Authorizing property or services of the agency to be provided for official purposes or other purposes authorized by law.
- Providing information at the request of a member or employee of the Legislature, or a legislative committee.

[ss. 13.621 (1) (c) and 13.695, Stats.]

Exceptions to the General Prohibition

Several exceptions apply to the prohibition against a lobbyist or principal giving, and a legislator accepting, anything of pecuniary value.

A principal may give and a legislator may accept anything of pecuniary value that is also made available to the general public.

A lobbyist or principal may give and a candidate for legislative office may accept campaign contributions, provided the contributions comply with state campaign finance law (ch. 11, Stats.), and the time limitations of the lobbying law. Under the lobbying law, a lobbyist may make a campaign contribution from his or her personal funds, and a candidate for legislative office may accept such contribution, in the year of the election between April 15 and the day of the general election, but only if the Legislature has concluded its final floorperiod and is not in special or extraordinary session. A lobbyist may deliver or convey a contribution on behalf of another organization or person, and a candidate for legislative office may accept such contribution, at any time. These restrictions also apply to campaign contributions made to the personal campaign committee of a candidate for legislative office.

A legislator may receive reimbursement or payment of actual and reasonable expenses from a lobbyist or principal for a published work or for the presentation of a talk or participation in a meeting, under certain circumstances authorized under the Ethics Code. (See, generally, the section of this chapter on the Ethics Code.)

A legislator may accept food, meals, beverages, or entertainment provided by the Governor when acting in an official capacity.

A legislator may accept anything of pecuniary value furnished by a principal or lobbyist who is a relative of the legislator or resides in the same household as the legislator.

A principal that is a local governmental unit may give certain things of pecuniary value to a legislator who also serves as an elected official of the local governmental unit in an amount not exceeding the amount given to other similarly situated elected officials of the local governmental unit.

A lobbyist or principal may provide educational or informational material to legislators.

Under certain circumstances, a principal may provide compensation or employee benefits to an employee who is a candidate for elective state office but who does not hold an elective state office. [s. 13.625, Stats.]

A lobbyist may provide uncompensated personal services to a legislator's campaign for reelection. Although this exception is not set forth in the statutes, a 1993 decision of the U.S. District Court for the Western District of Wisconsin held that the Free Speech Clause of the First Amendment to the U.S. Constitution guarantees lobbyists the right to provide uncompensated personal services on behalf of candidates for elective office. [*Barker v. Wisconsin Ethics Board*, 841 F. Supp. 255 (W.D. Wis. 1993).]

Bribery

Bribery is a criminal activity that is not directly dealt with under the lobbying law. However, the solicitation or acceptance by a legislator of something of pecuniary value from a lobbyist or principal may amount to a violation of the bribery statute in s. 946.10, Stats., if it is done with the understanding that the legislator will officially act in a certain manner or will do or omit to do any act in violation of a lawful duty.

The crime of bribery is a Class H felony. If a legislator is found guilty of this crime, his or her office becomes vacant and he or she is subject to a fine not to exceed $10,000 or imprisonment not to exceed six years, or both.

Legislator Advice to Constituents

Legislators are frequently asked by constituents whether their activities subject them to the regulatory requirements of the lobbying law. When asked, a legislator may wish to explain that the purpose of the lobbying law is not to hinder citizens' rights to express freely their opinions on legislation or other policy decisions of their government.

Constituents can be told that the only persons who are subject to licensing and regulation as lobbyists are those who are paid to lobby. Further, a legislator may wish to inform the constituent that the law does not apply to or interfere with the right of any person to engage in lobbying in either of the following manners:

- Solely on his or her own behalf.
- By communicating solely with the legislator who represents the Senate or Assembly district in which the person resides, whether or not the communication is made on behalf of the person or on behalf of another person.

[s. 13.621 (6), Stats.]

Thus, for example, a sole proprietor of a business, who engages in lobbying solely on his or her own behalf, may compensate himself or herself for these lobbying activities without being subject to regulation under the law. Also, a person who is compensated for lobbying on behalf of another is exempt from coverage by the law, if his or her lobbying communications are restricted solely to the legislators who represent the Senate and Assembly districts in which the person resides.

If a constituent is unsure whether or not his or her lobbying activities or employment status makes him or her subject to regulation as a lobbyist, a legislator should advise the constituent to contact the GAB.

The GAB can advise an individual on whether or not the individual is subject to regulation under the lobbying law.

As the state agency responsible for the administration of the lobbying law, the GAB is in a position to give specific authoritative advice to the constituent on whether or not he or she is subject to regulation. Any individual may request an advisory opinion from the GAB with respect to his or her authority or responsibility under the lobbying law.

The GAB also can inform the constituent of the numerous exceptions to regulation. By taking advantage of these exceptions, a constituent can limit the regulatory impact of the law on his or her particular lobbying activities.

Please note that this chapter describes the key provisions of the Ethics Code that relate to legislators. Similar conduct is addressed by both the lobbying law and the Ethics Code.

Election and Campaign Finance Law

State election and campaign finance laws are administered and enforced by the GAB. Specifically, the Elections Division of the GAB administers election laws, and the Ethics and Accountability Division of the GAB administers campaign finance laws. [s. 5.05, Stats.]

Federal law contains various election and campaign finance laws. Candidates for national office, such as candidates for the U.S. Congress, must comply with federal campaign finance laws. State campaign finance laws apply to candidates who receive votes at an election in the state, other than candidates for national office. [s. 11.01 (1), Stats.] In addition, the federal Help America Vote Act (HAVA) of 2002 requires states to comply with certain requirements regarding the administration of elections. A full discussion of federal campaign finance law and HAVA is beyond the scope of this chapter.

Elections

State election laws govern various issues related to elections. This section highlights some of the significant state election laws regarding candidates, referenda, eligible voters, voting, post-election activities, and recall.

Candidates

To qualify as a candidate for an elected office, an individual must file nomination papers. In some cases, a caucus procedure may be used to nominate candidates for town or village office, instead of nomination papers. The number of signatures that is required on nomination papers is determined by the office that the candidate is seeking to fill. For example, the number of signatures required for the Office of State Senator is not less than 400 but not more than 800, and for the Office of State Representative, not less than 200 but not more than 400. The signatures must be of electors who reside in the district or jurisdiction that the candidate, if elected, will represent.

An individual generally must file nomination papers and a declaration of candidacy to become a candidate for an elected office.

For the Spring Election, nomination papers may be circulated beginning on December 1 preceding the election and generally must be filed by 5 p.m. on the first Tuesday in January before the election (or the following day if that Tuesday is a holiday). For the partisan primary, nomination papers may be circulated beginning on April 15 preceding the election and generally must be filed by 5 p.m. on June 1 preceding the partisan primary.

A candidate must file a declaration of candidacy with the nomination papers. If the candidate has not filed a registration statement, as required under the campaign finance law, the candidate must file a registration statement with the nomination papers. If the candidate is a candidate for state office or municipal judge, the candidate must also file a Statement of Economic Interests with the GAB by 4:30 p.m. on the third day after nomination papers are due. [ss. 8.10 and 8.15, Stats.]

Referenda

Generally, all proposed constitutional amendments and other questions or measures to be included on the election ballot must be filed with the official who prepares the ballots for an election no later than 70 days before the election. [s. 8.37, Stats.]

Voter Qualifications and Disqualifications

To be eligible to vote, an individual must be a U.S. citizen at least 18 years old and must reside in an election district or ward for 28 consecutive days prior to the election in which the individual will vote. An individual is disqualified from voting if the individual was convicted of a felony, treason, or bribery or was adjudicated incompetent. An individual who is disqualified from voting by reason of a felony, treason, or bribery conviction will have his or her right to vote restored after receiving a pardon or after completing the sentence. [ss. 6.02, 6.03, and 304.078 (3), Stats.]

An individual must be a U.S. citizen at least 18 years old and must reside in an election district or ward for 28 consecutive days prior to an election in order to be eligible to vote in the election.

Voter Registration

An individual generally must register before voting in an election. However, the registration requirement does not apply to the following individuals:

- New Wisconsin residents who will vote only in the presidential election.
- Former Wisconsin residents who will vote only in the presidential election.
- Military electors.

An individual may register in person or by mail prior to Election Day or at the polling place on Election Day.

When an individual registers to vote, he or she must provide proof of residence unless the individual is a military or overseas elector. Table 1 lists the documents that are considered proof of residence if they contain a current and complete name and residential address, except that a university, college, or technical college ID card is not required to contain a residential address. [ss. 6.15, 6.18, 6.22, 6.27, and 6.34, Stats.]

Table 1: Proof of Residence
• Current and valid Wisconsin driver's license. • Current and valid Wisconsin ID card. • Any other official ID license or card issued by a Wisconsin governmental unit or body. • ID license or card issued by an employer in the normal course of business, excluding a business card, that contains a photograph of the elector. • Real estate tax bill or receipt for the current or previous year. • Residential lease (except for electors registering by mail). • University, college, or technical college ID card that includes a photograph of the elector, accompanied by certain other documentation. • Utility bill for the period beginning not earlier than 90 days prior to the date of registration. • Bank statement. • Paycheck. • Check or other document issued by a governmental unit.

Registration in person closes at 5 p.m. on the third Wednesday prior to the election. An individual may register in person at the municipal clerk's office, county clerk's office, office of the board of election commissioners, or other designated registration locations. However, an individual may register in person after the close of registration until the Friday before an election at the municipal clerk's office. [ss. 6.28 (1), 6.29 (2) (a), and 6.30 (1), Stats.]

An individual may register to vote in person or by mail prior to Election Day or at the polling place on Election Day.

Registrations by mail must be delivered to the municipal clerk's office or postmarked on or before the third Wednesday prior to the election.

[ss. 6.28 (1) and 6.30 (4), Stats.]

An individual may obtain a registration form from the municipal clerk or at:

http://www.gab.wi.gov/elections-voting/voters/registration-voting

An individual may register to vote at the polling place on Election Day. The individual must fill out a registration form and an election inspector must sign the form, indicating that the registration form has been accepted.

[s. 6.55, Stats.]

Absentee Voting

Any qualified elector who is registered to vote may vote by absentee ballot.

Any qualified elector who is registered to vote may vote

by absentee ballot. A registered elector may obtain an absentee ballot by applying, in writing, through several methods, including by mail, in person at the municipal clerk's office, or by e-mail or fax. If an elector applies for an absentee ballot by mail, the application must be received by 5 p.m. on the fifth day prior to the election. If an elector applies in person, the application must be made no earlier than the third Monday preceding the election and no later than 7 p.m. on the Friday preceding the election. An in-person application may only be received Monday to Friday between 8 a.m. and 7 p.m. and cannot be received on a legal holiday.

An elector who applies for an absentee ballot must provide proof of identification (also known as "voter ID") with the application, unless the elector is exempt from the proof of identification requirement. Table 2 lists the documents that qualify as proof of identification, if the documents satisfy certain requirements.

Table 2: Proof of Identification ("Voter ID")
• Wisconsin driver's license.
• Wisconsin identification card.
• U.S. uniformed service identification card.
• U.S. passport.
• Certificate of U.S. naturalization.
• Driving receipt.
• Identification card receipt.
• Wisconsin tribal identification card.
• University or college identification card.

Upon receipt of an application for an absentee ballot, the municipal clerk must verify that the name on the proof of identification conforms to the name on the application and, if the elector applies in person, the clerk must verify that any photograph on the proof of identification reasonably resembles the elector. If the application is complete, the clerk must mail or deliver the absentee ballot to the elector. For a military or overseas elector, the clerk may transmit the absentee ballot to the elector by email or fax.

For additional information on the proof of identification requirement, refer to Legislative Council Information Memorandum 2011-12 at:

http://www.legis.wisconsin.gov/lc

The elector must complete the certification on the envelope of the absentee ballot before an adult witness who is a U.S. citizen and must mark the ballot. The elector must then fold the ballot and insert it into the envelope, along with proof of residence, if required. The envelope is sealed and mailed or delivered to the clerk. The absentee ballot must be received by the clerk by 8 p.m. on Election Day, except that an absentee ballot

received by mail and that is postmarked no later than Election Day is counted if it is received by the clerk no later than 4 p.m. on the Friday after the election.

At the polling place on Election Day, the election inspectors announce the name of an absent elector. The inspectors verify that the certification was properly executed; the elector is a qualified elector of the election district or ward; and the elector has not voted in the election. On the poll list, the inspectors note that the elector voted by absentee ballot. Then, the inspectors open the ballot and verify that the ballot has been endorsed by the clerk and that proof of residence is enclosed, if required. Finally, the inspectors insert the ballot into the ballot box and enter the elector's name or voting number after the elector's name on the poll list.

Some of the absentee voting procedures for military and overseas electors and for residents of certain residential care facilities and retirement homes differ from the procedure described above. [ss. 6.20, 6.22, 6.24, 6.86 to 6.88, and 7.515, Stats.]

Voting on Election Day

An elector must vote at the polling place for the elector's residence. Polling places are open from 7 a.m. to 8 p.m. on Election Day. Any elector waiting to vote when the polls close must be permitted to vote.

Polling places are open from 7 a.m. to 8 p.m. on Election Day.

Each election ward has two poll lists containing information about electors. An elector provides his or her full name and address, and the election officials verify that the name and address are the same as that in the poll list. An elector may not vote if he or she does not provide his or her name and address, unless the elector has a confidential listing. In addition, an elector must present proof of identification, unless the elector is exempt from the proof of identification requirement. The election officials must verify that the name on the proof of identification conforms to the name on the poll list and that any photograph on the proof of identification reasonably resembles the elector. Then, the elector must sign the poll list, unless exempt from the signature requirement due to physical disability.

The officials enter a serial number for the elector next to the elector's name in the poll list and provide the elector with a slip listing the serial number. The elector will then receive a ballot.

If the poll list indicates that an elector is required to provide proof of residence, the officials must require that the elector provide proof of residence. The officials must verify the name and address on the document and record the type of document. If the poll list indicates that an elector is not eligible to vote because of a felony, treason, or bribery conviction, the officials must notify the elector of the elector's ineligibility. If the elector insists that he or she is eligible to vote, the officials must allow the elector to vote and then challenge the ballot.

A voting booth may be occupied by only one voter at a time, except if accompanied by a minor child or ward or an individual who is providing assistance to the voter. If a voter spoils or incorrectly marks a ballot, the voter may receive another ballot. However, a voter may not receive more than three ballots because of spoiled or incorrectly marked previous ballots. A voter must be given a reasonable amount of time to vote. [ss. 6.77 to 6.80, Stats.]

Election Days

The **spring primary** is held on the third Tuesday in February to nominate nonpartisan candidates for the spring election. The **spring election** is held on the first Tuesday in April to elect judicial, municipal, and educational officers, nonpartisan county officers, and sewerage commissioners and to express preferences for presidential candidates.

The **partisan primary** is held on the second Tuesday in August to nominate candidates for the general election. The **general election** is held on the Tuesday after the first Monday in November in even-numbered years to elect presidential electors, U.S. Senators and Representatives, State Senators and Representatives, state officers (except judicial officers and State Superintendent), county officers (except county supervisors and executives), and district attorneys. [s. 5.02 (5), (12s), (21), and (22), Stats.]

Canvass

For additional information on canvassing procedures, refer to:

http://www.gab.wi.gov/clerk/education-training/election-administration-manual
and
http://www.gab.wi.gov/sites/default/files/publication/65/county_canvass_manual_6_2012_pdf_19416.pdf

A canvass is conducted after an election to certify the official results of the election. The canvass process may consist of a municipal, county, state, or school district canvass, or a combination thereof, depending on the offices that are elected at the election. A board of canvassers conducts any municipal, county, or school district canvass. For a municipal canvass, the board of canvassers must meet no later than 9 a.m. on the Monday following the election. For a county or school district canvass, the board of canvassers must meet no later than 9 a.m. on the Tuesday following the election. For a state canvass, the GAB chairperson, or the chairperson's designee, must canvass the returns on or before the 2nd Tuesday following a spring primary, May 15th following a spring election, the 3rd Wednesday following a partisan primary, or December 1 following a general election.

A recount cannot be requested until the canvass is completed. If a recount is not requested for an office, the certificate of election for that office is issued to the person declared elected to that office immediately after the expiration of the time allowed to file a recount petition. If a recount is requested, the certification of election is not issued until the recount has been completed and the time allowed for filing an appeal has passed, or, if appealed, until the appeal is decided. [subch. II of ch. 7, Stats.]

Recount

For additional information on recount procedures, refer to:

http://www.gab.wi.gov/sites/default/files/publication/65/recount_manual_23968.pdf

The recount procedure is the exclusive remedy to test the results of an election against an alleged defect, irregularity, or mistake. A candidate voted for at an election or an elector who voted on a referendum question may petition for a recount.

A recount petition must be filed by 5 p.m. on the third business day after the last meeting of the board of canvassers that determines the election for that office or on that referendum question. The petition must state the following:

- The petitioner was a candidate or voted on a referendum question at the election.
- The petitioner believes that a mistake or fraud has occurred in the counting and return of votes or that another irregularity, illegality, or defect has occurred.

After the petition is filed and any required fee is paid, the board of canvassers conducts the recount. The recount determination may be appealed to the circuit court. [s. 9.01, Stats.]

Recall

An incumbent elective official of a state, county, congressional, legislative, judicial, city, village, town, town sanitary district, prosecutorial unit, or school district office may be subject to the recall process if qualified electors petition for the recall of that official. Qualified electors must file a petition signed by a certain number of electors demanding the recall of the official. For city, village, town, town sanitary district, or school district officials, a statement of the reason for recall that is related to the official's responsibilities must be included in the recall petition.

An official is not subject to recall during the first year of the official's term of office.

For additional information on recall, refer to:

http://www.gab.wi.gov/elections-voting/recall

No recall petition may be offered for filing during the first year of an official's term of office. In addition, no subsequent recall petitions may be filed against an official during the official's term of office after one recall petition and election has occurred.

The filing official must determine whether the recall petition is sufficient and record that in the certificate attached to the petition. If the petition is sufficient, the official or governing body, depending on the type of office subject to the recall petition, must call for a recall election. The official subject to recall is a candidate at the recall election without nomination unless he or she resigns within 10 days after the date that the petition is filed. Other candidates for the recall election are nominated by

filing nomination papers and declarations of candidacy. A recall primary is held if more than two candidates compete for the office. [s. 9.10, Stats; and Wis. Const. art. XIII, s. 12.]

Campaign Finance

State campaign finance laws, which are set forth in ch. 11, Stats., and ch. GAB 1, Wis. Adm. Code, govern various issues, including contributions, registration, and reporting. This section briefly highlights some of the significant state campaign finance laws.

Political Purposes

In general, communications that are made for "political purposes" are subject to regulation under ch. 11, Stats.

Communications made for "political purposes" are generally subject to regulation under state campaign finance laws.

An act is for "political purposes" when the act is done to influence the election or nomination of any individual to state or local office, to influence the recall from or retention in office of an individual holding state or local office, to pay expenses incurred in a recount, or to influence a particular vote at a referendum. Acts that are for "political purposes" include: (1) making a communication that expressly advocates the election, defeat, retention, or recall of a clearly identified candidate or a particular vote at a referendum; and (2) attempting to influence an endorsement or nomination to be made at a political party convention regarding a campaign for state or local office. [ss. 11.01 (16), 11.05, and 11.06, Stats.]

Further, the Wisconsin Administrative Code provides that a communication is for "political purposes," and thus subject to regulation under ch. 11, Stats., if one of the following applies:

1. The communication contains terms such as "vote for," "elect," "support," "cast your ballot for," "Smith for Assembly," "vote against," "defeat," or "reject," or their functional equivalents; references a clearly identified candidate; and unambiguously relates to that candidate's campaign.
2. The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

[s. GAB 1.28, Wis. Adm. Code.]

Registration and Reporting Requirements

For a list of information that a registrant must report, refer to s. 11.06 (1), Stats.

Every candidate and certain individuals, committees, and groups must file a registration statement. A registrant must report all contributions, disbursements, and obligations, and each report must include certain information about contributions, disbursements, and obligations. For example, a registrant must report the name and address of each individual who has made a contribution of more than $20. [ss. 11.05 and 11.06, Stats.]

Contribution Limits

State law limits the amount of contributions that an individual or committee may contribute to a candidate for state or local office. The contribution limits apply cumulatively to the candidate's campaign for the primary and general election. A candidate is not bound by the contribution limits for personal contributions that the candidate makes to his or her campaign. Table 3 lists the limits, by office, that an individual or committee, other than a legislative campaign committee or political party committee, may contribute to candidates for state office. [s. 11.26, Stats.]

State law limits the amount that an individual or committee may contribute to a candidate for state or local office.

For additional information on contribution limits for candidates for state or local office, refer to: http://www.gab.wi.gov/campaign-finance/limits-deadlines

Table 3: Contribution Limits

	Individual	Committee
Governor	$10,000	$43,128
Lieutenant Governor	$10,000	$12,939
Attorney General	$10,000	$21,560
Secretary of State	$10,000	$ 8,625
State Treasurer	$10,000	$ 8,625
State Superintendent	$10,000	$ 8,625
Supreme Court Justice	$ 10,000	$ 8,625
Court of Appeals Judge (District I)	$ 3,000	$ 3,000
Court of Appeals Judge (Districts II, III, & IV)	$ 2,500	$ 2,500

Table 3: Contribution Limits		
	Individual	**Committee**
Circuit Court Judge (Milwaukee, Dane, & Waukesha Counties)	$ 3,000	$ 3,000
Circuit Court Judge (Other Counties)	$ 1,000	$ 1,000
District Attorney (Milwaukee, Dane, & Waukesha Counties)	$ 3,000	$ 3,000
District Attorney (Other Counties)	$ 1,000	$ 1,000
State Senator	$ 1,000	$ 1,000
State Representative	$ 500	$ 500

Constitutional Issues

Campaign finance laws have frequently been challenged under the First Amendment to the U.S. Constitution. The landmark decisions in campaign finance law include *Buckley v. Valeo,* 424 U.S. 1 (1976); *McConnell v. Federal Election Commission (FEC)*, 540 U.S. 93 (2003); *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007); *Citizens United v. FEC*, 130 S. Ct. 876 (2010); and *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014). Recently, in *Wisconsin Right to Life v. Barland*, the U.S. Court of Appeals for the Seventh Circuit held that several Wisconsin campaign finance statutes and administrative rules are unconstitutional under the First Amendment.

In *Buckley*, the U.S. Supreme Court held that contribution limits and reporting and disclosure requirements are constitutional and that expenditure limits and limits on the use of personal funds by a candidate in the Federal Election Campaign Act (FECA) of 1971 violate the First Amendment. The Court also developed a "magic words" test, which indicated that communications using "vote for," vote against," "elect," "reject," or similar words, may be regulated.

For further information see the following Legislative Council Information Memoranda (IM):

- ***Wisconsin Right to Life* (IM-2007-04)**
- ***Citizens United* (IM-2010-02) at:**

http://www.legis.wisconsin.gov/lc

In *McConnell*, the U. S. Supreme Court upheld the regulation of "issue ads" in the Bipartisan Campaign Reform Act (BCRA) of 2002, even though the communications did not use the "magic words" from *Buckley*. Later, in *FEC v. Wisconsin Right to Life*, the Court's principal decision held BCRA's "issue ads" provision unconstitutional as applied to specific ads but did not explicitly overturn the *McConnell* decision.

In *Citizens United*, the U.S. Supreme Court held that government may not prohibit corporations from using their general treasury funds to make independent expenditures, overturning *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and, in part, *McConnell*. However, the Court upheld federal law's disclosure and disclaimer requirements on corporate political speech.

In *McCutcheon*, the U.S. Supreme Court held that aggregate limits on how much a contributor may contribute to all candidates, parties, or committees are unconstitutional under the First Amendment.

In *Barland*, the Seventh Circuit held that Wisconsin's ban on a corporation using its general treasury to make independent expenditures and the cap on the amount that a corporation could spend to raise money for the corporation's affiliated committee are unconstitutional under *Citizens United*. In addition, the court held that "political purposes," as it applies to speakers other than candidates, candidate committees, and political parties, is limited to express advocacy and the functional equivalent of express advocacy. The court also held that several administrative rules are unconstitutional, including a disclaimer on independent communications, a portion of the definition of "political purpose," and the application of statutory reporting requirements to certain independent organizations.

Additional References

1. The GAB has various manuals and forms available at: http://www.gab.wi.gov/publications/manuals and http://www.gab.wi.gov/forms.
2. The U.S. Federal Election Commission has information on federal campaign finance laws available at: http://www.fec.gov.
3. The Legislative Reference Bureau prepares publications on election law. Those publications may be found at: http://www.legis.wisconsin.gov/lrb/.
4. The Legislative Audit Bureau prepares audits of various state programs. For examples, see *Compliance with Election Laws* (Audit Report 07-16), and *Voter Registration* (Audit Report 05-12), at: http://www.legis.wisconsin.gov/lab.
5. The National Conference of State Legislatures has information on election and campaign finance laws in other states available at: http://www.ncsl.org/research/elections-and-campaigns.aspx.

Glossary

Canvass: The process conducted after an election to certify the official results of the election.

Ethics Code: The state law that governs the conduct of state and local officials and contains financial disclosure requirements, standards of conduct, enforcement procedures, and penalties for violations.

General election: The election held on the Tuesday after the first Monday in November in even-numbered years to elect presidential electors, U.S. Senators and Representatives, State Senators and Representatives, state officers (except judicial officers and State

Superintendent), county officers (except county supervisors and executives), and district attorneys.

Government Accountability Board (GAB): The state agency that administers and enforces the ethics, lobbying, elections, and campaign finance laws.

Lobbying law: The state law that regulates the activities of persons who are hired to influence legislative and executive actions.

Partisan primary: The election held on the second Tuesday in August to nominate candidates for the general election.

Recall: The process by which qualified electors petition for the recall of an elected official and, if the petition is sufficient, an election is held between the official subject to recall and any other qualified candidates.

Recount: The exclusive remedy to test the results of an election against an alleged defect, irregularity, or mistake.

Spring Election: The election held on the first Tuesday in April to elect judicial, municipal, and educational officers, nonpartisan county officers, and sewerage commissioners and to express preferences for presidential candidates.

Spring Primary: The election held on the third Tuesday in February to nominate nonpartisan candidates for the spring election.

Statement of Economic Interests: A statement that must be filed annually by state officials that contains information regarding the financial interests of the official.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 16 – FAMILY LAW

Family law encompasses all areas of family relationships, including marriage, domestic partnerships, marital property, divorce, legal custody, physical placement, child support, visitation, paternity, and adoption.

Margit Kelley, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Couples 1
Marriage 1
Domestic Partnerships 2
Marital Property 4
Divorce or Separation 6
Property Division 8
Maintenance 9
Children 9
Legal Custody and Physical Placement 10
Child Support 13
Paternity 16
Adoption 18
Third Party Visitation 19
Additional References 21
Glossary 21

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Couples

Wisconsin law addresses the legal rights and obligations of couples, as to each other, in the areas of marriage, domestic partnerships, marital property, divorce or separation, property division, and spousal maintenance.

Marriage

In Wisconsin, marriage is a civil contract between spouses that also creates a legal status that governs certain rights and responsibilities to each other and to others.

Parties

In order to marry, a person must be at least 18 years of age. If a person is age 16 or 17, the person may marry with the written consent of a parent, guardian, or custodian.

In Wisconsin, some individuals are not allowed to marry. Specifically, persons who are nearer of kin than second cousins (unless sterile); a person who is already married to someone else; a person who is incapable of assenting to marriage due to a "want of understanding"; and a person who has been divorced less than six months may not marry.

License and Ceremony

A marriage license may be obtained in any county where at least one party has resided for 30 days before applying for the license. A license will be issued no sooner than five days after receiving the application. However, at the county clerk's discretion, and upon receiving an additional fee, the five-day waiting period may be waived. If both parties are nonresidents of the state, a marriage license may be obtained in the county where the marriage ceremony will be performed.

"Common law" marriage is not recognized as a legal marital status in Wisconsin. In some states, common law marriage is a status where a couple living together in a marital-like relationship for an established period of time are treated as legally married.

With the completed application, a couple must submit a fee, provide their birth certificates, provide documentary proof of identity and residence, submit a copy of a judgment or death certificate affecting prior marital status, and swear to and affirm the application before the county clerk. Once the license has been issued, the couple may marry in any county in the state within 30 days of its issuance.

The statutes provide a procedure for family members, the district attorney, or a circuit court commissioner to object to a marriage. The person objecting may file a petition with the clerk of probate court explaining that the application is false or insufficient, or that the

applicants are not legally allowed to marry. If the court determines the objections have merit, it must issue an order for the marriage applicants to appear, at a hearing, and show why the objections are not valid.

The marriage ceremony must involve the mutual declarations of the two parties that they take each other as husband and wife. The declarations must be made before an authorized adult, and at least two competent adult witnesses. Authorized officiants are ordained clergy members, judges, circuit court commissioners, and municipal judges. In certain recognized religious ceremonies, the two parties themselves may mutually declare the marriage without an officiant.

Recognition of Valid Marriages

Generally, under the Full Faith and Credit Clause of the U.S. Constitution, a marriage contracted in another state that satisfies the legal requirements of that state will be recognized in Wisconsin. However, courts have acknowledged an exception for when a marriage violates Wisconsin's strong public policy and Wisconsin had the most significant relationship to the spouses at the time of the marriage. Additionally, state law provides that if a Wisconsin couple enters into a marriage outside of this state when the couple is ineligible or is prohibited from marrying under state law, the marriage is void, and each party is subject to a penalty of up to nine months in jail and up to a $10,000 fine, or both.

The Wisconsin Constitution has a specific provision addressing same-sex marriages and civil unions in Article XIII, Section 13. This section provides that: "Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state." This provision has been challenged in federal court by eight same-sex couples who have asked either to be allowed to marry or to have their marriage from another state recognized in Wisconsin. On June 6, 2014, the federal district court issued a decision finding the state's provision to be in violation of the Due Process and Equal Protection clauses of the U.S. Constitution. The court held that the provision interferes with the right to marry, and discriminates on the basis of sexual orientation. As of the writing of this chapter, the state's appeal in support of the provision is pending. [*Wolf v. Walker*, Case No. 14-CV-64-bbc (U.S. Dist. Ct., Western Dist. of Wisconsin, decision filed June 6, 2014).]

Domestic Partnerships

Wisconsin law includes provisions for the establishment of domestic partnerships and related rights and benefits.

Wisconsin law provides a registration process for same-sex couples wishing to declare a domestic partnership, with certain legal rights and benefits.

Declaration of Same-Sex Domestic Partnership for Legal Rights

Same-sex couples sharing a common residence may apply for a declaration of domestic partnership with the county clerk where they have resided for at least 30 days prior to the application. Five days after the application is made, the county clerk will issue the declaration to the couple. The declaration may be issued sooner, in the clerk's discretion, and upon receipt of an additional fee. In order to form the legal status of domestic partners, the couple must then sign the declaration before a notary and submit it for recording with the Register of Deeds. The Register then files the declaration with the Wisconsin Vital Records Office. The Wisconsin Supreme Court has reviewed and upheld the validity of the same-sex domestic partnership law under the Wisconsin Constitution. [*Appling v. Walker*, 2014 WI 96, July 31, 2014.]

County-by-county legal resources for domestic partnership forms and guides can be found at:
http://www.wilawlibrary.gov

Partners who wish to terminate their Wisconsin domestic partnership must file a notice of termination in the same county clerk's office that issued the declaration of domestic partnership, even if they no longer reside in that county. If only one party signs the notice, that partner must complete an affidavit stating that the notice was served on the other party or, if unable to serve, that an official notice was published in the area where the partners last shared a residence. The county clerk will then issue an original certificate of termination of domestic partnership, which is effective 90 days after being recorded by the Register of Deeds. Additionally, if either party enters into a valid marriage that is recognized in this state, the partnership is automatically terminated as of that date of marriage.

Same-sex domestic partners who have declared the relationship have certain benefits, such as inheritance rights and medical access, but do not have certain other rights of marriage, such as the mutual obligation for support, the comprehensive marital property system, and child custody and placement rights and obligations.

Some benefits conferred by filing a declaration of domestic partnership include: inheritance from a domestic partner who dies without a will; award of a home and vehicles titled in a deceased partner's name; workplace death benefits; standing to sue for wrongful death; coverage by the state Family and Medical Leave Act; visitation and access rights at hospitals and residential care facilities; and recognition of a domestic partnership status in a power of attorney for health care or for property and finances.

Some areas of the law where benefits are not conferred to a domestic partner include: marital property laws; legal custody and physical placement of children; child support; spousal support; property division upon dissolution; discrimination in education, housing, employment, credit, and insurance; adoption; social services; and public assistance.

Affidavit of Same- or Opposite-Sex Domestic Partnership for Public Employee Benefits

Both same-sex and opposite-sex couples may file an affidavit of domestic partnership with the Department of Employee Trust Funds (ETF) to enroll the partner in the employee benefit programs administered by ETF for the state, and for participating local governmental units. To qualify, the couple must share a residence and agree to be responsible for each other's basic living expenses.

The ETF affidavit of domestic partnership can be found at:
http://etf.wi.gov/publications/et2371.pdf

All benefit programs that are administered by ETF are available to a qualifying partner. Children of a qualifying domestic partner can be covered by the employee's health insurance if the family coverage option is selected. Benefits are also available to a qualifying domestic partner of a retired employee.

Marital Property

Wisconsin's marital property law took effect on January 1, 1986. The law governs spousal property interests during marriage as it relates to creditors and at death. It does not govern property rights at dissolution of marriage by divorce, annulment, or legal separation.

The principal feature of the marital property system is that each spouse, by law, has an equal ownership interest in property acquired by either or both spouses during marriage, which gives a present, undivided, one-half interest in all property.

Under the marital property law, all property owned by spouses is presumed to be marital property. Marital property includes income earned by a spouse or income attributable to property of a spouse that accrues during marriage; property acquired in exchange for, or with, the proceeds of marital property; the substantial appreciation value of individual property that is attributable to the substantial effort of either spouse; and any property not classified as something other than marital property.

A spouse may nevertheless have individual property that is excluded from marital rights in the following circumstances: property owned by a spouse before marriage; property obtained by gift or inheritance during the marriage; property acquired in exchange for, or with, the proceeds of individual property; market appreciation of individual property; income from third party trusts; property designated as individual property by a marital property agreement; income from nonmarital property designated as individual by a properly executed "unilateral statement"; and certain portions of personal injury awards.

Special classification rules apply to homestead property, certain retirement, pension and deferred compensation plans, and life insurance policies. For example, a home titled in

both spouses' names together is automatically classified as survivorship martial property, with all ownership passing to a surviving spouse, unless explicitly classified otherwise.

In general, spouses must act together to manage and control marital property held in the names of both spouses in the conjunctive (e.g., John *and* Mary). Otherwise, a spouse acting alone may manage and control the person's own individual property and marital property held in the alternative (e.g., John *or* Mary). Special management and control rules apply in some circumstances, such as creating a mortgage interest on a home, managing business property, and making gifts.

One aspect of the marital property law is equal access to the extension of credit. In evaluating a spouse's creditworthiness, the law requires a creditor to consider all marital property available to satisfy the obligation. If credit is extended, a creditor must give written notice to the nonapplicant spouse of the extension of credit before any payment is due. The type of obligation determines when marital property may be used to satisfy the obligation. For example, an obligation incurred prior to the marriage is generally satisfied from the incurring spouse's individual property. An obligation incurred by a spouse during the marriage is presumed to be in the interest of the marriage and the family and may be satisfied from all marital property, as well as the individual property of the incurring spouse.

Marital Property Agreement

Spouses, as well as persons intending to marry, may enter into a marital property agreement regarding the classification of marital or individual property and the rights to control the property. Any agreement must be in writing and signed by both parties. An agreement cannot affect certain obligations, such as child support.

Marital property agreements are commonly known as prenuptial agreements, or pre-nups, though in Wisconsin they may be executed either before or during marriage.

In order for a reclassification of property to be effective against a creditor, the creditor must be furnished with a copy of the marital property agreement prior to the granting of credit.

The statutes include both marital property and individual property classification agreement forms, sometimes referred to as "opt-in" and "opt-out" agreements, that parties may use. These forms are found in ss. 766.588 and 766.589, Stats. An agreement may be amended or revoked only by a subsequent marital property agreement.

Wills

A spouse may dispose of half of the couple's marital property by will. The surviving spouse retains a one-half share in the property, and that share is not subject to probate. "Deferred marital property" rules apply to property acquired during the marriage, but prior to 1986,

that would have been marital property had the marital property law applied when the property was acquired.

Taxation

Married persons in Wisconsin may file joint or separate tax returns. On joint returns, all income, deductions, and credits for both spouses are combined on the same return. However, the Internal Revenue Service's (IRS's) innocent spouse rule relieves a spouse from tax liability if the innocent spouse did not know or have reason to know that the other spouse omitted an income item or erroneously claimed a tax credit or deduction on a joint return, and it would be inequitable to impose liability on the innocent spouse.

The married person's tax credit is available to couples filing joint returns but not separate returns.

If separate returns are filed, each spouse must report half of the total, combined, marital property income, deductions, and credits, except as provided by a marital property agreement. In order to resolve questions that might arise regarding access of a spouse to the other spouse's tax return if separate returns are filed, Wisconsin tax law permits the spouse or former spouse to examine tax returns or claims of the other spouse if the Department of Revenue (DOR) issued an assessment or notice of claim to the spouse or former spouse, or if the spouse or former spouse is subject to a collection for a delinquency. Also, DOR may disclose whether an extension for filing a return or claim was filed.

For income tax purposes, spouses may reclassify future income by a marital property agreement or in some cases by a unilateral statement. In order to affect state tax liability, the agreement or statement must be filed with the DOR before the income is earned.

For estate tax purposes, the "basis" in marital property, which is the adjusted original cost of property that is used to determine the amount of gain or loss for capital gains taxes, differs from that given to property that is jointly held with other people. Both spouses' share of marital property receives a new basis upon the death of the first spouse to die, adjusted to the date-of-death value of the marital property. This is known as a double step-up in basis, for community property states such as Wisconsin.

Divorce or Separation

In Wisconsin, actions for divorce, legal separation, or annulment each use the same procedures. For this discussion, the term "divorce" will generally be used. A judgment of legal separtion differs only in allowing the parties to maintain the legal status of marriage (sometimes used to continue family coverage for

Legal separation is a legal status that is distinct from physical separation. Any couple may physically separate at any time without affecting their legal marital status.

health insurance, or for other personal reasons) while separating the family and financial obligations.

In order to initiate a divorce action, one spouse must have been a Wisconsin resident for at least six months prior to the filing of the petition for divorce. In addition, at least one of the parties to the divorce must have been a resident of the county in which the petition is filed for at least 30 days prior to the filing of the petition. County clerks collect a fee when a party commences an action affecting the family.

Circuit court forms for family actions can be found at:
http://www.wicourts.gov

Wisconsin is a "no fault" divorce state, which means the court must find simply that the marriage is "irretrievably broken." This is shown by both parties stating in the divorce petition that the marriage is irretrievably broken; by the parties voluntarily living apart continuously for 12 months or more immediately prior to filing the divorce petition; or, if only one party has stated that the marriage is irretrievably broken, by the court determining that there is no reasonable prospect of reconciliation.

Wisconsin requires a waiting period before a judgment of divorce or legal separation may be granted. When the parties have filed a joint petition for divorce, 120 days must pass from the filing date before the action may be brought to trial or to a final hearing for approval of a settlement agreement. When one party has filed the petition, the 120-day waiting period begins when the other party is served with the petition.

Pendency of Divorce Action

A circuit court judge or court commissioner may make just and reasonable temporary orders during the pendency of a divorce action concerning legal custody and periods of physical placement of a minor child; removal of a child from the court's jurisdiction; payment for child support and spousal maintenance; payment of debts; disposal of assets; counseling for one or both parties; and other issues.

Reconciliation may be attempted, if stipulated by the parties in writing, during the pendency of a divorce action. A suspension of the proceedings to effect reconciliation may be granted for up to 90 days. Suspension does not affect the parties' rights in the divorce action. During the suspension period, the parties may resume living together as husband and wife and their acts: (1) do not constitute an admission that the marriage is not irretrievably broken; and (2) do not negate that the parties have voluntarily lived apart continuously for 12 months or more immediately before the commencement of the action. If the parties do not reconcile, the action will proceed as though no reconciliation period was attempted.

During the pendency of a divorce action, parties are required to disclose information about: (1) assets owned by them individually or jointly; (2) debts and liabilities; and (3) income. There are penalties for disclosures that are not complete. All financial and asset information that is disclosed is confidential and sealed by the court.

Each party's financial disclosure statement in a divorce action is sealed by the court and cannot be disclosed to any person outside the action.

The statutes contain various requirements for the parties to attend counseling or educational programs. Most of the programs focus on educating parents about the effect of divorce or parental separation on children and how to lessen any detrimental effects. Specific provisions relate to child custody mediation where it appears that legal custody or physical placement is contested, as discussed below.

Reaching a Judgment

The primary issues decided in a judgment of divorce are: property division; child support and spousal maintenance; legal custody of a child; and periods of physical placement with a child (sometimes including visitation rights of third parties).

Parties may stipulate to any of these issues in settlement of a divorce action, subject to court approval and certain limitations. For example, child support must be determined in a manner that is consistent with the state's child support standards. Also, a stipulation cannot leave one party in need of assistance from the state.

Property Division

Property division in a divorce action is not governed by the marital property law, but, rather, by the marital dissolution laws. Generally, in a divorce, all property acquired before or during the marriage, owned by either or both spouses, is subject to division. This includes assets such as pension plans, retirement accounts, vehicles, and real estate. Property acquired by gift or inheritance by one party is generally not subject to division.

After determining all assets and debts of the parties, the court must presume that each party should be awarded an equal value of the total divisible property, but the application of certain statutory factors may alter this presumption. This includes considerations such as the length of the marriage, the property brought to the marriage by each party, and the tax consequences to each party. For example, in dissolving a marriage of short duration, where the parties had a large difference in the property brought to the marriage, a court may consider an unequal division of property, approximately back to where the parties started.

Debts incurred during the marriage are also assigned, but can be collected from either party regardless of how responsibility for debts is divided between the parties in their judgment of divorce. A divorce judgment assigning a debt is not binding on creditors, because a creditor is not a party in the divorce action. To avoid possible problems with the

collection of debts after a divorce, parties may take actions such as consolidating and refinancing in the name of the spouse who is assigned those debts.

Maintenance

As part of a divorce judgment, a court may order maintenance payments (formerly known as alimony) to either party for an open or defined period of time after considering several designated statutory factors. Some of these factors include the length of the marriage; the age and physical and emotional health of the parties; the division of property made in connection with the divorce; the educational level of each party at the time of the marriage and at the time of the divorce; the earning capacity of the party seeking maintenance, including the party's educational and employment background, length of absence from the job market, and child-rearing responsibilities during the marriage; and the contribution of one party to the education, training, and earning power of the other party.

A maintenance award must meet the dual objectives of supporting the recipient in accordance with the parties' needs and earning capacities, while ensuring a fair and equitable financial arrangement between them. There is no statutory presumption of an equal division of earnings in awarding maintenance, but the courts have stated that a reasonable starting point for a maintenance evaluation in a long-term marriage is that the dependent spouse may be entitled to one-half of the total combined earnings of both parties.

Maintenance payments pursuant to a judgment of divorce are taxable income to the recipient and are a tax deduction to the payer.

If no maintenance is awarded in the judgment, maintenance is waived and cannot later be ordered by a court. If maintenance is awarded, a court may consider revising the amount or duration if it first finds that there has been a substantial change in the parties' financial circumstances.

The IRS allows a payer to deduct the amount of maintenance payments from reported gross income on a tax return, if certain requirements are met. Additionally, the IRS allows payments made to a third party for the benefit of a former spouse to be considered as maintenance. However, the IRS disallows deductions for any portion of spousal support that is intended for child support.

Children

Wisconsin law addresses the legal rights and obligations of parents and other caregivers towards children in the areas of legal custody and physical placement, child support, paternity, adoption, and third-party visitation.

Legal Custody and Physical Placement

In actions for divorce, legal separation, annulment, or paternity, a court must assign legal custody and physical placement for a child. "Custody" and "placement" involve different aspects of a child's upbringing.

"Legal custody" means the right and responsibility to make major decisions concerning a child. Major decisions include decisions regarding consent to marry, consent to enter military service, consent to obtain a driver's license, authorization for nonemergency health care, and choice of school and religion. The court, in its order for custody, may delineate specific decisions to be made by either party.

In contrast to legal custody, which authorizes decision-making on major issues, physical placement is the actual time a child is in a parent's care. A parent must make routine daily decisions while the child is physically with that parent, consistent with the major decisions.

Statutory Factors

In assigning legal custody and physical placement, the court must consider numerous statutory factors. Some of these include the child's wishes; the child's relationship with the parents; the child's age; the family's history of custodial roles and any reasonable lifestyle changes that are proposed; the child's adjustment to home and school; and the need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.

In determining legal custody and physical placement, a court must consider all facts relevant to the best interests of the child. A court may not prefer a parent on the basis of sex or race.

Legal Custody

It is presumed that joint legal custody is in the best interest of the child. However, a court may award sole legal custody if the parties agree to it, and if the court finds that sole legal custody is in the child's best interest. If the parties do not agree to sole legal custody, the court may award it if the court finds that one party is not capable of performing parental duties or does not wish to be active in raising the child; that conditions exist that substantially interfere with the exercise of joint legal custody; or that the parties will not be able to cooperate in future decision-making.

If there is evidence of a pattern or serious incident of domestic abuse by one parent against the other parent, the presumption for joint legal custody does not apply, and there is a rebuttable presumption that joint legal custody is detrimental to the child and contrary to the best interest of the child and sole or joint legal custody cannot be awarded to that parent.

The "spousal abuse" presumption for sole legal custody may be rebutted only by a preponderance of evidence that the abusive party has completed treatment for batterers

provided through a certified treatment program or treatment provider and is not abusing alcohol or any other drug, and that it is in the best interest of the child that the abusive party be given joint or sole legal custody after considering the specified custody and placement factors.

If the court finds that both parties have engaged in a pattern or serious incident of domestic abuse, for purposes of the presumption, the court must attempt to determine which party was the primary physical aggressor, considering factors such as any prior acts of abuse, relative severity of injuries, acts of self-defense, and any patterns of coercive and abusive behavior between the parties. If one, but not both, of the parties was convicted of a crime that was an act of domestic abuse with respect to the other party, the court must find the party who was convicted to be the primary physical aggressor. If the court determines that neither party was the primary physical aggressor, the presumption against a party's custody rights does not apply.

A court must set a placement schedule that: (a) allows the child to have regularly occurring, meaningful periods of physical placement with each parent; and (b) maximizes the amount of time the child may spend with each parent.

Physical Placement

A child is entitled to periods of physical placement with both parents unless the court finds that placement with a parent would endanger the child's physical, mental, or emotional health. In determining physical placement, a court must consider the same statutory factors that apply to legal custody determinations, for the best interest of the child.

Wisconsin statutes provide that a placement schedule should allow a child to have regularly occurring, meaningful periods of placement with each parent. The schedule must maximize the amount of time a child spends with each parent, considering geographic separation and the accommodations in the separate households. According to Wisconsin court decisions, the requirement to maximize time with both parents is not synonymous with a presumption for equal physical placement, but requires a consideration of the child's best interests and the amount of time a child has with both parents within an overall placement schedule.

A court may not deny a parent physical placement based on the parent's failure to make child support or maintenance payments.

Guardian Ad Litem

When the legal custody or physical placement of a child is contested, or if there is reason for special concern regarding the welfare of the child, the court appoints a guardian ad litem (GAL) for the child. A GAL's responsibility is to represent the best interests of the child and to make recommendations to the court regarding paternity, custody, physical placement, and support. A GAL must be a licensed attorney in the State of Wisconsin who

meets the GAL special training requirements. Generally, both parents are required to contribute to the payment of the GAL's fees.

Mediation

Mediation services may play a significant role in actions involving child custody and placement issues. Every county must make mediation services available to help the parties resolve their disputes about the best interests of a child.

With exceptions for undue hardship or endangerment to one of the parties, an initial session of mediation is required in any action where it appears that legal custody or physical placement is contested. The parties may contract with a mediator at their own expense or may use the county's family court counseling service mediators. If an agreement is reached, it must be reviewed by the parties' attorneys and the GAL and be approved by the court. If no agreement is reached, the matter must be referred for a legal custody or physical placement study and the issues are resolved through court procedures.

Modification of Custody and Placement Order

A court generally may not modify an initial legal custody or physical placement order for two years unless the current custodial conditions are physically or emotionally harmful to the best interest of the child. This is meant to provide a period of finality and stability while the child is adjusting to the new family situation.

After the two-year period, the court may modify the legal custody or placement order if it first finds that: (1) it is in the best interest of the child to do so; and (2) a substantial change of circumstances has occurred that affects custody or placement. In considering a request to modify a custody or placement order, the court presumes that continuing substantially equal periods of physical placement, or continuing greater periods with one parent, is in the best interest of the child.

Under the so-called "use-it-or-lose-it" provision, a court may modify a party's rights to physical placement for failure to exercise physical placement.

If the parties have substantially equal periods of placement, the court may modify an order for physical placement at any time if it is in the best interest of the child, but only if circumstances make it impractical to continue the equal placement arrangement.

If a court granted physical placement rights to both parents and a parent later plans to move outside of Wisconsin, move within Wisconsin to a distance that is 150 miles or more from the other parent, or remove the child from Wisconsin for more than 90 days, that parent must give at least 60 days written notice, by certified mail, to the other parent. The statutes provide a procedure for the nonmoving party to object to the move, and provides standards for when a move may be allowed. The objection must be made within 15 days of

receipt of the notice. The court will then refer the parents for mediation or other family court services and may appoint a GAL.

At any time, a court may deny a parent's physical placement rights if it finds that the placement rights endanger the child's physical, mental, or emotional health.

Enforcement of Custody and Placement Order

Methods for enforcing rights to legal custody and physical placement include contempt of court sanctions and criminal sanctions relating to interference with the custody of a child. Additionally, statutory remedies require a court to grant periods of physical placement to replace those denied or interfered with by the other parent and to order the uncooperative parent to pay costs and attorney fees for maintaining the enforcement action.

Wisconsin courts may also enforce or modify custody and placement orders from tribal courts, other states, or other countries under the procedures set forth by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA, ch. 822, Stats.), and the Hague Convention on the Civil Aspects of International Child Abduction.

Child Support

As part of a divorce judgment, paternity judgment, or cases where a child's parents may live apart, the parties are responsible for supporting a child under 18, or under 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. The court must determine the amount of child support to be paid using child support standards promulgated by the Department of Children and Families (DCF), unless the court finds that to do so would be unfair to the child or either parent.

The administrative code gives the child support standards that are to be applied to a person's income in determining the appropriate level of child support. Child support amounts are based on a percentage of the parent's gross income. The percentage-of-income standards when one parent has primary physical placement are as follows:

- 17% for one child.
- 25% for two children.
- 29% for three children.
- 31% for four children.
- 34% for five or more children.

Additional information on child support in Wisconsin can be found at:
http://www.dcf.wisconsin.gov/bcs

When both parents have court-ordered periods of physical placement of a child for at least 25% of the year (92 overnights) each, the percentage standard is calculated for both parents and offset under a specific formula.

The amount of child support is determined from the obligated parent's gross monthly income. Gross income includes all salary and wages before taxes and other deductions are taken out, income from assets, workers' compensation, unemployment income, and Social Security disability. Income does not include public welfare assistance.

In cases of teenage parents, both sets of grandparents also have a child support obligation.

The court is also permitted to set child support based on a payer's ability to earn, or "imputed income," beyond actual earnings. The court may consider factors such as past earnings; current physical and mental health; history of child care responsibilities of the parent with primary placement; the parent's education, training, and recent work experience; and local job openings.

Special rules govern the application of the percentage standards to the following types of payers:

- A serial family payer, who has an existing child support obligation and incurs an additional child support obligation in a subsequent family.
- A split-custody payer, who has physical placement of at least one but not all the children.
- A low-income payer, with an income below 150% of the federal poverty level.
- A high-income payer with an income above $84,000 per year. A further reduced percentage rate applies to income in excess of $150,000.

In most cases, child support is automatically withheld from the income paid by an obligated parent's employer. This is known as income assignment.

A court may set child support without using the percentage standards only in limited circumstances. Upon request of a party to the action, the court may deviate from the standards if the court finds that the use of the applicable standard is unfair to the child or to any of the parties. Any deviation must include consideration of an extensive list of factors set forth in the statutes.

Although the child support amount is calculated based on a percentage standard, current law provides that the child support order must be given as a fixed sum. The order may be expressed as a percentage only in limited circumstances.

A court that issues a child support order must also assign responsibility for payment of the child's health care expenses. In assigning responsibility, the court must consider specified factors, including existing and available health insurance, the extent of coverage, and the cost of health insurance coverage for the child. The court may require a parent to initiate or continue health care insurance coverage for a child.

Child support is generally required to be withheld from employment income, and is paid to the Wisconsin Support Collections Trust Fund. Child support payments are then paid out by direct deposit or added to a debit card.

Modification of Child Support Order

A child support order may be modified only when there has been a substantial change in circumstances of the parties or the children since the entry of the order. A court may presume that it has the authority to reconsider a child support order under the following changes in circumstance: commencement of participation in Wisconsin Works (W-2) by either parent; expiration of 33 months after the date of entry of the last child support order; or failure of the payer to furnish a timely annual financial disclosure.

Additional factors the court may consider in determining whether or not to revisit a child support order include a change in the payer's income or earning capacity, a change in the child's needs, or any other condition the court determines is relevant in a particular case.

If a court determines that a substantial change in circumstances has occurred to give it authority to review the child support order, the court may, but is not required to, modify the order, by applying the child support standards to the current circumstances.

Enforcement of Child Support Order

The Wisconsin Child Support Lien Docket is a registry containing the names of any person with an obligation for past-due child support. The amount owed equals a lien against the person's real and titled personal property.

The searchable child support lien docket is available at: http://www.dwd.state.wi.us/liendocketweb/**.**

There are several tools available for enforcement of support orders. The mechanisms include mandatory employer reporting of newly hired employees to the DCF; tax refund intercepts; accrual of interest on past due child support amounts; work search requirements; contempt of court proceedings with penalties of fines, imprisonment, or both; ineligibility for W-2 benefits; suspension of driver's licenses; data sharing between DCF and state financial institutions; liens on property; seizure of assets; suspension of recreational licenses and professional licenses and credentials; denial of passports; denial of college or business loans; and seizure of bank accounts. State and federal criminal penalties may also apply.

Wisconsin courts may also enforce or modify child support orders from other states under the procedures set forth in ch. 769, Stats., the Uniform Interstate Family Support Act (UIFSA).

The application form for child support case management services can be found at: http://www.dcf.wisconsin.gov/bcs/applications.htm

The local county child support offices prosecute enforcement actions on behalf of parents receiving child support, when the recipients have applied for the services. The fee for services is $25 for each year in which $500 or more is received in support.

Paternity

If parents are not married when a child is born, legal fatherhood can be established in three different ways:

- **Voluntary paternity acknowledgment.** If both the mother and the man are sure that the man is the father, the easiest way to establish fatherhood is with the Voluntary Paternity Acknowledgment form, which the father and the mother may sign together before a notary. The Acknowledgement may be signed at any time, and is commonly provided after birth, by a hospital or midwife. Local child support agencies can also help with the form.
- **Court ruling.** If a man is named as the possible father in a petition for paternity and does not agree, or, if a man states that he is the father of a child and the mother does not agree, a court will make a ruling about paternity. Both the man and the mother will be notified of the hearing and both may attend.
- **Acknowledgment of marital child (legitimation).** If a mother and the father marry after their child is born, the parents may sign a form for an Acknowledgment of Marital Child to establish paternity. Local child support agencies can help with the form, which is then filed with the state Vital Records Office.

A child born to a married couple is presumed, by law, to be the natural child of the husband and wife.

Several persons are eligible to commence a paternity action under Wisconsin law. Eligible persons include the child, the child's mother, or the state. Likewise, a man alleging himself to be the child's father may bring an action to determine paternity. In addition, the husband of the mother, who is presumed to be the child's father, or a man legally acknowledged as the child's father at birth, may bring an action to refute paternity.

Court Procedure

A paternity action is commenced by filing a summons, notice, and petition for paternity with the clerk of court for the county in which the child

An action to establish paternity cannot be brought after the child turns 19.

or the alleged father resides.

The person filing the action must serve the petition, summons, and other documents on the other parent or alleged parent within 90 days of filing with the clerk of court. The time may be extended only for good cause. All parties to a paternity action may be represented by an attorney. A GAL is appointed for a minor parent, and may be appointed for the child in some circumstances. The alleged father has a right to counsel, and will have an attorney appointed if the alleged father is indigent and cannot afford one.

The court proceeding generally has three stages: the first appearance, the pretrial hearing, and the trial. Paternity can be acknowledged at any of these stages. The alleged father is permitted to enter one of the following three pleas relating to the paternity: admit paternity, deny paternity, or admit paternity subject to confirming tests.

At the first appearance the court must inform the parties that a judgment of paternity grants parental and inheritance rights and establishes child support obligations; that the alleged father is entitled to an attorney, at public expense if he is indigent; that any party may request genetic tests; and that the alleged father has several defenses available to him to deny paternity, including that he was sterile or impotent at the time of conception, that he did not have intercourse with the mother during the preconceptive period, or that another man had intercourse with the mother during that period. The first appearance can be held any time after 30 days have passed from the service of the petition on the respondent.

At the pretrial hearing the court has an opportunity to evaluate the probability of paternity. At this point, witnesses and other evidence may be presented. The court may, at the conclusion of the evidence, dismiss the action or make a recommendation to the parties regarding settlement of the paternity action. The pretrial hearing is closed to persons other than those necessary to the action.

If no settlement is reached at the pretrial stage, a paternity trial is held. Like the pretrial hearing, the trial is closed to persons other than those necessary to the action. The paternity trial is in two parts: first, to make the determination of paternity, as shown by a clear and satisfactory preponderance of the evidence; and, second to make a determination of child support, legal custody, periods of physical placement, and any related issues.

Liability for past child support payments is limited to the period after filing unless the action was delayed because of duress, threats, promises, or evasion.

Evidence Used to Establish Paternity

Genetic tests are one form of evidence used to determine the existence of paternity. If the results of genetic testing show that the alleged father is not excluded as a possible father of

the child and that the statistical probability of the alleged father's parentage is 99% or higher, the alleged father is presumed to be the father of the child.

Other evidence that may be submitted includes evidence of sexual intercourse between the mother and alleged father during the possible time of conception; evidence of a relationship between the mother and alleged father at any time; an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy; and any other evidence relevant to the issue of paternity.

Judgment of Paternity

Once the trial is completed, the court enters a judgment of paternity. The judgment contains an adjudication of the child's paternity, an order requiring either parent to pay child support, an order for the child's legal custody and physical placement, an order regarding which parent will have the right to claim the tax exemption for the child, and orders relating to the payment of birth expenses and all related costs and fees of the action, including GAL fees and genetic testing fees.

Adoption

The process for adopting a child usually involves four steps: (1) termination of parental rights; (2) petition to adopt and order for investigation; (3) agency investigation (often referred to as the home study); and (4) hearing on the adoption. State law requires that all hearings concerning termination of parental rights and adoption must be closed to the public.

Additional information on adoption in Wisconsin can be found at:

http://www.dcf.wi.gov/children/adoption

Agency adoptions involve the placement of a child with adoptive parents by a public agency, including the Bureau of Milwaukee Child Welfare or any other county department of human or social services, or by a licensed private agency. Public child welfare agencies generally place children who have become wards of the state for reasons such as orphanage, abandonment, or abuse. Private agencies are sometimes run by charities or social service organizations.

An independent adoption refers to situations where the biological and adoptive parents find each other without the help of an agency, often through friends or acquaintances. In Wisconsin, these families must still work with an agency for the home study and birth parent counseling services.

Similarly, a parent who has custody of a child may place the child for adoption in the home of a relative. This is most familiar in cases of grandparent adoptions, but could also include adoption by a brother, sister, first or second cousin, uncle, or aunt.

It is also common for a stepparent to adopt the child of his or her spouse under the same general procedures. Wisconsin does not allow adoption by a same-sex or opposite-sex domestic partner of a birth parent, under the stepparent adoption procedures.

It is lawful for the proposed adoptive parents to pay certain, limited expenses of the birth parent that relate to the adoption. These may include medical and hospital expenses, birthing classes, maternity clothes (not to exceed $300), legal expenses, living expenses if necessary to protect the mother or child's health and welfare (not to exceed $5,000), counseling, and a gift to the mother (not to exceed $100 in value).

There is no statutory "open adoption" in Wisconsin. If adoptive parents have made promises of continued contact with the birth parents after the termination of parental rights, those promises are not enforceable by a court.

A biological parent may sign a consent to terminate parental rights after the birth of a child, and may revoke the consent at any point up until the judge signs the order terminating parental rights. When the termination order is entered by the court, it is final, and there is no waiting period allowing the biological parent to change his or her mind. A biological parent may appeal the order within 30 days, under an expedited appeals process.

In every adoption, the agency caseworker must determine whether the federal Indian Child Welfare Act of 1978 applies. The Act applies if the child is either a member of an Indian tribe or eligible for membership, and is the biological child of a member of an Indian tribe. Each tribe sets its own standards of eligibility for membership. Unless it is a voluntary proceeding, the tribe must be notified and given an opportunity to assert the statutory placement preference priority in favor of the child's extended family and tribe.

Third Party Visitation

Wisconsin statutes provide for the visitation of children by certain nonparents, including grandparents, stepparents, and domestic partners, in several situations. However, unlike a parent with physical placement or even supervised physical placement, a person granted visitation with a child does not have any other parental rights or obligations towards the child.

Person With a Parent-Like Relationship

First, in the context of an existing action dissolving a marriage, grandparents, great-grandparents, stepparents, or other persons who have maintained a relationship similar to a parental relationship with a child may request and be granted reasonable visitation rights, if the parents have notice of the hearing and the court determines that the visitation is in the best interests of the child.

Wisconsin courts also recognize an independent action for a former same-sex or opposite-sex partner who is seeking visitation rights with a minor child if the partner proves four

specific elements to demonstrate a parent-like relationship with the child. These elements are: (1) the biological or adoptive parent consented to, and fostered, the person's parent-like relationship with the child; (2) the person and the child lived together in the same household; (3) the person assumed parental obligations, including contributing to the child's support, without expectation of financial compensation; and (4) the person has been in a parental role long enough to have established a bonded, dependent parent-like relationship. If there is no underlying action affecting the family, the person must show that there was a significant triggering event, such as substantial interference with the parent-like relationship.

Grandparents of a Nonmarital Child

Grandparents of a child whose parents are not married may petition for, and be granted, visitation rights in an independent action for visitation or in an underlying paternity action. The child's parents must have notice of the hearing and the court must find that: (1) the parents have not married each other after the birth of the child; (2) the paternity of the child has been determined if the grandparents seeking visitation are the paternal grandparents; (3) the child has not been adopted; (4) the grandparents have maintained a relationship with the child (or have tried but have been prevented from doing so by a parent); (5) the grandparents will not act in a manner contrary to the parenting decisions of the parent; and (6) the visitation is in the best interest of the child.

After Adoption

Other relatives may apply for visitation after adoption when: (1) a parent has remarried, the other parent's rights have been terminated, and the stepparent adopts the child; or (2) both parents have terminated their parental rights to the child and the child is adopted by another relative. In these cases, even though the parental relationship has been legally extinguished with one or both birth parents, other relatives (listed in the statutes) who have maintained a parent-like relationship with the child for at least two years before the action may request visitation rights. Reasonable visitation may be granted if the court determines that it would be in the best interest of the child, the relative will not undermine the legal parents' relationship with the child, and the relative will not act in manner contrary to the parenting decisions of the legal parents.

After Death of One or Both Parents

Grandparents and stepparents of a child may request and be granted visitation with the child if one or both parents of the child are deceased and the child is in the custody of the surviving parent or any other person. For the rights to be granted, the visitation must be in the best interest of the child. The petition may be filed in an underlying guardianship action or as an independent action.

Additional References

1. Legislative Council Information Memoranda (IM):
    - IM- 2012-09, *Legal Custody, Physical Placement, and Child Support* (May 10, 2012).
    - IM- 2012-12, *Visitation by Grandparents and Other Third Parties* (July 6, 2012).
    - IM-2013-05, *U.S. Supreme Court Decisions Relating to Same-Sex Marriage* (July 29, 2013).

These publications are available at: http://www.legis.wisconsin.gov/lc.

2. Wisconsin Department of Revenue:
    - Publication 109, *Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2013* (November 2013).
    - Publication 113, *Federal and Wisconsin Income Tax Reporting Under the Marital Property Act* (February 2014).

These publications are available at: http://revenue.wi.gov/html/taxpubs.html.

Glossary

Guardian ad litem (GAL): A guardian ad litem is an attorney admitted to practice in Wisconsin who must advocate for the best interest of a minor child as to paternity, legal custody, physical placement, and support. The GAL must consider, but is not bound by, the wishes of the minor child or the positions of others as to the best interest of the minor child. The GAL must review and comment to the court on any mediation agreement, stipulation, and parenting plan. The GAL has none of the rights or duties of a general guardian.

Joint legal custody: Joint legal custody means the situation in which both parties share legal custody and neither party's legal custody rights are superior, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order.

Legal custody: With respect to any person granted legal custody of a child, legal custody means the right and responsibility to make major decisions concerning the child, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order.

Major decisions: Major decisions include, but are not limited to, decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator's license, authorization for nonemergency health care, and choice of school and religion.

Mediation: Mediation means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute

resolution skills, to define and resolve their own disagreements. In cases where a child is involved, the best interest of the child is the paramount consideration.

Physical placement: Physical placement means the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility, during that placement, to make routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody.

Sole legal custody: Sole legal custody means the situation in which only one party has legal custody.

Termination of parental rights (TPR): Termination of parental rights means that, pursuant to a court order, all rights, powers, privileges, immunities, duties, and obligations existing between parent and child are permanently severed.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 17 – FINANCIAL INSTITUTIONS

The state regulates certain financial institutions through the Department of Financial Institutions and the Office of Credit Unions. The Department of Financial Institutions oversees state-chartered banks and savings institutions (savings and loan associations and savings banks) through its Division of Banking. Similarly, the Office of Credit Unions oversees the operation of state-chartered credit unions. The Office of Credit Unions is an independent policy-making unit that is attached for administrative purposes to the Department of Financial Institutions. Regulation of financial institutions is designed to maintain their sound and safe operation. The Department of Financial Institutions also regulates securities transactions, consumer credit transactions, and consumer finance transactions such as payday lending and auto-title lending.

Scott Grosz, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Regulation of Financial Institutions 1
Banks 1
Savings Institutions 2
Universal Banks 3
Credit Unions 4
State Regulation of Securities Transactions 5
State Regulation of Payday and Auto-Title Lending 5
State Regulation of Consumer Credit Transactions 5
Federal Consumer Financial Protection 6
Additional References 6
Glossary 6

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Regulation of Financial Institutions

Banks

Historical State Regulation

At the beginning of Wisconsin's statehood, banking corporations were not permitted to exist under Wisconsin law. The Wisconsin Constitution of 1848 prohibited the Legislature from enacting general or special banking legislation, unless a majority of voters at a general election approved of banks. The Constitution provided that, if such a question were submitted to the electors and received approval, the Legislature was then authorized to pass a general or special banking law. Any banking law subsequently adopted by the Legislature was not effective until it also was approved by a majority of voters at a general election. The electorate approved legislative action to authorize banking activities in November 1851, and the first general banking law was approved in the general election of November 1852. The constitutional provisions regarding electorate approval of banking laws were repealed in 1902.

Banks, savings and loans, savings banks, and credit unions differ in their authorized activities and business purposes.

State-chartered banks have been regulated by numerous entities over the years, including a Bank Comptroller, the State Treasurer, the Bank Examiner, the Commissioner of Banking, and the Banking Commission.

Modern State Regulation

The current regulator of banks in Wisconsin is the Division of Banking in the Department of Financial Institutions (DFI). DFI charters state banks, and the Division of Banking regulates and supervises state-chartered banks in Wisconsin, including regularly examining state banks in order to ensure their sound and safe operation.

The Division of Banking also has under its jurisdiction entities that are not considered financial institutions, such as mortgage bankers, mortgage brokers, loan originators, loan solicitors, collection agencies, community currency exchanges, sales finance companies, and payday lenders. The division oversees the market practices of these entities.

Banks, savings and loans, savings banks, and credit unions are subject to state regulation if they are "state chartered."

Historical Federal Regulation

The modern system of federal bank regulation began with the National Currency Act of 1863 and the National Bank Act of 1864. The federal statutes enacted at that time authorized the creation of national banks for the purposes of the issuance of national currency, rather than the use of individual state bank notes, and financing the Union effort in the Civil War. The officer in charge of this system was the Comptroller of the Currency who headed a separate office in the Department of the Treasury.

By common measures, most financial institutions operate under a federal charter.

Modern Federal Regulation

Presently, the Office of the Comptroller remains in the Department of the Treasury, and the Comptroller performs his or her duties under the direction of the Secretary of the Treasury. The Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC) also have jurisdictional oversight of some aspects of nationally chartered banks. State banks are also affected by federal statutes relating to, and regulations of, the FDIC and the Federal Reserve Board, if a state bank is a member of the Federal Reserve System.

For more information on federal regulation, see:

- http://www.fdic.gov/regulation
- http://www.occ.treas.gov
- http://www.federalreserve.gov

Savings Institutions

Historical State Regulation

Organizations resembling contemporary savings institutions were first recognized in Ch. 331, Laws of 1876. The law provided in part that at any time when five or more persons desired to form a "mutual savings fund, loan or building association," they were required to file a certificate of organization in the office of the clerk of the circuit court of the county in which they intended to carry on the business of the new corporation. Aside from enacting a law regarding the organization of the business, the state was not otherwise involved in the regulation of a "mutual savings fund, loan or building association."

In the 1895 Session of the Wisconsin Legislature, the regulation of building and loan associations was integrated with bank regulation under the Bank Examiner. However, in Ch. 411, Laws of 1947, the Savings and Loan Association Department was created to regulate savings and loan companies and was placed under the management and control of the newly created position of Commissioner of Savings and Loan Associations.

Modern State Regulation

The DFI, through the Division of Banking, issues certificates of incorporation to savings institutions and supervises savings institutions through an examination process. State savings institutions also are affected by the regulatory actions of the FDIC and the Federal Office of the Comptroller of the Currency (OCC). The OCC (formerly the Office of Thrift Supervision, which merged with the OCC in 2011) is a part of the U.S. Department of the Treasury.

For more information on the FDIC and OCC, see:

- http://www.fdic.gov.regulations/laws
- http://www.occ.treas.gov

Federal Regulation

As in the case of federally chartered banks, federally chartered savings institutions are affected by the actions of certain federal regulators: the FDIC and the OCC.

Universal Banks

Chapter 222, Stats., authorizes the formation of universal banks. A state bank, state savings bank, or state savings and loan association may apply to become a universal bank. If it is certified as a universal bank, the financial institution retains its original status as a state bank, state savings bank, or state savings and loan association and is subject to all of the regulations of that original institution, except to the extent the requirements are inconsistent with those of a universal bank.

To qualify as a universal bank, the financial institution must meet six requirements: (1) it must have been in existence and continuous operation for at least three years; (2) it must be "well-capitalized," as defined by federal law; (3) it must not exhibit moderately severe or unsatisfactory financial, managerial, operational, or compliance weakness; (4) it must not have been subject to any enforcement action within the 12 months preceding the application; (5) its most recent evaluation under the Federal Community Reinvestment Act must have rated the financial institution as "outstanding" or "satisfactory"; and (6) the most recent report evaluating the financial institution's compliance with certain federal laws relating to customer privacy must indicate that it is in substantial compliance.

A universal bank may engage in any activity that is authorized for any savings bank, savings and loan association, or state bank. In addition, a universal bank may exercise all of the powers that a national bank, federally chartered savings and loan association, or federally chartered savings bank may exercise. The Division of Banking must approve the first exercise of such powers. Once the division approves the exercise of that power for one universal bank, any universal bank may exercise that power. A universal bank may also

Universal banks may engage in activities authorized for any federal or state chartered financial institution.

exercise all powers necessary or convenient to effect the purposes for which the universal bank is organized or to further the business in which the bank is lawfully engaged.

Credit unions are not authorized to become universal banks.

Credit Unions

Historical State Regulation

In 1912, President William Howard Taft, in a promotion of the credit union movement, asked that all states adopt a credit union statute. Subsequent to this request, the Wisconsin Legislature enacted Ch. 733, Laws of 1913, creating the state's first credit union legislation. Under the law, a "cooperative credit union association" was authorized to receive the savings of its members and lend accumulated funds to members at reasonable rates. The membership of a credit union was limited to those individuals who had a defined common bond, such as individuals working for the same employer. Unlike banks and savings institutions, credit unions do not pay federal or state income taxes. The regulator of the early credit unions was the Commissioner of Banking who, among other powers, had the authority to ensure the soundness of a credit union and to take possession of an unsound credit union.

A credit union exists to serve the interests of its members rather than to generate a profit for its shareholders.

The first major structural change in the regulation of credit unions occurred with the enactment of Ch. 411, Laws of 1947. This law required the Commissioner of Banks to employ a supervisor of credit unions. The supervisor was responsible for the supervision and examination of credit unions, under the direction and control of the Commissioner.

Modern State Regulation

The creation of separate regulatory structures for banks, savings and loan associations, and credit unions became complete with the enactment of Ch. 193, Laws of 1971. This legislation created an Office of the Commissioner of Credit Unions. Previous responsibilities of the Commissioner of Banking were transferred to the new Commissioner of Credit Unions. 1995 Wisconsin Act 27 created the Office of Credit Unions and attached it to DFI for administrative purposes. The Office of Credit Unions, now headed by a director rather than a commissioner, charters credit unions and examines credit union records and assets. Accounts in state-chartered credit unions are insured through the National Credit Union Administration.

Federal Regulation

Federal credit unions are chartered and regulated by the National Credit Union Administration (NCUA). For more information on the NCUA, see: http://www.ncua.gov.

State Regulation of Securities Transactions

For more information on securities regulations, see:

- http://www.sec.gov
- http://www.wdfi.org/fi/securities/

Wisconsin statutes require the registration of certain securities before they may be sold in the state. The statutes also require that broker-dealers, agents, investment advisors, and investment advisor representatives be licensed by the state. The regulation of these activities is managed by the Division of Securities in the DFI. The laws are designed to protect the public against securities fraud. (The Federal Securities and Exchange Commission regulates security activities nationally.)

State Regulation of Payday and Auto-Title Lending

In the 2009-10 Legislative Session, the Legislature created new requirements for payday lending. As a result of a partial veto by Governor Doyle, the legislation also prohibited auto-title lending. A summary of 2009 Wisconsin Act 405 may be found at: http://www.legis.wisconsin.gov/lc.

In the 2011-12 Legislative Session, the Legislature modified the regulation of payday lending and repealed the prohibition on auto-title lending as part of 2011 Wisconsin Act 32, the Biennial Budget Act. A summary of the modifications to payday lending and auto-title lending in 2011 Wisconsin Act 32 may be viewed at: http://www.legis.wisconsin.gov/lfb/.

State Regulation of Consumer Credit Transactions

For more information on the Wisconsin Consumer Act, see:

- www.wdfi.org/consumer_information
- www.wdfi.org/wca

The Office of Consumer Affairs in the Office of the Secretary of DFI acts as the administrator of the Wisconsin Consumer Act. In general, the Act regulates certain credit transactions, trade practices, types of insurance practices, and debt collection practices that are entered into between consumers and financial institutions or merchants. Generally, a consumer is an individual who is involved in a transaction involving no more than $25,000 when the individual seeks or acquires certain real or personal property, services, money, or credit for personal, family, or household purposes.

Federal Consumer Financial Protection

Created in 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau (CFPB) has broad regulatory authority over businesses including banks, credit unions, and the mortgage industry, as well as payday lenders, debt collectors, the student loan industry, and other consumer finance transactions.

The CFPB, a new federal entity created in 2011, has broad authority regarding consumer protection. See http://www.consumerfinance.gov for more information.

Additional References

1. Wisconsin Department of Financial Institutions: http://www.wdfi.org.
2. U.S. Department of the Treasury: http://www.treas.gov.
3. Federal Deposit Insurance Corporation: http://www.fdic.gov.
4. U.S. Securities and Exchange Commission: http://www.sec.gov.
5. Consumer Financial Protection Bureau: http://www.consumerfinance.gov.

Glossary

Office of the Comptroller of the Currency (OCC): Federal agency that issues charters to and regulates national banks and savings institutions.

Consumer Finance Protection Bureau: A federal entity with broad authority to provide consumer education, enforce federal consumer financial laws, and study consumer financial markets.

DFI: The Wisconsin Department of Financial Institutions. The agency that, through the Division of Banking, and the Office of Credit Unions, charters and regulates state banks, savings institutions, and credit unions.

Finance charge: The sum of all charges payable by a customer as an incident to, or as a condition of, the extension of credit.

National Credit Union Administration: Federal agency that charters and regulates federal credit unions and provides insurance of deposits to both federal- and state-chartered credit unions.

Office of Credit Unions: State agency attached to the DFI for administrative purposes that charters and regulates state-chartered credit unions.

Office of Thrift Supervision (OTS): Defunct federal agency that chartered and regulated federal savings institutions. The OTS was merged with various federal agencies in 2011 (primarily the OCC).

Wisconsin Consumer Act: Wisconsin statutes regulating credit, trade practices, the sale of insurance, and debt collection practices in certain transactions entered into between consumers and financial institutions or merchants. Covered transactions must involve no more than $25,000 and be entered into for personal, family, or household purposes.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 18 – GENERAL INSURANCE

Insurance protects against unexpected losses of income or property. The state regulates general insurance matters through the Office of the Commissioner of Insurance. The agency's primary focus is to ensure sound and fair practices by insurers doing business in Wisconsin.

Chad Brown, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Introduction 1
Office of the Commissioner of Insurance 1
Types of Insurance Coverage 2
Auto Insurance 2
Commercial Liability Insurance (Including Worker's Compensation) 2
Credit Insurance 3
Crop Insurance 3
Disability Income Insurance 3
Flood Insurance 3
Homeowner's (Including Renter's, Condominium, and Mobile Home) Insurance 3
Life Insurance 4
Long-Term Care Insurance 4
Travel Insurance 4
Segregated Insurance Funds 4
Additional References 5
Glossary 5

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

This chapter describes the duties of the Office of the Commissioner of Insurance (OCI), provides an overview of major types of insurance, and discusses state insurance funds. This chapter does not discuss health insurance, which is covered in Chapter 19, *Health Care and Health Insurance*.

Insurance is largely regulated by the states. The McCarran-Ferguson Act of 1945 outlines the roles of state and federal government in insurance regulation, and allows states to retain regulatory authority over insurance. It reverses the usual preemptive effect of federal law flowing from the Supremacy Clause. Absent a congressional act specifically relating to the business of insurance, McCarran-Ferguson provides that state law controls over conflicting federal legislation.

OFFICE OF THE COMMISSIONER OF INSURANCE

OCI was established through legislation enacted in 1871. The OCI is vested with broad powers to ensure that the insurance industry meets the insurance needs of Wisconsin citizens. The major functions of the OCI include:

OCI's website has numerous publications on the various types of insurance. Anyone can look up an agent or file a complaint on the website, as well: http://www.oci.wi.org.

- Reviewing insurance policies proposed for sale in Wisconsin to determine if they meet the requirements of Wisconsin laws.
- Conducting financial examinations of domestic and foreign insurers to assure compliance with Wisconsin laws.
- Monitoring the financial status of licensed companies and applicant companies.
- Creating, implementing, and enforcing laws relating to licensing of companies, agents, brokers, and others.
- Examining and analyzing rates filed by insurance companies to determine if they are excessive, inadequate, or unfairly discriminatory.
- Providing insurance information to Wisconsin consumers, and investigating and processing consumer complaints.
- Investigating and pursuing administrative actions against agents and insurers who violate Wisconsin insurance laws.
- Operating a State Life Insurance Fund, a Local Government Property Insurance Fund for the property owned by local units of government, and the Injured Patients and Families Compensation Fund insuring health care providers for medical malpractice.

Types of Insurance Coverage

Wisconsin's statutory provisions related to insurance and the powers and duties of the OCI are set forth in chs. 600 through 655, Stats. The OCI's administrative rules are set forth in chs. INS 1 through 55, Wis. Adm. Code. The statutes and rules affect various types of insurance. A few of the most common types of insurance coverage in specific lines are briefly described below.

Auto Insurance

All Wisconsin drivers must have an automobile insurance policy in place (with limited exceptions for drivers who post sufficient bond). This policy must contain coverage at specified minimum limits for property damage liability, personal injury liability, and injury caused by an uninsured motorist, as follows:

Each person operating a motor vehicle on any road in Wisconsin must have auto insurance for the vehicle. The penalty for violating this law is a fine of not more than $500.

- Personal injury: $25,000 per person/$50,000 per incident.
- Property damage: $10,000.
- Uninsured: $25,000 per person/$50,000 per incident for bodily injury only.
- Underinsured: Not required, but the insurer must give notice to insurance purchaser that it is available, and if purchased, minimum coverage of $50,000 per person/$100,000 per incident is required.

For more information on mandatory auto insurance, see Legislative Council Information Memorandum 2011-14, at:

http://www.legis.wisconsin.gov/lc

A person who is required to have in effect a motor vehicle liability insurance policy with respect to a vehicle he or she is operating must be in possession of proof of the insurance and display the proof upon demand from any traffic officer. Such proof can be presented in either printed or electronic format.

Auto insurance coverage that is also available, although not required by law, includes collision and comprehensive coverage. Collision coverage pays to repair or replace your car in the event your car hits another object (even if it is your fault), and comprehensive coverage pays for damage to your car by other causes (such as fire, theft, vandalism, hail, or hitting an animal). Optional coverage for medical payments may also be purchased, and is required by law to be offered at the time of auto insurance purchase.

Commercial Liability Insurance (Including Worker's Compensation)

The purpose of commercial liability insurance is to protect businesses against losses arising from a claim against that company. A particular type of commercial liability insurance, worker's compensation insurance, is required for nearly every Wisconsin business. It

insures against work-related injury and death and is generally the employee's exclusive remedy in such cases. For a more complete discussion of worker's compensation insurance, see Chapter 22, *Labor and Employment Law*.

Credit Insurance

Credit insurance is insurance that is usually sold to a person obtaining a loan or credit card at the same time as the credit transaction. The insurance pays all or a portion of the outstanding credit balance if a claim is filed due to an event outlined in the policy, such as death, disability, or unemployment of the obligor. The payment for the insurance is generally written into the payment for the loan. Compared to other types of insurance, credit insurance tends to be relatively expensive and often contains strict policy limitations. In addition, it may apply to risks already covered under other policies the insured may have.

Crop Insurance

Prior to planting, farmers may purchase insurance to cover a portion of damage in the event of hail or other peril that results in crop loss. This insurance may be purchased from private insurance companies or the Federal Crop Insurance Corporation. Coverage options include the portion of the crop insured (most is insured for less than the full amount) and the types of losses covered.

Disability Income Insurance

Disability income insurance replaces some portion of an employee's income for a specified period of time in the event that the employee is unable to work due to a covered injury or illness.

Flood Insurance

Flood insurance covers losses to property caused by flooding, such as damage to structures, damage to household mechanicals, and costs of cleanup. Flood insurance is provided to those living in flood hazard areas through The National Flood Insurance Program and frequently administered by local insurance agents. Property owners and renters are encouraged to inquire with a licensed property or casualty insurance agent to determine if flood insurance is available and advisable for their area.

Homeowner's (Including Renter's, Condominium, and Mobile Home) Insurance

Homeowner's insurance compensates an insured in the event of losses to the insured's house and belongings. Some considerations when purchasing homeowner's insurance include the amount of coverage needed, whether the coverage should be based on market value or replacement cost, the deductible amount, and special riders for jewelry, antiques, art, firearms, or other personal property that insurance companies frequently treat separately from ordinary household items.

Homeowner's insurance also offers protection if someone is injured on your property or in some cases in which the negligence of the insured results in damages to the property of another.

Life Insurance

Life insurance provides a benefit in the form of a cash payment or an annuity in the event of the death of the insured. It can be provided by an employer or purchased separately. The two main types are term insurance and cash value insurance (sometimes referred to as "whole life"). Term insurance premiums are generally lower in the early years, but the policy provides no residual value at the end of the term. Cash value insurance builds in value over time and can be cashed out prior to death or used to pay premiums in later years.

Long-Term Care Insurance

Long-term care insurance generally provides coverage for medical and other services needed for an extended illness or disability. The policy may cover a variety of levels of care, much of which may not be covered by Medicare.

Travel Insurance

2013 Wisconsin Act 212 allows the OCI to issue a new type of license, known as a "travel insurance producer" license. Travel insurance policies provide coverage for risks associated with planned travel, including trip cancellation, loss of baggage, and sickness or accident.

Segregated Insurance Funds

Wisconsin operates the Local Government Property Insurance Fund under ch. 605, Stats., and the State Life Insurance Fund under ch. 607, Stats. Each fund is administered by the OCI. The State Treasurer has sole custody of all the assets of the funds.

Wisconsin is the only state that offers life insurance to its citizens through a segregated fund.

The purpose of the **Local Government Property Insurance Fund** is to make reasonably priced property insurance available for tax-supported local government property, such as government buildings, schools, libraries, and motor vehicles. The fund provides policy and claim service to the policyholders.

The **State Life Insurance Fund** offers a maximum of $10,000 of life insurance coverage to state residents who purchase a policy from the fund. The fund is required to distribute net profits annually among the policyholders. Wisconsin is the only state that offers a life insurance program to its residents.

Additional References

1. The Legislative Audit Bureau has prepared the following audits relating to state insurance programs, available at: http://www.legis.wisconsin.gov/lab

    - *State Life Insurance Fund* (Audit Report 13-16).
    - *Local Government Property Insurance Fund* (Audit Report 12-7).
    - *Injured Patients and Families Compensation Fund* (Audit Report 10-4).

2. For questions, comments, or complaints relating to insurance companies or agents conducting business in Wisconsin contact the OCI, 125 South Webster Street, Madison, Wisconsin 53703-3474, (608) 266-3585, Madison, (800) 236-8517, statewide; ocicomplaints@wisconsin.gov.

3. The OCI publishes a guide that provides a general outline of Wisconsin insurance law at http://www.oci.wi.gov/agentlic/pi-060.pdf. Written for insurance agents and those preparing for the insurance examination, it provides useful background information on Wisconsin law as it relates to the different types of insurance available in the state.

4. Information on portable electronics insurance can be found at: https://docs.legis.wisconsin.gov/2011/related/lcactmemo/sb429.pdf.

5. The National Association of Insurance Commissioners (NAIC) provides information regarding the insurance industry generally and insurance practices in all 50 states at http://www.naic.org/index.htm.

6. NAIC Consumer Information Source https://www.eapps.naic.org/cis.

Glossary

Adjuster: An employee or contractor working for an insurance company who inspects claims and establishes the company liability in a claim.

Agent: A person who negotiates and sells insurance contracts on behalf of one or more insurance companies.

Annuity: A payment benefit sold by insurance companies that makes a periodic (usually monthly) payment for the life of a person or for a predetermined period of time.

Anti-stacking provision: Insurance contract provision that prohibits the application of multiple sets of deductibles or multiple sets of limits to a single loss event.

Authorized insurer: An authorized insurer is one that holds a valid certificate of authority to do insurance business in this state.

Beneficiary: The person or entity named in an insurance policy as the recipient of insurance money as the result of a covered event.

Broker: An individual representing insurance purchasers to arrange for coverage that meets the customer's needs.

Cancellation: Termination of an insurance policy before its expiration date.

Collision coverage: Auto insurance coverage that pays for damage to the policyholder's car caused by a collision with another vehicle or object.

Comprehensive coverage: Insurance coverage that pays for damage to the policyholder's car for losses caused by fire, theft, vandalism, and other incidents not involving collision with another vehicle or object.

Domestic insurer: Insurance corporation organized under the laws of this state.

Financial responsibility law: A law requiring a person involved in an automobile accident to furnish security up to certain minimum dollar limits.

Foreign insurer: Insurance corporation organized under the laws of another state.

Homeowner's insurance: Policy covering damage to the insured's property and liability coverage for the insured.

Liability: Individual responsibility for causing injury or property damage.

Liability insurance: Insurance covering legal liability for injury or property damage caused by the insured.

Reducing clause: Provision in an insurance contract which reduces recovery by amounts received from other sources (such as the other party or worker's compensation).

Rider: Special provisions added to a policy that are not contained in the original policy contract. Riders are frequently used in homeowners insurance for items such as jewelry, antiques, or firearms.

Subrogation: The right of the insurance company to recover money paid on a claim from a third party. One common example occurs in uninsured motorist coverage, where the policyholder is paid by their own insurer and the insurer takes action to collect from the uninsured, at-fault party.

Term insurance: Life insurance for a given period of time, with no investment component that would provide residual or cash value. If the insured survives the policy term, the insurer pays nothing.

Umbrella policy: A policy providing additional liability coverage after the limits of another policy are reached (such as a home or auto policy). These policies frequently provide coverage in many situations not covered by the other liability insurance policies.

Unauthorized insurer: An unauthorized insurer is one that does not hold a valid certificate of authority to do insurance business in this state.

Underinsured motorist (UIM) coverage: An auto insurance policy under which the insurance company will pay damages to the insured for which another motorist is liable in an amount up to the point that total recovery equals the insured's UIM limits. If, for example, the at-fault driver had $50,000 of liability coverage and caused $70,000 worth of damage, a $100,000 UIM policy would pay the additional $20,000 to cover what the other party's insurance did not.

Uninsured motorists (UM) coverage: A policy that will pay bodily injury damages to the insured for which another motorist is liable if that motorist is uninsured, or in the event of a hit-and-run.

Whole life insurance: Life insurance that remains in force during the insured's entire lifetime, provided premiums are paid as specified in the policy. Whole life insurance also builds a savings called the cash value.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 19 – HEALTH CARE AND HEALTH INSURANCE

The state's involvement in health care and health insurance issues is primarily through four agencies: the Department of Health Services; the Department of Safety and Professional Services; the Office of the Commissioner of Insurance; and the Department of Employee Trust Funds.

Mary Matthias, Principal Attorney
Wisconsin Legislative Council

Table of Contents

Major Health Care Coverage Programs 1
- Medicare 1
- Medicaid 2
- BadgerCare Plus 3
- SeniorCare 4
- HIRSP 4

The Affordable Care Act and the Federal Exchange 5
- Overview of Key ACA Provisions 5
- The Federal Health Insurance Exchange 6
- Medicaid Expansion Under the ACA 7

Health Insurance Regulation 8
- Office of the Commissioner of Insurance Oversight 8
- Federal Preemption 8
- General Patients' Rights 9
- Continuation Rights 9

Public and Preventive Health 10

Health Facilities and Residential Programs 11
- State Licensing 11
- Zoning Exceptions for Certain Residential Facilities 12

Health Professionals 12
- Licensing and Certification 12
- Caregiver Background Checks 13

Medical Malpractice 13

Advance Directives 14

Additional References 14

Glossary 15

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Major Health Care Coverage Programs

Described below are major programs with state government financial involvement that provide health care coverage to eligible persons. The programs are administered by the Department of Health Services (DHS), with claims processing done by private contractors. Medicaid, BadgerCare Plus, and SeniorCare all have income eligibility criteria, while Medicaid also has asset eligibility requirements. The federal Medicare program is also an important source of health care coverage for many Wisconsin residents.

In addition to the programs described in this chapter, DHS administers programs that provide assistance to persons with certain chronic diseases (chronic renal disease, cystic fibrosis, and hemophilia) and acquired immunodeficiency syndrome (AIDS).

Medicare

Detailed information about Medicare is included in a federal publication, *Medicare & You*, which is available at:

http://www.medicare.gov

The federal Medicare program, administered by the Centers for Medicare and Medicaid Services (CMS) in the U.S. Department of Health and Human Services (DHHS) is a major source of payment for health care for elderly and disabled persons. Most U.S. citizens age 65 and older, people under age 65 with certain disabilities, and people with end-stage renal disease, are eligible for coverage under the program. Medicare has four parts.

Medicare Part A provides hospital insurance that includes inpatient care in hospitals, nursing homes, skilled nursing facilities, and critical care access hospitals, but does not include long-term care or custodial care. Most Part A enrollees are not required to pay a premium to receive those benefits if they or their spouse paid Medicare taxes while working.

Medicare provides coverage for citizens age 65 and older and individuals under age 65 with certain disabilities, without regard to income or assets.

Medicare Part B provides supplementary medical insurance that covers such services as medically necessary doctor visits, outpatient care, and other services not covered by Medicare Part A. Unlike Part A, most people are required to pay a premium to participate in Medicare Part B.

The average Part B premium is $104.90 per month with a $147 annual deductible. However, if an individual does not sign up for Part B when they are first eligible, they may accrue a late enrollment penalty. If an individual's modified adjusted gross income, as reported to the IRS, is above $85,000 for an individual or $170,000 for a couple, their monthly premium will range between $146.09 and $335.70 per month.

Medicare Part C combines the benefits available under Medicare Parts A and B, and does so through private health insurance plans referred to as Medicare Advantage Plans. These Medicare Advantage Plans can also offer additional benefits, including Medicare Part D prescription drug coverage.

Medicare Part D is a prescription drug benefit program which began in January 2006. People are eligible to participate in Medicare Part D if they are entitled to Medicare Part A or they are enrolled in Medicare Part B. Generally speaking, participation in Medicare Part D is voluntary, although some individuals such as "dual eligibles" (individuals who are eligible for coverage under both the Medicare and Medicaid programs) are automatically enrolled in a Medicare Part D plan. Like Part B, there is also a late penalty if an individual does not sign up for Part D when they are first eligible.

Medicaid

Information about Medicaid enrollment and benefits:

http://www.dhs.wisconsin.gov/publications/p0/p00079.pdf

Medicaid, commonly referred to as Medical Assistance (MA) or Title 19, is a program aimed at providing health care services to persons of limited resources. The DHS administers Wisconsin's MA program under a framework of state and federal laws, and in conformity with the state plan it submits to the DHHS CMS.

Medicaid has income and asset eligibility requirements. However, Medicaid does provide spousal impoverishment protections when one spouse enters a nursing home and the other spouse remains outside of the nursing home. In that situation, the law allows the spouse outside the nursing home to retain greater assets and income than would otherwise be allowed in order for the spouse in the nursing home to be eligible for Medicaid. Medicaid laws also limit the extent to which an applicant must divest property in order to bring the applicant's assets below the level allowed for Medicaid eligibility.

When a spouse applies for Medicaid to cover the expenses of long-term care in a nursing home or other long-term care facility, spousal impoverishment protections allow the couple to disregard certain assets and income for purposes of Medicaid eligibility, so that the non-institutionalized spouse will not be required to deplete his or her assets in order to pay for the care of the institutionalized spouse.

Medicaid covers an array of health care services. Unlike the federal Medicare program, Medicaid is a major payer for long-term care services, including nursing home services. Included in the services covered are physician services, hospitals, rural health clinics, medical supplies and equipment, transportation to receive services, and several other health care services.

In Wisconsin, Medicaid services for individuals who are elderly, blind or disabled (EBD MA) are provided through a variety of programs administered by the DHS. These programs

provide elderly, blind, and disabled individuals traditional MA services such as physician services, inpatient and outpatient hospital services, and nursing home care. Some EBD MA recipients also receive non-traditional long-term care services under Family Care and other home and community-based waiver programs.

As discussed above, in order to be eligible for most of the EBD MA programs, individuals must meet certain financial criteria, including an asset and income test. Certain individuals who do not qualify for MA coverage because their income exceeds the limit may receive MA coverage by meeting the "Medicaid deductible." Once the individual meets the deductible, other MA-covered services the individual receives during a six-month deductible period are paid by the state MA program. The deductible is equal to the amount by which the individual's income exceeds the MA income limit.

In addition, the Medicaid Purchase Plan (MAPP) permits individuals with a disability who are working or want to work to become eligible or remain eligible for Medicaid. The goal of this program is to remove financial disincentives to work. The program also allows an individual to accumulate savings from earned income in independence accounts.

During the past decade, Wisconsin's Medicaid program has grown increasingly complex. This is due, in part, to agreements between the state and the federal DHHS that waived aspects of federal Medicaid law, thereby enabling the state to expand coverage. Examples of current waiver programs are the state's home- and community-based long-term care programs (including the community options waiver program, the community integration program, and the long-term care children's waiver program), SeniorCare, Family Care and BadgerCare Plus, described below. Information about the MA waiver programs is also provided in Chapter 21, *Human Services and Aging*.

As a result of the federal Health Care Reform legislation (which is described in detail later in this chapter), beginning in 2014, states will have the ability to expand Medicaid coverage and receive enhanced federal funding for newly eligible Medicaid beneficiaries.

Medicaid is funded jointly by the federal government and the State of Wisconsin. In general, services are reimbursed approximately 59% by the federal government and 41% by the state government.

BadgerCare Plus

BadgerCare Plus Information:
1-800-362-3002
http://dhs.wisconsin.gov/badgercareplus/

BadgerCare Plus is a Medicaid program that offers an array of health care services for low-income persons. The program was previously broken into tiers, but on April 1, 2014, all BadgerCare Plus members became covered under the Standard Plan. Adults with household incomes at or below 100% of the federal poverty level (FPL) are eligible for BadgerCare Plus Standard. Pregnant women

with household incomes at or below 300% of the FPL and children (under 19 years old) with household incomes at or below 300% of the FPL are also eligible. Copayments for services are between $0.50 and $3 per service. There are no copayments for preventive services.

BadgerCare Plus is funded by federal funds available under Medicaid and under the State Children's Health Insurance Program (SCHIP), state general purpose revenue (GPR) funds, and premiums paid by participants.

SeniorCare

SeniorCare information:
1-800-657-2038

http://dhs.wisconsin.gov/seniorCare/index.htm

SeniorCare is a program that provides prescription drug coverage to eligible elderly persons. To be eligible, a person must be a state resident who is at least 65 years of age, does not receive Medicaid benefits, has an annual household income at or below 240% of the FPL, and pays a $30 annual enrollment fee. There is no asset limit for SeniorCare. The term "household income" is defined by DHS by rule. FPLs are calculated annually and the income eligibility limits for SeniorCare may be found at the DHS website at: http://www.dhs.wisconsin.gov/seniorCare/fpl.htm.

To qualify for coverage under SeniorCare, a participant must meet an $850 annual deductible for prescription drugs. The deductible is $500 for persons with a household income between 160% and 200% of the FPL, and the deductible does not apply to persons with annual incomes of less than 160% of the FPL. After meeting the deductible, the participant is charged a copayment for drug purchases at the rate of $5 for a generic drug and $15 for a brand name drug. In addition, drug coverage is available under SeniorCare for persons whose household income exceeds 240% of the FPL if they spend greater than the amount by which their income exceeds 240% of the FPL on prescription drugs.

SeniorCare is funded by state GPR, federal Medicaid dollars, and enrollment fees.

HIRSP

HIRSP offered health insurance coverage to Wisconsin residents who could not purchase adequate private coverage due to a medical condition, or who lost employer-sponsored group health insurance. HIRSP was an independent authority with its own governing board and was not part of either DHS or OCI.

With the Affordable Care Act requirement that insurers accept anyone who applies for coverage beginning with plans effective January 1, 2014, keeping HIRSP operational was determined to be unnecessary. The 2013-15 Biennial Budget (Act 20) included language to eliminate HIRSP on December 31, 2013; however, in light of problems with the launch of HealthCare.gov, HIRSP was extended through March 31, 2014, to give HIRSP enrollees additional time to purchase a plan during open enrollment. HIRSP coverage ended on April 1, 2014, and all claims were due on June 1, 2014. OCI assumed responsibility for the dissolution of HIRSP on March 1, 2014.

THE AFFORDABLE CARE ACT AND THE FEDERAL EXCHANGE

In March 2010, Congress passed the Patient Protection and Affordable Care Act (P.L. 111-148 and P.L. 111-152), often referred to as the "ACA." Almost immediately, the ACA was challenged on constitutional grounds. In June 2012, the U.S. Supreme Court upheld the ACA in a landmark decision, *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012). In the *National Federation* decision, the Court rejected only one provision of the law, the "Medicaid expansion," and ruled that the provision must be optional for the states. As discussed below, Medicaid was not expanded in Wisconsin. Below is an overview of the health insurance market reforms introduced by the ACA, including a description of the optional Medicaid expansion provision.

Overview of Key ACA Provisions

The ACA required most individuals to have health insurance beginning in 2014. Tax penalties, phased-in over several years, will be assessed against those who do not have qualifying coverage. The tax penalty is set to increase each year as follows:

- In 2014, it will be the greater of $95 per adult or 1% of taxable income.
- In 2015, it will be the greater of $325 per adult or 2% of taxable income.
- In 2016, it will be the greater of $695 per adult or 2.5% of taxable income.
- After 2016, the tax penalty increases annually based on a cost-of-living adjustment.

Tax penalties will not be assessed against persons below certain income levels, those for whom premiums for the lowest-cost plan exceed 8% of an individual's income, and certain others. The law provides cost-sharing subsidies and premium credits to individuals based on income level and cost of coverage.

The ACA also requires employers with 50 or more employees to provide health insurance to employees beginning in 2014, and will impose assessments for noncompliance. The ACA offers tax credits to small businesses (i.e., fewer than 50 employees) to make employee coverage more affordable.

The ACA provided funding to states to establish state-based American Health Benefit Exchanges and Small Business Health Options Program Exchanges, through which individuals and small businesses may purchase qualifying coverage. However, Wisconsin opted not to create its own exchange and, therefore, Wisconsin is currently participating in the federally operated health exchange, described below.

The ACA established new requirements for private insurance companies, including requiring dependent coverage up to age 26 for all individual and group policies, prohibiting pre-existing condition exclusions, prohibiting lifetime caps on coverage, and requiring new private plans to cover preventive services with no copayments or deductibles.

All insurers must sell a health insurance policy to any person who applies for coverage unless fraudulent information is provided by the consumer. This is referred to as "guaranteed issue."

The ACA requires insurance plans to spend 80% or 85% of premium dollars on medical services. Insurers that do not meet these thresholds must provide rebates to policyholders.

Plans are required to offer the following "essential health benefits":

- Ambulatory patient services.
- Emergency services.
- Hospitalization.
- Maternity and newborn care.
- Mental health and substance use disorder services, including behavioral health treatment.
- Prescription drugs.
- Rehabilitative and habilitative services and devices.
- Laboratory services.
- Preventive and wellness services and chronic disease management.
- Pediatric services, including oral and vision care.

Plans are categorized into one of four tiers. The tiers and the extent of coverage provided are as follows: bronze plans, on average, cover 60% of expected costs; silver plans cover 70% of these costs; gold plans cover 80%; and platinum plans cover 90%.

All plans offered on the federal exchange must limit in-network annual out-of-pocket expenses to $6,350 for self-only coverage and $12,700 for family coverage.

Insurance premium credits for federal taxes are available for individuals and families with incomes between 100% and 400% of the FPL, which is $11,670 to $46,680 for individuals and $23,850 to $95,400 for a family of four.

The premium tax credit is refundable which means that if a person has no tax liability, rather than receiving a credit against their taxes, the amount of the credit is paid directly to the individual's insurance company to help reduce the cost of health insurance. Premium tax credits are available only for health insurance that is purchased through a health care exchange. A premium tax credit calculator is available on the Kaiser Family Foundation website: http://healthreform.kff.org/subsidycalculator.aspx.

The Federal Health Insurance Exchange

As discussed above, Wisconsin chose to establish a state-operated exchange, and therefore, Wisconsin participates in the federal health insurance exchange (exchange), also referred to as the "marketplace." The federal exchange operates a website designed to help consumers

find and purchase health insurance. The website for the federal exchange is www.healthcare.gov.

Although the ACA requires most individuals to have health insurance or face tax penalties, it does not require individuals to purchase health insurance through the exchange. Likewise, insurers may sell their plans through the federal exchange or privately, off the federal exchange.

The exchange website allows consumers to: (1) check their eligibility for government assistance programs, including any subsidies available to help pay for private health insurance; (2) compare health insurance plans based on cost; and (3) link consumers to insurers for the purchase of health insurance after they choose a plan in which they are interested.

In general, health insurance may be purchased on the exchange only during periods of "open enrollment." For coverage starting in 2015, the proposed Open Enrollment Period is scheduled for November 15, 2014-February 15, 2015. Individuals and families may also qualify for special enrollment periods outside of open enrollment if they experience certain triggering events, such as: (1) loss of minimum essential coverage; (2) gaining or becoming a dependent; (3) newly gaining citizenship; and (4) becoming newly eligible for premium tax credits. Individuals and families generally have 60 days from the time of a triggering event to enroll.

According to the federal DHHS Assistant Secretary for Planning and Evaluation Office of Health Policy, as of mid-April, 2014, 139,815 Wisconsin residents had selected a health insurance plan through the federal exchange.

Medicaid Expansion Under the ACA

For more information on the implementation of the ACA in Wisconsin, see:

http://www.dhs.wisconsin.gov/publications/P0/00634.pdf

A comprehensive health reform portal maintained by the Henry J. Kaiser Family Foundation can be found at:

http://kff.org/health-reform/

A healthcare information web portal maintained by the federal DHHS can be found at:

http://www.healthcare.gov

The ACA also introduced changes to Medicaid to provide broader coverage for low-income individuals and families. Most significantly, this included an expansion of Medicaid eligibility to childless adults earning up to 138% of the FPL, along with an increased level of federal matching funds. Wisconsin chose not to expand Medicaid eligibility and thus all Wisconsin residents with an income above 100% of the FPL must obtain private insurance on the marketplace.

Health Insurance Regulation

Office of the Commissioner of Insurance Oversight

Health insurance, including health insurance sold on the federal exchange, is regulated by the Office of the Commissioner of Insurance (OCI), both with respect to financial stability and consumer protection. All insurers must be licensed in Wisconsin and meet state marketing and financial standards. The OCI regulates all rate and form filings, performs financial and market conduct examinations, and responds to consumer complaints. The OCI also regulates health insurance agents and licensed navigators who help consumers to find health insurance coverage.

Types of health insurance regulated by the OCI include plans in which an insured person may select from any health care providers to provide covered services (generally referred to as an "indemnity plan") or plans in which an insured person is limited to or is given an incentive for obtaining covered services from health care providers selected by the plan (generally referred to as a "defined network plan" or "managed care plan"). Types of defined network plans include health maintenance organizations (HMOs) and preferred provider plans (PPPs; also referred to as "preferred provider organizations" or "PPOs").

Insurance laws include various types of mandates that must be met by insurance plans. These health insurance mandates generally fall into the following categories: (1) requiring coverage of a particular type of health care provider (e.g., a chiropractor or an optometrist); (2) requiring coverage for the treatment of a particular disease or condition (e.g., temporomandibular disorders or breast reconstruction); (3) requiring coverage of a particular type of health care treatment, service, or equipment (e.g., mammograms or lead poisoning screening); and (4) requiring coverage for particular persons because of their relation to the insured person (e.g., newborn infants or adopted children).

Federal Preemption

In the area of health insurance regulation, state law is preempted by federal law in several areas. For example, certain changes under the ACA relate to consumer grievances against insurance providers. Because these changes have not been incorporated into Wisconsin law, the federal regulations administered by the DHHS concerning grievances currently preempt Wisconsin's rules administered by the OCI.

Similarly, because of the federal Employee Retirement Income Security Act (ERISA), the OCI does not regulate self-insured employee benefit plans. ERISA provides that it supersedes all state laws that relate to employee benefit plans. Therefore, a state's insurance laws, including health insurance mandates, do not apply to such plans. However, ERISA's preemption does not apply to governmental self-insured plans, such as municipal or school district self-insured plans, and the state's insurance laws apply to those plans.

General Patients' Rights

State law contains a range of consumer rights for persons insured under defined network plans. The law sets forth duties of health plans and patients' rights in the following areas: (1) access standards; (2) continuity of care; (3) provider disclosures; (4) quality assurance; (5) use of a physician as a medical director; (6) data systems and confidentiality; and (7) OCI oversight. Included in the statutes are requirements that defined network plans include sufficient numbers, and types, of providers to meet anticipated needs; requirements regarding referrals to specialists, including referrals to obtain obstetric or gynecologic benefits; continuity of care after a provider is no longer included as a selected provider in a defined network plan; prohibitions on penalizing participating providers who discuss all treatment options with insured persons (generally called "gag clauses"); and a requirement for developing a process for selecting participating providers and reevaluating them. The rights and duties relating to defined network plans are generally set forth in ch. 609, Stats., and subch. III of ch. Ins 9, Wis. Adm. Code.

In addition to the above provisions that apply to defined network plans, the statutes also provide protections for insured persons relating to coverage of emergency care and experimental treatment. Those provisions apply to all health benefit plans, not just to defined network plans. The statute relating to emergency care requires that if a health care plan provides coverage of any emergency medical services, it must provide coverage of emergency medical services that are provided in a hospital emergency facility and that are needed to evaluate or stabilize an emergency medical condition. The term "emergency medical condition" is defined in the statutes using a "prudent layperson" definition.

The statutes also require a health care plan that limits coverage of experimental treatment to define the limitation and disclose the limits in any policy. The disclosure must state who is authorized to make a determination on the limitation and the criteria the plan uses to determine whether a treatment, procedure, drug, or device is experimental. Time deadlines for making a determination and the right of appeal are also included in the statute.

Continuation Rights

Both federal law and Wisconsin law provide for the ability of a person who would otherwise terminate coverage under a group plan to continue to be covered under the group plan for a specified period of time. In addition, Wisconsin law provides for conversion from group plan coverage to individual policy coverage. The federal law is often referred to as "COBRA," since it was created by the Consolidated Omnibus Budget Reconciliation Act of 1985.

Both federal law and Wisconsin law provide for the ability of a person who would otherwise terminate coverage under a group plan to continue to be covered under the group plan for a specified period of time.

Under the federal COBRA law, employees who terminate employment for any reason other than gross misconduct, persons whose hours are reduced, and dependents of those persons, may continue group coverage for up to 18 months. Dependents may continue coverage for up to 36 months if they lose coverage because of death of the employee, divorce of the employee, the dependent has reached the maximum age under the policy, or the employee becomes eligible for Medicare. Disabled employees may continue coverage for up to 29 months.

For more information on continuation rights, visit the DHS' *Consumer Guide to Healthcare*, at:

http://www.dhs.wisconsin.gov/guide/pay/losing.htm

Under the Wisconsin law, continuation rights are available for: (1) the former spouse of a group member who otherwise would terminate coverage because of divorce or annulment; (2) a group member who would otherwise terminate eligibility for coverage except in cases of discharge due to misconduct; and (3) the spouse or dependent of a group member if the group member dies while covered by the group policy and the spouse or dependent was also covered. Generally, the person electing continuation coverage in the group plan may continue such coverage for 18 months. Wisconsin law also permits a terminated insured to choose conversion coverage, without having to show evidence of insurability, under individual coverage that is reasonably similar to the coverage under the group policy.

Persons electing continuation coverage under Wisconsin law may be required to pay the full premium for such coverage. Under federal law, they may be required to pay up to 102% of the premium.

Wisconsin law on continuation rights covers groups of all sizes, whereas federal law covers only groups of 20 or more employees. However, federal law is more expansive in that it covers persons under self-insured employee benefit plans, whereas Wisconsin law may not cover these plans because of ERISA preemption.

Public and Preventive Health

At the state level, the public health system is primarily administered by DHS, through its Division of Public Health. The division is further divided into the following bureaus: (1) Communicable Disease and Emergency Response (communicable diseases, sexually transmitted disease programs, AIDS programs, immunization, public health preparedness, and emergency medical services); (2) Community Health

At the state level, the public health system is primarily administered by the DHS, through its Division of Public Health. At the local level, public health services are provided by local public health departments and tribal health centers.

Promotion (nutrition and physical activity, family health, and chronic disease prevention and cancer control); and (3) Environmental and Occupational Health (food safety, health hazard evaluation, radiation protection, and asbestos and lead). The division also includes an Office of Health Informatics (eHealth initiative, population health, vital records, and health care information) and the Office of Policy and Practice Alignment.

A map with links to all local public health departments may be found at:

http://www.dhs.wisconsin.gov/localhealth/index.htm

At the local level, public health services are provided by local public health departments and tribal health centers. In most counties, the local health department is a county agency. However, in a handful of counties, local health departments may be any of the following: (1) a joint city-county health department; (2) a municipal or multiple municipal health department; or (3) a combination of a county health department and municipal health departments. A number of local health departments have also been granted agent status by DHS for the purposes of performing environmental health activities such as issuing permits to and making investigations of hotels, restaurants, campgrounds, swimming pools, and similar types of entities. In addition, all 11 American Indian tribes in Wisconsin operate tribal health clinics, and the Gerald L. Ignace Indian Health Center in Milwaukee serves members of all tribes in Wisconsin. Most tribal health centers offer services to non-tribal members as well.

Health Facilities and Residential Programs

State Licensing

Information about facilities regulated by the DHS is available at:

http://dhs.wisconsin.gov/rl_DSL/index.htm

The state licenses and certifies a number of health facilities and caregiving residential programs.

The Division of Quality Assurance in the DHS licenses adult family homes, community-based residential facilities (CBRFs), and residential care apartment complexes (RCACs) for adults, as well as hospitals, hospices, and nursing homes. CBRFs are facilities that serve five or more adults who do not require care above intermediate level nursing care and who receive no more than three hours of nursing care per week. RCACs are places where five or more adults reside and that consist of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, an individual bathroom, sleeping and living areas, and that provide to residents not more than 28 hours per week of services that are supportive, personal, and nursing services.

Although the term “assisted living” is commonly used, this is not actually a type of licensed facility. Typically, when that term is used, the facility referred to is either a CBRF or an RCAC. Residential programs that provide services to minors and that are licensed by the

Department of Children and Families (DCF) include foster homes, treatment foster homes, group homes, and residential care centers for children and youth. The statutes also allow a foster home or treatment foster home to be licensed by a county human services or social services department or by a licensed child welfare agency.

Zoning Exceptions for Certain Residential Facilities

Information about statutes governing placement of community living arrangements is provided in Legislative Council Information Memorandum 2010-11, at:

http://www.legis.wisconsin.gov/lc

The statutes provide that, under specified circumstances, certain residential caregiving programs, including CBRFs for adults and group homes and residential care centers for children, may locate in areas that are locally zoned for residences of families. These programs, which are referred to generally as "community living arrangements" in the statutes, may locate in specified residential areas depending on the number of residents in the facility. In addition, the statutes provide that no community living arrangement may be established within 2,500 feet, or a lesser distance established by ordinance, of any other community living arrangement. However, a federal district court in Wisconsin has held that the distance requirement in the law is preempted by the federal Fair Housing Amendments Act and the federal Americans with Disabilities Act. Information about these facilities and programs is included in Chapter 21, *Human Services and Aging*.

Health Professionals

Licensing and Certification

Examining boards and affiliated credentialing boards in the Department of Safety and Professional Services license and certify a number of health care professionals, including nurses, chiropractors, dentists and dental hygienists, physicians, physician assistants, respiratory care practitioners, podiatrists, dieticians, athletic trainers, occupational therapists and occupational therapy assistants, optometrists, pharmacists, acupuncturists, psychologists, social workers, marriage and family therapists, professional counselors, hearing instrument specialists, speech-language pathologists, and audiologists. The DHS licenses emergency personnel, including first responders and various categories of emergency medical technicians.

An examining board is a part-time body that sets standards of professional competence and conduct for the profession under its supervision; prepares, conducts, and grades examinations; grants licenses; and examines complaints. An affiliated credentialing board generally has the same authority as an examining board, but is attached to an examining board and must submit its proposed rules to the examining board to which it is attached for comment.

In addition to providing for a basic credential, such as a license or certificate, the statutes also allow certain health care providers who satisfy additional requirements to engage in a higher level of practice than that provided under the basic credential. For example, a nurse who satisfies additional requirements established by the Board of Nursing is authorized to issue prescription orders; such a nurse is referred to as an advanced practice nurse prescriber.

Caregiver Background Checks

More information about the caregiver background check law is available at:

http://www.dhs.wisconsin.gov/caregiver/index.htm

Under Wisconsin law, certain entities regulated by the DHS or the DCF or county departments of human services or social services are required to conduct a background check on employees with direct client contact at the time of employment and every four years after that. The background check involves a criminal history search from records maintained by the Department of Justice, information maintained by the DHS concerning abuse of patients, and other specified information. The entities covered by the law include nursing homes, CBRFs, hospitals, home health agencies, child welfare agencies, and group homes. In addition to applying to these entities, the law also applies to regulatory agencies, such as the DHS, the DCF, and county departments with respect to licenses and certificates for those entities.

Under the caregiver background check law, the regulated entities may not hire or contract with a caregiver if the person has engaged in certain misconduct or been convicted of a "serious crime," as defined by statute. The statutory definition of that term includes a number of serious crimes and includes additional crimes that are considered serious if the entity is one that serves children. However, the law provides a process by which a person who has engaged in certain misconduct or been convicted of a serious crime may demonstrate that he or she has been rehabilitated.

Medical Malpractice

Any person, or certain relatives of a person, who is injured by the malpractice of a health care provider may sue for economic and noneconomic damages. Noneconomic damages are intended to compensate for pain and suffering, loss of companionship, mental distress, and loss of enjoyment of life.

Current law limits noneconomic damages to $750,000 per occurrence of medical malpractice. Current law also limits damages for loss of society and companionship to certain relatives recoverable in a wrongful death action against a health care provider to $500,000 in the case of a deceased minor and $350,000 in the case of a deceased adult.

Wisconsin law requires specified health care providers (including physicians, nurse anesthetists, and hospitals) to carry insurance or self-insure for liability up to statutorily specified levels. The level is $1,000,000 per occurrence and $3,000,000 for all claims in a year. The law also requires those health care providers to pay annual assessments into the Injured Patients and Families Compensation Fund, which then provides coverage for medical malpractice claims in excess of those amounts. The Injured Patients and Families Compensation Fund is administered by OCI.

Advance Directives

Forms for living wills and powers of attorney for health care (or a power of attorney for finance and property) may be obtained from the DHS, at:

http://dhs.wisconsin.gov/forms/advdirectives/index.htm

A living will and a power of attorney for health care are documents that are referred to generally as advance directives. They are designed to specify the wishes of a competent person with regard to health care to be rendered when the person is no longer capable of making health care decisions. A living will is a directive to physicians not to use life-sustaining procedures or feeding tubes when the person is in a terminal condition or persistent vegetative state. A power of attorney for health care is a document that authorizes another individual, known as a "health care agent," to make health care decisions for the person when the person is incapacitated. While use of a living will is limited to persons who are in a terminal condition or persistent vegetative state, a power of attorney for health care may be used at any time that the person is incapacitated, regardless of whether the person is in a terminal condition. Therefore, the power of attorney for health care is not limited to end-of-life decision-making.

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs, including Medical Assistance, BadgerCare, and related programs. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb/.

2. More information regarding the ACA may be found on the following websites:

- The National Conference of State Legislatures maintains a health reform implementation website at: http://www.ncsl.org/issues-research/health.aspx.
- The Henry J. Kaiser Family Foundation maintains a comprehensive health reform web portal at: http://kff.org/health-reform/.
- The federal DHHS maintains a healthcare information web portal at: http://www.healthcare.gov.

3. The OCI has prepared a number of frequently asked questions informational pages on the ACA, and the federal exchange, found at: http://oci.wi.gov/healthcare_reform.htm.

4. The DHS has prepared a number of consumer publications and websites that describe programs and services under its jurisdiction. These may be found at: http://www.dhs.wisconsin.gov/programs/consumer.htm. Some of the specific items prepared by DHS are as follows:

- Consumer Guide to Health Care: (http://dhs.wisconsin.gov/guide/index.htm).
- Choosing Wisconsin Residential Options: (http://dhs.wisconsin.gov/bqaconsumer/ResidOpts/seek.htm).

5. The Board on Aging and Long Term Care operates a Medigap help line, with a toll-free number of 1-800-242-1060. The help line is designed to answer questions about health insurance, primarily Medicare supplemental policies, long-term care insurance, and other health care plans available to Medicare beneficiaries.

   The Board on Aging and Long Term Care also operates an ombudsman program that serves as an advocate for long-term care consumers who reside in nursing homes or group homes or are participating in the Community Options Program. The toll-free telephone number for the ombudsman program is: 1-800-815-0015.

6. In addition to the toll-free number, persons may contact the Medigap help line or the ombudsman program at: BOALTC@wisconsin.gov or by writing to the Board on Aging and Long Term Care at: 1402 Pankratz Street, Suite 111, Madison, WI 53704-4001.

7. The Legislative Audit Bureau audit reports may be found at: http://www.legis.wisconsin.gov/lab

- *Health Insurance Risk-Sharing Plan Authority* (Audit Report 14-7).
- *Non-Emergency Medical Transportation* (in-progress; expected release Winter 2014-15).
- *Dental Services Grant* (Audit Report 13-13).
- *Injured Patients and Families Compensation Fund* (Report 13-4).
- *Medical Assistance Program* (Report 11-15).

GLOSSARY

ACA: Affordable Care Act, or the Patient Protection and Affordable Care Act. The federal health reform law passed by Congress in 2010.

APNP: Advanced practice nurse prescriber. A nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or clinical nurse specialist who meets specified requirements and is granted a certificate to prescribe drugs by the Board of Nursing.

CBRF: Community-based residential facility. A place in which five or more adults live and receive care, treatment, or services, but only limited nursing services.

CMS: Federal Centers for Medicare and Medicaid Services in the federal DHHS.

COBRA: Consolidated Omnibus Budget Reconciliation Act of 1985. This federal law includes provisions for continuation of group health care coverage after a person would otherwise leave the group.

Defined network plan: A health care plan in which an enrollee's choice of health care providers is generally limited to those selected by the plan, although under some of the plans, enrollees may choose other providers and pay a larger share of the cost. Types of defined network plans include health maintenance organizations (HMOs) and preferred provider plans (PPPs).

DHHS: Federal Department of Health and Human Services.

ERISA: Employee Retirement Income Security Act. This federal law preempts states from applying their insurance laws to nongovernmental self-insured plans.

Health Insurance Exchange or Marketplace: The website maintained by the federal government that facilitates the purchase of health insurance by consumers.

Federal Poverty Level (FPL): This level is set by the federal government and varies based on family size. Individuals with incomes below the poverty level are believed to be lacking the resources to meet their basic needs.

Navigator: A federally funded entity or individual who helps consumers determine their eligibility for public assistance programs. They also help consumers compare health insurance options displayed on the federal exchange website after consumers input their preferences.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 20 – HOUSING AND LANDLORD-TENANT LAW

A wide diversity of laws and programs combine to provide a framework for housing, real estate, and landlord-tenant transactions in Wisconsin. This chapter contains sections on three housing-related topics: housing assistance, housing discrimination, and residential landlord-tenant law.

Brian Larson, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Introduction 1
Housing Assistance 1
HUD Programs 1
DOA Programs 3
WHEDA Programs 6
Constitutional Issue 6
Housing Discrimination 8
Prohibited Grounds for Discrimination 8
Wisconsin Fair Housing Law 9
Enforcement and Complaints 10
Residential Landlord-Tenant Law 11
State Regulation of Landlord-Tenant Law 11
Severability of Rental Agreements and Prohibited Provisions 12
Recent Changes in Landlord-Tenant Law 13
Additional References 15
Glossary 15

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

This chapter contains an overview of the main laws and programs in this area.

The section on ***housing assistance*** provides information on financial assistance available through various government programs to subsidize the cost of housing. The key federal agency involved in housing is the U.S. Department of Housing and Urban Development (HUD), which administers numerous assistance programs. Both the Wisconsin Housing and Economic Development Authority (WHEDA) and the Department of Administration (DOA) have primary roles at the state level in administering housing assistance for low- and moderate-income families. In addition, the DOA administers various energy assistance and weatherization programs.

Federal and state housing assistance programs are administered in Wisconsin by HUD, WHEDA, the Department of Veterans Affairs (DVA), and the DOA.

The section on ***housing discrimination*** describes federal and state laws prohibiting discrimination in real estate transactions, often referred to as "fair housing" laws. At the federal level, this includes the Fair Housing Act, which is administered by HUD. In the State of Wisconsin, fair housing law is administered primarily by the Department of Workforce Development (DWD). In addition, local government and organizations such as the Metropolitan Milwaukee Fair Housing Council play a role in providing fair housing services.

The section on residential ***landlord-tenant*** law describes general law governing the rental of residential property. Specific information is provided regarding severability of rental agreements and prohibited provisions, as well as an overview of recent changes in landlord-tenant law made by the Legislature.

HOUSING ASSISTANCE

This section on housing assistance is organized in three parts, addressing the programs administered by HUD, the DOA, and WHEDA.

HUD Programs

HUD – Wisconsin Field Office:

414-227-3214

http://www.hud.gov/local

HUD administers numerous housing assistance programs, as described below. More information about any of these programs may be obtained through HUD's Wisconsin field office in Milwaukee.

HUD programs include:

- **Mortgage Insurance Program**. HUD supports homeownership by low- and moderate-income families through the Federal Housing Administration (FHA) program. The FHA insures mortgages against loss, thus encouraging lenders to make loans to people who might not otherwise be able to meet the larger down payment requirements or higher interest rates that would be required in the absence of mortgage insurance.

HUD was created by Congress in 1965. HUD's mission is to help both low- and moderate-income families by creating strong, sustainable, inclusive communities, and quality affordable homes for all.

- **Housing Counseling Programs**. HUD administers a grant program to sponsor housing counseling agencies that provide services to homebuyers, homeowners, low- to moderate-income renters, and the homeless. Counselors provide advice on avoiding foreclosure, homebuying, renting, defaults, credit issues, and reverse mortgages. A list of HUD-approved counseling agencies may be found at: http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm.
- **Making Home Affordable (MHA) Program**. The MHA program is designed to deliver mortgage relief and help homeowners avoid foreclosure by reducing monthly loan payments, reducing the loan's interest rate, and modifying second mortgages. MHA also includes assistance specifically designed to assist homeowners who are unemployed; whose homes have decreased in value and who now owe more on their mortgages than their homes are worth; or who are veterans with loans that are insured or guaranteed by the DVA. More information of all MHA program options may be found at: http://www.makinghomeaffordable.gov/programs/view-all-programs/Pages/default.aspx.
- **Public Housing Program**. This program provides housing at affordable rent for eligible low-income families, the elderly, and persons with disabilities. Local housing agencies receive HUD funds to manage the housing and determine applicant eligibility based on income limits developed by HUD.
- **Housing Choice Voucher Program**. This program, formerly known as "Section 8," also provides assistance to low-income renters and first-time homebuyers. To be eligible for the program, a renter must have income below 50% of an area's median income. Under the program, participants must contribute 30% of their adjusted monthly income for rent. The program then issues a voucher for the difference between the participant's contribution and the area's fair market rent. Participants are responsible for rent in excess of the fair market rent. Local public housing agencies (PHAs) administer the housing choice voucher program. A list of all PHAs in Wisconsin and links to their websites may be found at: http://www.hud.gov/offices/pih/pha/contacts/states/wi.cfm.

DOA Programs

The Division of Housing in the DOA has the primary responsibility for administering most of the housing grant and loan programs funded by state or federal dollars.

The DOA's Division of Housing is responsible for administering most of the state or federally funded housing grant and loan programs. In doing so, it also prepares a comprehensive five-year state housing strategy plan called the "State of Wisconsin Consolidated Plan."

In connection with this role, the department prepares the **State of Wisconsin Consolidated Plan**, which is a comprehensive five-year state housing strategy plan. The DOA's Division of Energy Services also administers several programs for home energy assistance and for home weatherization, as described below.

State of Wisconsin Consolidated Plan

Section 16.302, Stats., requires the DOA to prepare a comprehensive state housing strategy plan, known as the State of Wisconsin Consolidated Plan, once every five years. The plan serves as the state's application to HUD for key federal program funds. It also acts as a plan for distributing federal and state dollars to a variety of housing programs, community programs, and economic development programs. The consolidated plan currently in effect for 2010–15 was prepared by the former state Department of Commerce.

The current *State of Wisconsin Consolidated Plan* is available on DOA's website at:

http://www.doa.state.wi.us

Programs Financed With State Funds

The DOA housing programs financed with state funds include the following:

- The **Housing Cost Reduction Initiative (HCRI) Program**. HCRI provides direct financial assistance to reduce the housing costs of low- and moderate-income households. Funds may be used for assistance to eligible homebuyers and eligible homeowners facing foreclosure. Funds are awarded to local governments, tribes, and organizations. [s. 16.303, Stats.]
- The **Homeless Prevention Program (HPP)**. HPP provides funds for security deposits, short-term rental assistance, and utility costs. Funds for HPP come from the HCRI program. [s. 16.303, Stats.]
- The **Transitional Housing Grant Program**. This program provides competitive grants to organizations and county or municipal governments for the provision of transitional housing and associated supportive services for the homeless, to facilitate transition to self-sufficiency. [s. 16.306, Stats.]
- The **Interest Bearing Real Estate Trust Account (IBRETA) Program**. IBRETA is funded from earnings on interest-bearing real estate common trust accounts into which

real estate brokers and salespersons deposit down payments, earnest money, and similar types of real estate payments. Interest or dividends from IBRETA accounts are sent to the state to provide funds for programs serving homeless individuals and families. [s. 16.307, Stats.]

- The **State Shelter Subsidy Grant (SSSG) Program**. SSSG gives formula-based grants to support homeless shelter facilities and services for homeless persons to recipients including nonprofit organizations, federally recognized American Indian tribes or bands, housing and community development authorities, and county or municipal governments. [s. 16.308, Stats.]
- The **Wisconsin Fresh Start (WFS) Program**. WFS, created in 1998 through an Executive Order of the Governor, replicates a City of Madison program designed to provide at-risk young people with education, employment skills, and career direction leading to economic self-sufficiency. The work component of WFS includes new construction or rehabilitation of housing into well-built, affordable dwellings for low- and moderate-income residents.

Programs Financed With Federal HUD HOME Funds

The DOA also administers a series of initiatives financed with HUD funding, through the Home Investment Partnerships program, generally referred to as the HOME program. This HOME program is separate from WHEDA's home ownership mortgage loan program, described below, which also uses HOME as an acronym. The HUD-funded HOME program primarily helps households having incomes no greater than 80% of county median income, although this threshold drops to 60% for rental rehabilitation and home rental housing development programs for most households. These programs include the following:

- The **HOME Homebuyer and Rehabilitation (HHR) Program**. HHR provides grants to local organizations assisting qualified low-income homebuyers and landlords. Assistance includes subsidization of housing rehabilitation expenses, acquisition costs such as down payments and closing costs, or construction expenses for single-family, owner-occupied dwellings. The program also provides grants and low-interest loans for repairs to rental units that are leased at or below fair market rental levels to low-income persons.
- The **HOME Rental Housing Development Program**. This program funds projects leading to additional rental units for low-income households, through new construction or the acquisition and rehabilitation of existing properties. Awards are made to community housing development organizations that sponsor the developments. Funds are also set aside for WHEDA to piggyback with low-income housing tax credits and multifamily programs.
- The **HOME Tenant-Based Rental Assistance Program**. This program provides funds through local governments, housing authorities, and nonprofit organizations for

rental assistance and support services coordinated by the participating agency, to help homeless persons and to prevent homelessness.

Programs Financed With Other Federal Funds

In addition, the DOA administers various other programs funded with federal dollars, including the following:

- The **Emergency Shelter Grant (ESG) Program**. Under ESG, the Division of Housing distributes federal grants for emergency shelters, homeless prevention programs, and services for homeless persons to eligible applicants such as cities, counties, tribal agencies, and private, nonprofit agencies.
- The **Critical Assistance (CA) Program**. CA provides financial assistance to reduce the housing costs of low- and moderate-income households. Grant awards may be used to provide rental assistance and assistance with mortgage payments, property taxes, and utility arrearages to avoid foreclosure.
- The **Small Cities Community Development Block Grants (CDBG)** housing component. This program provides funds for grants to local governments for housing programs which principally benefit low- and moderate-income households. The goal of the program is to upgrade the quality and expand the supply of decent, safe, and sanitary housing for low- and moderate-income households.
- The **Community Development Block Grant Revolving Loan Fund (CDBG-RLF)**. CDBG-RLF provides loans to low and moderate-income households (defined as households at or below 80% of the county median income), to make needed home repairs. Loans may also be made to local landlords in exchange for an agreement to rent at an affordable rate to tenants that meet this income level.
- The **Housing Opportunities for Persons with AIDS (HOPWA) Program**. HOPWA helps persons affected by AIDS/HIV and their families develop long-term strategies for meeting their housing needs and preventing homelessness.
- The **Projects for Assistance in Transition from Homelessness (PATH)**. PATH provides funds to local agencies to serve homeless individuals with serious mental illnesses and individuals with co-occurring substance abuse disorders.
- The **Lead Hazard Control Program**. The Division of Housing administers this program, which provides lead abatement services to eligible dwelling units throughout Wisconsin, excluding the Cities of Milwaukee, Sheboygan, and Racine, and the Counties of Rock and Kenosha. The most recent program funding was from the 2009 Federal American Recovery and Reinvestment Act.

Programs for Home Energy Assistance and Weatherization

As stated above, the DOA's Division of Energy Services administers several programs for home energy assistance and for home weatherization. These programs include the following:

- The **Wisconsin Home Energy Assistance Program** (WHEAP). This program provides cash benefit assistance in the form of heating costs, electric costs, and energy crises. WHEAP operates with both federal and state funding.
- **Low-Income Home Energy Assistance Program** (LIHEAP). This program is established under s. 16.27, Stats. Under LIHEAP, low-income households are provided with cash benefits and services in the form of heating assistance, crisis assistance, and emergency furnace repair and replacement.
- The **Wisconsin Weatherization Assistance Program**. The DOA contracts with various community action agencies, housing authorities, local governments, and other non-profit organizations to provide weatherization services to eligible households. The weatherization services are designed to reduce home heating bills, save energy, and make the home warmer in the winter and cooler in the summer. Information about this program is available at: http://homeenergyplus.wi.gov/.

WHEDA Programs

Many low- to moderate-income Wisconsin households are assisted by WHEDA, which sells mortgage revenue bonds to finance housing development, and provides mortgage loans to qualifying individuals at below-market interest rates. WHEDA also administers three federally funded programs on behalf of the state, as described below. For constitutional reasons, WHEDA is organized as an independent authority, and not a state agency.

WHEDA incurs debt by issuing bonds, secured by a capital reserve fund, to finance private housing construction and loans. To avoid a possible violation of Wis. Const. art. VIII, s. 7, WHEDA is an authority, not a state agency.

Constitutional Issue

Article VIII, Section 7, of the Wisconsin Constitution, authorizes the state to incur debt to defend itself and for other public purposes, but does not explicitly authorize the state to incur debt by selling mortgage revenue bonds to finance private housing. To avoid a constitutional challenge, the Legislature created WHEDA as an authority, not a state agency, so that its operating budget is not included in the state budget. Instead, WHEDA's operating budget is financed primarily from interest earnings on loans it makes, from its investments, and from administrative fees it assesses. The Wisconsin Supreme Court agreed that as an authority, WHEDA is not a state agency, and held that the state does not have an enforceable legal obligation to back its bonds. [*State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391 (1973).]

WHEDA Housing Programs for Homebuyers and Homeowners

WHEDA administers the following programs:

- **WHEDA Fannie Mae Advantage (or WHEDA Advantage) Program**. This program provides first mortgage loans to qualified low- and moderate-income homebuyers. The

program allows the purchase of a single-family home or a duplex and also provides loans for major rehabilitation of a home (at least 33% of the purchase price of the home). Among the various types of assistance, WHEDA Advantage loans provide down payment assistance and assistance with closing costs. The program is based on a national lending initiative agreement between Fannie Mae and state housing finance agencies.

- **WHEDA FHA Advantage Program**. This program is similar to the WHEDA Advantage program. It provides low-cost mortgage loans to qualified low- and moderate-income homebuyers with flexible underwriting. The borrower may purchase an existing single-family home or a HUD reviewed and approved condominium. The borrower must also participate in homebuyer education.
- **Home Improvement Advantage Loan Program**. This program provides loans for home improvement to low- and moderate-income households to repair their homes or to improve home energy efficiency.
- **Easy Close Advantage Program**. Easy Close Advantage offers loan amounts to homebuyers of between either $3,000 and $5,000, or between 3.0% and 3.5% of the purchase price, whichever is greater. The loan may be used for a down payment on a home, or for closing costs and homebuyer education expenses.
- **WHEDA Federal Home Bank of Chicago (FHLBC) Advantage**. This financing option provides assistance to reduce the amount of cash needed to buy a home and to reduce monthly mortgage payments. Among other program requirements, to be eligible, the borrower must use a WHEDA Advantage mortgage and must be receiving other down payment assistance from FHLBC.
- **Property Tax Deferral Loan Program**. Under this program, low-income elderly homeowners are able to convert home equity into income to pay property taxes.

WHEDA Housing Programs for the Development and Rehabilitation of Housing

Other programs administered by WHEDA to encourage the development of housing for low- to moderate-income persons include the following:

- **WHEDA Foundation Grant Program**. Under this program, grants are provided by the WHEDA Foundation, a nonprofit corporation, founded by WHEDA, to nonprofit organizations and local governments for improving housing opportunities for low- and moderate-income persons, elderly persons, disabled persons, and persons in crisis.
- **Multifamily Housing Programs**. WHEDA provides numerous loan options to assist in the development and rehabilitation of affordable multifamily housing for low- to moderate-income persons, homeless persons, or persons with disabilities. Some loans are short term and others are long term.

Federally Funded Programs Administered on Behalf of the State

WHEDA administers the following federally funded housing programs on behalf of the state:

- **Low-Income Housing Tax Credit Program**. WHEDA administers the state's low-income housing tax credit program, which assists the development or rehabilitation of affordable rental housing.
- **HUD Housing Choice Voucher Program**. This program is described under HUD programs above. WHEDA acts on behalf of the state to distribute rental vouchers for low-income Wisconsin households in communities that do not have local housing agencies.
- **WHEDA Preservation Revolving Loan Fund (PRLF)**. PRLF is funded by the U.S. Department of Agriculture. WHEDA uses PRLF funds to allocate loans to rural multifamily developments in communities of 20,000 or less if the multifamily housing integrates low-income families and individuals, as well as people who are elderly or have disabilities.

Housing Discrimination

Housing discrimination is prohibited under the federal Fair Housing Act and Wisconsin's Fair Housing Law. HUD's Office of Fair Housing and Equal Opportunity administers the federal Fair Housing Act. It also establishes national policies relating to fair housing. At the state level, the Equal Rights Division in the DWD is primarily responsible for administering and enforcing Wisconsin's fair housing law. The DWD also provides technical assistance to local governments and private nonprofit organizations. At the local level, in some areas, organizations such as fair housing councils help individuals understand their rights with respect to fair housing.

Prohibited Grounds for Discrimination

Federal Fair Housing Act

The federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, is codified at 42 U.S.C. s. 3601, *et seq*. Traditional grounds for discrimination prohibited by the federal Fair Housing Act are race or color, national origin, religion, and sex. Disability and familial status were added in 1988. Each of these prohibited grounds for discrimination is a characteristic that defines a "protected class" of persons, and those individuals are protected by the law from discrimination based on the characteristic.

The federal Fair Housing Act prohibits housing discrimination based on race, color, national origin, religion, sex, disability, or familial status.

With respect to disability, the Fair Housing Act prohibits the refusal of reasonable modifications at the expense of the disabled person. It also prohibits the refusal of reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary for persons with disabilities to have the equal opportunity to use and enjoy the dwelling. The Fair Housing Act requires certain multifamily dwellings to be designed and constructed as accessible housing.

With respect to familial status, the Fair Housing Act includes prohibitions on discrimination based on characteristics such as being pregnant or having children under the age of 18 living with parents or legal custodians, with some exceptions. [42 U.S.C. ss. 3604-3606.]

Covered Housing

The federal Fair Housing Act covers most housing, but generally excludes single-family housing sold or rented without the use of a broker, as well as owner-occupied buildings with no more than four units.

Accessibility Requirements

The federal Fair Housing Act imposes accessibility requirements for persons with physical disabilities on multifamily housing, which include requirements related to sizing of passageways, placement of door handles and outlets, and access to existing common areas. The Act applies to buildings with ***four or more*** dwelling units first ready for occupancy after March 13, 1991.

Wisconsin Fair Housing Law

Wisconsin's Fair Housing Law, also known as the "open housing law," is similar to its federal counterpart. However, the state law prohibits discrimination based on a wider range of characteristics than federal law. State law prohibits housing discrimination against the same protected classes as federal law, as well as: (1) sexual orientation; (2) marital status; (3) status as a victim of domestic abuse, sexual assault, or stalking; (4) lawful source of income; (5) age; and (6) ancestry. [s. 106.50 (1m) (h), Stats.]

Wisconsin's Fair Housing Law protects the following six additional classes not found in federal law: (1) sexual orientation; (2) marital status; (3) status as a victim of domestic abuse, sexual assault, or stalking; (4) lawful source of income; (5) age; and (6) ancestry.

With respect to disability and familial status, the Wisconsin Fair Housing Law includes similar provisions to the Federal Fair Housing Act.

Covered Housing

Wisconsin's open housing law differs from the federal Act in that it covers single-family residences that are owner-occupied. According to the governing statute: "The legislature

finds that the sale and rental of single-family residences constitute a significant portion of the housing business in this state and should be regulated." [s. 106.50 (1), Stats.]

Accessibility Requirements

State law also imposes accessibility requirements for persons with physical disabilities on multifamily housing. Accessibility requirements under the state open housing law are similar to those under the federal Act. The state law applies to housing first ready for occupancy on or after October 1, 1993, consisting of ***three or more*** dwelling units and including ***at least one*** elevator.

Enforcement and Complaints

Federal and state fair housing laws are enforced primarily in response to complaints initiated by individuals who feel that they have been discriminated against in their search for housing. Complaints may be filed under either law. Some areas of the state are served by a fair housing council, which may assist individuals in the complaint process, as described below.

Complaints Under the Federal Fair Housing Act

A person alleging a violation under the federal Fair Housing Act has the following two general options for proceeding:

A person may file a complaint with HUD by any of the methods listed on HUD's website at: http://www.hud.gov/complaints/housediscrim.cfm**.**

- A person may file a complaint with HUD no later than one year after the alleged discrimination occurred. HUD will then investigate the claim and determine whether it finds reasonable cause to believe that discrimination occurred. If charges are issued, the person who filed the complaint will not have to pay the costs of pursuing a legal remedy.
- A person may file a civil action at his or her expense in federal district court or state court no later than two years after the alleged discrimination occurred. This option is only available if an administrative law judge has not yet started a hearing.

Information on filing a state fair housing complaint is available on the DWD's Equal Rights Division website: http://www.dwd.state.wi.us/er/discrimination_civil_rights/open_housing_law.htm

A benefit of the first option is that the federal government pays for the proceeding if HUD does not dismiss the complaint, whereas a person choosing the second option does so at his or her own expense.

Complaints Under Wisconsin's Open Housing Law

A person alleging a violation under Wisconsin's open housing law may file a complaint with the DWD's Equal Rights Division no later than one year after the alleged discrimination occurred.

In addition to some differences in state and federal law with respect to the prohibited grounds for discrimination, as described above, the state law requires that a higher threshold be met before charges may be issued on behalf of an individual who brings a complaint. The DWD's Equal Rights Division must find ***probable cause*** to believe that discrimination occurred before charges may be issued, whereas the federal Act requires only ***reasonable cause***.

Fair Housing Councils

A fair housing council is an organization that helps individuals to understand their options for pursuing a complaint under the fair housing laws. Assistance is provided in Milwaukee by the Metropolitan Milwaukee Fair Housing Council, which also helps individuals in other communities find out if their area is served by a fair housing council.

To find out if a particular area is served by a fair housing council, contact:

Metropolitan Milwaukee Fair Housing Council, Inc. (MMFH)

(414) 278-1240

http://www.fairhousingwi.com.

Fair housing councils may conduct investigations using "testing," a method of investigating complaints that compares treatment of various persons seeking housing to determine whether differences in treatment are occurring which may constitute discrimination. Such testing has the potential to yield significant evidence in later administrative hearings or court proceedings. A fair housing council may also refer persons to attorneys experienced in fair housing issues and, in some cases, can itself be a plaintiff.

Residential Landlord-Tenant Law

This section on residential landlord-tenant law describes state regulation in the renting of residential properties. Specific information is provided regarding severability of rental agreements and prohibited provisions. The section also describes recent changes in landlord-tenant law made by the Legislature, which included a modification to the role of the Department of Agriculture, Trade, and Consumer Protection (DATCP) in regulating landlord trade practices.

State Regulation of Landlord-Tenant Law

Residential landlord-tenant law is a mix of statutes, administrative rules, and common law (law derived from court decisions on individual cases). Chapter 704, Stats., sets forth the

main part of Wisconsin statutory law governing landlord and tenant relationships, including important provisions regarding severability of rental agreements and prohibited provisions. The state agency with responsibility for promulgating and administering the main body of rules relating to landlord-tenant law is DATCP. These rules were promulgated as ch. ATCP 134, Wis. Adm. Code (Residential Rental Practices), under DATCP's general statutory authority for the regulation of unfair competition and unfair trade practices.

Severability of Rental Agreements and Prohibited Provisions

Section 704.02, Stats., provides that provisions of a rental agreement are generally severable.

Rental agreement provisions found to be void or unenforceable by reason of statute, rule, regulation, or judicial order are generally severable from the rental agreement itself. This allows the rest of the agreement to be enforceable. Some prohibited provisions are not severable, and render the entire agreement invalid.

If any provision of a rental agreement is determined to be void or unenforceable by reason of any statute, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid provision. An example of a provision that is void and severable from the rental agreement is an agreement to waive any of the duties owed by either the landlord or tenant requiring the property to meet code requirements and be fit for tenants. [s. 704.07 (1), Stats.]

However, under the statutes, certain provisions found to be void or unenforceable will not be severed from the agreement but will instead render the entire lease void and unenforceable. A provision will render an entire rental agreement void and unenforceable if it does any of the following:

- Allows a landlord to do any of the following because a tenant has contacted an entity for law enforcement services, health services, or safety services:
  - Increase rent.
  - Decrease services.
  - Bring an action for possession of the premises.
  - Refuse to renew a rental agreement.
  - Threaten to take any action on the previous four items.
- Authorizes the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures as provided under ch. 799, Stats.

- Provides for an acceleration of rent payments in the event of tenant default or breach of obligations under the rental agreement, or otherwise waives the landlord's obligation to mitigate damages as provided in s. 704.29, Stats.
- Requires the tenant to pay attorney fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement. This does not prevent a landlord or tenant from recovering costs or attorney fees under a court order under ch. 799 or 814, Stats.
- Authorizes the landlord or an agent of the landlord to act on the tenant's behalf in an action arising under the rental agreement.
- States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This does not affect ordinary maintenance obligations of a tenant under s. 704.07, Stats., or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.
- Imposes liability on a tenant for any of the following:
  - Personal injury arising from causes clearly beyond the tenant's control.
  - Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This paragraph does not affect ordinary maintenance obligations of a tenant under s. 704.07, Stats., or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.
- Waives any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition or to maintain the premises during the tenant's tenancy.
- Allows the landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property if the tenant, or someone who lawfully resides with the tenant, is the victim of that crime.
- Allows the landlord to terminate the tenancy of a tenant for a crime committed in relation to the rental property if the rental agreement does not include the required notice related to certain domestic abuse protections available under the statutes.

  [s. 704.44, Stats.]

Recent Changes in Landlord-Tenant Law

The Legislature has enacted changes in the area of landlord-tenant law during the two most recent legislative sessions.

2011 Wisconsin Act 143, Relating to Miscellaneous Landlord-Tenant Provisions and Prohibiting Ordinances Imposing a Moratorium on Eviction Actions

2011 Wisconsin Act 143 made changes in a variety of areas of landlord-tenant law. For example, the Act revised procedures for disputes over security deposits, occupancy beyond termination of the lease, a standardized check-in sheet, and disposition of property abandoned by the tenant. The Act also restricted the ability of local governments to impose a moratorium on eviction actions. For a stand-alone summary of 2011 Wisconsin Act 143, please consult the Legislative Council Act Memo, dated March 26, 2012, which is available here: https://docs.legis.wisconsin.gov/2011/related/lcactmemo/sb466.pdf.

2013 Wisconsin Act 76, Relating to Evictions, Towing Practices, and Prohibitions on Certain Ordinances Regarding Landlords

2013 Wisconsin Act 76 made additional changes in a variety of areas of landlord-tenant law. The Act included further revisions related to disputes over security deposits and evictions. In addition, it created procedures allowing landlords to initiate the towing of illegally parked vehicles and removal of abandoned property, under certain circumstances, which was not possible under prior law without greater involvement from law enforcement. The Act also further restricted local governments from regulating in this area. Specifically, the Act prohibits a city, village, town, or county (municipality) from enacting or enforcing an ordinance that does any of the following:

- Limits a tenant's responsibility or a landlord's right to recover for any damage or waste to, or neglect of, the premises that occurs during the tenant's occupancy of the premises.
- Limits a tenant's responsibility or a landlord's right to recover for any other costs, expenses, fees, payments, or damages for which the tenant is responsible under the rental agreement or applicable law.
- Requires a landlord to communicate to tenants any information that is not required to be communicated to tenants under federal or state law, unless the ordinance has a reasonable and clearly defined objective of regulating the manufacture of illegal narcotics.
- Requires a landlord to communicate to the municipality any information concerning the landlord or a tenant, unless the information: (1) is required under federal or state law; (2) is required of all residential real property owners; or (3) is solely information that will enable a person to contact the owner or, at the option of the owner, an agent of the owner.

For a stand-alone summary of 2013 Wisconsin Act 76, please consult the Legislative Council Act Memo, dated February 28, 2014, available here:

https://docs.legis.wisconsin.gov/2013/related/lcactmemo/act076.pdf

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs and agencies, including state housing programs, the property tax deferral loan program, and WHEDA. The Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
2. DATCP Bureau of Consumer Protection: http://datcp.wi.gov/Consumer/Consumer_Protection/index.aspx.
3. *The Wisconsin Way: A Guide for Landlords and Tenants* (DATCP), available at: http://datcp.wi.gov/Consumer/Wisconsin_Way/index.aspx.
4. *Household Housing Guide: A Guide to Identifying Public Sources of Housing Financial and Informational Assistance for Low- and Moderate-Income Households in Wisconsin*, is a useful document for identifying public sources of housing and financial information and is available on the Division of Housing's website at: http://doa.wi.gov/docview.asp?docid=9089&locid=173.

Glossary

Division of Energy Services: The DOA's Division of Energy Services. The Division administers various weatherization assistance programs to eligible low-income households.

Division of Housing: The DOA's Division of Housing. The Division administers most of the housing grant and loan programs funded by state or federal dollars.

HUD: The U.S. Department of Housing and Urban Development. HUD provides housing and other economic assistance to moderate- to low-income families, including the Housing Choice Voucher Program (formerly known as Section 8 housing). It also investigates claims of housing discrimination arising under federal law.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 21 – HUMAN SERVICES AND AGING

Human services encompasses a wide range of services provided to persons in need, including persons with low income, the elderly, persons with physical and developmental disabilities and mental illness, and children. The federal, state, local, and tribal governments fund and administer an array of human services programs including: Wisconsin Works; child welfare services; mental health and substance abuse services; and community-based long term care and residential care for the elderly and persons with developmental disabilities.

Laura Rose, Deputy Director
Wisconsin Legislative Council

Table of Contents

Introduction 1
Department of Health Services 1
Department of Children and Families 1
Economic Assistance Programs 2
Wisconsin Works 2
Transform Milwaukee and Transitional Jobs Programs 4
Wisconsin Shares Child Care Subsidy Program 4
Supplemental Security Income 5
FoodShare Wisconsin 6
Special Supplemental Nutrition Program for Women, Infants and Children 7
Income Maintenance Administration 7
Human Services and Aging Programs 8
Funding 8
Child Welfare Services 9
Mental Health and Substance Abuse Services 12
Services for the Elderly 15
Community-Based Long Term Care 17
Residential Facilities 23
Additional References 24
Glossary 25

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

Human services and aging programs are administered primarily by two state agencies: the Department of Health Services (DHS); and the Department of Children and Families (DCF).

Department of Health Services

The DHS administers:

- Long term care services, including Family Care and the Medical Assistance (MA) waiver programs.
- Residential long term care programs, including the state centers for persons with developmental disabilities.
- The regulation of various types of long term care facilities, such as nursing homes and other facilities.
- Community-based services for elderly persons, children with long term care needs, and persons with developmental disabilities, hearing and visual impairments, and brain injuries.
- Community-based services for persons with mental illness and alcohol and other drug abuse (AODA) issues.

In Wisconsin, these community-based services are administered primarily on a county level, and the DHS is responsible for distributing various types of block grant funds, including community aids, to counties for the operation of these programs.

Department of Children and Families

The programs administered by the DCF include the following:

- Adoption programs.
- Brighter Futures Initiative.
- Child care licensing, certification, and regulation of the Wisconsin Shares Child Care Subsidy program.
- Child protective services.
- Child support enforcement.
- Child welfare in Milwaukee County.
- Domestic violence and abuse programs.
- Foster care licensing.
- The Kinship Care program.
- The Wisconsin Works (W-2) program.

Economic Assistance Programs

Wisconsin Works

The W-2 program is an economic support program for low-income families. The Division of Family and Economic Security in DCF administers the W-2 program, while counties, private agencies, and tribes ("W-2 agencies") provide services under the terms of contracts signed with DCF. W-2 is funded by state general purpose revenue (GPR), federal Temporary Assistance to Needy Families (TANF) block grant funds, and program revenue, which is primarily from child support collections assigned to the state by public assistance recipients.

Eligibility

The lifetime eligibility limit for W-2 is 60 months; however, extensions may be granted in limited circumstances. Nonfinancial eligibility requirements for W-2 participation include all of the following:

- Being a custodial parent who is at least 18 years old.
- Being a U.S. citizen or qualifying alien.
- Residing in Wisconsin.
- Fully cooperating in efforts to establish paternity of a dependent child and obtain support payments.
- Not receiving federal or state Supplemental Security Income (SSI) payments or federal Social Security disability insurance payments (SSDI).

W-2 participants must also meet financial eligibility requirements. An individual, his or her spouse or nonmarital coparent, and any dependent children and grandchildren who reside together, may not have a gross income that exceeds 115% of the federal poverty level. (In 2014, $27,428 annual income for a family of four.) In addition, the family may not have assets that exceed $2,500 in combined equity value, excluding the equity value of vehicles up to a total of $10,000 and one homestead property.

Employment Requirement

All W-2 participants are assigned by their local W-2 agency to either unsubsidized employment or one of three types of subsidized employment--trial jobs, community services jobs, or transitional placements:

- **Unsubsidized employment**. Job search assistance is provided

All W-2 participants are assigned by their local W-2 agency to either unsubsidized employment or one of three types of subsidized employment: trial jobs, community services jobs, or transitional placements.

to an unemployed individual who, once employed, will receive wages from his or her employer. Generally, unsubsidized employment is appropriate for an unemployed person who has no barriers to work that cannot be addressed through supportive services, has recent work experience, and has an educational or training background that allows the individual to compete in the unsubsidized labor market.

- **Trial employment match program**. Individuals who have basic skills, but lack sufficient work experience, may be placed in a trial employment match program (TEMP) job. Through a TEMP job contract, the employer agrees to provide the participant with on-the-job work experience and training in exchange for a wage subsidy. 2013 Wisconsin Act 20 revised the method for payment of the subsidy.
- **Community services job**. Generally, community services jobs are developed for participants who lack basic skills and work habits needed in a regular job environment. Participants receive a monthly cash grant for up to 30 hours per week in work training activities and up to 10 hours per week in education or training.
- **W-2 Transition (W-2T)**. W-2T is designed for participants who have a limited ability to perform independent, self-sustaining work. Participants receive a monthly cash payment for up to 28 hours per week for participating in work training or other employment-related activities, and up to 12 hours per week in education and training.

Participants in W-2 subsidized employment positions are required to search for unsubsidized employment throughout their participation. A W-2 agency is required to assist a participant in searching for unsubsidized employment. Caretakers of infants age 12 weeks or younger, and unmarried women in the third trimester of an at-risk pregnancy, may receive cash grants in lieu of employment placements.

Additional Support Services

Additional support services are available for all W-2 participants. These services may include the following:

- Job access loans to help eligible individuals meet immediate expenses related to obtaining or maintaining employment. These are short-term loans that must be repaid in cash or a combination of cash and volunteer services.
- Transportation assistance to get to and from work, child care, or school.

W-2 recipients may also be eligible for the state and federal earned income tax credit, child care subsidies through the Wisconsin Shares Child Care Subsidy program, and nutrition assistance through the Wisconsin FoodShare Program. Participants may also be eligible for MA or BadgerCare Plus.

Transform Milwaukee and Transitional Jobs Programs

2013 Wisconsin Act 20 established the Transform Milwaukee Jobs program in Milwaukee County. To be eligible to participate in the program, an individual must satisfy all of the following criteria:

- Be at least 18 years of age.
- If over 24 years of age, be a biological or adoptive parent of a child under 18 years of age whose parental rights to the child have not been terminated or be a relative and primary caregiver of a child under 18 years of age.
- Have an annual household income that is below150% of the poverty line.
- Be unemployed for at least four weeks.
- Be ineligible to receive unemployment insurance benefits.
- Not be participating in a Wisconsin Works employment position.

An individual may participate in the program for a maximum of 1,040 work hours. The program reimburses an employer for a minimum of 20 hours a week of work performed by the participant. The reimbursement includes a wage subsidy for hours worked, not to exceed 40 hours a week at the federal or state minimum wage. The employer may pay more, but is not subsidized for any amount exceeding the minimum wage.

2013 Wisconsin Act 113 authorizes DCF to establish a Transitional Jobs program outside of Milwaukee County, with the same eligibility and program requirements as the Transform Milwaukee Jobs Program. In selecting the geographic area or areas in which to conduct the Transitional Jobs program, DCF must give priority to those areas with relatively high rates of unemployment and childhood poverty.

Wisconsin Shares Child Care Subsidy Program

Under Wisconsin Shares, the state subsidizes child care expenses for eligible W-2 and other low-income working families. The Division of Family and Economic Security in DCF administers Wisconsin Shares through local W-2 agencies and county human or social services departments. The subsidy is available to enable parents to work or participate in certain work or educational activities.

In order to qualify, parents must meet the applicable income, asset, employment, and educational requirements. Generally, a family whose gross income does not exceed 185% of the federal poverty level is eligible. Once eligible, a family remains eligible until the family's gross income exceeds 200% of the federal poverty level. Most parents who qualify for the subsidy are required to make a copayment, based upon the family's income, family size, the type of child care selected, and the number of children in the family who receive child care services.

2013 Wisconsin Act 20 provided additional funding to implement the DCF's plan to increase child care provider reimbursement rates, and to smooth out child care rate differentials. Further, Act 20 provided an increase to the maximum payment rate, beginning January 1, 2014, for a child care provider who receives a four-star rating under YoungStar, the state's child care rating system.

Act 20 also required the DCF to submit a plan to the Joint Finance Committee to implement a program to deliver W-2 benefits or child care subsidies electronically, and provided $140,000 annually to fingerprint Wisconsin Shares providers, their employees, and any nonclient residents.

Supplemental Security Income

Supplemental Security Income (SSI) is a federal program that provides cash benefits to persons who are age 65 or older with financial need, as well as to children or adults who are blind or disabled. Individuals who receive SSI payments automatically qualify for MA and may also qualify for FoodShare.

SSI eligibility is based upon nonfinancial and financial requirements. To qualify for SSI payments for blindness, a person must have vision of 20/200 or less or have a limited field of vision of 20 degrees or less with the best corrective eyeglasses. To receive SSI payments based on disability, an adult must have a physical or mental impairment that prevents the individual from performing any substantial gainful activity (earnings up to $1,690 per month for blind individuals and $1,010 for other disabilities) and which has lasted, or is expected to last, for a continuous period of at least 12 months or result in death. A child's impairment must result in "marked and severe functional limitations," which is expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months.

Eligible individuals must also have limited income and resources. An individual may be eligible for SSI payments if the person has little or no income and has countable resources of up to $2,000 for a single person, or $3,000 for married couples. Certain resources are excluded from consideration, including the person's home and car.

State SSI Supplement

Wisconsin has chosen to supplement federal SSI payments with a state supplemental payment to SSI beneficiaries. Individuals do not have to apply separately for the state SSI payment, but must qualify for a federal SSI payment in order to receive a state SSI payment.

Wisconsin has chosen to supplement federal SSI payments with a state supplemental payment to SSI beneficiaries.

The state SSI cash benefit includes three components: a basic supplement, an exceptional expense supplement, and a supplement for caretakers of dependent children. The Division

of Disability and Elder Services in the DHS administers state SSI benefits. A recipient's cash benefit level is based upon whether the individual is living:

- Independently.
- In the household of another person (such as a relative or friend).
- Independently with an ineligible spouse.
- In the household of another person with an ineligible spouse.
- In an SSI Exceptional Expense Supplement (SSI-E)-supported living in nonmedical substitute care (eight or fewer beds) or in a natural residential setting (a home or apartment).

If an SSI recipient has a spouse who is also eligible to receive SSI payments, the couple receives a combined benefit.

The **SSI-E** is an additional payment of up to $96 per month added to the state SSI payment of each individual who meets eligibility requirements. Generally, an SSI recipient who lives in a home or apartment who needs at least 40 hours of primary long-term support services each month is eligible for the SSI-E benefit.

The **SSI Caretaker Supplement** is an additional payment available to SSI recipients who have dependent children. Eligible recipients receive a cash benefit of $250 per month for one dependent child and $150 per month for each additional dependent child. The dependent children themselves must be SSI recipients. The SSI Caretaker Supplement is funded by TANF and GPR funds.

FoodShare Wisconsin

In Wisconsin, the Federal Food Stamp program is called FoodShare Wisconsin.

The federal Supplemental Nutrition Assistance Program (SNAP; formerly known as the Food Stamp Program) is administered by the U.S. Department of Agriculture (USDA). In Wisconsin, it is called FoodShare Wisconsin. FoodShare benefits are entirely federally funded. The state administrative costs are generally 50% state funded and 50% federally funded. DHS administers FoodShare Wisconsin at the state level in accordance with federal law and regulations. Eligibility determinations, issuance of debit (Quest) cards used to purchase food, and implementation of the voluntary FoodShare Employment and Training program are generally done by county human or social services agencies or tribal agencies.

Participants must meet all of the following nonfinancial eligibility requirements:

- Be a U.S. citizen, or resident alien who qualifies for benefits under the federal law.
- Live in the county where the application is made and not reside in an institution that provides meals, such as a nursing home.
- Provide a Social Security number for all members of their household.

- Comply with certain requirements regarding the establishment of paternity and child support.

Households may have up to $2,000 worth of assets, or up to $3,000 if at least one household member is at least age 60 or disabled. Only certain types of assets are counted toward these limits. To be eligible, a family must meet the gross income test, with a gross income at or below 200% of the federal poverty level. Several items are then deducted from gross income to determine if net income is low enough (generally, 100% or below) to qualify for FoodShare.

2013 Wisconsin Act 20 permitted the DHS to implement a policy that conforms to federal law regarding work requirements for able bodied adults without dependents. 2013 Wisconsin Act 42 creates a new FoodShare offense if a person knowingly traffics FoodShare benefits.

Any household that includes at least one person eligible for FoodShare is also eligible for the Low-Income Home Energy Assistance Program.

Special Supplemental Nutrition Program for Women, Infants and Children

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is a federally funded program administered by the Division of Public Health in DHS to promote and maintain the health of nutritionally at-risk pregnant, breastfeeding, or new mothers, infants under age one, and children under age five. To be eligible, families may not earn income that exceeds 185% of the federal poverty level.

All WIC participants receive screening for nutrition and health needs; financial assistance to purchase WIC-approved nutritional foods and infant formula; and referrals to doctors, dentists, and programs such as FoodShare and Head Start. In addition, women receive information on healthy eating during pregnancy and on breastfeeding.

Income Maintenance Administration

Counties, except for Milwaukee County, are organized into 10 multi-county consortia to administer income-maintenance programs. The consortia are responsible for administering BadgerCare Plus, MA, FoodShare, SSI Caretaker Supplement, Emergency Food Assistance, Funeral and Cemetery Aids, and Family Planning. If a county does not enter a consortium or the DHS determines a consortium does not meet performance requirements, DHS must provide the services or contract with another consortium to provide the services. DHS operates Milwaukee County's income maintenance system as a single-county consortium.

Human Services and Aging Programs

Funding

A majority of the state's human services programs are funded through the community aids and children and family aids programs. Community aids are a combination of state GPR and federal revenues from a variety of sources that are distributed by the DHS to counties for the provision of human services, including services for low-income persons, child welfare services, and persons with needs relating to mental illness, substance abuse, or developmental disabilities. The programs funded through community aids are county administered.

Community aids and children and family aids funds are distributed to counties to fund a wide variety of human services programs.

Community aids funds are provided to counties under the "basic county allocation" block grant and in four categorical allocations. A majority of funds are provided in the basic county allocation, which funds certain services that counties are required to provide, such as services ordered by the courts. However, beyond these required services, counties have discretion in the expenditure of the remaining funds, limited by the availability of funds and the demands of competing programs. Community aids categorical allocations must be used for specific purposes. The four categorical allocations are:

- The Family Support program.
- Community mental health services.
- Prevention and treatment of substance abuse.
- The Alzheimer's Family and Caregiver Support program.

Counties are required to provide matching funds for the basic county allocation and the Alzheimer's Family and Caregiver Support program allocation. Most counties provide county funds in excess of the required match. The excess is referred to as "overmatch."

Children and family aids are also distributed to counties in an allocation referred to as the child and family allocation, to fund child abuse and neglect prevention, juvenile justice, and other services for children and families. There is also a categorical allocation used to fund tribal child care services. As with community aids, counties are required to provide matching funds to the child and family allocation.

Because Milwaukee County's child welfare services are administered by the state Bureau of Milwaukee Child Welfare (BMCW), Milwaukee County must provide funds from its community aids and children and family aids allocation to BMCW for these services. Additional funds are provided from federal substance abuse services funds and also from a deduction in Milwaukee County's shared revenue.

Child Welfare Services

The Division of Safety and Permanence in the DCF supervises child welfare services, including child protective services, foster care, and kinship care.

In contrast to other counties where child welfare services are provided by the county department of human or social services, the *DCF* must provide child welfare services in Milwaukee County.

Child protective services are administered by county human or social services departments in 71 counties and by the BMCW in Milwaukee County. The juvenile court and a county department of human or social services, or the BMCW in Milwaukee County, share responsibility for children in the child welfare system. Under the federal Indian Child Welfare Act (ICWA), special provisions apply to American Indian children in child custody proceedings, and some tribes have child welfare departments, which have jurisdiction over those cases.

The Children's Code, ch. 48, Stats., grants the juvenile court jurisdiction over children who are alleged to be in need of protection or services, including children who are abused or neglected. The appropriate child welfare department is responsible for providing intake and investigation services to determine if children have been abused or neglected, case management services to children placed by the juvenile court in out-of-home placements, and services to children placed for adoption whose parents have had their parental rights terminated.

Jurisdictional Grounds

The juvenile court may take jurisdiction over a child as a "child in need of protection or services" (CHIPS). The jurisdictional grounds include, among others, the following situations:

- The child is without a parent or guardian.
- The child is at substantial risk of, or has been the victim of, sexual or physical abuse.
- The child is at substantial risk for, or has been the victim of, neglect.
- The child is in need of special treatment or care.

Dispositional Alternatives

If a juvenile court adjudicates a case as a CHIPS case, the court orders a disposition of the case. The dispositional process includes determining whether custody of the child should be transferred to the county (or to the BMCW in Milwaukee County) and whether the child should be placed outside the home. If a child is placed outside the home, the court's dispositional order must contain a finding that continued placement of the child in his or her home would be contrary to the health, safety, and welfare of the child. The order must also contain a finding as to whether the appropriate agency has made reasonable efforts to

prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns. If applicable, the order may contain a finding as to whether the agency primarily responsible for providing services has made reasonable efforts to make it possible for the child to return safely to his or her home. The agency may be the county department of social or human services, the BMCW in Milwaukee County, or the child welfare agency primarily responsible for providing services under the court order.

For each child living outside his or her home in a licensed facility (e.g., a foster home or group home), the agency that placed the child, arranged the placement, or is primarily responsible for providing services to the child must prepare a written permanency plan that identifies the goal for a permanent placement for the child and the services provided to the child and the family in order to achieve the identified goal. An identified goal could be reunification with the birth family, transfer of legal guardianship to a relative, termination of parental rights, or long-term foster care. The court or a panel appointed by the court must review a permanency plan every six months from the date on which the child was first held in physical custody or placed outside of his or her home.

Foster Care

Children may be placed in a foster home if the children's court or juvenile court, makes certain findings and orders the placement.

A child may be placed in a foster home under the Children's Code, ch. 48, Stats., or Juvenile Justice Code, ch. 938, Stats. Foster care placements typically are made pursuant to a court order. A court may order foster care following a CHIPS adjudication (for example, based on abuse or neglect); an adjudication that a juvenile is delinquent; or an adjudication that a juvenile is a juvenile in need of protection or services (JIPS) (for example, based on being uncontrollable or habitually truant from home or school). Foster care placements also may be made without a court order for up to six months under a voluntary placement.

A foster home is licensed pursuant to administrative rules by a county department of human or social services; by the BMCW in Milwaukee County; by licensed private child placement agencies; or by tribes. A foster home may provide care and maintenance for no more than four children unless all of the children are siblings, or up to six children if that will allow a sibling group to stay together.

The State of Wisconsin implemented a new foster care licensing system in 2010.

Foster care payments are made to a licensed foster parent who is caring for a child. The payments are made if a court has placed the child with a

foster parent or the child has been placed with the foster parent on a voluntary basis. The amount of the foster care payment is based on the age of the child, and whether the child needs more than the usual amount of care because of individual needs.

The foster care licensing system specifies the levels of care that a licensed foster home is certified to provide. Wisconsin licenses five levels of foster homes, based on the severity of the child's needs. Foster home payments are adjusted accordingly, and are also adjusted based on the age of the child in care.

2013 Wisconsin Act 20 created the Transition to Independent Living program. Under this program, the DCF must distribute at least $231,700 in each fiscal year to counties for the purpose of assisting individuals who attain the age of 18 while residing in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent to make the transition from out-of-home care to independent living. No county may use funds provided under this subsection to replace funds previously used by the county for this purpose.

Kinship Care

Kinship care provides a payment of $232 per month (as of January 1, 2015) to eligible kinship care relatives who are providing care and maintenance for a child. A "kinship care relative" means a relative other than a parent.

Kinship care is administered by county departments of human or social services; by the BMCW in Milwaukee County; or by an Indian tribe or band that has entered into an agreement with DCF to administer the program.

The basic eligibility requirements for kinship care include the following:

- The basic needs of the child can be better met with the relative than with the parent.
- The placement is in the best interests of the child.
- The child currently meets or would potentially meet the requirements of CHIPS (being found in need of protection or services) if the child were to remain with his or her parent.

Kinship care is funded with federal TANF block grant funds. Based on a formula established by the DCF, the moneys are allocated to counties, to the BMCW for Milwaukee County, and to tribes.

As a condition of eligibility, a court-ordered kinship care relative who applies to the county department or the DCF for kinship care payments must apply for a license to operate a foster home, which enables the DCF to capture federal funds under Title IV-E of the federal Social Security Act for these placements. However, if a kinship care relative's application for a foster home license is denied, the county department or BMCW may make kinship care payments to the kinship care relative for as long as the relative continues to meet the conditions for eligibility for those payments, provided that certain information is submitted to the juvenile court.

Mental Health and Substance Abuse Services

Community Mental Health Services

The state oversees community mental health services through the Division of Mental Health and Substance Abuse Services in the DHS. Counties have the primary responsibility for the treatment and care of persons with mental disabilities who reside in the county. Under standards established by administrative rule, each county establishes its own program and budget for mental health services.

There are four primary funding sources for community mental health services in Wisconsin:

- The federal community mental health block grant.
- State and local funding.
- MA and BadgerCare Plus.
- Private insurance and individual copayments.

Counties have the primary responsibility for providing community mental health services in Wisconsin.

The primary mental health programs offered in the community are Community Support Programs (CSP). The CSPs provide community-based, individualized services, including coordinated care, treatment, rehabilitation, and support services to adults with serious and persistent mental illness.

Coordinated Services Teams

A directory of the CSTs in the state may be found at:

http://dhs.wisconsin.gov/mh_bcmh/cstisp.htm

The Division of Mental Health and Substance Abuse Services in the DHS distributes state GPR and federal funding to counties for collaborative systems of care, which are also called Coordinated Services Teams (CSTs), and "Children Come First." All of these projects provide "wraparound services," which "wrap" services around the child and family to treat and support them in the community. CSTs target children and families who have complex needs and are involved in two or more service systems, including mental health, child welfare, or juvenile justice.

Comprehensive Community Services

Comprehensive Community Services (CCS) are services for individuals who are less functionally impaired by their mental illness than those requiring CSP who need help arranging a comprehensive range of services to support a fuller recovery. Under federal law, CCS is an optional medical assistance (MA) benefit. Prior to 2013 Act 20, the CCS benefit was provided through counties that chose to provide the services and are certified CCS providers. These counties paid the nonfederal share (approximately 40%) of MA-

allowable CCS costs. Act 20 increased funding for a projected increase in MA benefits costs that would result by expanding state support for CCS, beginning July 2014.

Speaker's Task Force on Mental Health

In the 2013-14 Legislative Session, Assembly Speaker Robin Vos established the Speaker's Task Force on Mental Health. The following proposals recommended by this task force were enacted into law:

- Act 126, which provides grants for crisis intervention team training.
- Act 127, which creates a child psychiatry consultation program.
- Act 128, which creates a grant program designed to encourage primary care physicians and psychiatrists to practice primary care medicine or psychiatry in underserved areas in Wisconsin.
- Act 129, which requires DHS to contract with peer-run organizations to establish peer-run respite centers for individuals experiencing mental health conditions or substance abuse.
- Act 130, which modifies the ways in which the medical assistance program reimburses providers for mental health services.
- Act 131, which creates a program within the DHS for individual placement and support (IPS) for individuals with mental illness and provides funding for the program. An IPS program is an evidence-based practice designed to help promote the recovery of people who have serious mental illness through competitive jobs related to their employment preferences.
- Act 132, which requires DHS to award grants to counties or regions comprised of multiple counties to establish certified crisis programs, which must create mental health mobile crisis teams to serve individuals having mental health crises in rural areas.
- Act 235, which establishes a two-year pilot program that authorizes certain mental health professionals in Milwaukee County to carry out emergency detentions.
- Act 238, which makes it easier to release certain protected health information.
- Act 251, which requires DHS to submit to the Legislature a report that describes the mental health services and programs provided by counties and regions comprised of multiple counties in Wisconsin.
- Act 340, which contains two provisions that pertain to court proceedings for involuntary commitment of an individual for mental health treatment: a new procedure for limited appearance by corporation counsel; and establishes a 24-hour time limit for court review of a petition for examination.

Other legislation that passed during the 2013-14 Legislative Session on mental health issues is as follows:

- Act 203 makes various changes relating to Milwaukee County mental health functions, programs, and services and creates the Milwaukee County Mental Health Board (MCMHB). Functions relating to mental health services in Milwaukee County are transferred from the county board of supervisors to the MCMHB. Under the Act, the MCMHB is initially constituted as a state entity and transitions to become a county entity on January 1, 2015.

The following proposals recommended by the Legislative Council's Special Committee on Review of Emergency Detention and Admission of Minors Under Ch. 51 and introduced by the Joint Legislative Council were enacted into law:

- Act 158 makes several changes to laws relating to emergency detention of, and involuntary commitment for treatment of, persons who are mentally ill, developmentally disabled, or drug dependent.
- Act 161 makes several changes to statutes relating to inpatient mental health treatment of minors.

Involuntary Commitment

Current law requires a civil court proceeding to obtain involuntary mental health treatment or care for an individual. Under the statutory procedures, the decision to involuntarily commit a person is made by an objective decision-maker (the judge) based on professional opinions, factual evidence, and a balancing of the interests of the state and the interests of the person alleged to be mentally ill. Special provisions apply to minors.

A person must meet several criteria, including one of five legal standards of dangerousness, in order to be committed by a court for involuntary mental health treatment.

Three statutory criteria must be proved before a person may be involuntarily committed. The person must be shown to be all of the following:

- Mentally ill, drug dependent, or developmentally disabled.
- A proper subject for treatment.
- Dangerous, under at least one of five statutory standards that demonstrate harm to oneself or others.

The Division of Mental Health and Substance Abuse Services in the DHS operates two mental health institutes in the state. These institutes provide psychiatric services to adults and children who are either involuntarily committed or are forensic patients committed as

a result of a criminal proceeding. The Mendota Mental Health Institute is located in Madison and the Winnebago Mental Health Institute is located near Oshkosh.

Substance Abuse

The Division of Mental Health and Substance Abuse in the DHS administers a variety of county-operated programs that provide AODA prevention, treatment, and educational services. A major source of funding for state substance abuse programs is the federal Substance Abuse Prevention and Treatment block grant administered by DHS. The DHS is also responsible for certifying publicly funded substance abuse programs, including detox centers, day treatment, inpatient and outpatient facilities, residential programs, and intervention and prevention efforts.

The DHS administers a variety of programs for elderly persons through a county-based aging network.

The DHS also administers tobacco control programs, such as the Wisconsin Wins campaign, designed to reduce illegal sales of tobacco to young people, and a statewide compulsive gambling awareness campaign.

Services for the Elderly

Older Americans Act Programs

Established under the federal Older Americans Act (OAA) in 1973, the federal Administration on Aging administers an "aging network," comprised of various state units on aging, and a variety of programs which support elderly persons in the community. The Administration on Aging distributes funds to the states. In Wisconsin, the DHS distributes federal as well as state funding to area agencies on aging, which administer the aging network through county and tribal aging offices.

The National Family Caregiver Support Program (NFCSP) was created by the federal OAA Amendments of 2000. The NFCSP provides grants to states to enable area agencies on aging to provide an array of support services to family caregivers of older adults, as well as grandparents and relative caregivers of children under age 18.

The Elderly Nutrition program is authorized under the OAA and administered by the Division of Long Term Care in the DHS. The program is operated by county and tribal aging offices. The program addresses the nutrition and nutrition-related health needs of older adults by providing congregate meals in the community, such as in senior or community centers, or in individual homes. Home-delivered nutrition services are commonly referred to as "meals on wheels." There are no income eligibility requirements for the nutrition program; however, the home-delivered

A directory of county and tribal aging offices is available at:

http://dhs.wisconsin.gov/aging/contacts/coagof.htm

nutrition services are for persons who are age 60 or older who are homebound due to health reasons.

Board on Aging and Long Term Care

The state Board on Aging and Long Term Care was created by the Legislature in response to the 1979 OAA Amendments. The board operates the Long Term Care Ombudsman program. An ombudsman serves as an advocate for long term care consumers who are age 60 and over who reside in nursing homes, group homes, or are participating in Family Care and the Community Options Program (COP). Some of the services an ombudsman offers include complaint investigation, education on resident rights, abuse reporting and prevention, and assistance with choosing a nursing home or community-based residential facility (CBRF).

Medigap Help Line 1-800-242-1060.

The Board on Aging and Long Term Care also operates the Medigap Help Line, which answers questions and provides counseling related to Medicare, Medicare supplemental insurance, MA, the Health Insurance Risk-Sharing Plan (HIRSP), long term care insurance, and other forms of health insurance.

Alzheimer's Family and Caregiver Support Program

A directory of county and tribal aging offices is available at: http://dhs.wisconsin.gov/aging/contacts/coagof.htm

The Alzheimer's Family and Caregiver Support Program (AFCSP) is administered by the Division of Long Term Care in the DHS and operated by county or tribal aging offices. The program is designed to respond to the service needs of families caring for someone with irreversible dementia at home. To be eligible, a person must have a diagnosis of Alzheimer's disease or a related disorder and be financially eligible. A couple must have a joint annual income of $40,000 or less; however, if their income is more than $40,000, the costs related to Alzheimer's may be subtracted from the gross income for eligibility purposes. When net income is then less than $40,000, the couple becomes eligible.

Under the AFCSP, up to $4,000 per year may be available to a participant. Participants may use the funds to purchase goods and services including: nutritional supplements; security systems; specialized clothing; home-delivered meals; respite care; adult day care; and transportation.

Anyone age 60 or older who is having a problem securing benefits, including Medicare, MA, SSI, and FoodShare, or is having problems regarding housing or consumer issues, is eligible for the Elderly Benefit Specialist program.

Elderly Benefit Specialists

Anyone age 60 or older who is having a problem securing benefits, including Medicare, MA, SSI, and FoodShare, or is having problems regarding housing or consumer issues, is eligible for the Elderly Benefit Specialist program. Elderly benefit specialists are trained to help older persons with paperwork often required to apply for a benefit program and can help older persons determine what benefits they may be entitled to and what to do to receive them. The program is supported by funding from the state and the OAA. The Bureau of Aging in the DHS coordinates the program, but services are provided through county and tribal aging units.

A list of elderly benefit specialists by county and a list of elderly benefit specialists serving tribes is available at: http://dhs.wisconsin.gov/

Community-Based Long Term Care

Community-based long term care programs use state funds or a combination of federal and state funds monitored by the DHS and administered by county agencies to deliver community-based services to elderly or disabled persons who need long-term assistance in bathing, dressing, cooking, and other daily activities involving self-care and home care.

Family Care

Family Care serves persons who reside in a Family Care county, and who are frail adults age 65 or older (age 60 or older in Milwaukee County), people with physical disabilities, and people with developmental disabilities. As of August 2014, 57 counties were participating in Family Care.

Family Care's purpose is to provide a single program in which a person can access and receive all long term care services, rather than having their care fragmented among many separate programs.

The purpose of Family Care is to provide a single program in which an eligible person can receive all long term care services, rather than having the person's care fragmented among several different programs, each with its own eligibility criteria and service parameters. Family Care establishes both functional and financial eligibility criteria. Cost-sharing requirements apply to individuals above a certain income level. Family Care includes both MA and non-MA eligible persons.

As of August 2014, Family Care is offered in 57 counties. A list of Family Care counties, as well as ADRC and CMO contacts, is available at: http://dhs.wisconsin.gov/LTCare/Generalinfo/Where.htm

Under Family Care, Aging and Disability Resource Centers (ADRCs) serve as the primary point of entry for accessing long term care services, including Family Care. The ADRCs provide information and referral services, determines functional and financial eligibility for Family Care,

and helps persons enroll in Family Care; all counties and tribes are served by ADRCs.

When a person enrolls in Family Care, he or she becomes a member of a Care Management Organization (CMO), which manages and delivers the Family Care benefit. The Family Care benefit combines funding and services from a variety of programs into one long term care benefit that is tailored to an individual's needs, circumstances, and preferences.

The Division of Long Term Care in the DHS supervises Family Care. Funding for Family Care includes federal funds and state GPR. All counties that participate in Family Care by offering a CMO must either provide a payment to the DHS or authorize the DHS to allocate a portion of the county's basic community aids allocation to fund the operation of the county's CMO.

Current law requires a proposed contract for Family Care expansion to be submitted for JFC approval. The DHS may enter into the Family Care contract only if the JFC approves the proposed contract.

The expansion of the Family Care program into new counties in Wisconsin was suspended as of April 2011. 2013 Wisconsin Act 20 required the DHS to provide a report on the publicly funded long-term care system to inform whether the state should consider completion of statewide expansion of the Family Care managed care program. Accordingly, DHS submitted the report in December 2013. The report concluded that "the expansion of Family Care, and the entitlement of support in homes and community-integrated settings, allows Wisconsin residents to receive cost-effective long-term supports. Managed long-term care is the most effective strategy to meet the needs of Wisconsin's residents. Family Care expansion will eliminate waiting lists for 1,600 people in fifteen counties while reducing the growth of state spending by $34.7 million over the coming ten years."

A list of disability benefit specialists by county is available at: http://dhs.wisconsin.gov/disabilities/benspecs/counties.htm

Disability Benefit Specialists

In some counties, disability benefit specialists provide assistance and information about benefit programs, including MA waiver programs, and private health and disability-related insurance issues, to adults ages 18 to 59 with physical disabilities, developmental disabilities, mental illness, or substance abuse disorders.

Disability benefit specialists can also help individuals apply for benefits or appeal a denial of benefits.

MA Waiver Programs

MA waivers are a source of funding for long term support services in the community for persons who are otherwise eligible for MA-funded institutional care. These waiver programs are supervised by the Division of Long Term Care in the DHS and administered by county human or social services agencies in counties that currently do not operate Family Care. Wisconsin operates all of the following MA waiver programs.

MA waivers are a source of funding for long term support services for persons who are otherwise eligible for MA-funded institutional care.

Community Options Program – Regular

Under the COP, also known as COP-Regular (COP-R) program, persons who need the same levels of physical or mental health care provided in nursing homes are screened to determine if they could remain in the community if adequate support services were provided. COP-R serves the elderly and persons with developmental disabilities; chronic mental illness; physical disabilities; and alcohol or drug dependency.

COP-R provides screening of potential participants, coordination of services, and supplementary funding to counties for support services to COP-R clients. COP-R is funded by state GPR funds.

A list of COP coordinators by county is available at: http://dhs.wisconsin.gov/ltc_cop/contacts.htm

Community Options Program Waiver

Community Options Program Waiver, or COP-W, serves persons who are elderly or physically disabled. COP-W is intended to divert persons from nursing homes and to relocate nursing home residents; therefore, COP-W does not require that a nursing home bed be closed before a new available program opening is created. Under COP-W, counties are allocated a specific amount of funding, rather than a given number of slots. Counties are subject to a federally imposed waiver requirement that the average cost of care statewide under COP-W does not exceed the average cost of care in nursing homes.

Community Integration Programs IA and IB

The Community Integration Programs IA and IB, or "CIP IA and IB," permit federal MA funds that would normally be required to fund institutional care for persons with developmental disabilities to be used for long term community support services. Both programs are funded from federal MA funds and state GPR.

Under CIP IA and IB and CIP II, participating counties receive payments to divert or relocate persons from institutional settings into appropriate community settings.

Under CIP IA, participating counties receive a payment to relocate persons into appropriate community settings from the state centers for persons with developmental disabilities with the assistance of home and community-based services and with continuity of care. The payment is a per person daily rate. When a CIP IA placement is made, the state center's bed capacity and MA reimbursement is reduced. The participant remains eligible for SSI and all other MA services.

The purpose of CIP IB is to provide home or community-based care to persons with developmental disabilities who are relocated from an institution other than a state center for the developmentally disabled, or to persons who require the level of care necessary to qualify for MA reimbursement in an intermediate care facility for persons with mental retardation (ICF-MR). CIP IB attempts to relocate or divert persons from nursing homes to individualized, integrated community services. Counties receive a payment that is a statewide average payment per day for each person relocated under the program to a community setting. A CIP IB participant remains eligible for SSI and other MA services.

Community Integration Program II

Community Integration Program II (CIP II) participants are persons who are either elderly or physically disabled who are relocated or diverted from nursing homes. Under state statute, a CIP II placement requires the closing of a nursing facility bed. Once a nursing home bed has been de-licensed and a community slot has been established, the number of MA recipients who receive CIP II services at any time may not exceed the number of MA beds that are closed.

Brain Injury Waiver

Under the Brain Injury Waiver (BIW) program, adults and children who are substantially disabled by a brain injury and who receive, or are eligible for, admission to a brain injury rehabilitation facility may receive supportive services available under other MA waivers in the community. Individuals who are eligible for the BIW must be eligible for MA and have a brain injury. According to DHS, this program is being phased out.

Children's Long-Term Support Waiver

The Children's Long-Term Support (CLTS) waiver provides children with long term care needs with MA services and a single entry point for eligibility determinations in each county. The CLTS program is designed to improve access to services, choice, coordination of care, quality, and financing of long term care services for children with physical, sensory and developmental disabilities, and severe emotional disturbance.

State funding supports CLTS in several counties across the state. Counties may also create CLTS by supplying a local match to obtain federal matching funds to support waiver services. The services provided under the CLTS program are

The CLTS waiver provides MA services and a single point of entry for services to children with long term care needs.

similar to those available under other MA waiver programs, but also include support services that are not available under the other waivers, such as intensive in-home autism services and specialized medical and therapeutic supplies. Children enrolled in the CLTS program also have access to all MA card services, which are services provided to a MA recipient, as detailed in the state MA plan.

Children must meet functional and financial eligibility criteria in order to be eligible for the program. Families may be required to contribute to the cost of services, based upon their income level. Children may continue receiving waiver services until they reach age 21, as long as they continue to be eligible for MA.

Autism Services

Autism benefits are provided under the MA home and community-based waiver program. Autism services are one-on-one behavioral modification therapy services for children with autism, Asperger's disorder, or a pervasive developmental disorder. Children must also meet diagnostic and functional criteria before starting services.

Children are eligible for in-home autism services may qualify for one of two level of services for up to three years as long as they begin receiving services by the time they are eight years old. Consultative behavioral intervention services provide 10 to 20 hours per week of face-to-face service. Early intensive behavioral intervention services provide 30 to 40 hours per week of face-to-face service. The DHS may grant variances to the three-year limit. Services are also available at the ongoing level until the child is 16 years old. There is a statewide waiting list for these services. Participants are limited by the services identified in their individual service plans (ISPs), which are developed for each participant to identify the type of care and number of hours of services that each individual requires, and the funding that is available.

Contact information for autism services by county is available at:

http://dhs.wisconsin.gov

Counties are responsible for administering the in-home autism benefit; therefore, the counties conduct assessments, establish ISPs, and perform quality assurance activities for each participant.

The Governor's Council on Autism advises the DHS on strategies for implementing statewide supports and services for children with autism.

Insurers must cover certain treatments for individuals with autism spectrum disorders. Specifically, health insurers must provide coverage of at least $50,000 for intensive-level services per year for up to four years. Insurers are also required to provide coverage of at least $25,000 per year for nonintensive-level services. In general, if a child has access to an insurance plan that is subject to this mandate, the child will be required to obtain services covered by that insurance prior to accessing the intensive in-home autism treatment program, except that the child may have access to service coordination services provided by the program.

Early Intervention Services for Infants and Toddlers With Disabilities (Birth to Three Program)

The Birth to Three program is a federal grant program that is administered by the Division of Long Term Care in the DHS and operated by counties and tribes. State and county funds also support the program.

Birth to Three operates a "child find" system to ensure identification of children who may be eligible for the program. Identified children are screened and referred for further evaluation. If a child is determined to be eligible for the program, due to a finding of developmental delay or a physical or mental condition likely to result in developmental delay, a child may receive early intervention services. Services are based on an individual family service plan developed for the child and his or her family. Core services offered include occupational and physical therapy services and nutrition services.

State, regional, and tribal Birth to Three resources are available at: http://www.dhs.wisconsin.gov/children/birthto3/familiy/index.htm

There are no income eligibility requirements for the Birth to Three program; children who meet disability criteria are eligible regardless of their family's income status. However, parents contribute to the cost of the services based on their ability to pay.

Katie Beckett Program

The Katie Beckett Program enables certain children with long-term disabilities or complex medical needs to live at home with their families and to obtain MA coverage. A disabled child under these circumstances may be eligible for MA if all of the following criteria are met:

- The child is under age 19 and determined to be "disabled" by Social Security Act standards.
- The child requires a level of care at home that is typically provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded (ICF-MR).
- Services can be provided with safe and appropriate care at home.
- The child does not have assets or income in his or her name in excess of current standards for a child living in an institution.
- The child does not incur MA costs at home that exceed the costs MA would pay if the child were in an institution.

A list of Katie Beckett program consultants is available at: http://www.dhs.wisconsin.gov/children/kbp/kbpcons.htm

The Katie Beckett Program is administered by the Division of Long Term Care in the DHS and funded with a combination of federal and state funds.

Family Support Program

Information about the Family Support Program is available at:

http://www.dhs.wisconsin.gov/children/fsp/index.htm

The Family Support Program is a state-funded and state-administered, county-operated program that provides supportive services to families that include a severely disabled child under age 21. The program is intended to enable a family to keep a child at home or to return a child home from an institution or other out-of-home placement. Under the program, parents work with a county family support program coordinator to develop an ISP for each family. Examples of items and services which the program may help a family purchase include: home modifications, transportation, specialized equipment, nursing care, and respite care. The application process includes an eligibility determination and a needs assessment; family income is not a basis for eligibility. However, families contribute to the cost of the program's services based on ability to pay.

Residential Facilities

State Centers

The DHS operates three residential centers for persons with developmental disabilities.

The Division of Disability and Elder Services in the DHS operates three residential institutions for the care of developmentally disabled persons: Northern Center, established in 1897 and located in Chippewa Falls; Central Center, established in 1959 and located in Madison; and Southern Center, established in 1919 and located in Union Grove.

The purpose of the centers is to provide residents with services that may not otherwise be available to them and to assist them in returning to the community when their needs can be met at the local level. Over the years, the centers' missions have shifted from primarily a residential approach to a treatment approach, and there has been a corresponding decrease in long-term extended care admissions at the centers. Only Central Center and Southern Center serve individuals with developmental disabilities on a long-term basis.

Nursing Homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

A nursing home is a residential facility where three or more persons who are not related receive care or treatment and, because of their mental or physical condition, require access to 24-hour nursing services, including limited nursing care, intermediate level nursing care, and skilled nursing services. Nursing homes are licensed by the Division of Quality Assurance in the DHS according to whether the level of care is skilled nursing care or intermediate nursing care.

When a nursing home accepts residents whose placements are funded by the Medicare or MA programs, the facility is subject to both federal and state regulations, and can be sanctioned under both state and federal law for the same violation. This is referred to as "dual enforcement." 2011 Wisconsin Act 70 prohibits the DHS from serving a notice of violation to a nursing home for any Class A or B violation of state requirements if DHS has, in a statement of deficiency, cited the nursing home for a violation under federal regulations based on the same facts. A Class "A" violation is one that creates a condition or occurrence presenting a substantial probability of death or serious mental or principal harm to a resident. A Class "B" violation is one that creates a condition or occurrence that threatens the health, safety, or welfare of a resident.

An ICF-IID is an institution (or a distinct part of an institution) that primarily provides treatment or rehabilitative services for persons with mental retardation or related conditions and provide ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at his or her greatest ability. A license from the Division of Quality Assurance in the DHS is required to operate an ICF-IID for three or more unrelated persons.

Assisted Living Facilities

The Division of Quality Assurance in the DHS licenses adult family homes, CBRFs, and residential care apartment complexes (RCACs) for adults. Adult family homes are places where three or four adults reside and receive treatment, care, or services that may include up to seven hours per week of nursing care per resident. CBRFs are facilities where five or more adults who do not require care above intermediate level nursing care reside and receive care, treatment, or services that include no more than three hours of nursing care per resident per week. RCACs, commonly known as assisted living facilities, are places where five or more adults reside that consist of individual apartments and provide up to 28 hours per week of services that are supportive, personal, and nursing services.

Lists of residential options, including nursing homes, assisted living facilities, and adult family homes, are available by county at:

http://www.dhs.wisconsin.gov/bqaconsumer/ResidOpts/seek.htm

Additional References

1. Legislative Council Information Memoranda; under the subject headings Children and Family Law and Human Services and Aging at: http://www.legis.wisconsin.gov/lc.
2. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on various subjects including, among others, Wisconsin Works, Supplemental Security Income, FoodShare, and community aids. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.

3. The Legislative Audit Bureau selected audit reports:
    - Child-Placing Agencies (Audit Report 13-15).
    - FoodShare Wisconsin (Audit Report 12-8).
    - FoodShare Benefits Spent Outside of Wisconsin (Audit Report 12-3).
    - Child Care Regulation (Audit Report 09-15).
    - Matching Addresses of Registered Sex Offenders and Child Care Providers (Letter Report, September 2009).
    - Wisconsin Shares Child Care Subsidy Program (Letter Report, June 2009).
    - Milwaukee County Child Welfare Program (Audit Reports 06-1 and 06-2).
    - Wisconsin Works (W-2 Program) (Audit Report 05-6).
4. The DCF website, http://dcf.wisconsin.gov.
5. The DHS website, http://dhs.wisconsin.gov/programs.htm.
6. Greater Wisconsin Agency on Aging Resources, www.gwaar.org.
7. Wisconsin Board for People With Developmental Disabilities (formerly the Wisconsin Council on Developmental Disabilities), www.wcdd.org.
8. Wisconsin Board on Aging and Long Term Care (includes Ombudsman program), http://longtermcare.state.wi.us/.
9. Wisconsin Affordable Assisted Living, http://www.wiaffordableassistedliving.org.

GLOSSARY

BIW: Brain Injury Waiver Program. A MA home and community-based waiver program in which adults and children who are substantially disabled by a brain injury and who receive, or are eligible for, admission to a brain injury rehabilitation facility, may receive the same services available under MA in the community.

CHIPS: Child in need of protection or services. Under ch. 48, Stats., the juvenile court has jurisdiction over children who are alleged to be in need of protection or services.

CIP IA: Community Integration Program IA. A MA waiver program to relocate developmentally disabled persons into community settings, with the assistance of home and community-based services, from the state centers for the developmentally disabled.

CIP IB: Community Integration Program IB. A MA waiver program that provides home and community-based care to developmentally disabled persons who are relocated from an institution, other than a state center for the developmentally disabled, such as a nursing home.

CIP II: Community Integration Program II. A MA waiver program that assists elderly or physically disabled persons in moving or being diverted from a nursing home into a community-based setting.

CLTS: Children's Long-Term Support Waiver. A MA waiver program that provides children with long-term care needs with MA services and a single entry point for eligibility determinations in each county.

COP: Community Options Program. A state-funded program that screens persons who are elderly, developmentally or physically disabled, have chronic mental illness, or who are alcohol or drug dependent and who are about to enter nursing homes or state centers for the developmentally disabled to determine if they could live in the community, and provides community-based services.

COP-W: Community Options Program Waiver. A MA waiver program that funds long-term support services for elderly or physically disabled persons who are relocated or diverted from nursing homes into community-based settings.

SSI: Supplemental Security Income. A federal program that provides cash benefits to low-income elderly, blind, and disabled persons who meet financial and nonfinancial eligibility requirements; each Wisconsin recipient of a federal SSI benefit is eligible for a basic state supplement to his or her federal benefit.

SSI-E: Supplemental Security Income Exceptional Expense Supplement. An enhanced payment added to the state SSI payment of each SSI recipient who meets the program requirements.

TANF: Federal Temporary Assistance to Needy Families Block Grant Program. The 1996 federal Personal Responsibility and Work Opportunity Reconciliation Act replaced the AFDC program with the TANF program, under which public assistance benefits are funded with block grants to states.

W-2: The Wisconsin Works program is funded with a combination of state funds and federal TANF block grant funds, which generally provides persons who satisfy financial and nonfinancial eligibility requirements with benefits based upon employment status.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 22 - LABOR AND EMPLOYMENT LAW

Reflecting the importance of the millions of workers in the state and the businesses and industries that employ them, Wisconsin has a number of laws that regulate the relationship between employers and employees. Many of these laws establish minimum standards for the workplace, and others provide assistance to workers who are unemployed or who are injured on the job.

Jessica Ozalp, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Introduction 1
Collective Bargaining 1
Public Sector Employers and Employees 1
Private Sector Employers and Employees 2
Wages and Hours 2
Minimum Wage 2
Overtime Pay 3
Wage Payment and Wage Claims 4
Prevailing Wage 5
Child Labor 5
Breaks and Meal Periods 6
Family and Medical Leave 6
Fair Employment 7
Unemployment Insurance 8
Worker's Compensation 10
Additional References 11
Glossary 12

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

This chapter summarizes various state laws that affect the relationship between an employee and employer. In addition to state law, this relationship may also be governed by federal law and regulations, collective bargaining agreements, employment contracts, and employer policies. Although this chapter briefly describes the state laws relating to collective bargaining, any significant discussion of federal law and regulations, employment contracts, and employer policies is beyond the scope of this chapter.

In general, Wisconsin's employment laws are administered by the state's Department of Workforce Development (DWD), including the laws relating to wages and hours, employment discrimination, family and medical leave, unemployment insurance, and worker's compensation. The Wisconsin Employment Relations Commission (WERC) and the Office of State Employment Relations (OSER) play significant roles in the collective bargaining process.

COLLECTIVE BARGAINING

Collective bargaining is a process in which an employer and a representative of the employer's employees negotiate over certain subjects relating to employment, with the intention of reaching an agreement. An agreement reached between the employer and the employees' representative is oftentimes formalized in a written document called a collective bargaining agreement.

Public Sector Employers and Employees

Collective bargaining for public sector employees is governed by the Municipal Employment Relations Act (MERA) for municipal employees and the State Employment Labor Relations Act (SELRA) for state employees. [subchs. IV and V of ch. 111, Stats.] 2011 Wisconsin Act 10, as amended by 2011 Wisconsin Act 32, made significant changes to MERA and SELRA.

Public sector employees can collectively bargain on base wages but are prohibited from bargaining on other subjects. However, public safety employees and certain transit employees generally can bargain on wages, hours, and conditions of employment.

MERA distinguishes between three types of municipal employees: (1) general municipal employees; (2) public safety employees; and (3) transit employees. SELRA distinguishes between two types of state employees: (1) general state employees; and (2) public safety employees. A "general municipal employee" is a municipal employee who is not a public safety employee or transit employee. Likewise, a "general state employee" is a state

employee who is not a public safety employee. A "public safety employee" is generally a police officer, fire fighter, or emergency medical services provider.

As a result of Act 10, general municipal employees and general state employees can collectively bargain with their employers on base wages but are prohibited from bargaining collectively on other subjects, including hours and conditions of employment. Base wages can be bargained on up to a maximum limit, which is determined by a statutory formula. Any increase in total base wages that exceeds the limit must be approved by referendum. Under MERA and SELRA, "base wages" does not include overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, or automatic pay progressions.

Public safety employees and transit employees can collectively bargain with their employers on wages, hours, and conditions of employment, with some exceptions.

Private Sector Employers and Employees

Private sector employees can collectively bargain on wages, hours, and other terms and conditions of employment.

Collective bargaining for private sector employees is generally governed by federal law, specifically the federal National Labor Relations Act (NLRA). The National Labor Relations Board (NLRB) administers the NLRA. Private sector employees can collectively bargain on wages, hours, and other terms and conditions of employment.

State law contains some provisions relating to collective bargaining for private sector employees. [subch. I of ch. 111, Stats.]

Wages and Hours

Minimum Wage

The Wisconsin and federal minimum wages are $7.25 per hour.

Wisconsin sets minimum wage rates that employers must comply with when paying employees. Wisconsin's minimum wage requirements generally apply to all public and private sector employers, including nonprofit organizations, regardless of whether they are covered by the federal minimum wage law. For most employees, including minor employees, the Wisconsin minimum wage is set at $7.25 per hour. (The federal minimum wage is also $7.25 per hour.)

More information about the minimum wage may be found at: http://dwd.wisconsin.gov/er/labor_standards_bureau/minimum_wage.htm

However, for "opportunity employees" (those employees who are not yet 20 years old and who have been in an employment status with a particular employer for 90 or

fewer consecutive days from the date of their initial employment), the minimum wage is $5.90 per hour. For employees receiving tips as part of their compensation, the minimum wage is $2.33 per hour (or $2.13 per hour for tipped opportunity employees).

The payment of wages that are less than those minimums described above is authorized in some limited circumstances. For example, employers who receive a special license from the DWD and who employ workers with disabilities, operate rehabilitation facilities, or participate in student learner programs may pay sub-minimum wages.

The state's minimum wage law is to be construed as providing a uniform living wage throughout the state. A county, city, village, or town may not enact a living wage ordinance. This prohibition, however, does not apply to local ordinances that apply to certain employees who contract with or are employed by a county, city, village, or town. [ch. 104, Stats., and ch. DWD 272, Wis. Adm. Code.]

Overtime Pay

In addition to the minimum wage, state law also requires the payment of overtime pay in certain situations. Generally, employees must be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week. This requirement applies to most employees, but certain employees are exempt from overtime pay requirements, including certain administrative, executive, and professional employees; certain outside sales and commissioned employees; taxi drivers; employees of motor carriers who are covered by federal regulations; and salespersons, parts personnel, and mechanics employed by motor vehicle dealers.

Generally, employees must be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week.

More information about overtime pay may be found at: http://www.dwd.state.wi.us/er/labor_standards_bureau/hours_of_work_and_overtime.htm

Federal and state laws differ on the exemptions that apply to some employees. To comply with both federal and state overtime requirements, a Wisconsin employer must meet both federal and state law regarding a given exemption, which generally requires that an employer satisfy the more stringent criteria of the two types of law. [ss. 103.01 to 103.03, Stats., and ch. DWD 274, Wis. Adm. Code.]

Wage Payment and Wage Claims

Generally, Wisconsin law requires employers to pay their employees at least once per month. An employee who quits or is discharged from his or her job must be paid in accordance with the employer's regularly established payroll schedule. If an employee is not paid in a timely manner, is not paid at all, or is paid an incorrect amount, the employee may file a wage claim with the DWD for the unpaid wages or may bring an action in court against his or her employer.

If an employee is not paid, the employee may file a wage claim or bring an action in court against an employer.

Once a wage claim is filed, the DWD seeks to resolve the matter between the employer and employee. For purposes of the wage claim laws, wages include the following:

- Salaries.
- Commissions.
- Overtime pay.
- Holiday pay.
- Vacation pay.
- Severance pay.
- Dismissal pay.
- Bonuses.
- Other similar advantages that the employer and employee agree to or that are provided by the employer to the employees as an established policy.

More information about wage payment and wage claims may be found at: http://www.dwd.state.wi.us/er/labor_standards_bureau/wage_payment_and_collection_law.htm

Typically, an employee must file a wage claim within two years. The DWD or an employee who brings a wage claim has a lien for the amount of the wage claim or deficiency on the employer's property. This lien generally has priority over all other liens except certain environmental remediation liens and liens of banks and various other lenders. However, a wage lien will generally take precedence over the lien of a lender that originated before the wage lien took effect, only as to the first $3,000 of certain unpaid wages covered under the lien. [ch. 109, Stats.]

More information about child labor laws may be found at: http://dwd.wisconsin.gov/er/labor_standards_bureau/child_labor_laws.htm

Prevailing Wage

Wisconsin law generally requires that an employee who works on a project of public works be paid the prevailing wage for the trade or occupation. The "prevailing wage" is the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits, and any other *bona fide* economic benefit, paid directly or indirectly, for a majority of the hours worked in the trade or occupation on projects in the area.

Employees who work on a public works project must be paid the prevailing wage.

The prevailing wage law applies to public works projects in which the state, a state agency, or a local governmental unit is a party to the project. To determine the prevailing wage for workers on a project, the state agency or local governmental unit must apply to DWD for the determination. Any contractor who performs work on the project is required to pay its employees the prevailing wage.

The prevailing wage law does not apply to a single-trade project for which the estimated completion cost is less than $48,000 or a multiple-trade project for which the estimated completion cost is less than $100,000, or in the case of a multiple-trade project erected, constructed, repaired, remodeled, or demolished by a private contractor for a city or village having a population of less than 2,500 or for a town, a multiple-trade project for which the estimated completion cost is less than $234,000. [ss. 66.0903 and 103.49, Stats.; see also s. 103.50, Stats., for prevailing wage on highway and bridge construction projects.]

More information about prevailing wage may be found at: http://dwd.wisconsin.gov/er/prevailing_wage_rate/pw_laws.htm

Child Labor

Wisconsin regulates the employment of minors with respect to types of employment and hours of work. A minor may not work at any employment or in any place of employment that is dangerous or prejudicial to the life, health, safety, or welfare of the minor or where the employment of the minor may be dangerous or prejudicial to the life, health, safety, or welfare of other employees or frequenters. Further, a minor under 16 years of age may not work at any employment for such hours of the day or week, for such days of the week, or at such periods of the day as may be dangerous or prejudicial to the life, health, safety, or welfare of the minor.

State law regulates the types and hours of employment for minors.

A minor under 18 years of age may not work at any gainful occupation during the hours that the minor is required to attend school, unless the minor has completed high school. In

addition, Wisconsin law contains additional restrictions on the hours that a minor under 16 years of age may work. Specifically, a minor under 16 years of age may not work in any gainful occupation, other than domestic service, farm labor, or public exhibitions, as follows:

- For more than three hours on a school day or eight hours on a nonschool day.
- For more than 18 hours in a school week or 40 hours in a nonschool week.
- For more than six days in a week.
- Before 7:00 a.m. or after 7:00 p.m. from the day after Labor Day to May 31.
- Before 7:00 a.m. or after 9:00 p.m. from June 1 to Labor Day.

Furthermore, an employer of a minor is required to provide meal periods to employees under the age of 18 if the minor works for more than six consecutive hours. Those meal periods must be at least 30 minutes in length and generally must be provided reasonably close to the meal times of 6:00 a.m., noon, 6:00 p.m., or midnight. [ss. 103.64 to 103.82, Stats., and ch. DWD 270, Wis. Adm. Code.]

Breaks and Meal Periods

State law generally prohibits a person from being employed at any employment for periods of time that are dangerous or prejudicial to the person's life, safety, health, or welfare. Wisconsin law does **not** require employers to provide rest periods or breaks to adult employees.

Employers are not required to provide rest periods or breaks to adult employees.

More information about breaks and meal periods may be found at: http://www.dwd.state.wi.us/er/labor_standards_bureau/breaks_and_meals.htm

Similarly, employers are not required to provide meal periods to adult employees, but state law **recommends** that employers provide at least 30 minutes for a meal period for each shift longer than six hours. Typically, employers must pay all employees for an "on-duty" meal period. An "on-duty" meal period is a period during which the worker is not provided at least 30 minutes away from work or allowed to leave the employer's premises. [s. 103.02, Stats., and s. DWD 274.02, Wis. Adm. Code.]

Family and Medical Leave

Wisconsin is one of several states that has its own Family and Medical Leave Act (FMLA) in addition to the federal FMLA. Wisconsin's FMLA covers employers with 50 or more permanent employees. An employee is covered under Wisconsin's FMLA if the employee has been employed by the same

Wisconsin's FMLA requires that employees be allowed leave for certain family or medical reasons.

More information about FMLA may be found at: http://dwd.wisconsin.gov/er/family_and_medical_leave/default.htm

employer for the prior 52 consecutive weeks and has worked at least 1,000 hours during that period. The law requires that such employees be allowed up to the following amounts of leave in a 12-month period:

- Six weeks of leave for the birth or adoption of a child.
- Two weeks of leave to care for a parent, child, spouse, or domestic partner with a serious health condition.
- Two weeks of leave for the employee's own serious health condition.

[s. 103.10, Stats., and ch. DWD 225, Wis. Adm. Code.]

Fair Employment

More information about fair employment may be found at: http://dwd.wisconsin.gov/er/discrimination_civil_rights/fair_employment_law.htm

Subject to certain exceptions, Wisconsin's Fair Employment Law prohibits discrimination in employment based on the following classifications:

- Age.
- Ancestry.
- Arrest record.
- Color.
- Conviction record.
- Creed.
- Declining to attend a meeting or to participate in any communication about religious matters or political matters. (DWD does not enforce this classification in circumstances where such enforcement would be preempted by the NLRA.)
- Disability.
- Genetic testing.
- Honesty testing.
- Marital status.
- Military service.
- National origin.
- Pregnancy or childbirth.
- Race.
- Sex.
- Sexual orientation.
- Use or nonuse of lawful products off the employer's premises during nonworking hours.

Wisconsin's Fair Employment Law prohibits discrimination in employment based on certain classifications.

Employment discrimination includes refusing to employ or terminating any individual based on the above classifications or discriminating against any individual in compensation, promotion, or terms, privileges, or conditions of employment based on any of the above classifications. If an individual is discriminated against in violation of the Fair Employment Law, he or she may be awarded reinstatement, back pay, attorney fees, and costs. [subch. II of ch. 111, Stats., and ch. DWD 218, Wis. Adm. Code.]

The maximum weekly UI benefit is $363, and the minimum weekly UI benefit is $54.

Unemployment Insurance

The Unemployment Insurance Division of the DWD administers the state's Unemployment Insurance (UI) program. Wisconsin's UI law, which was enacted in 1932, provides temporary cash benefits to eligible employees when they are out of work. Financing for the program comes from a combination of federal and state taxes paid by employers who are subject to federal and state UI laws.

Generally, the Federal Unemployment Tax Act (FUTA) imposes a tax on a portion of the wages paid for covered employment. That tax rate is 6.0% of the first $7,000 of each employee's earnings for the calendar year. The employer is then provided a credit against the FUTA tax for quarterly tax paid to state-operated UI programs. This system was set up by the federal government to encourage states to have a broad UI program. Generally, some of the FUTA money that is collected is returned to the state in order for the state to administer the UI program.

UI provides temporary cash benefits to eligible employees who become unemployed.

In addition to the FUTA tax, the state imposes its own tax to finance UI benefits paid to unemployed workers. Generally, most private, for-profit employers pay a state unemployment tax into the UI reserve fund. The tax is paid on the first $14,000 of wages paid by an employer to an employee during each calendar year. The tax is based on an experience rating system. The rating system requires that the particular tax rate paid by an employer is based on, and varies with, the layoff experience of that employer. Employers with greater layoff experience will have higher tax rates. A private employer's rate may increase or decrease depending on changes in benefits charged to that employer, contributions credited to that employer, and the amount of that employer's taxable payroll.

Some employers, however, most notably governmental employers and nonprofit organizations, finance their UI benefits for their employees through a reimbursement system. Instead of paying the quarterly UI tax on payroll into the UI reserve fund, these employers reimburse DWD the actual amount of any benefits paid to their employees.

Generally, an employer is subject to Wisconsin's UI law if it paid $1,500 or more in wages in any quarter in that year or the preceding calendar year or if it had at least one employee in at least 20 different weeks in a year or the preceding calendar year. Although the law exempts certain types of work from the UI law, the definition of employment in the UI law is, on the whole, very broad.

Typically, to qualify for UI benefits, an employee must satisfy the following requirements:

- Have sufficient base period wages in covered employment.
- Be available for work and able to work.
- Register for work.
- Undertake a reasonable search for work.
- Make a claim for benefits.

Claims may be made with the DWD through an automated touch-tone telephone service or via the Internet. The major reasons that an unemployed worker would be disqualified from receiving benefits include discharge for misconduct or voluntarily leaving employment. Both of these disqualifications depend on the facts in a particular case.

The amount of benefits an eligible employee may receive is based upon his or her wages. Typically, the weekly benefit will equal 4% of the wages paid to the employee in the calendar quarter in which the highest wages were paid to the employee, subject to certain statutory minimums and maximums. As of January 5, 2014, the minimum weekly benefit rate is $54 and the maximum rate is $370. The maximum amount a claimant may normally receive is the lesser of 26 times the weekly benefit rate or 40% of the total base period wages. However, both state and federal law contain provisions allowing for the payment of extended unemployment benefits during difficult economic times when unemployment rates exceed certain levels. These extended benefits may be paid to unemployed workers who have exhausted their initial 26 weeks of benefits. Because of unemployment conditions in recent years, the federal government has implemented several extensions of UI benefits between 2008 and 2013.

The Legislative Council staff has prepared Act Memos that describe the changes made by the 2011-12 Legislature in 2011 Wisconsin Acts 198 and 236. The Act Memos may be found at: http://www.legis.wisconsin.gov/lc

Wisconsin has established an Unemployment Insurance Advisory Council (UIAC) to advise DWD and the Legislature regarding matters affecting the development and administration of the state's UI law. The UIAC is made up of five labor representatives, five management representatives, and one nonvoting chairperson. The UIAC is required to advise DWD on

More information about UI may be found at: http://dwd.wisconsin.gov/ui/

the administration of the UI law and to report its view on pending legislation concerning UI to the appropriate committees of the Legislature. In addition, the UIAC submits to the Legislature, generally on a biennial basis, legislation approved by the UIAC to make changes to the UI law. Recently, those recommended changes have been adopted by the Legislature with few or no amendments. [ch. 108, Stats., and chs. DWD 100 to 150, Wis. Adm. Code.]

Worker's Compensation

The Worker's Compensation Division of DWD administers the state's Worker's Compensation (WC) program. The WC law provides for a system of no-fault insurance that pays benefits to employees for accidental injuries or diseases arising from an employee's job. Generally, for workplace injuries, WC is the exclusive remedy against the employer. In other words, an injured employee is typically precluded from suing his or her employer for the injury and may only recover those benefits authorized by the WC law.

WC pays benefits to employees for accidental injuries or diseases arising from employment.

An employer is required to cover his or her employees with WC insurance if the employer usually has three or more employees or if the employer has fewer than three employees but a payroll of $500 or more during any calendar quarter. In addition, farmers who employ six or more employees on any 20 days in a calendar year must have insurance within 10 days after the 20th day of employment.

The cost of WC insurance typically varies, based on job classification. Insurance rates and classifications depend on past work-related injury experience, payroll, and level of hazard in an occupation. The Wisconsin Compensation Rating Bureau sets the premium rate for each class with the approval of the Commissioner of Insurance. The law provides for penalties for employers who fail to obtain insurance when required to do so.

Benefits payable under WC include reasonable and necessary medical costs and lost wages.

Some employers in Wisconsin, including some larger private sector and various governmental employers, are self-insured. They do not purchase WC insurance but pay their claims using their own funds. An employer must have written approval from the DWD before becoming self-insured.

More information about WC may be found at: http://dwd.wisconsin.gov/wc/

Benefits payable under a WC policy include the following:

- All reasonable and necessary medical costs.

- Benefits for lost wages while recovering from an injury.
- Benefits for permanent disability if the employee does not fully recover from the injury.
- Death benefits and burial expenses up to certain limits.

Generally, for the period when an employee is out of work and recovering from his or her injury, the employee may receive 2/3rds of his or her weekly wage in WC benefits up to a certain weekly maximum. Payment is made on the basis of a six-day work week (Monday through Saturday) regardless of the number of days per week an employee actually works. A waiting period applies before a benefit may be paid. The waiting period is the first three days, excluding Sunday, after the accident in which an injury is received. If a disability from work lasts beyond the seventh day, the first three days are fully compensated. Generally, the first insurance payment is made within 14 days of the injury.

In addition to the above-described temporary benefit payments during the period of healing, if an employee has a permanent disability, the employee will receive additional compensation based upon statutory formulas in existence at the time of the injury.

Typically, an employer may not unreasonably refuse to rehire an injured employee if suitable employment is available within the employee's physical and mental limitations. If the employer has suitable employment available and unreasonably refuses to rehire the employee, the employer is liable for any lost wages up to a total of one year's wages. However, the employer is not required to hold or create a job for the employee after an injury.

As with UI, Wisconsin has implemented a Worker's Compensation Advisory Council (WCAC). The WCAC was created to advise the DWD and the Legislature regarding matters affecting the administration and development of the WC law. The membership of the WCAC is made up of five voting labor representatives, five voting management representatives, three nonvoting insurance representatives, and one representative from the DWD. As with the UIAC, the WCAC forwards to the Legislature, on a biennial basis, recommended changes to the WC law. [chs. 102 and 626, Stats., and chs. DWD 80 to 82, Wis. Adm. Code.]

The Legislative Council staff has prepared an Act Memo that describes the changes made by the 2011-12 Legislature in 2011 Wisconsin Act 183. The Act Memo may be found at: http://www.legis.wisconsin.gov/lc

Additional References

1. The DWD has prepared a number of publications that provide information concerning employment laws. Those publications may be found at: http://dwd.wisconsin.gov.

2. The U.S. Department of Labor has information on federal employment laws available on its website at: http://www.dol.gov/.

3. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs, including Wisconsin's UI program, available at: http://www.legis.wisconsin.gov/lfb.
4. The Legislative Reference Bureau prepares publications concerning employment laws. Those publications may be found at: http://www.legis.wisconsin.gov/lrb.
5. For audits concerning employment issues, see the following Legislative Audit Reports at http://www.legis.wisconsin.gov/lab/:
    - *Unemployment Reserve Fund* (Audit Report 13-9).
    - *Overtime in State Agencies and UW System* (Letter Report, May 2011).

GLOSSARY

Department of Workforce Development (DWD): The state agency that administers many of Wisconsin's employment laws and programs.

Family and Medical Leave Act (FMLA): The state or federal law that requires that employees be allowed leave for family or medical reasons.

Municipal Employment Relations Act (MERA): The state law that governs collective bargaining for municipal employers and employees.

National Labor Relations Act (NLRA): The federal law that governs collective bargaining for private sector employers and employees.

Office of State Employment Relations (OSER): The state agency that administers various laws and policies relating to state employment, including the state civil service system, and that represents the state in collective bargaining with most state employees.

State Employment Labor Relations Act (SELRA): The state law that governs collective bargaining for state employers and employees.

Unemployment Insurance (UI): The state program that provides temporary cash benefits to eligible employees who become unemployed.

Wisconsin Employment Relations Commission (WERC): The state agency that processes cases and resolves disputes relating to collective bargaining.

Worker's Compensation (WC): The state program that pays benefits to employees for accidental injuries or diseases arising out of employment.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 23 – MILITARY AFFAIRS AND EMERGENCY MANAGEMENT

The Wisconsin Department of Military Affairs oversees the operations of the Wisconsin National Guard, whose state mission is to help civil authorities protect life and property and preserve peace, order, and public safety in times of natural and human-caused disasters and emergencies. The Department of Military Affairs also administers the state's emergency management system through its Division of Emergency Management.

Mike Queensland, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Department of Military Affairs 1
Military Affairs 1
Wisconsin National Guard 1
Service Member Support Division Programs 4
Other Programs and Services 5
Differential Pay for Activated State Employees 6
Legal Protections for National Guard Members 7
Wisconsin Homeland Security Council 8
Wisconsin Emergency Management System 8
Overview of System 8
Duties of Various Officials 8
Emergency Management Regions 9
Emergency Police and Fire Services 9
Role of County Sheriffs 9
Emergency Management Planning 12
Federal Funding 12
Incident Command System (ICS) 12
First Responder Training 13
Mutual Aid Box Alarm System (MABAS) 13
Disaster Assistance 13
Hazardous Materials 14
Continuity of Legislative Operations 14
Interim Successors for Legislators 14
Virtual Meetings of the Legislature 15
Emergency Temporary Locations for the Legislature 15
Additional References 16
Glossary 16

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Department of Military Affairs

The Department of Military Affairs (DMA) is headed by the state Adjutant General, who is appointed by the Governor for a five-year term and may be reappointed. The Adjutant General reports to the Governor, who is designated by the Wisconsin Constitution as the commander-in-chief of the Wisconsin National Guard. Chapter 321, Stats., sets forth statutory provisions governing the Wisconsin National Guard, the Adjutant General, and the Governor's military staff. Chapter 322, Stats., sets forth the Wisconsin Code of Military Justice.

The DMA legislative liaison may be reached at (608) 242-3009. The chief legal counsel may be reached at (608) 242-3072. DMA's website, at: http://dma.wi.gov has links to WEM, the Army National Guard, and the Air National Guard.

The DMA also administers Wisconsin's emergency management system through its Division of Emergency Management, which is headed by a division administrator appointed by the Governor. Chapter 323, Stats., governs state and local emergency management. Chapters WEM 1-8, Wis. Adm. Code, contain WEM's administrative rules.

Military Affairs

Wisconsin National Guard

Organization and Dual Missions

The Wisconsin National Guard is the organized militia of the state and is headed by the state Adjutant General. It consists of the Army National Guard and the Air National Guard, each of which is headed by a deputy Adjutant General. A third deputy Adjutant General serves the Guard for civil authority support. This person may be a member of either the Army or Air National Guard and may serve as joint chief of staff, responsible for overseeing the joint staff functions between the Army and Air National Guard.

When the National Guard is activated in state duty status, the Governor is its commander-in-chief.

When the National Guard is activated in federal duty status, the President becomes its commander-in-chief.

Information on current Wisconsin Army and Air National Guard mobilizations is available at: http://dma.wi.gov. Additional information about Department of Defense-wide news is located at: http://www.defense.gov/news.

The Guard is an armed military force which is organized, trained, equipped, and available for deployment under official orders in both state and national emergencies. The Guard has dual missions--federal and state. Its federal mission is

to provide trained units to the U.S. Army and Air Force in time of war or national emergency. Its state mission is to help civil authorities protect life and property and preserve peace, order, and public safety in times of natural or human-caused emergencies.

The composition of Wisconsin Army and Air National Guard units is authorized by the U.S. Secretary of Defense through the Department of Defense's National Guard Bureau. All Guard officers and enlisted personnel must meet the same physical, educational, and other eligibility requirements as members of the active duty Army or Air Force.

Role of Governor and Duties of Adjutant General

As commander-in-chief of the Wisconsin National Guard, the Governor may order the Guard or a portion of the Guard into active duty in the following circumstances:

- In the event of:
    - War, insurrection, rebellion, riot, invasion, terrorism, or resistance to execution of the laws of the state or of the United States.
    - A public disaster resulting from flood, fire, tornado, or other natural disaster.
    - A declared public health emergency.
- In order to assess damage or potential damage as a result of and to recommend responsive action to natural or man-made events.
- Upon application of a U.S. marshal, village president, mayor, town board chair, or county sheriff.

The Adjutant General serves as the military chief-of-staff to the Governor. The Adjutant General has numerous duties, including the following:

- Advising the Governor on military issues and transmitting military correspondence to and from the Governor.
- Under orders from the Governor, drawing from the state treasury money necessary for paying National Guard members on state active duty.
- Providing necessary medical supplies and services to the National Guard during periods of state active duty.
- Having custody of all military property, records, correspondence, and other documents relating to the National Guard.

Funding

The Wisconsin National Guard is funded and maintained by both the federal and state governments. The federal government provides arms and ammunition, equipment and uniforms, outdoor training facilities, pay for military and support personnel, and

The federal government currently provides approximately 90% of the funding for the Wisconsin National Guard.

training and supervision. The state provides personnel, conducts training, and shares the cost of constructing, maintaining, and operating armories and other military facilities.

Army National Guard

The Wisconsin Army National Guard currently has approximately 7,500 members and includes the following subordinate commands:

- The Army National Guard Headquarters in Madison with a number of subordinate units. These include the Recruiting and Retention Battalion, the 505th Trail Defense Team, Detachment 52 Operational Support Airlift Command, the Army Aviation Support Facility #2, the Army Aviation Support Facility #1, in West Bend, and the U.S. Property and Fiscal Office and the Combined Support Maintenance Shop at Camp Douglas.
- 32nd Infantry Brigade Combat Team with headquarters in Camp Douglas and several subordinate units, including the 1-120th Field Artillery Battalion in Wisconsin Rapids, the 2-127th Infantry Battalion in Appleton, the 1-128th Infantry Battalion in Eau Claire, the 132nd Brigade Support Battalion in Portage, the 32nd Brigade Special Troops Battalion in Wausau, and the 105th Reconnaissance Squadron Target Acquisition in Madison.
- 157th Maneuver Enhancement Brigade with headquarters in Milwaukee and several subordinate units including the 257th Brigade Support Battalion in Oak Creek, the 357th Network Support Company in Two Rivers, the 1-121st Field Artillery Battalion in Milwaukee, the 108th Forward Support Company in Sussex, the 32nd Military Policy Company in Milwaukee, and the 724th Engineer Battalion in Chippewa Falls.
- 64th Troop Command with headquarters in Madison and several subordinate units including the732nd Maintenance Battalion in Tomah, the 1-147th Aviation Battalion and the 54th Civil Support Team in Madison, the 64th Rear Operations Center in Monroe, the 332nd Rear Operations Center in Berlin, the 457th Chemical Company in Hartford, the 273rd Engineer Company in Medford, and the 641st Troop Command Battalion in Madison.
- 426th Regiment Regional Training Institution, located at Fort McCoy, which operates the Wisconsin Military Academy.

Air National Guard

The Wisconsin Air National Guard is comprised of more than 2,200 members and includes the following components:

- The Air National Guard Headquarters at the Office of the Adjutant General and the 115th Fighter Wing at Truax Field, Madison.
- 128th Air Refueling Wing at General Mitchell Field, Milwaukee.

- 128th Air Control Squadron and Combat Readiness Training Center located at Volk Field, Camp Douglas, and Hardwood Range, an air-to-ground bombing and gunnery range, located south of Babcock.

Service Member Support Division Programs

Further information about service member and family support programs is available online at: www.wisconsinmilitary.org

The Wisconsin National Guard's Service Member Support Division provides pre-, during-, and post-mobilization support to commanders and service members by establishing a centralized connection to the many public and private agencies that provide benefits, programs, and services to Wisconsin military service members and their families.

Supporting programs include education, advocacy, intervention, short-term counseling, resource awareness education, support in accessing resources, referral to community resources and services, and youth and parent education and enrichment programs. Selected programs include the following:

The Service Member Support Division manages the administration of benefits, programs, and support services for Wisconsin service members and their families.

- **National Guard Family Program**: establishes and facilitates ongoing communication, involvement, and support between service members and their families.
- **Child and Youth Program**: provides youth with opportunities to form bonds with other military youth, building support networks that are essential in times of deployment, as well as reintegration.
- **The Sexual Assault Response Program**: provides prevention training to all service members and resource and referral services to victims of sexual assault and domestic violence.
- **Suicide Prevention Program**: provides suicide prevention and intervention, and training on the risk factors and warning signs of suicide and connects service members with resources.
- **Military Family Assistance Centers**: provide family members with information on entitlements and benefits available during the service member's deployment cycle.
- **Transition Assistance Advisor**: assists service members in accessing federal and state veterans benefits, programs, and services, as well as public and private programs and services.
- **Director of Psychological Health**: provides assistance and direction to service members who are having transitional difficulties in adjusting to redeployment or life challenges.

- **Employer Support of the Guard and Reserve**: provides service members with education and awareness regarding employer relations, employment and re-employment rights, as well as programs and services to help strengthen employer support for the Guard and Reserve.

Other Programs and Services

National Guard Tuition Grant Program

The DMA administers the Tuition Grant Reimbursement Program for qualified members of the Wisconsin National Guard. All National Guard enlisted members and warrant officers in good standing in the Guard who do not have a bachelor's degree are eligible for tuition reimbursement at an eligible school. Eligible schools include a University of Wisconsin (UW)-System campus, a technical college, or an institution of higher education as defined by federal law for student financial assistance purposes. The program will reimburse 100% of actual tuition or 100% of the maximum resident undergraduate tuition at UW-Madison for a comparable academic load, whichever is less. Qualified students may receive reimbursement for up to eight full semesters of undergraduate courses or 120 credits of part-time study.

More information about the National Guard Tuition Grant program is available at:

http://dma.wi.gov/dma/SHR/tuition_grant_information.asp

Student Loan Repayment Program

National Guard members in good standing with pre-existing student loans may be eligible for the Federal Student Loan Repayment Program, if they re-enlist or extend their service for a six-year period and meet other requirements. The program repays loans up to $50,000.

Challenge Academy

The mission of the Challenge Academy is to offer Wisconsin youths the opportunity to become successful, responsible citizens. The Challenge Academy is a two-phase, 17-month program that serves 16- to 18-year old youths who have dropped out of school or are at-risk of not graduating from high school. The first phase is a five-month residential, character development-based program in which participants work towards earning their High School Equivalency Diploma. The second phase is a 12-month post-residential period in which the participant's mentor and Challenge Academy staff assist the participant with the transition back into the community. The program is funded 75% by the federal government and 25% with state program revenue. The Wisconsin National Guard Challenge Academy began operations in 1998 at Fort McCoy.

STARBASE Wisconsin

STARBASE Wisconsin is a Department of Defense-funded educational initiative for fifth grade students. Administered by the Wisconsin Air National Guard and based at the U.S.

Army Reserve Center in Milwaukee, the program provides 25 hours of interactive learning over the course of five weeks, which aims to provide students with experience and skills in science, technology, engineering, and math.

Military Funeral Honors

The Adjutant General may activate members of the National Guard to serve on an honors detail of a funeral for a deceased veteran. The Military Funeral Honors Program is administered by DVA and is described in Chapter 30, *Veterans*.

Information on Military Points of Contact and Activations

The Adjutant General is required to provide the DVA with information on all necessary military points of contact and general deployment information for activated and deployed members of the National Guard. The DVA, in turn, must provide this information to county veterans service officers (CVSOs). In addition, the law permits the DVA to provide CVSOs with information on military points of contact and general deployment information for Reserves units. CVSOs are authorized to: (1) inform Guard and Reserves members or their dependents living in the CVSO's county regarding potential benefits to which the members may be entitled and necessary military points of contact and general deployment information for activated and deployed members of the National Guard and Reserves; and (2) cooperate with federal and state agencies that serve or grant aid or benefits to members and their dependents.

Differential Pay for Activated State Employees

Wisconsin law requires that all state employees who are activated to military duty be paid their state salaries while on military duty, minus any military pay and housing allowances they receive, unless the military pay and housing allowances equal or exceed the person's state salary. An activated employee may also accumulate sick leave and paid annual leave as though no interruption in state service occurred.

To qualify for the payment, all of the following must apply:

- The employee was activated to serve or be serving on military duty in the U.S. Armed Forces, on or after January 1, 2003 other than for training purposes.
- On the date of activation, the employee was a member of either the Wisconsin National Guard or the Reserves, or recalled to active duty from inactive reserve status.
- The employee was on an authorized military leave of absence. The differential pay and benefits also apply

Q: Is the differential pay benefit for activated state employees retroactive?

A: The differential pay benefit is retroactive to January 1, 2003. Employees who were activated prior to that date may receive differential pay retroactively to January 1, 2003, but not for service before that date.

to state employees who are activated to serve in the U.S. Public Health Service and detailed to duty with the U.S. Armed Forces.

The law provides that an employee may receive the differential pay and benefits beginning on the date of activation, for a period of not more than 179 days. The Governor may make up to three extensions of two years each from the date of activation for an individual employee or a group of employees. The law also permits an employee to use up to 160 hours of accumulated paid leave within 30 days after completion of duty before resuming employment with the state and to carry over to the next year any remaining paid leave accumulated while on duty.

Legal Protections for National Guard Members

Federal and State Employment and Re-Employment Rights

The federal Uniformed Services Employment and Re-Employment Rights Act (USERRA) provides re-employment protection and other benefits to persons returning from federal military service. This includes service in the National Guard under a federal call-up and service in the Reserves. Under USERRA, a person who leaves a civilian job for military service is generally entitled to return to the job with accrued seniority if the person meets several eligibility criteria, including, among others, having notified the employer of the departure for military service, being honorably discharged, and reporting back to the employer in a timely manner following military service. USERRA applies to virtually all civilian employers regardless of size, including the federal government and state and local governments.

Because service in the National Guard under a state call-up by the Governor is not covered by USERRA, state legislation was enacted in 2001 to provide the same re-employment rights for persons called to state service in the National Guard.

Other Legal Protections for National Guard Members

Wisconsin law provides National Guard members, including Wisconsin residents who serve in the National Guard of another state, certain legal protections, including:

- Providing legal representation and payment of expenses and judgments at state expense, in specified circumstances, to a member who is prosecuted for a civil or criminal action for an act committed while performing military duty.
- Staying civil court proceedings during the period of active service.
- Capping interest rates at 6% per year on debts incurred prior to entering the service.
- Protecting the member from eviction or mortgage foreclosure.
- Extending a member's professional or occupational license that would otherwise come up for renewal while the person is on duty and, if certain conditions are met, extending the license until the next date on which the license is usually renewed.

- Providing college student members opportunities to complete course work and re-enroll in the school, if called to active duty while in school.

Wisconsin Homeland Security Council

The contact person for the Homeland Security Council is:

Randi Wind Milsap, Chief Legal Counsel, DMA (608) 242-3072.

The Homeland Security Council's website is: http://www.hsc.wi.gov

The mission of the Homeland Security Council is to advise the Governor and coordinate the efforts of state and local officials with regard to prevention of, and response to, potential threats to the homeland security of Wisconsin. The Council works with local, state, federal, and tribal agencies, non-governmental organizations, and private industry to improve citizen and community preparedness. The Governor is responsible for appointing each of the Council's 16 members.

Wisconsin Emergency Management System

Overview of System

WEM's 24-hour emergency hotline number is: (800) 943-0003.

The WEM website is: http://emergencymanagement.wi.gov

The DMA administers Wisconsin's emergency management system through its Division of Emergency Management, more commonly referred to as "Wisconsin Emergency Management" or "WEM." The purpose of the system is to prepare the state and its subdivisions and American Indian tribes to plan for, respond to, recover from, and mitigate emergencies resulting from enemy action and natural or human-caused disasters. WEM is headed by a division administrator appointed by the Governor and has two bureaus: the Bureau of Planning and Preparedness and the Bureau of Response and Recovery.

Duties of Various Officials

The Governor, Adjutant General, WEM administrator, and other state and local officials have statutory responsibilities relative to the emergency management system. The Governor is required to review state emergency management plans and to utilize WEM during a state of emergency. The Governor may order all or a portion of the Wisconsin National Guard into active service in case of war or other civil unrest or public disaster or to assess damage and recommend action as a result of natural or human-caused events. The Governor may proclaim a state of emergency for the state or a portion of the state and may enter into mutual aid agreements with other states concerning emergency management.

Emergency Management Regions

The state is divided into six emergency management regions, each headed by a regional director. The regional directors exercise powers delegated and duties assigned by the Adjutant General. The regional directors work directly with the counties in coordinating WEM's programs and serve as on-site representatives of WEM during emergencies.

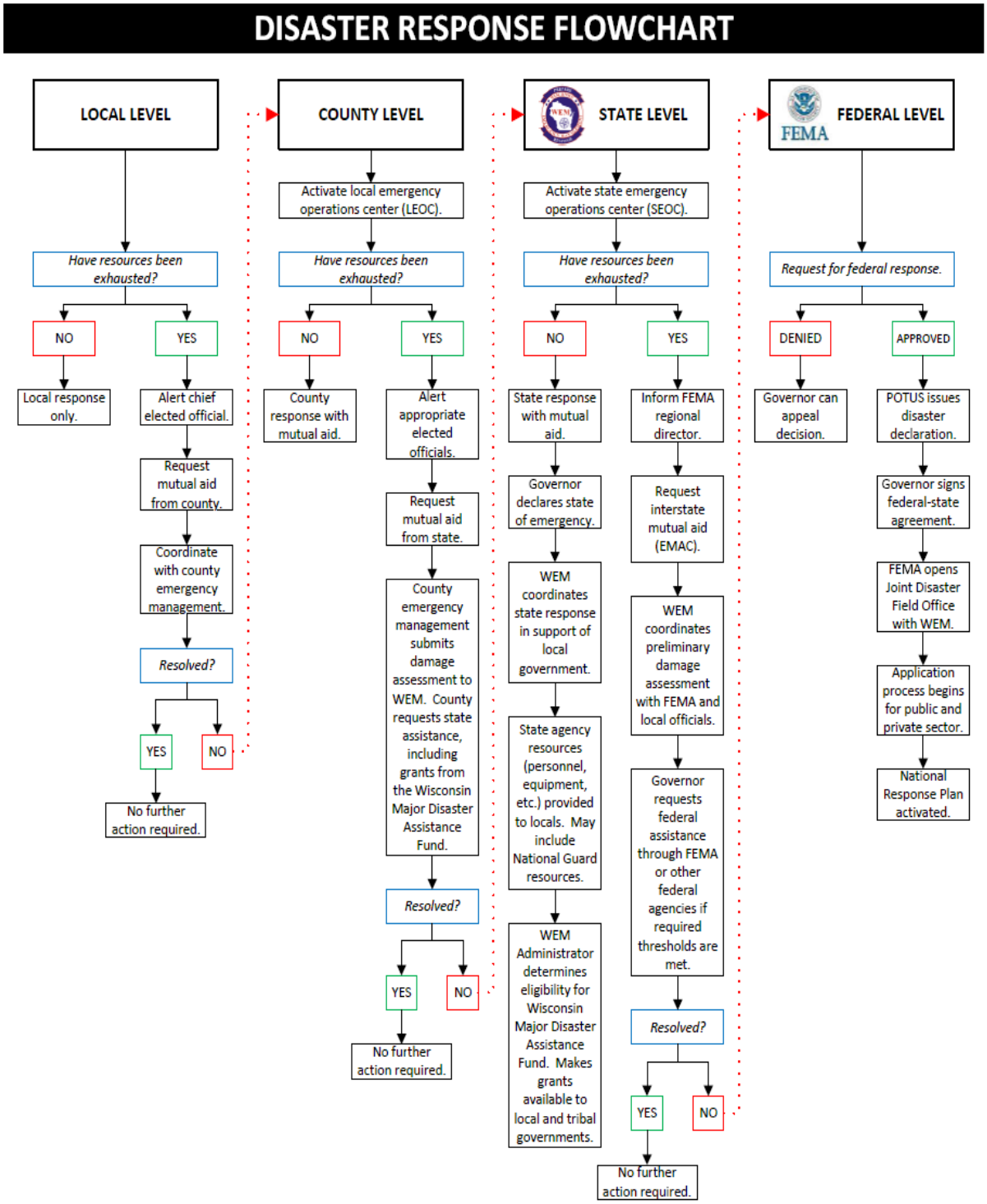
Emergency Police and Fire Services

WEM also provides an Emergency Police Services (EPS) Director and an Emergency Fire Services Coordinator to assist the state, its subdivisions, and tribes during emergencies. The EPS director coordinates state law enforcement response to emergencies, including coordination of mutual aid for law enforcement assistance in natural and man-made disasters, prison disturbances, and other emergencies. The Emergency Fire Services Coordinator works with local units of government to coordinate fire services during emergencies. This may include use of the Mutual Aid Box Alarm System. In addition, the Emergency Fire Services Coordinator works closely with fire and EMS departments and other emergency agencies to help ensure appropriate training, planning, and response needs are met at the local, regional, tribal, and state levels.

Role of County Sheriffs

The county sheriff has most of the statutory powers at the local level in the event of an emergency. In addition, there are mutual assistance agreements between law enforcement agencies as well as firefighting agencies, both regionally and statewide. In an emergency, the sheriff may call upon the mutual aid authorized by these agreements before requesting assistance from the state. If the sheriff deems it necessary, he or she will ask the Governor, through the WEM administrator, to call the National Guard into state service to assist in the response. Local officials and other designated local personnel are also authorized to declare a state of emergency at the local level.

Following are two documents prepared by the DMA: the first is a disaster response flowchart that delineates local, county, state, and federal level response sequences; and the second is a chart showing various officials who are authorized to declare a disaster.


DISASTER RESPONSE FLOWCHART
LOCAL LEVEL
Have resources been exhausted?
NO
Local response only.
YES
Alert chief elected official.
Request mutual aid from county.
Coordinate with county emergency management.
Resolved?
YES
No further action required.
NO
COUNTY LEVEL
Activate local emergency operations center (LEOC).
Have resources been exhausted?
NO
County response with mutual aid.
YES
Alert appropriate elected officials.
Request mutual aid from state.
County emergency management submits damage assessment to WEM. County requests state assistance, including grants from the Wisconsin Major Disaster Assistance Fund.
Resolved?
YES
No further action required.
NO
STATE LEVEL
Activate state emergency operations center (SEOC).
Have resources been exhausted?
NO
State response with mutual aid.
Governor declares state of emergency.
WEM coordinates state response in support of local government.
State agency resources (personnel, equipment, etc.) provided to locals. May include National Guard resources.
WEM Administrator determines eligibility for Wisconsin Major Disaster Assistance Fund. Makes grants available to local and tribal governments.
YES
Inform FEMA regional director.
Request interstate mutual aid (EMAC).
WEM coordinates preliminary damage assessment with FEMA and local officials.
Governor requests federal assistance through FEMA or other federal agencies if required thresholds are met.
Resolved?
YES
No further action required.
NO
FEDERAL LEVEL
FEMA
Request for federal response.
DENIED
Governor can appeal decision.
APPROVED
POTUS issues disaster declaration.
Governor signs federal-state agreement.
FEMA opens Joint Disaster Field Office with WEM.
Application process begins for public and private sector.
National Response Plan activated.

Source: DMA

WHO MAY DECLARE A DISASTER?

1 VILLAGE OR TOWN

Governing body of any Village or Town ss. 323.11 & 323.14(4)(a), Stats.

Village President, subject to ratification ss. 61.24 & 61.34, 323.14(4)(b), Stats.

Town Chairperson, subject to ratification ss. 60.22, 60.24(1), 323.14(4)(b), Stats.

Chief Executive Officer, subject to ratification ss. 60.22, 60.23, & 61.32, 323.14(4)(b), Stats.

Any person, employee, or position empowered and designated by ordinance or resolution.

2 CITY

Governing body of any City ss. 323.11 & 323.14(4)(a), Stats.

Mayor, subject to ratification ss. 323.14(4)(b), 62.09(8), 62.11, 64.29, Stats.

City Manager, subject to ratification ss. 64.11 & 323.14(4)(b), Stats.

Chief Executive Officer, subject to ratification ss. 62.11 & 323.14(4)(b), Stats.

Any person, employee, or position empowered and designated by ordinance or resolution.

3 COUNTY

Majority vote of **County Board** constituting a quorum ss. 59.02, 59.03, 59.04, 323.11, 323.14(4)(a), Stats.

County Board Chair, if empowered by ordinance ss. 59.12 & 323.14(4)(b), Stats.

County Executive, if empowered by ordinance ss. 59.17(2) & 323.14(4)(a), Stats.

County Administrator, if empowered by ordinance ss. 59.18(2) & 323.14(4)(a), Stats.

County Sheriff, s. 59.28, Stats.

Any person, employee, or position empowered and designated by ordinance or resolution.

4 STATE

Governor of the State of Wisconsin, s. 323.10, Stats.

5 FEDERAL

President of the United States, 42 USC s. 5170 (Et seq.)

NOTE: *Statute numbers (i.e., 323.11 or 42 USC s. 5170) refer to the Wisconsin Statutes and United States Code, respectively.*

EMERGENCY CONTACT INFORMATION

24-Hour Emergency Contact Number
To contact the Wisconsin State Duty Officer, dial (800) 943-0003

Wisconsin Joint Operations Center (JOC)
To contact the JOC, dial (800) 335-5147 x8400

Wisconsin Statewide Information Center (WSIC)
To contact the WSIC, dial (888) DCI-WSIC

GENERAL CONTACT INFORMATION

Wisconsin Emergency Management (WEM)
Main Telephone: (608) 242-3232
Fax: (608) 242-3247

Wisconsin Department of Military Affairs (DMA)
Main Telephone: (608) 242-3000
State Legal Office: (608) 242-3072
Judge Advocate General: (608) 242-3077
Fax: (608) 242-3082

Source: DMA

When the Governor proclaims a state of emergency, the DMA, through WEM, is generally the lead state agency to respond to the emergency. However, if the Governor determines that a public health emergency exists, he or she may proclaim a state of emergency related to public health and designate the Department of Health Services as the lead state agency to respond to that emergency. Additionally, if the Governor determines that an emergency is related to computer and telecommunications systems, the Governor may designate the Department of Administration as the lead agency.

Emergency Management Planning

The Adjutant General, through WEM, is required to develop a comprehensive state plan of emergency management for the security of people and property, which is mandatory during a state of emergency, subject to approval by the Governor. The plan, known as the Wisconsin Emergency Response Plan (ERP), sets forth the responsibilities of state and local officials to take specific actions. The Adjutant General must seek advice from the DHS regarding emergency medical aspects of the ERP and from the DOA regarding computer or telecommunications aspects of the ERP.

The Adjutant General carries out statewide training programs and exercises and serves as the principal assistant to the Governor in directing emergency management activities.

The governing bodies of counties, towns, and municipalities are required to adopt an effective program of emergency management compatible with the state ERP. WEM provides assistance to local governments in the development of their plans. Each governing body may appropriate funds and levy taxes for this program.

Federal Funding

Grants awarded by the U.S. Department of Homeland Security through WEM are a major source of funding to the state and local governments. Federal grant funds are awarded through several programs including the state Homeland Security Grant Program, the Urban Areas Security Initiative, and the Emergency Management Planning Grant Program.

Incident Command System (ICS)

"Incident command system" (ICS) is defined in state law as "a functional management system established to control, direct, and manage the roles, responsibilities, and operations of all of the agencies involved in a multi-jurisdictional or multi-agency emergency response." The state plan of emergency management requires use of the ICS by all emergency response agencies, including local health departments, during an emergency declared by the Governor or by a municipality or in other multi-jurisdictional or multi-agency emergencies. County and municipal emergency management plans are subject to a similar requirement. In addition, the DHS is required to ensure that emergency operations are conducted using ICS during a declared public health emergency in which the DHS is designated as the lead state agency.

The Adjutant General, through WEM, must provide training in the use of ICS in managing emergencies to local government officials, officers, and employees whose duties include responding to emergencies, including officers and employees of local health departments. The Adjutant General must consult with the DHS regarding the ICS training for local

health department personnel. The Adjutant General is required to utilize federal funding to provide this training, to the extent possible.

First Responder Training

To assist in the training of first responder personnel statewide, the DMA, through WEM, manages and operates the Regional Emergency All-Climate Training Center ("REACT" Center) at Volk Field at Camp Douglas. The REACT Center provides training for both military and civilian responders to natural and human-caused disasters. The facility has classrooms and a 15-acre training ground with various collapsed structures to provide a realistic response for rescue teams.

Mutual Aid Box Alarm System (MABAS)

The Adjutant General must furnish guidance and establish standards for fire, rescue, and EMS regarding the adoption of the intergovernmental cooperation MABAS system as a mechanism that may be used for deploying personnel and equipment in a multi-jurisdictional or multi-agency emergency response. MABAS is a fire service mutual aid system connecting fire, EMS, special operations, and hazardous materials resources. This standard is set forth under ch. WEM 8, Wis. Adm. Code. Further, agencies that manage public works departments may adopt a public works mutual assistance agreement developed by WEM for intergovernmental collaboration of public works personnel, equipment, and resources in a multi-jurisdictional or multi-agency emergency response.

Disaster Assistance

Wisconsin Major Disaster Assistance Program

This state program is a fund that makes payments to local units of government for damages and costs incurred as a result of a disaster. A "disaster" is a severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or critical systems, including computer, telecommunications, or agricultural systems. Funds from the Wisconsin Major Disaster Assistance Program may be used for costs including debris removal, emergency protective measures, and road damage. Local governments must provide a 30% match.

Federal Disaster Assistance

Various types of federal disaster assistance are available to both the public and private sectors as a result of a Presidential disaster declaration. The public sector (local, tribal, and state government, and certain private not-for-profit agencies) may receive the following types of aid:

- Public assistance grants with a 75% federal, 12.5% state, and 12.5% local cost-sharing, to replace uninsured publicly owned facilities and equipment damaged in a disaster.

- Hazard mitigation grants (same cost-sharing) to develop hazard mitigation plans and fund mitigation measures.

Funding is available to individuals, farmers, and businesses in the form of:

- Disaster housing grants.
- Small Business Administration loans.
- Other needs assistance grants.
- Farm Service Agency loans.

Hazardous Materials

Emergency Planning and Community Right-to-Know Act

The Emergency Planning and Community Right-to-Know Act (EPCRA) is a federal law created to help communities plan for emergencies involving hazardous substances. The law requires each state to establish a state emergency response commission and local emergency planning committees to develop emergency plans in case of an accidental release and to look for ways to prevent chemical accidents. Chemical storage facilities must report the storage, use, and release of certain hazardous chemicals as well as pay fees based upon the number of different hazardous chemicals present onsite.

Hazardous Materials Response

WEM contracts with a number of municipal fire departments around the state to provide regional coverage for hazardous materials (HAZMAT) incidents that require the highest level of respiratory and skin protection. There are currently 25 HAZMAT teams strategically located throughout the state.

Continuity of Legislative Operations

Interim Successors for Legislators

Wisconsin law provides a mechanism for choosing interim successors for legislators if specified criteria are met. The provision takes effect if there are nine or more vacancies in the Senate at the same time or if there are 25 or more vacancies in the Assembly at the same time.

Under the provision for interim successors for Senators, the Senate leader of each political party for each vacant Senate seat that was last held by a member of his or her own party must request the state chairperson of that party to solicit nominations for an interim successor from county chairpersons of the party in each county that is at least partially within the Senate district. The Senate leader must request that the state chairperson select three to five potential interim successors from the nominees submitted by the county chairpersons and request that the state chairperson submit the names to the Senate leader

of the party within seven days after the date on which the ninth Senate vacancy occurred. Within 14 days after the ninth vacancy occurred, the Senate leader of the political party must appoint an interim successor from the list of potential interim successors that is submitted by the state chairperson of the party. The act lists the order in which persons are determined to be the Senate leader for the majority party and for the minority party.

A similar procedure is specified for situations in which there are 25 or more vacancies in the Assembly at the same time.

Virtual Meetings of the Legislature

Additionally, each house of the Legislature, pursuant to its rules or joint rules, may issue a notice that the house and its committees are prevented from physically meeting at the seat of government due to a disaster or the imminent threat of a disaster. If a notice is issued, the house and any committee of the house may conduct a virtual meeting and transact business using any means of communication by which all of the following occur: (1) the identity of each participating member is verified and the actions of each participating member are authenticated; (2) all participating members are able to simultaneously hear or read the comments of members recognized to speak; (3) any document that is used by a member and that is accepted by the presiding officer or chairperson is immediately transmitted to the other participating members; and (4) the public has the opportunity to monitor the proceedings, within technological limits.

2009 Wisconsin Act 363 created many of the provisions relating to: (a) emergency interim successors for legislators; (b) virtual meetings of the Legislature; and (c) emergency temporary locations for the Legislature. This legislation was a product of the Joint Legislative Council's Special Committee on Emergency Management and Continuity of Government. Information may be found at: https://docs.legis.wisconsin.gov/2009/proposals/sb227

Emergency Temporary Locations for the Legislature

Whenever during a state of emergency it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the state capital, the Governor is required to designate an emergency temporary location for the seat of government and to take such action and issue such orders as are necessary for an orderly transition of the affairs of state government to that location. While the seat of government remains at a temporary location, all official acts required by law to be performed at the seat of government are as valid and binding when performed at the temporary location as if performed at the normal location.

Wisconsin law also allows the Legislature, by joint rule, to provide a process for designating an emergency temporary seat of government for the Legislature that is different than the location designated by the Governor. Whenever, as the result of a disaster or the imminent

threat of a disaster, it becomes imprudent, inexpedient, or impossible to conduct the business of the Legislature at the state capital, the Legislature may meet either at the location designated by the Governor or the location designated by the Legislature itself. Information about this location is not subject to inspection or copying under the Open Records Law. Furthermore, the Legislature may meet for up to one week per session in a location other than the state capital or the temporary seat of government designated by the Governor, in order to practice meeting in a temporary location.

Additional References

1. The DMA website describes the activities of the Wisconsin Army National Guard and Air National Guard, as well as the WEM system, at: http://dma.wi.gov/.
2. Wisconsin's Homeland Security website is a comprehensive source of information on homeland security issues. The website is: http://www.hsc.wi.gov.
3. WEM's website is: http://emergencymanagement.wi.gov.
4. Information on emergency preparedness is available at http://ready.wi.gov.
5. Information about the rights and responsibilities of employees and employers under the federal USERRA is available at:
    - http://www.dol.gov/vets/whatsnew/userraguide0903.rtf.
    - Employer Support of the Guard and Reserve, (608) 242-3169.
6. Information about re-employment rights for military personnel called to state service may be obtained from the Office of the Staff Judge Advocate DMA (608) 242-3071.
7. Legislative Audit Bureau audit reports available at http://www.legis.wisconsin.gov/lab:
    - *Emergency Management* (Audit Report 10-9).
    - *County Emergency Management Practices*, (best practices review, November 2006).

Glossary

CVSO: County Veterans Service Officer. Each county has a CVSO who is responsible for providing information and assistance to individuals seeking state and federal benefits, programs, and services.

Disaster: Wisconsin law defines "disaster" as a severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or critical systems, including computer, telecommunications, or agricultural systems.

WERP: Wisconsin Emergency Response Plan. The ERP is the state's comprehensive emergency management plan.

ICS: Incident Command System. Wisconsin law defines ICS as a functional management system established to control, direct, and manage the roles, responsibilities, and operations of all of the agencies involved in a multi-jurisdictional or multi-agency emergency response.

MABAS: Mutual Aid Box Alarm System. MABAS is a fire service mutual aid system connecting fire, EMS, special operations, and hazardous materials resources.

WEM: Wisconsin Emergency Management. WEM is the informal name of the Division of Emergency Management in DMA.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 24 – MUNICIPAL AND COUNTY GOVERNMENT

Wisconsin is comprised of 72 counties, 1,256 towns, 190 cities, and 405 villages. They are commonly referred to as "general purpose units of local government." While there are similarities and differences across each type of general purpose local unit of government in Wisconsin, they all exist to provide general governmental services to their residents. In an effort to decrease costs and improve these services, municipalities and counties often work together through intergovernmental cooperation agreements to provide such services.

Melissa Schmidt, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Overview of General Purpose Local Units of Government 1
- Counties 1
- Towns 3
- Cities and Villages 5

Intergovernmental Cooperation 7
- General Authority 8
- County Provision of Services to Cities, Villages, and Towns 8
- Revenue Sharing 9
- Area Cooperation Compacts 9

Boundary Issues 10
- Annexation 10
- Municipal Incorporation 12
- Consolidation 13
- Detachment 14
- Boundary Agreements 15

Comprehensive Planning 16

State Mandates 18

Additional References 19

Glossary 20

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Overview of General Purpose Local Units of Government

General purpose local units of government are divided into two tiers: counties and municipalities (towns, villages, and cities). They are all creatures of the state in that their existence depends on laws enacted by the state Legislature.[1] The Legislature also largely determines their powers and duties, although as described in the following section, the Wisconsin Constitution confers "home rule" authority to cities and villages for them to determine their local affairs and government. (General purpose local units of government are distinct from special purpose local government units such as school districts, sanitary districts, and inland lake districts.)

County government is the oldest form of local government in Wisconsin, dating back to 1818 when it was still part of the Michigan Territory.

Counties

Wisconsin's 72 counties serve dual functions, being both general purpose units of local government and administrative arms of the state. The counties vary in size from 232 square miles (Ozaukee County) to 1,545 square miles (Marathon County) and cover the entire territory of the state. Estimated county populations range from 4,214 (Menominee County) to 948,322 (Milwaukee County). County boundaries are generally established by the Legislature under s. 2.01, Stats., however the statutes also provide mechanisms by which a county may be divided or consolidated with an adjoining county.

Administrative Home Rule

The Wisconsin Constitution authorizes the Legislature to establish one or more systems of county government. It states that the Legislature may confer on county boards powers of a "local, legislative, and administrative character." Consequently, county powers are not derived from the State Constitution, but from what is specifically authorized by state statutes and what can reasonably be implied from them. Thus, unlike cities and villages, counties have no general

Q: What is administrative home rule authority?

A: Administrative home rule authority allows a county to decide for itself how to organize or consolidate its administrative departments and is conferred by statute.

[1] Chapter 66, Stats., relates to general municipal law; statutes specific to counties are found in ch. 59, those related to towns are in ch. 60; those related to villages are in ch. 61; and those related to cities are in ch. 62. Statistics regarding counties and municipalities cited in this chapter are from the 2011-12 *Wisconsin Blue Book*.

constitutional or statutory home rule authority, discussed later in this chapter. Instead, they have "administrative home rule" authority to organize their own departments.

Role in Local Government and Administration of State Programs

Counties are considered local units of government because they have local governmental powers. The local functions exercised by counties vary widely, but generally include the powers to levy and collect property taxes, construct and maintain county highways, engage in land use planning, and maintain parks and recreational facilities.

Counties administer the state's health and welfare services, court system, and highway maintenance programs, as well as many other state programs.

Counties are also considered an administrative arm of the state because they are also required to carry out or enforce certain state laws. For example, counties are required to maintain judicial court records, manage state elections, keep vital statistics and property records (birth and death certificates, marriage licenses, and property deeds), and enforce and prosecute state criminal laws. Counties are also required to carry out various state programs, such as health and human services programs.

Structure of County Government

A county's legislative power is exercised by the county board of supervisors, generally through the enactment of ordinances and the adoption of resolutions. In most counties, the county board carries out executive functions as well. Except in Milwaukee County, county board supervisors are elected to two-year terms in the spring nonpartisan election held in odd-numbered years. In Milwaukee County, supervisors hold four-year terms. Each county board consists of supervisors elected from individual supervisory districts drawn by the county board after each federal decennial census. The statutes establish the maximum number of supervisors a county may have, based on population, except for Milwaukee County. Milwaukee County currently has no statutorily prescribed maximum number of county board supervisors. Menominee County is also unique in that it currently consists of only one town. As such, elected town board members automatically serve as county board members. If the county ever has one or more villages, then the county board must also have one supervisor from each village in the county.

In any county other than Menominee, the size of the county board may be adjusted only after each federal decennial census. The procedures to do so are specified in the statutes.

To assist in carrying out administrative and executive functions, the statutes require counties to provide for either a county executive, a county administrator, or a county administrative coordinator. The most powerful of these is the county executive, who is elected for a four-year term and serves as the chief executive officer of the county. The county executive has veto authority, including partial veto of appropriation measures. There are 12 counties with a county executive, including Milwaukee County, which is required to have a county executive.

A county administrator is appointed by the county board to coordinate county operations. Twenty-five counties employ a county administrator. Since 1987, state statutes have required a county board in a county with no county executive or county administrator (half of the counties) to designate an elected or appointed county official as administrative coordinator. The administrative coordinator is responsible for coordinating all administrative and management functions of county government not vested by law elsewhere. Thirty-three counties have an administrative coordinator.

Several other county offices are required by the Wisconsin Constitution. For example, the constitution requires each county to have the elective offices of a sheriff, district attorney, clerk, treasurer, register of deeds, judge, and a clerk of circuit court. Counties with a population of less than 500,000 are also required to have a surveyor and may choose to have either an elective office of coroner or a medical examiner system.

Towns

Wisconsin's 1,256 towns cover those areas of the state that are not included within the corporate boundaries of cities and villages. While many towns continue to maintain their original rural character, a number of towns have become urban in character. As a result, there is a wide disparity among towns in population, industry, commerce, and level of governmental services. Estimated town populations vary from 40 (Town of Wilkinson, Rusk County) to 21,288 (Town of Grand Chute, Outagamie County).

Q: Do towns have any type of home rule authority?

A: No. Towns, just like counties, only possess powers expressly given to them by state statutes.

Town Uniformity

Towns do not have statutory or constitutional home rule authority to determine their own local affairs through charter ordinances. Instead, Wis. Const. art. IV, s. 23 requires that: "the legislature shall establish but one system of town government, which shall be as nearly uniform as practicable . . . ." This constitutional provision, commonly referred to as the "town government uniformity requirement," means that laws affecting towns may not provide for differences in the basic structural or organizational scheme, or "system," of town government. However, state laws may provide for variations in the way the details of town government affect different towns, to the extent it is impractical for the details to be uniform.

Thus, like counties, towns possess only those powers expressly delegated to them; the language of the statutes, and what can necessarily be implied from the statutes, determine the structure, method, and scope of town government. For example, the Legislature has given towns the power to provide for law enforcement, fire protection, and roads; levy taxes; and exercise zoning authority if the town is located in a county that has not enacted a county zoning ordinance. Also, towns may elect to exercise village powers. It is important

to note, however, that if a town elects to exercise village powers, the structure of the town government does not change.

Town Meetings

Town electors (eligible voters residing in the town) directly affect the governance of their town through town meetings. A town meeting has authority specified in statutes over various town matters, including the town's property tax levy. The annual town meeting must generally be held on the third Tuesday in April. The town electors may, however, vote to delegate some town meeting powers to the town board. Additional town meetings, referred to as special town meetings, may also be convened if called by a town meeting, upon written request of at least 10% of the town's electors, or if called by the town board under limited circumstances.

A unique aspect of town government is the town meeting, comprised of all eligible electors of the town. The town meeting is a form of direct (rather than representative) democracy.

The town meeting is specifically granted the following three different types of powers: (1) direct powers, including the power to levy taxes; (2) directives or grants of authority to the town board, including the power to levy taxes, purchase land, and exercise village powers, as discussed below; and (3) authorizations to the town board to appropriate money for specific purposes, including conservation activities, civic functions, and animal, insect, and weed control.

Town Boards

An elected town board, generally consisting of three or five members, handles town government matters that are not under the jurisdiction of the town meeting, along with any powers delegated from the town meeting. (The Town of Menominee in Menominee County may have up to seven members on its town board.) Town board supervisors serve two-year terms and are elected in the spring election of odd-numbered years. The town board chair has a number of statutory powers and duties that can be characterized as administrative or executive. For example, the town chair must preside over town meetings and town board meetings. The town chair must also act on behalf of the board in various matters, including seeing that town orders and ordinances are obeyed. Towns are also authorized, but not required, to create the position of town administrator to carry out duties assigned by the town board.

As previously mentioned, the town meeting may grant the town board the power to exercise all village powers. This allows the town board to exercise village powers under ch. 61, Stats., except those village powers "that conflict with statutes relating to towns and town boards." Subject to the latter limitation, the exercise of village powers expands the town board's regulatory and land use authority. It extends to various powers, including police powers for regulating the public's health, safety, and welfare, as well as expanded land use

planning authority. A town that is granted authority to exercise village powers is not required to exercise any of these powers, nor does this authority make the town become a village, or give it annexation authority.

Cities and Villages

Wisconsin's 190 cities and 405 villages are sometimes referred to as "incorporated" municipalities or "municipal corporations." This reflects to some extent their legal status. Early in state history, villages and cities were incorporated by special acts of the Legislature. In 1871 and 1892, constitutional amendments were adopted prohibiting the Legislature from incorporating any city, village, or town by special act. As a result, cities and villages are now incorporated according to general incorporation laws, and the basic outline of city and village government is now set forth in the statutes (sometimes referred to as "general charter" laws). [Wis. Const. art. IV, s. 31, and chs. 61 (villages) and 62 (cities), Stats.]

Not all Wisconsin cities and villages are urban. For example, the smallest city is the City of Bayfield, with a population of 487. The smallest village, the Village of Stockholm, has a population of 66.

While cities and villages are often thought of as urban centers, there are wide differences in population among cities and villages and a relatively high number of cities and villages with modest populations. Estimated city populations vary from 594,425 in Milwaukee to 488 in Bayfield. Likewise, estimated village populations vary from 35,680 in Menomonee Falls (Waukesha County), to 66 in Stockholm (Pepin County).

Classes of Cities and Villages

The Wisconsin statutes divide cities into four classes, based on population, as follows:

- First class cities, with a population of 150,000 or over.
- Second class cities, with a population of at least 39,000, but less than 150,000.
- Third class cities, with a population of at least 10,000, but less than 39,000.
- Fourth class cities, with a population of less than 10,000.

Changing from one class of city to another is not automatic. In addition to having the requisite population, the city must make any necessary changes in government and the mayor or city manager must make a proclamation and publish this change according to law. For example, the City of Madison has an estimated population of 234,625, which is sufficient population to become a first class city, but has not taken the necessary steps to do so. For purposes of statutes relating to cities, Madison remains a city of the second class.

Distinctions among second, third, and fourth class cities are few; the primary distinctions are between first class cities (currently, only the City of Milwaukee) and the other three classes. Over time, special provisions have been enacted in the statutes with the City of Milwaukee in mind, and these provisions only apply to first class cities. For example,

special provisions apply to first class city police and fire departments and eminent domain procedures.

Constitutional and Statutory Home Rule Authority

Under Wis. Const. art. XI, s. 3 (1), cities and villages may determine their local affairs and government, subject only to the Wisconsin Constitution and to legislative enactments of statewide concern that uniformly affect every city or village. This is referred to as "constitutional home rule" authority. Cities and villages implement home rule by enacting charter ordinances under s. 66.0101, Stats. Constitutional home rule authority authorizes cities and villages to act both in the absence of legislative enactments and, in some cases, even in the face of a contrary legislative enactment. Regarding the latter, if a statute addresses a subject matter entirely of a local character, the city or village may elect not to be bound by the statute if it exercises its constitutional home rule authority. If a statute is of a mixed character, the constitutionality of the statute depends on whether it is "primarily or paramountly" a matter of local affairs and government or of statewide concern. If the statute is primarily a matter of statewide concern, the city or village is bound by the statute. Some argue that the courts have construed constitutional home rule authority narrowly and that its primary value lies in serving to limit the reach of state legislation into local policymaking.

Q: What is "constitutional home rule" authority?
A: Constitutional home rule authority allows a village or city to determine its local affairs and governance, which is done through a charter ordinance. This authority is subject, however, to the Wisconsin Constitution and legislative enactments of statewide concern that uniformly apply to every city or village.

Often confused with constitutional home rule is the broad statutory authority of cities and villages to exercise police powers, sometimes referred to as "statutory home rule." Statutory home rule is a broad grant of authority to be exercised for the good order of the city or village, commercial benefit, and public health, safety, and welfare. The exercise of statutory home rule can be preempted, either expressly or impliedly, by state legislation.

Unlike "constitutional home rule" authority, "statutory home rule" authority is conferred through state statutes, not limited to matters of local affairs, and may be implemented through various measures such as ordinances and regulations.

City and Village Governments

While the powers of cities and villages are similar, there are differences in how their governments are organized. There are two different governmental structures for cities and two for villages: for cities, the mayor-council structure and the council-manager structure; for villages, the president-village board structure and the village board-manager structure. While each governmental structure has an elected legislative body, the executive may either be elected or appionted by the legislative branch. Cities and villages decide for themselves which governmental structure to use.

The two forms of city government are mayor-council and council-manager. The two forms of village government are president-village board and village board manager.

The vast majority of Wisconsin cities use the mayor-council form of government organization, where the mayor is elected. Only 10 cities use the council-manager (or city-manager) form, where the city manager is appointed by the city council. Under the mayor-council form of government, the common council consists of alderpersons typically elected by alder districts and the mayor, who is elected at large, to be the city's chief executive officer. The mayor votes in the event of a tie vote in the city council and has veto power. Wisconsin cities operating under the mayor-council form generally have a "weak" mayor. This is because instead of concentrating administrative responsibilities in the mayor's office, administrative responsibilities are spread among the mayor, elected administrative officers, boards and commissions, and independent appointed officials.

Most Wisconsin villages utilize the president-village board form of government. Only 10 villages operate under the village board-manager form of government. The board of trustees, or village board, which acts as the legislative branch for the village, is generally elected at large. The village president is also elected at large. The village president is assigned certain administrative responsibilities but has no veto power and generally is not considered the chief executive officer of the village.

The manager form of government for both cities and villages is set forth in ch. 64, Stats. The manager form of government provides a strong executive, serving at the pleasure of the legislative body. The manager is typically professionally trained in municipal management and is responsible for policy implementation and administration, including preparation of the budget. The manager form of government usually has a relatively small legislative body.

Intergovernmental Cooperation

Wisconsin law offers considerable opportunity for cooperation at the local government level on a voluntary basis. In addition to the general cooperation provisions summarized below, other statutes contain authority for counties, towns, villages, and cities to cooperate in

specific areas, such as police and fire protection and library services. The following is an overview of statutory provisions that authorize intergovernmental cooperation.

General purpose and special purpose units of local government have broad authority to cooperate with each other and with Indian tribes and bands in Wisconsin through procedures specified in s. 66.0301, Stats.

General Authority

The statutes authorize municipalities (broadly defined to include both general purpose and special purpose units of local government) to contract with other municipalities and with American Indian tribes for the receipt or furnishing of services or the joint exercise of power or duty. [s. 66.0301, Stats.] The general limitation on this authority is that each may act under the contract only to the extent of its lawful powers and duties. The law provides that a cooperation contract may provide a plan for administration of the function or project, including proration of expenses, deposit and disbursement of funds, submission and approval of budgets, creation of a commission, selection and removal of commissioners, and formation and letting of contracts. Further, the law must be "interpreted liberally in favor of cooperative action …."

The cooperation statute also expressly allows a commission created under a cooperation contract to finance the acquisition, development, remodeling, construction, and equipment of land, buildings, and facilities for "regional projects." Several means of financing these regional projects are provided in ch. 67, Stats.

A similar statute authorizes municipalities of this state to contract with municipalities of another state for the receipt or furnishing of services or the joint exercise of any power or duty. These agreements generally must be approved by the Attorney General.

Wisconsin municipalities may contract with municipalities in other states to provide or receive services. These contracts must be approved by the Wisconsin Attorney General.

County Provision of Services to Cities, Villages, and Towns

A county may provide local government services to a city, village, or town that requests the county to do so. [s. 59.03 (2), Stats.] Under this provision, counties, cities, villages, and towns are not limited to act only to the extent of their lawful power and duties as is the case under the general authority for cooperation, described above. Thus, for example, even though county boards have no independent authority to provide fire protection, s. 59.03 (2), Stats., authorizes counties to provide such services upon the request of a city, village, or town located within the county. The broad statutory language authorizes county boards to provide local government services throughout the county; in specific cities, villages, and towns within the county; or within districts that comprise all or portions of cities, villages, and towns within the county. Powers under the section may be exercised exclusively by the

county or jointly by the county and the town, city, or village. The procedures for both requesting and approving the furnishing and financing of services are prescribed by statute.

Revenue Sharing

Counties, towns, villages, and cities may enter into agreements to share revenues from taxes and special charges with other counties, towns, villages, or cities and with Indian tribes and bands. [s. 66.0305, Stats.] A county, town, village, or city that enters into a revenue sharing agreement must be contiguous to at least one other county, town, city, or village also entering into the agreement. The revenue sharing agreement may be used to permit a city or village to share in the expanded tax base of an adjacent town which is experiencing growth that is essentially an extension of growth in the city or village. Originally enacted in 1996, this provision was intended, among other things, to assist in eliminating disputes over municipal boundaries.

Counties, towns, villages, and cities may share revenue with each other and federally recognized American Indian tribes and bands in this state through procedures specified in s. 66.0305, Stats.

Revenue sharing agreements may include various appropriate matters, but must have a minimum term of 10 years and must specify each of the following:

- The boundaries of the area within which the revenues are to be shared.
- The formula or other means of determining the amount of revenues to be shared.
- The date upon which revenues agreed to be shared shall be paid to the appropriate county, town, village, or city.
- The method by which the agreement may be invalidated after the 10-year minimum duration has expired.

A public hearing must be held before a revenue sharing agreement may be entered into by the interested municipalities. The governing body of a participating municipality or county or interested electors may also call for an advisory referendum.

Area Cooperation Compacts

Section 66.0317, Stats., requires each city, village, or town located in a federal standard metropolitan-statistical area to enter into "area cooperation compacts" with at least two other municipalities or counties in that region. A "federal standard metropolitan statistical area" is a geographical region defined by the U.S. Office of Management and Budget to meet certain high population density criteria and to have high economic ties within the area, as measured by worker commuting. The intent behind area cooperation compacts is to reduce the cost of local governmental services. The compact must perform at least two specified services which may include: law enforcement; fire protection; emergency services;

public health; solid waste collection and disposal; recycling; public transportation; public housing; animal control; libraries; recreation and culture; human services; and youth services. A cooperation compact must be structured to provide significant tax savings. A compact must provide a plan for collaboration, benchmarks to measure progress, and outcome-based performance measures to evaluate success.

Boundary Issues

The DOA's Municipal Boundary Review Section:

608-264-1602

www.doa.state.wi.us

Municipal boundaries are often a source of tension and conflict, particularly in developing areas. As an urban area grows, the core city or village may want to annex newly developed territory outside its borders in order to provide consistent services over the expanding urban area and to capture the tax base that will allow it to provide those services, among other reasons. The towns in which the new development takes place often resist annexation, preferring to retain their individual identity rather than being subsumed within the city or village, and to keep that tax base to finance their own governmental services. The residents and property owners in urbanizing areas may have diverging interests, as well. Some town residents may want the area in which they live to be annexed to the adjoining city or village to take advantage of municipal services. Other property owners in the town may oppose annexation if, as is commonly the case, the town property tax levy is less than the levy would be if annexed.

The statutes provide detailed procedures for annexation as well as for municipal incorporation, consolidation, and detachment. Other statutes seek to avoid conflicts over municipal boundaries by promoting cooperative plans and intergovernmental agreements to specify boundaries in areas of urban growth. Included in these procedures is the requirement that the Department of Administration's (DOA's) Municipal Boundary Review Section provide assistance and review most of these boundary changes (all but detachment). The principal statutes relating to these topics are in subch. II of ch. 66, Stats. Annexation, incorporation, consolidation, detachment, and boundary agreements are described below.

Annexation

Annexation is the process of transferring local jurisdiction of land from unincorporated areas (towns) to incorporated areas (cities and villages). Usually, annexation is designed and initiated by property owners rather than directly by the city or village itself. Often landowners wish to have their property annexed to take advantage of city or village services. In this case, a city or village can only accept or reject a landowner petition for annexation. Consequently, cities and villages argue that they have less authority to

Annexation is a process whereby town territory becomes part of a village or city, usually initiated by owners of the town property proposed to be annexed.

control annexation than is commonly perceived.

Several annexation procedures are available. The most commonly used procedure is direct annexation by unanimous approval. Under this procedure, the owner or owners of the property involved (and any other resident electors) petition for annexation. The land must be contiguous to the annexing city or village. The city or village governing body may approve the annexation by adoption of an ordinance by 2/3rds vote; there is no provision for a city or village residents to approve or reject the annexation by referendum. Also, a town is prohibited from bringing an action on any grounds to contest the validity of a direct annexation by unanimous approval.

Other general annexation procedures include direct annexation by less than all the electors and property owners in the territory; annexation by referendum; and annexation initiated by a city or village with a court-ordered referendum. These procedures either allow or require a referendum of the electors of the territory to be annexed and are used infrequently. Another annexation procedure allows the annexation of land owned by a city or village but located in a town if the land is nearby, but not necessarily contiguous to, the city or village. Finally, special procedures govern how a city or village may annex "town islands," or create town islands when annexing other portions of a town.

Recently established limits on annexation include the following:

- A city or village may not annex town territory unless: (a) the municipality agrees to pay the town, for five years, an amount equal to the property taxes levied by the town on that territory in the year in which the annexation is final; or (b) the city or village and town enter into a specified boundary agreement.
- A city or village may not annex town territory if none of the city's or village's territory is in the same county as the territory to be annexed, unless the town board and county board in which the territory is located each adopt a resolution approving the annexation.

In counties with a population of 50,000 or more, annexations initiated by electors and property owners require an advisory review by the state. The review is conducted by the Municipal Boundary Review Section in the DOA. While the review is advisory, it must be considered by the annexing city or village before an annexation ordinance may be passed. DOA's advisory review consists of a determination as to whether the proposed annexation is in the public interest, based on:

The DOA's Municipal Boundary Review Section must conduct an advisory review of annexations initiated in counties with a population of 50,000 or more.

- Whether governmental services, including zoning, for the territory could clearly be better supplied by the town or by some other village or city whose boundaries are contiguous to the territory proposed for annexation.

- The shape of the proposed annexation and the homogeneity of the territory with the annexing municipality and any other contiguous city or village.

Describing the purpose of the DOA review, the Wisconsin Court of Appeals has stated that the review is "in consideration of the objectives recognized by the Legislature - to prevent haphazard, unrealistic and competitive expansion of municipalities which disregards the overall public interest." [*Incorporation of the Town of Pewaukee*, 186 Wis. 2d 515, 525 (Ct. App. 1994).]

Municipal Incorporation

Municipal incorporation is the process of creating a new village or city from town territory. Incorporation requires three separate approvals, by the circuit court, the Incorporation Review Board (Review Board) described below, and the electors of the area to be incorporated. Once incorporated, the territory may not be annexed by another village or city. Consequently, incorporation may be initiated in some cases as a defensive move to prevent annexation by a neighboring village or city.

Municipal incorporation is the process of creating a new village or city from town territory.

Incorporation procedures are initiated by a petition to the circuit court by at least 25 persons who are both electors and property owners in the territory to be incorporated. If the proposed city or village includes 300 or more people, then the minimum number of signatures increases to 50. The court must determine whether specified population, density, and area requirements are met. The requirements vary, depending on the proximity of the area proposed for incorporation to a metropolitan village or city and whether incorporation as a village or a city is sought. If the required standards are not met, the court dismisses the incorporation petition; if the standards are met and the incorporation petition is sufficient, the court refers the petition to the Review Board.

The Review Board consists of five members: the Secretary of DOA (or designee); two members appointed by the Wisconsin Towns Association; and one member each appointed by the League of Wisconsin Municipalities and the Wisconsin Alliance of Cities. With the exception of the DOA Secretary, all board members serve in an advisory capacity.

Municipal incorporations are approved by a review board and then by the residents in a court-ordered referendum.

In determining whether to approve an incorporation, the Review Board looks at certain characteristics of the territory. Specified standards of homogeneity and compactness must be met and the territory must have a well-developed community center, if the petition is for an isolated city or village. For proposed isolated cities or villages, the territory beyond the core area of density must meet certain housing or assessed value criteria. For proposed metropolitan cities or villages, the territory must have the potential for residential or other land use

development on a substantial scale within the next three years. In addition, the proposed incorporation must be determined by the Review Board to be in the public interest after considering specified factors relating to tax revenues, level of services, impact on the remainder of the town, and impact on the metropolitan community.

If an incorporation petition is approved by the Review Board, the circuit court must order a referendum to be held in the territory to be incorporated. A favorable referendum vote is necessary for the incorporation to take place.

Statutory incorporation standards have been an obstacle in many proposed incorporations. Common reasons for failing to meet the standards include lack of a community identity and negative effects on neighboring communities. Because it is difficult in many cases to meet the general incorporation standards, the Legislature on occasion has enacted special incorporation procedures to address the hurdles to the general incorporation procedures.

Consolidation

Consolidation is a procedure that allows a town, village, or city to consolidate with another contiguous town, village, or city. Likewise, a county may also consolidate with another county. The consolidation procedure begins when the governing body of each affected unit of government passes, by 2/3rds vote of all the members of the governing body, an ordinance fixing the terms of the consolidation. After adoption, the ordinances are submitted first to circuit court for a determination of whether the ordinances comply with statutory formalities and then to the DOA for a determination of whether the proposed consolidation is in the public interest. (Note that consolidation of contiguous towns is not subject to court or the DOA review.) The DOA's review is based on the same standards that apply to incorporations. If the DOA determines that the consolidation is in the public interest, the consolidation ordinances must be ratified by the electors of both units of government.

Consolidation is a process whereby a town, village, or city merges with a contiguous town, village, or city, or a county merges with a contiguous county. The process is initiated by 2/3 vote of each local governmental unit's governing body.

Town Consolidations With a City or Village

An alternative statutory procedure authorizes the consolidation of all or part of a town with a contiguous city or village. The procedure requires adoption of an ordinance by a 2/3rds vote by each consolidating municipality and ratification by the electors at a referendum. There is no requirement that the consolidation be submitted to the circuit court or DOA, but several requirements must be met as a condition of consolidation, including:

- The consolidating town and city or village must adopt identical resolutions describing the level of specified services that will be available to the consolidated city or village,

including all of the following services: public parks; public health; animal control; library; fire and emergency rescue; and law enforcement.

- The town and the city or village must adopt identical resolutions that relate to the ownership or leasing of government buildings.
- The city or village must execute separate boundary agreements with each city, village, and town that borders the proposed consolidated city or village.
- The consolidating town and city or village must agree to adopt a comprehensive plan for the consolidated city or village.
- At least some part of the consolidated city or village must receive sewage disposal services.

Consolidating Counties

The statutory procedure for consolidating counties authorizes the county boards of two or more adjoining counties to enter into a joint consolidation agreement, containing specified provisions. The question of consolidating under the consolidation agreement is submitted to the electors at a referendum. If a majority of the votes cast in each county favors the consolidation, the consolidation takes place; otherwise the consolidation fails. The procedure also allows electors on their own to initiate the consolidation process in the absence of such action by the county board. [s. 59.08, Stats.]

The consolidation of counties may be initiated by either the county boards or the counties' electors.

Detachment

Detachment is the process by which territory is transferred from one municipality to another. For example, territory can be detached from one city or village and attached to another contiguous city, village, or town. Most commonly, detachment is used to transfer city or village territory back into an unincorporated town.

The general detachment process in s. 66.0227, Stats., is initiated when a majority of property owners of 3/4ths of the taxable property to be detached (or all property owners if there is no taxable property in the territory) publish notice of their intent to circulate a detachment petition. They must then file the petition with the city or village from which detachment is sought. The city or village from which detachment is sought must adopt an ordinance to detach the property. The city, village, or town from which attachment is sought must then adopt an ordinance to attach the property.

There is also a detachment process specific for certain farm lands located in a city. [s. 62.075, Stats.] The process includes a petition by property owners; a circuit court hearing with notice served on the city, town, and property owners; and a court order. The statutes limit what farm lands qualify for this detachment process. The total territory of farm land

must be at least 200 acres, owned by one or more property owners each owning at least 20 acres. Also, the land must have been located in the city for at least 20 years, used exclusively for agricultural purposes, contain no public improvements, and not be platted.

Boundary Agreements

Cooperative Plans

Any combination of cities, villages, or towns may determine their shared boundary lines under a cooperative plan approved by the DOA. The cooperative plan must include, among other things, a description of its consistency with the parties' comprehensive plans (described in the following section), a schedule and description of boundary changes and freezes, and provision for delivery of municipal services to the territory covered by the plan. Local procedures for adopting a cooperative plan consist of an authorizing resolution, a public hearing, adoption of the final version of the plan (an extraordinary vote may be required), an optional advisory referendum, and submittal of the plan to the DOA for approval. The duration of a plan is 10 years, but it may be longer if agreed to by the parties and approved by the DOA.

There are three types of boundary agreements allowed under state statutes: cooperative plans; intergovernmental agreements; and stipulations by court order.

DOA must approve a cooperative plan if the plan meets statutorily specified criteria concerning all of the following: (1) the plan's consistency with applicable laws; (2) the plan's provision for municipal services; (3) the compatibility of any affected boundary with the characteristics of the surrounding community; (4) the shape of any affected boundary; and (5) the consistency of the plan with each participating municipality's comprehensive plan. Once a plan is approved, provisions in the plan to maintain existing boundaries, any boundary changes in the plan and the schedule for those changes, and the service delivery plan and schedule are binding on the parties to the plan and have the force and effect of a contract. Also, the DOA may provide mediation services under a mediated agreement procedure, whereby one municipality may bring an adjacent municipality "to the table" in connection with a common boundary dispute and related issues.

Intergovernmental Agreements

Common municipal boundaries may also be determined by a general intergovernmental agreement under s. 66.0301, Stats. No state approval is necessary and the maximum term of such an agreement is 10 years. These agreements might be used by municipalities that, for example, wish to make minor changes in their common boundaries or by municipalities that wish to enter into an initial, shorter-term agreement before developing a cooperative plan, as described above.

Stipulations by Court Order

If annexation is challenged in court, the parties to the litigation may enter into a written stipulation, compromising and settling the litigation and determining the portion of the boundary that is the subject of the annexation. The court having jurisdiction of the litigation may enter a final judgment establishing the boundary as specified in the stipulation.

Comprehensive Planning

Comprehensive planning implementation guides can be found on the DOA's website:
http://www.doa.state.wi.us

Additional information on preparing comprehensive plans can be found on the following websites:

The Wisconsin Economic Development Corporation:

http://www.wedc.org

The Department of Natural Resources:

http://dnr.wi.gov/

The Department of Transportation:
http://www.dot.wisconsin.gov

The State Historical Society:
http://www.wisconsinhistory.org/

The Local Government Center, UW-Extension
http://lgc.uwex.edu/

Wisconsin's comprehensive planning law potentially affects every general purpose local unit of government in the state. This stems from the fact that the law includes a "consistency requirement," which states that in order for a county, town, village, city, or regional planning commission to enact or amend any of the following types of land use ordinances, these ordinances must be consistent with the comprehensive plan:

- Official mapping ordinances.
- Local subdivision ordinances.
- County, town, village, or city zoning ordinances.
- Shoreland or wetlands in shoreland zoning ordinances.

A comprehensive plan that is adopted by a county, town, village, city, or regional planning commission must include nine specified elements:

- Issues and opportunities.
- Housing.
- Transportation.
- Utilities and community facilities.
- Agricultural, natural, and cultural resources.
- Economic development.
- Intergovernmental cooperation.

- Land use.
- Implementation.

While the required content of each element of a comprehensive plan is delineated in general terms in the statutes, the DOA has prepared guides for implementing most of the required elements, which are available on its website.

The law provides for public participation in the development of a comprehensive plan and that the plan must be adopted by ordinance. Adopting the plan by ordinance has been a source of confusion. As such, the law was amended in 2010 to clarify that a comprehensive plan is a guide to the physical, social, and economic development of a local governmental unit and that the enactment of a comprehensive plan by ordinance does not make the comprehensive plan by itself a regulation. This language is intended to clarify that adopting a comprehensive plan is only one step in the process and a plan is not a self-implementing document; a comprehensive plan is implemented through other decisions made by the community following the guidance provided in the plan.

To assist local governmental units in developing comprehensive plans, the law provides for state-funded comprehensive planning grants. The grant program is administered by the DOA through the Division of Intergovernmental Relations. Grant applications are ranked competitively, based on statutory criteria that give preference to planning efforts that:

A comprehensive plan is a guide to the physical, social, and economic development of a local governmental unit. An ordinance enacting a comprehensive plan, by itself, does not make it a regulation.

- Address intergovernmental issues.
- Address specified local, comprehensive planning goals.
- Identify "smart growth areas" (areas that will enable the development and redevelopment of lands with existing infrastructure and municipal, state, and utility services, where practicable, or that will encourage efficient development patterns that are both contiguous to existing development and at densities that have relatively low municipal, state governmental, and utility costs).
- Include development of implementing ordinances.
- Will be completed within 30 months.
- Provide opportunities for public participation throughout the planning process.

The grant program requires local matching funding and gives priority to cooperative planning efforts.

The comprehensive planning legislation also requires cities and villages with a population of at least 12,500 to adopt traditional neighborhood development ordinances similar to a model ordinance that has been developed by the University of Wisconsin (UW)-Extension.

State Mandates

A recurring issue raised by local government is the burden imposed by "state mandates," particularly "unfunded" state mandates. It is difficult to determine with precision what is or is not a "state mandate," but the term generally refers to a state-imposed requirement or restriction on local government. The issue of "unfunded" state mandates appears to be most often raised by counties, partly because of their role as administrative arms of the state. For example, counties fund a substantial portion of human services and justice services programs, which many argue should be state responsibilities.

Legislative efforts have been directed at reducing, eliminating, or funding specific mandates or at addressing mandates with a more general approach. The latter include repeated proposals over the years to establish a formal legislative review mechanism for dealing with legislative proposals that may impose a mandate on local government. These proposals have generally been unsuccessful, although legislative proposals affecting general local government fiscal liability require the preparation of fiscal estimates, generally by the state agency that administers the program. In addition, the Legislature has specifically targeted certain grants to local governments as providing mandate relief. Examples include county mandate relief payments and various grants to counties relating to the costs of operating circuit courts.

A county, town, village, or city may file a request with the DOR for a waiver from a state mandate, except for state mandates related to health and safety.

Under s. 66.0143, Stats., a county, town, village, or city may appeal to the Department of Revenue (DOR) and receive a waiver from a state mandate. "State mandate" is defined for this purpose as a state law that requires one of these local units of government to engage in an activity or provide a service or to increase the level of its activities or services. Under this provision, a county, town, village, or city may file a waiver request with the DOR and must state its reason for requesting the waiver.

Waivers may be granted under the statute from any state mandate except ones related to health or safety. A request for a waiver is handled by the state agency responsible for administering the state mandate; if there is no such agency, the DOR handles the request. If granted, a waiver is effective for four years. The responsible agency may renew the waiver for an additional four years.

Additional References

1. DOA's Division of Intergovernmental Relations, http://www.doa.state.wi.us/Divisions/Intergovernmental-Relations.
2. UW-Extension Local Government Center, http://www.lgc.uwex.edu.
3. League of Wisconsin Municipalities, http://www.lwm-info.org.
4. Wisconsin Towns Association, http://www.wisctowns.com.
5. Wisconsin Counties Association, http://www.wicounties.org.
6. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers, relating to state programs and local government issues. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
7. During the first summer of every biennial legislative session, the Legislative Reference Bureau publishes *State of Wisconsin – Blue Book*, which includes information and statistics about Wisconsin's counties, towns, villages, and cities, available at: http://www.legis.wisconsin.gov/lrb.
8. Paddock, Susan C., "*The Changing World of Wisconsin Local Government*," pp. 99-172, *1997-1998 Wisconsin Blue Book*.
9. Anderson, Jason, *Counties, Cities, Villages, Towns Forms of Local Government and Their Functions* (Wisconsin Legislative Reference Bureau, October 2005), available at: http://www.legis.wisconsin.gov/lrb.
10. Shovers, Marc, *Special Purpose Districts: Types, Powers, and Duties* (Wisconsin Legislative Reference Bureau, January 2006), available at: http://www.legis.wisconsin.gov/lrb.
11. Ohm, Brian W., *Wisconsin Land Use and Planning Law*, CLEW Publications, UW Law School (2013, Board of Regents of the UW System).

Glossary

Administrative home rule authority: The authority conferred by statute to counties, allowing them to decide for themselves how to organize or consolidate their administrative departments.

Charter ordinance: The organizational ordinance of a village or city, enacted by a 2/3rds vote of its legislative body. Procedures relating to the enactment of charter ordinances are found in s. 66.0101, Stats.

Constitutional home rule authority: The authority conferred by Wis. Const. art. XI. s. 3, to villages and cities, which allows them to determine their own local affairs and governance. To exercise this authority, the city or village must do so by enacting a charter

ordinance. Constitutional home rule authority is subject to the Wisconsin Constitution and legislative enactments.

General purpose units of local government: Units of local government that provide basic, general services used by all residents. Also, referred to generally as "local units of government" or "local government," Wisconsin's local units of government are counties, towns, villages, and cities.

Special purpose local units of local government: Units of local government that provide special services targeted at specific groups of residents. Also referred to as "special purpose districts" in Wisconsin, these districts include school districts, technical college districts, sewerage districts, Southeast Wisconsin Professional Baseball Park District, Professional Football Stadium District, regional planning commissions, drainage districts, mosquito control districts, and various cultural arts districts, among others.

Statutory home rule authority: The authority conferred by ss. 61.34 (1) and 62.11 (5), Stats., to villages and cities to manage and control their property, finances, highways, navigable waters, and the public service. It also gives villages and cities the power to act for the good order of the village or city, commercial benefit, and for the health, safety, and welfare of the public. Unlike constitutional home rule, statutory home rule authority is not limited to local affairs and government. The authority may be exercised through various means including, ordinances, licenses, regulations, borrowing, money, tax levies, imprisonment, confiscation, and other necessary means.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 25 - PRIVACY

In Wisconsin, there is no specific state agency with general responsibility for privacy. Instead, the state relies on a number of privacy laws that are generally enforced privately in the case of civil violations or by local district attorneys in the case of criminal violations.

Dan Schmidt, Principal Analyst
Wisconsin Legislative Council

Table of Contents

Major Privacy Laws in Wisconsin 1
Civil Action for Invasion of Privacy 1
Crime of Invasion of Privacy 2
Representations Depicting Nudity 2
Identity Theft 4
Records Containing Personal Information 5
Privacy of Health Care Records 8
Prohibition on Wiretapping 9
Prohibition on Unauthorized Telephone Solicitations 10
Social Security Numbers 10
Use and Collection by Government 10
Private Collection of Social Security Numbers 12
Additional References 12
Glossary 12

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Major Privacy Laws in Wisconsin

The laws described in this chapter are the major privacy provisions in the Wisconsin statutes. While it is not an exhaustive list, it includes significant privacy provisions that are often the subject of constituent questions.

Civil Action for Invasion of Privacy

Wisconsin law recognizes an individual right to privacy. Under the statutes and case law, a person may bring a civil action for damages resulting from an invasion of privacy. For purpose of civil relief, an invasion of privacy is defined as any of the following:

Wisconsin law recognizes the right to privacy and defines when equitable relief, compensatory damages, and attorney fees may be provided if privacy is invaded.

- An intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner that is actionable for trespass.
- The use, for advertising purposes or for purposes of trade, of the name, portrait, or picture of any living person, without having first obtained the written consent of the person or, if the person is a minor, of his or her parent or guardian.
- Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed.
- Conduct involving a representation that depicts nudity without the knowledge and consent of the person who is depicted nude in a circumstance in which the person has a reasonable expectation of privacy, regardless of whether there has been a criminal action related to the conduct or regardless of the outcome of such a criminal action.

However, it is not an invasion of privacy to communicate any information available to the public as a matter of public record.

Under Wisconsin law, a person whose privacy has been invaded is entitled to the following remedies:

- Equitable relief to prevent and restrain an invasion of privacy, excluding prior restraint of constitutionally protected speech;
- Compensatory damages based on the plaintiff's loss or the defendant's unjust enrichment, if proven; and
- Reasonable attorney fees.

If the court determines that an action for invasion of privacy is frivolous, the court must award the defendant reasonable fees and costs relating to the defense. A frivolous action is

an action that was commenced in bad faith or for harassment purposes or an action that was commenced without an arguable basis. [s. 995.50, Stats.]

Crime of Invasion of Privacy

Wisconsin law specifically prohibits an individual from engaging in any of the following crimes of invasion of privacy:

The crime of invasion of privacy prohibits, among other acts, the use of a surveillance device in a private place if the person has the intent to observe a nude or partially nude individual and does not have the consent of that individual.

- Installing or using a surveillance device in a private place with the intent to observe a nude or partially nude person without the consent of the person observed.
- Looking into, for the purpose of sexual arousal or gratification, a private place that is or is part of a public accommodation (public restrooms, etc.) in which a person may be nude or partially nude, regardless of whether an individual is present or not.
- Entering another person's private property without consent or entering an enclosed or unenclosed common area of a multi-unit dwelling or condominium and viewing an individual who has a reasonable expectation of privacy in that part of the dwelling, without consent, for the purposes of sexual gratification or arousal and with the intent to intrude upon or interfere with the individual's privacy.

If a person is convicted of an invasion of privacy crime, he or she is guilty of a Class A misdemeanor and may be fined up to $10,000, imprisoned for nine months, or both. The court may also order an individual convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect to register with the Department of Corrections as a sex offender. [s. 942.08, Stats.]

Representations Depicting Nudity

Wisconsin law prohibits certain representations depicting nudity without the express permission of the subject of the depiction. A representation is defined as a photograph, exposed film, motion picture, videotape, other visual representation, or data that represents a visual image. Specifically, the law provides that anyone who does any of the following may be found guilty of a Class I felony and may be fined up to $10,000, imprisoned for 3 1/2 years, or both:

It is also a crime in Wisconsin to capture, reproduce, possess, distribute, or exhibit photographs and other representations that depict nudity if certain conditions are met.

- Captures a representation that depicts nudity without the knowledge and consent of the person who is depicted nude while that person is nude in a circumstance in which he or she has a reasonable expectation of privacy, if the person knows or has reason to know

that the person who is depicted nude does not know of and consents to the capture of the representation.

- Makes a reproduction of a representation that the person knows or has reason to know was captured in violation of the above provision and that depicts the nudity depicted in the representation captured in violation of the above provision if the person depicted nude in the reproduction did not consent to the making of the reproduction.

- Possesses, distributes, or exhibits a representation that was captured in violation of the above provision or a reproduction made in violation of the above provision(s) if the person knows or has reason to know that the representation was captured in violation of the above provision(s) or the reproduction was made in violation of the above provision(s), and if the person who is depicted nude in the representation or reproduction did not consent to the possession, distribution, or exhibition.

In addition, Wisconsin law prohibits the distribution of certain sexually explicit images without the consent of the person depicted. The statutes specifically prohibit a person from doing the following:

- Posting, publishing, or causing to be posted or published, a private representation if the actor knows that the person depicted does not consent to the posting or publication of the private representation.

- Posting, publishing, or causing to be posted or published, a depiction of a person that he or she knows is a private representation without the consent of the person depicted.

"Posting or publishing" includes posting or publishing on a website on the Internet, if the website may be viewed by the general public. A "private representation" is defined as a representation depicting a nude or partially nude person or depicting a person engaged in sexually explicit conduct that is intended by the person depicted to be captured, viewed, or possessed only by the person who, with the consent of the person depicted, captured the representation or to whom the person depicted directly and intentionally gave possession of the representation.

A violation of either of these provisions is a Class A misdemeanor, punishable by imprisonment for up to nine months, a fine of up to $10,000, or both.

This prohibition does not apply to the following:

- The parent, guardian, or legal custodian of the person depicted if the private representation does not violate the crime of sexual exploitation of a child or possession of child pornography, and the posting or publication is not for commercial purposes.

- A law enforcement officer or agent, acting in his or her official capacity in connection with the investigation or prosecution of a crime.

- A person who posts or publishes a private representation that is newsworthy or of public importance.

A provider of electronic communication services that provides Internet access service to customers. [s. 942.09, Stats.]

Identity Theft

The unauthorized use of personal identifying information, commonly termed "identity theft" is prohibited in Wisconsin. A person who intentionally uses or attempts to use personal identifying information or personal identification documents (a birth certificate, PIN number, or financial transaction card) of another individual to obtain credit, money, goods, services, or anything of value, without that individual's authorization or consent, to avoid civil or criminal process or penalty, or to harm the reputation, property, person, or estate of an individual, is guilty of a Class H felony. A Class H felony is punishable by imprisonment for up to six years, a fine of up to $10,000, or both.

Identity theft occurs when a person intentionally uses or attempts to use personal identifying information or personal identification documents of another to obtain anything of value, including credit or services.

For the purposes of this statute, personal identifying information includes an individual's:

- Name.
- Address.
- Telephone number.
- Driver's license number.
- Social Security number.
- Employer or place of employment.
- Employee identification number.
- Mother's maiden name.
- Financial account numbers.
- Taxpayer identification number.
- DNA profile.
- Any number or code that can be used alone or with an access device to obtain money, goods, services, or any other thing of value.
- Unique biometric data, including a fingerprint, voice print, retina or iris image, or any other unique physical representation.
- Any other information or data that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled.
- Any other information that can be associated with a particular individual through one or more identifiers or other information or circumstances.

In addition, the law provides that if any individual reports an identity theft violation to the law enforcement agency where the individual resides, but the violation occurs outside of

that law enforcement agency's jurisdiction, the law enforcement agency receiving the complaint must prepare a report on the violation and forward it to the law enforcement agency in the appropriate jurisdiction. [s. 943.201, Stats.]

Records Containing Personal Information

Wisconsin law requires certain businesses and government entities to take actions to protect personal information.

Disposal of Records

Wisconsin law prohibits financial institutions, medical businesses, and tax preparation businesses in this state from disposing of records that contain personal information unless the personal information is first rendered undiscoverable. The statutes provide that these businesses may discard the records only after they do one of the following prior to disposal:

- Shred the records.
- Erase the personal information contained in the records.
- Modify the records to make the personal information unreadable.
- Take actions that the businesses reasonably believe will ensure that no unauthorized individual will have access to the personal information contained in the records prior to their destruction (e.g., locked dumpsters).

For the purposes of this statute, personal information generally includes medical information, account or credit information, account or credit application information, and tax information, by which an individual is capable of being associated through one or more identifiers.

Financial institutions, medical businesses, and tax preparation businesses in Wisconsin must make personally identifying information in their documents undiscoverable before disposing of them, and certain businesses must notify individuals of unauthorized acquisition of personal information.

Wisconsin law requires certain business entities to notify individuals of unauthorized acquisitions of personal information. [s. 134.98, Stats.] If an entity whose principal place of business is located in Wisconsin or an entity that maintains or licenses personal information in Wisconsin knows that personal information in the entity's possession has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity must make reasonable efforts to notify each subject of the personal information. The notice must indicate that the entity knows of the unauthorized acquisition of the personal information.

A business that improperly disposes of such records may be required to forfeit up to $1,000 per violation and may be held liable for damages to the individual whose personal

information was disposed of improperly. A person who uses personal information that was improperly disposed of is also liable for damages and may be fined not more than $1,000, imprisoned for not more than 90 days, or both. Such a violation is commonly referred to as "dumpster diving." [s. 134.97, Stats.]

Notification Requirements

Specified entities must provide notification regarding the unauthorized acquisition of personal information. The law applies to entities that:

- Conduct business in Wisconsin and maintain personal information in the course of business.
- License personal information in Wisconsin.
- Maintain a depository account for a Wisconsin resident.
- Lend money to a resident of Wisconsin.

An "entity" also includes:

- The state and any office, department, independent agency, authority, institution, association, society, or other body in state government created or authorized to be created by the constitution or any law, including the Legislature and the courts.
- A city, village, town, or county.

Certain business entities must notify individuals of the unauthorized acquisition of personal information held by those entities.

For purposes of the notification requirements, "personal information" means an individual's last name and first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable:

- The individual's Social Security number.
- The individual's driver's license number or state identification number.
- The number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account.
- The individual's DNA profile.
- The individual's unique biometric data, including a fingerprint, voice print, retina or iris image, or any other unique physical characteristic.

If an entity whose principal place of business is not located in Wisconsin knows that personal information pertaining to a Wisconsin resident has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity must make reasonable efforts to notify each Wisconsin resident who is the subject of the personal

information. The notice must indicate that the entity knows of the unauthorized acquisition of personal information pertaining to the resident.

If a person, other than an individual, that stores personal information pertaining to a Wisconsin resident, but does not own or license the personal information, knows that the personal information has been acquired by a person whom the person storing the personal information has not authorized to acquire the personal information, and the person storing the personal information has not entered into a contract with the person that owns or licenses the personal information, the person storing the information must notify the person that owns or licenses the information of the acquisition as soon as practicable.

Patient health care records are generally confidential and may not be disclosed except with the informed consent of the patient or a person authorized by the patient to give consent or under exceptions specified in Wisconsin statutes.

If, as a result of a single incident, an entity is required to notify 1,000 or more individuals that personal information pertaining to the individuals has been acquired, the entity must, without unreasonable delay, notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis of the timing, distribution, and content of the notices sent to the individuals.

An entity is not required to provide notice if: (1) the acquisition of personal information does not create a material risk of identity theft or fraud to the subject of the personal information; or (2) the personal information was acquired in good faith by an employee or agent of the entity and the personal information is used for a lawful purpose. [s. 134.98, Stats.]

Timing and Method of Notice

An entity must provide the required notice within a reasonable time, not to exceed 45 days after the entity learns of the acquisition of personal information. A determination of reasonableness must include consideration of the number of notices that an entity must provide and the methods of communication available to the entity. Notice must be provided by mail or by a method the entity has previously employed to communicate with the subject of the personal information. If an entity cannot with reasonable diligence determine the mailing address of the subject, and if the entity has not previously communicated with the subject, the entity must provide notice by a method reasonably calculated to provide actual notice to the subject. Upon written request by a person who has received a notice, the entity that provided the notice must identify the personal information that was acquired. [s. 134.98 (3), Stats.]

Exemptions

These notice provisions do not apply to financial institutions that are subject to and in compliance with federal law relating to disclosure of nonpublic personal information or to a person that has a contractual obligation to such an entity, if the entity or person has in effect a policy concerning breaches of information security. In addition, the provisions do not apply to health plans, health care clearinghouses, or health care providers, if the entity complies with federal law relating to security and privacy of information maintained by those entities.

In addition, a law enforcement agency may, in order to protect an investigation or homeland security, ask an entity not to provide a notice that is otherwise required for a period of time. The notification process must begin at the end of that time period. If an entity receives such a request, it may not provide notice of or publicize an unauthorized acquisition of personal information, except as authorized by the law enforcement agency that made the request. [s. 134.98 (3m), Stats.]

Privacy of Health Care Records

Wisconsin law requires that all patient health care records remain confidential unless a patient or a person authorized by the patient gives explicit informed consent to the release of the patient's health care record or unless the situation comes within one of the exceptions listed in the law. [s. 146.82, Stats.] A patient health care record is defined as any record related to the health of a patient prepared by or under the supervision of a health care provider.

Informed consent to disclose patient health care records to an individual, agency, or organization must be in writing. A statement of informed consent must include all of the following:

- The name of the patient whose record is being disclosed.
- The type of information to be disclosed.
- The types of health care providers making the disclosure.
- The purpose of the disclosure.
- The individual, agency, or organization to which disclosure may be made.
- The signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person.
- The date on which the consent is signed.

Q: Can I see my own medical records?

A: Yes. A health care provider must allow you to inspect your medical records during regular business hours if you provide reasonable notice of your intent to inspect the records. You may also receive a copy of your health care records; however, the health care provider may charge reasonable costs for providing copies.

- The time period during which the consent is effective.

In certain circumstances, patient health care records may be released without the informed consent of the patient. Included in the list of exceptions are release of information to other health care workers who are caring for the patient, government agencies with certain health care responsibilities, and certain health care research organizations. Absent informed consent, recipients of patient health care information generally must keep that information confidential and may not disclose such information.

Violations of the laws on confidentiality of patient health care records are punishable by penalties, with the severity of the penalty varying depending on whether the violation was negligent, intentional, or intentional with a pecuniary gain. Private lawsuits are also authorized, in which a plaintiff may recover actual damages, specified exemplary damages, and costs and attorney fees.

Although similar to general patient health care records, the treatment of mental health records and human immunodeficiency virus (HIV) test results is governed by separate statutes. Mental health record laws are set forth in s. 51.30, Stats., and HIV test result laws are set forth in s. 252.15, Stats.

Prohibition on Wiretapping

Wisconsin law generally prohibits the intentional actual or attempted interception, actual or attempted use of a device to intercept, intentional alteration, and actual or attempted disclosure of information obtained through the interception of wire, electronic, or oral communication. Generally, a person not acting under color of law may intercept wire, electronic, or oral communication, commonly referred to as wiretapping, only if that person is a party to the communication or has prior consent from one of the parties to the communication.

A person may generally record a communication if the person is a party to the communication or has prior consent from one of the parties to the communication.

However, a person is strictly prohibited from performing any interception with the purpose of violating a law or committing any other injurious act. A violation of the wiretapping prohibitions is a Class H felony punishable by a fine of up to $10,000, imprisonment for up to six years, or both. [s. 968.31, Stats.]

National Do Not Call Registry

1-888-382-1222
http://www.donotcall.gov

Prohibition on Unauthorized Telephone Solicitations

Residents of Wisconsin who do not wish to receive telephone solicitations may request to be included in the National Do Not Call Registry. The registry is maintained by the Federal Trade Commission (FTC).

A telephone solicitor or employee or contractor of a telephone solicitor may not make a telephone solicitation to a residential customer if that individual is listed in the Do Not Call Registry. A telephone solicitor also may not make a telephone solicitation to a nonresidential customer if the nonresidential customer (e.g., a business) has provided the solicitor with notice by mail that the nonresidential customer does not wish to receive telephone solicitations. Finally, a telephone solicitor may not require an employee or contractor to make a telephone solicitation in violation of the provisions of the nonsolicitation prohibition. These prohibitions do not apply if a telephone solicitation is made in response to the recipient's request for such a solicitation or when the recipient is a current client of the person selling property, goods, or services through telephone solicitation. The nonsolicitation prohibition does not apply to a nonprofit corporation, or its employees or contractors, that engage in telephone solicitation.

In addition, a telephone solicitor may not use a prerecorded message in a telephone solicitation without the consent of the recipient of the solicitation.

A person who violates the telephone solicitation regulations may be required to forfeit $100 per violation. The Department of Agriculture, Trade and Consumer Protection (DATCP) enforces these provisions. [s. 100.52, Stats.]

Social Security Numbers

Use and Collection by Government

Federal law places a number of restrictions on state and local governmental use of an individual's Social Security number. For example, the federal Privacy Act of 1974 generally prohibits federal, state, or local government agencies from denying to an individual any right, benefit, or privilege provided by law because that individual refuses to disclose his or her Social Security number. This prohibition does not apply: (a) if the disclosure is required by federal law or the disclosure is required by a federal, state, or local agency maintaining a system of records in existence and operating before January 1, 1975; or (b) if the disclosure was required under a statute or regulation adopted prior to that date to verify the identity of an individual.

Federal law also authorizes several specific uses that a state or local government, or an agency thereof, may make of a person's Social Security number. For example, the Social Security Act authorizes states or local units of government to require persons to disclose their Social Security numbers and to utilize such numbers as a form of identification in the administration of a tax program, a general public assistance program, a driver's license or motor vehicle registration program, or a blood donor program, and in the administration of laws relating to birth certificates.

Q: Can a private company require me to provide my Social Security number as a condition of engaging in business?

A: Yes. Federal law does not prohibit private business' use of Social Security numbers for any legitimate purpose. Financial institutions and other creditors often use Social Security numbers as financial identifiers when checking credit histories. You may refuse to provide your Social Security number on such occasions; however, the business making the request is under no obligation to provide goods or services if you refuse.

While a state or local governmental agency is limited in its ability to require persons to disclose their Social Security numbers, those agencies are not prohibited from requesting that a person provide his or her Social Security number. However, if a state or local governmental agency requests a person to disclose his or her Social Security number under any situation, the federal Privacy Act of 1974 requires the state or local government agency to advise the individual whether the disclosure is mandatory or voluntary, under what statutory authority or other authority the Social Security number is requested, and what uses will be made of the Social Security number.

The federal Personal Responsibility and Work Opportunity Reconciliation Act established a requirement that all states collect Social Security numbers as a condition of receiving federal funding for child support and family assistance programs. These laws were created to assist states and the federal government in finding and reducing the number of individuals evading child support payments. Thus, as a condition of receiving any license in Wisconsin, an individual's Social Security number must be recorded on the license application. Social Security numbers are also required for records relating to a divorce decree, support order, paternity determination, and on death certificates.

Federal law limits the circumstances under which a state or local government may request an individual's Social Security number. Federal law also requires the state to collect Social Security numbers as a condition for receiving federal funding for child support and family assistance programs.

Private Collection of Social Security Numbers

While the Social Security number is commonly used as a financial identifier, the federal government does not regulate the collection of Social Security numbers by private individuals or corporations. Certain industries (credit, banking, etc.) may require a Social Security number as a condition of conducting business; however, it is up to the discretion of the individual to decide to release or withhold a Social Security number in private matters.

Additional References

1. National Conference of State Legislatures (NCSL) Telecommunications and Information Technology website at: http://www.ncsl.org/. NCSL publications that are not available on the NCSL website are usually available at no charge to legislators and staff. To order copies, contact the NCSL Publication Department at 303-364-7812.
2. Federal Communications Commission website at: http://www.fcc.gov/.
3. Office of Privacy Protection at the DATCP website at: http://www.privacy.wi.gov/.
4. The Federal Trade Commission's website on identity theft at: http://www.ftc.gov/bcp/edu/microsites/idtheft/.

Glossary

DATCP: The state Department of Agriculture, Trade and Consumer Protection.

Do-Not-Call Registry: The federal telephone nonsolicitation directory maintained by the FTC.

FTC: Federal Trade Commission.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 26 – STATE-TRIBAL RELATIONS

The relationship of the 11 federally-recognized American Indian tribes and bands in Wisconsin to the state is not always well understood. This relationship, however, has been an important part of the fabric of the state for as long as the state has existed and has become increasingly important as tribal governments have grown in scope and sophistication. This chapter provides general background information on tribal governments in Wisconsin and their relationships with the state government.

David Moore, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Introduction 1
American Indian Tribes in Wisconsin 1
Tribal Government 3
Tribal Membership 3
Tribal Consortia 4
Indian Lands in Wisconsin 4
Trust Land Versus Fee Land 5
Off-Reservation Trust Land 5
Tribal Sovereignty 6
Relation to Federal Government 6
Relation to State Government 7
Sovereign Immunity 7
Treaties 8
Chippewa Treaties 8
Jurisdiction 9
Criminal Jurisdiction 10
Civil Jurisdiction 10
Civil Regulatory Jurisdiction 11
Indian Gaming 12
Gaming Compacts 13
Off-Reservation Gaming 14
Tribal-State Relations in Wisconsin 14
Executive Branch 14
Legislative Branch 15
Judicial Branch 16
Additional References 17
Glossary 17

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

The 11 federally-recognized American Indian tribes and bands in Wisconsin have a unique relationship with the state. As entities that enjoy sovereign status under federal law, the tribes' relations with the state are governed by an evolving and intertwining patchwork of federal, tribal, and state law.

The tribes' sovereign status means that they enjoy a certain amount of autonomy and are empowered to govern themselves and promote their own cultural and economic development. The sovereignty of American Indian tribes, however, is not the same as the sovereignty of a nation-state or of a U.S. state. Members of American Indian tribes are also citizens of the United States and residents of the various states, entitled to the same rights and responsibilities as all other U.S. citizens.

Each tribe and band in Wisconsin has a distinct history. The Menominee Tribe traces its origins in these lands back thousands of years to the people of the Old Copper Culture. The Potawatomi and the various bands of Chippewa (also called Ojibwe) living in Wisconsin originated in other areas of the country, but migrated here prior to European settlement. The Oneida Nation and the Stockbridge-Munsee Band of Mohican Indians inhabited areas in the northeast and mid-Atlantic United States until after the Revolutionary War, but settled in Wisconsin after being displaced from their historical homelands. Ancestors of members of the Ho-Chunk Nation occupied land now in the State of Wisconsin prior to European settlement, were displaced from Wisconsin, but later voluntarily returned despite having to repurchase tribal lands they once owned.

The history of American Indian tribes and bands in Wisconsin, while rich and varied, has also been fraught with the consequences of government policies that deprived Native Americans of their lands, marginalized their culture, and relegated them to reservations that often lacked the resources to sustain them. The present-day relationship of the tribes and the state, then, is informed both by the legacies of these policies as well as by the mutual respect implicit in the relationship of one sovereign government to another.

AMERICAN INDIAN TRIBES IN WISCONSIN

There are 11 federally-recognized American Indian tribes[1] in Wisconsin. Each has its own government, land base, and membership. The following table indicates the name of each tribe, the county or counties in which its land base is located, the approximate number of acres of land the tribe owns, and the approximate number of enrolled members.

[1] The statutes typically refer to "federally recognized Indian tribes or bands in this state." In this chapter, references to "American Indian tribes" or "tribes" refer to all of the federally-recognized tribes and bands.

Name of Tribe	Approximate Number of Enrolled Members (As of July 2011)	Wisconsin Counties in Which Reservation or Off-Reservation Trust Land is Located
Bad River Band of Lake Superior Chippewa Indians	6,945	Ashland, Iron
Forest County Potawatomi Community	1,400	Forest, Marinette, Milwaukee, Oconto
Ho-Chunk Nation	6,563	Adams, Clark, Crawford, Dane, Eau Claire, Jackson, Juneau, La Crosse, Marathon, Monroe, Sauk, Shawano, Vernon, Wood
Lac Courte Oreilles Band of Lake Superior Chippewa Indians	7,275	Burnett, Sawyer, Washburn
Lac du Flambeau Band of Lake Superior Chippewa Indians	3,415	Iron, Oneida, Vilas
Menominee Indian Tribe of Wisconsin	8,720	Menominee, Shawano
Stockbridge-Munsee Band of Mohican Indians	1,565	Shawano
Oneida Tribe of Indians of Wisconsin	16,567	Brown, Outagamie
Red Cliff Band of Lake Superior Chippewa Indians	5,312	Bayfield
St. Croix Chippewa Indians of Wisconsin	1,054	Barron, Burnett, Polk
Sokaogon Chippewa Community (Mole Lake)	1,377	Forest

Sources: Membership data is taken from "Tribes of Wisconsin," prepared by the Department of Administration (DOA) (July 2011), and reflects information provided by each tribe.

Tribal Government

Every tribe in Wisconsin has a constitution that establishes the structure of its government. Each tribe has an elected legislative body, variously called a tribal council, tribal governing board, or business committee. Some tribal constitutions provide that certain issues must be voted on by the general membership of the tribe, rather than the elected governing body. Every tribe also has an elected executive, termed a chair or president. In some tribes, the executive is elected by the tribe's general membership; in other tribes, the executive is elected by the tribal council. Each tribe also has a tribal court. The subject matter over which a tribal court has jurisdiction varies from tribe to tribe.

Information about the tribal courts in Wisconsin, including the subject matter jurisdiction of each court, is available at:

http://www.wtja.org

In addition to these decision-making bodies, each tribe has various administrative departments that deal with particular issues, including human services, child welfare, education, environment, business development, health, and transportation. Some tribal governments have law enforcement departments.

Tribal Membership

Each tribe has the authority to determine its own membership (typically called enrollment). Examples of criteria for membership include blood quantum requirements, ancestors on a specific roll, and patrilineal or matrilineal descent rules. Some individuals of Indian descent may not be eligible for membership in any tribe and some may be eligible for membership in more than one tribe.

Not all American Indians in Wisconsin are members of Wisconsin tribes. Some are enrolled in tribes outside the state and some are not enrolled in any tribe. Who is considered an American Indian depends on the circumstance for which the definition is employed. In some circumstances, such as the U.S. Census, American Indian status is based on self-identification. For the purposes of many state and federal programs, however, whether someone is an American Indian generally depends on whether the individual has: (1) a particular degree of Indian blood; and (2) is recognized by a tribe as a member.

According to data from the 2010 Census, 81,852 people in Wisconsin identify themselves as American Indian or Alaskan Native, either as one race or in combination with one or more other races. This represents 1.5% of the Wisconsin population. The majority of people who identify themselves as American Indian in Wisconsin do not live on reservations.

Tribal Consortia

GLITC

The Great Lakes Inter-Tribal Council (GLITC) is a consortium of the 11 federally-recognized tribes in Wisconsin plus the Lac Vieux Desert Tribe of Michigan. The GLITC Board of Directors is comprised of the tribal chair of each member tribe or the chair's designated representative. GLITC was originally devoted to delivering services and programs (such as health, aging, and economic development programs) to member tribes and to the rural Indian communities of Wisconsin. However, as many tribes have become increasingly capable of providing services to their own communities, GLITC's role has largely changed from direct delivery of services to assisting member tribes with the delivery of services and with supplementing member tribes' service capacities. GLITC's functions also include advocating for its member tribes and communicating with the state government about issues of concern to the tribes.

GLIFWC

The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) represents 11 Chippewa bands in Minnesota, Wisconsin, and Michigan, including all six Wisconsin Chippewa bands. As will be discussed later in this chapter, when various Chippewa bands ceded territory in Wisconsin to the United States by treaty in 1837 and 1842, they reserved the right to hunt, fish, and gather on off-reservation public lands and territories throughout the ceded territories. In the 1980s, a series of federal court decisions approved the Chippewa bands' proposal to adopt an off-reservation code governing their members' exercise of those rights and to form an inter-tribal agency to enforce that code. GLIFWC is the agency the Chippewa bands created for this purpose.

In addition to developing and enforcing the off-reservation conservation code, GLIFWC also provides resource management expertise, legal and policy analysis, and education services. Further, GLIFWC wardens are included within the definition of "peace officer" and have many of the same responsibilities and protections that apply to other state peace officers. GLIFWC wardens may also make arrests for violations of state laws and render aid and assistance to Wisconsin peace officers under certain circumstances.

Other Consortia

In addition to the GLITC and GLIFWC, Wisconsin tribes have created various other inter-tribal groups that work on particular issues and may work in coordination with the GLITC. One example is the Tribal Aging Directors Association, which meets regularly to discuss issues related to the services the tribes provide to their elders.

Indian Lands in Wisconsin

Most of the federally-recognized tribes in Wisconsin have a reservation; that is, land that the federal government has set aside for the use of the tribe. However, land within the

boundaries of these reservations may or may not belong to the tribe or tribal members. This is because the federal General Allotment Act of 1887 authorized the President to allot portions of reservations to individual Indians. Under the Act, the United States would hold the allotments in trust for 25 years; after that period, the land would be conveyed to the Indian in fee. For a variety of reasons, many of these allotments were sold once they were converted to fee status. This resulted in a substantial diminution of Indian-held land, and reservations being disaggregated into a "checkerboard" of jurisdictions.

Trust Land Versus Fee Land

As relevant here, trust land is land to which the United States holds title for the benefit of a tribe or individual American Indian. Trust land cannot be sold without the approval of the Secretary of the Interior, and is exempt from taxation by state and local government. By contrast, fee land is land to which a tribe, individual, or other entity holds title without restriction.[2] In general, fee land is subject to taxation by state and local government.

If a tribe or American Indian purchases land and holds the title in fee simple, the tribe or American Indian may petition the Secretary of the Interior to take the land into trust. An individual American Indian may only petition to convert fee land to trust land if the land is on or adjacent to a reservation or land that is already in trust or restricted status. A tribe, however, may petition to have any land it owns in fee converted to trust land. Federal regulations set forth the procedure and criteria the Secretary must use when determining whether to take land in trust.

Land tenure patterns on reservations in Wisconsin and around the United States vary greatly. For example, almost all of the Menominee Reservation is tribal trust land. By contrast, the vast majority of the Oneida Reservation is fee land, much of which is owned by non-Indians.

Off-Reservation Trust Land

Federal law permits a tribe to apply to have the United States take into trust land that it owns, even if the land is outside the boundaries of the tribe's reservation. One reason tribes place off-reservation land into trust is because Indian gaming may only be conducted on a reservation or on trust land; however, a tribe may also petition to have off-reservation land placed in trust for other purposes.

The Secretary of the Interior has discretion in deciding whether to hold land in trust. Under federal regulations, the criteria the Secretary must use when making this decision vary depending on whether the land is within the boundaries of or contiguous to a tribe's reservation or whether it is outside the boundaries of and noncontiguous to a reservation. The Secretary's analysis also varies depending on whether the tribe intends to use the land

[2] There is another category of land status that is unique to American Indians. Restricted fee land is land which the tribe or tribal member holds title to in fee, subject to a federal patent that restricts alienation. For most purposes, such land is treated the same as trust land.

for gaming purposes. The process for placing off-reservation land trust for gaming purposes is discussed on pages 13-14 of this chapter.

TRIBAL SOVEREIGNTY

In very general terms, sovereignty refers to the right or power to govern, including the authority of a political entity to make its own laws and enforce those laws within its territory. The sovereign status of tribes is a matter of federal law.

The sovereignty of American Indian tribes is unique because it is not absolute. In an early U.S. Supreme Court case, Chief Justice John Marshall described the tribes' sovereignty as different from that of a foreign nation-state, terming the tribes "domestic dependent nations," a phrase courts have used frequently when discussing the tribes' sovereignty. Chief Justice Marshall wrote:

> Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations.[3]

Under federal law, tribes retain those attributes of their original sovereignty that have not been: (1) given up in a treaty; (2) divested by an act of Congress; or (3) divested by implication as a result of their status as "domestic dependent nations." In general, the third category consists of areas in which federal courts have held that a particular aspect of sovereignty does not apply to a tribe. For example, in 1978 the U.S. Supreme Court held that a tribe, as a domestic dependent nation, could not impose a criminal penalty against a non-Indian for an alleged crime against an Indian on the tribe's reservation.[4]

Relation to Federal Government

The unique political status of American Indian tribes flows from their special relationship with the federal government. The genesis of this special relationship stems from federal policy extending back to the founding of the United States to treat Indian tribes as sovereign nations.[5] This policy is expressed in two provisions of the U.S. Constitution: the first grants to Congress "the power...[t]o regulate commerce with foreign nations, and among the several states, and with the Indian tribes"; the second grants to the President

[3] *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).
[4] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).
[5] William C. *Canby*, Jr., *American Indian Law in a Nutshell*, 13 (West Publishing Co. 2009).

the power to make treaties, including Indian treaties, with the advice and consent of the Senate.[6]

The tribes' relationship with the federal government is most often described as a trust relationship. Chief Justice Marshall articulated this view when he wrote that as domestic dependent nations the tribes' relationship to the United States "resembles that of a ward to his guardian." Over time, this paradigm evolved into a framework that also justified the federal government's authority to exercise power over the tribes. For example, in 1886, the U.S. Supreme Court explained that because of the federal government's "course of dealing" with the tribes and the treaty promises it had made, the federal government owes the tribes "the duty of protection," and this obligation is accompanied by the concomitant power to carry out that duty.[7]

The parameters of the federal government's trust responsibility to the tribes are not well defined. The Supreme Court has held that this responsibility, in some of its aspects, establishes legally enforceable duties, particularly with regard to the Executive Branch. With regard to Congress, however, this responsibility is largely considered a moral or political obligation.

Relation to State Government

A tribe is not a political subdivision of a state. Therefore, unless Congress, a treaty, or a court decision specifies to the contrary, a state generally does not have jurisdiction over a tribe or over American Indians in Indian country. This means that a state may not enact legislation requiring a tribe to do anything unless Congress, a treaty, or court decision explicitly grants such power to a state. A state may, however, enact legislation permitting a tribe to do certain things if the tribe so chooses (for example, to administer a state program) or conditioning the receipt of state funds on certain actions by a tribe.

In Wisconsin, the state interacts extensively with the tribes located here. For example, state-mandated social services are administered by the counties in Wisconsin. As residents of the state, American Indians residing on reservations are eligible for these services. Tribes administer many of these programs for the residents of Indian reservations, using state funds and operating under state supervision.

Sovereign Immunity

Sovereign immunity refers to the principle that a government may not be sued without its consent. Courts have held that sovereign immunity applies to tribes and tribal business organizations just as it does to the federal and state governments. Like the federal and state governments, a tribe may also waive sovereign immunity.

In Wisconsin, the doctrine of sovereign immunity was most recently asserted by a tribe in *Koscielak v. Stockbridge-Munsee Community, D/B/A Pine Hills Golf Course & Supper Club*

[6] U.S. Const. art. I, s. 8, and art. II, s. 2.
[7] *United States v. Kagama*, 118 U.S. 375, 384-85 (1886).

(Wis. Ct. App. 2012). The issue in that case was whether a golf course and supper club the Stockbridge-Munsee Community operates could claim immunity against a tort claim brought by a patron of the business.

In *Koscielak*, the Wisconsin Court of Appeals observed that the sovereign immunity of Indian tribes generally extends to the tribe's business arms and is a matter of federal law that cannot be abrogated by the states. Therefore, the court held that the tribe's sovereign immunity extended to its golf course and supper club. [2012 WI App. 30, ¶¶7-9.]

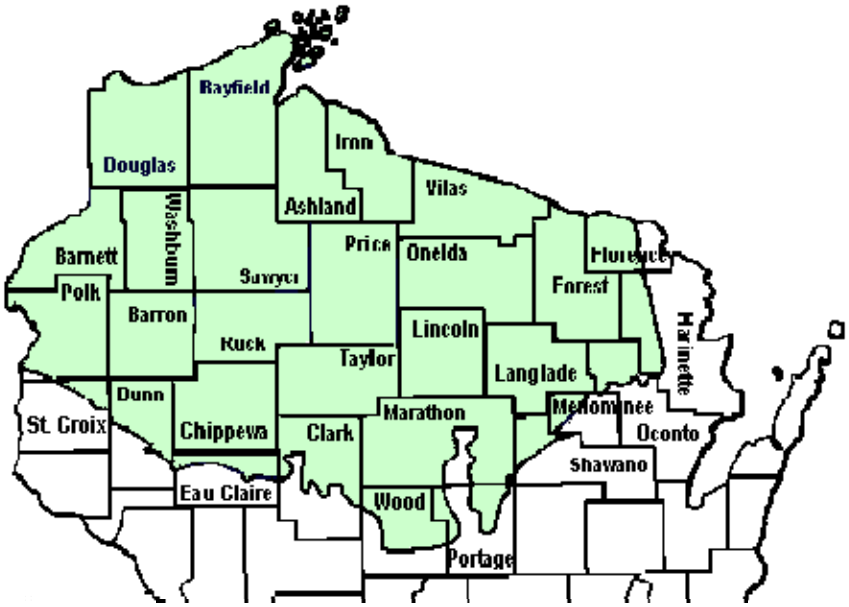
Treaties

Most tribes in the United States have entered into one or more treaties with the United States. In 1871, Congress effectively terminated the President's authority to enter into future treaties with tribes. A treaty, however, remains in force until Congress abrogates it. Therefore, the terms of treaties made prior to 1871 generally remain relevant to analyzing the issues these treaties address. In Wisconsin, as will be discussed below, terms of treaties the Chippewa made with the United States in the mid-19th Century continue to impact contemporary state-tribal relations.

Chippewa Treaties

In 1836, 1837, 1842, and 1854, the Chippewa entered into treaties with the United States covering land in what is now northern Michigan, Minnesota, and Wisconsin. In the 1837 and 1842 treaties, the Chippewa reserved specified lands ("reservations") but ceded other land to the federal government. In Wisconsin, this ceded territory covers approximately 22,400 square miles in the northern third of the state.

Territory in Wisconsin Ceded by Chippewas in 1837 and 1842 Treaties



Source: Wisconsin Department of Natural Resources (DNR).

In the treaties, the Chippewa reserved use rights, also called usufructuary rights, to hunt, fish, and gather within the ceded territory.

With the exception of Lake Superior fishing rights, the treaty rights were generally not exercised in Wisconsin until 1983, when the U.S. Court of Appeals for the Seventh Circuit, in *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341 (7th Cir.), affirmed the rights reserved in the treaties for Chippewa to hunt, fish, and gather in all public land within the ceded territory. Following the decision, 11 Chippewa bands, including six bands located in Wisconsin, established GLIFWC to help the member bands manage and enforce their treaty rights.

A series of subsequent federal judicial rulings further clarified the parameters of the treaty rights and the extent to which the state may regulate tribal hunting, fishing, and gathering in the ceded territory. The U.S. District Court for the Western District of Wisconsin held that the treaty rights include "rights to those forms of animal life, fish, vegetation and so on that [the Chippewa] utilized at treaty time" and that tribal members have the right to "use all of the methods of harvesting employed in treaty times and those developed since." However, the court held that the rights "have been terminated as to all portions of the ceded territory that are privately owned as of the time of the contemplated or actual use of those rights." For the purpose of its holding, the court clarified that "private lands" include lands that are privately held and that are not enrolled in the forest cropland or in the managed forest lands program (and not designated as closed).

With regard to state regulation of tribal members' activities, the district court held that the state may regulate such activities in the interest of conservation and in the interest of public health and safety. The court also outlined rules governing the regulation of several specific resources, including walleye, muskellunge, and deer.

Over time, GLIFWC and member Chippewa bands have negotiated memoranda of understanding with the Wisconsin Department of Natural Resources (DNR) to coordinate the regulation of hunting, fishing, and gathering by tribal members in the ceded territory.

To date, courts have primarily interpreted Chippewa treaty rights in the context of direct restrictions on tribal members' hunting, fishing, and gathering rights. In upholding such rights, the U.S. Supreme Court has noted that tribal treaty rights are "not inconsistent with state sovereignty over natural resources."[8] However, questions regarding whether treaty rights prevent the state from authorizing activities with potential environmental impacts on fish, wildlife, or wild rice generally have not been addressed by the courts.

JURISDICTION

Some of the most complex issues in Indian law concern questions of jurisdiction; that is, whether a particular government--federal, state, or tribal--has the authority to enforce a law in a given context against a particular person. This complexity arises because

[8] *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 208 (1999).

jurisdiction in Indian country may vary depending on whether either party is an Indian and the location of the crime.

Criminal Jurisdiction

In Wisconsin, with one exception, the state has **criminal** jurisdiction over all land in Indian country. Under federal law, "Indian country" includes: (1) all lands within the limits of a reservation; (2) all dependent Indian communities; and (3) all Indian allotments.[9]

The exception to the general rule that the state has criminal jurisdiction over all land in Indian country is the Menominee Reservation. This is because all Wisconsin tribes except the Menominee are subject to Public Law 83-280, commonly referred to as P.L. 280. Passed by Congress in 1953, P.L. 280 transferred criminal jurisdiction in Indian country from the federal government to five states (later six states when Alaska was admitted to the Union), with exceptions for certain reservations. Wisconsin is one of the five states in which Congress transferred criminal jurisdiction to the states via P.L. 280. Federal recognition of the Menominee Tribe and Reservation was terminated in 1953; when the recognition was restored in 1973, the Menominee Reservation was not subjected to P.L. 280.

On the Menominee Reservation, criminal jurisdiction depends on the nature of the crime and the status of the perpetrator and victim. The following table illustrates the general scope of criminal jurisdiction on Indian land, such as the Menominee Reservation, that is not subject to P.L. 280.

Criminal Jurisdiction on Non-P.L. 280 Reservations (Menominee, in Wisconsin)

	"Major" Crime (As defined by the Major Crimes Act)	All Other Crimes
Indian perpetrator, Indian victim	Federal jurisdiction (under Major Crimes Act) & tribal jurisdiction	Tribal jurisdiction
Indian perpetrator, Non-Indian victim	Federal jurisdiction (under Major Crimes Act) & tribal jurisdiction	Federal jurisdiction (under General Crimes Act) & tribal jurisdiction
Non-Indian perpetrator, Indian victim	Federal jurisdiction (under General Crimes Act)	Federal jurisdiction (under General Crimes Act)
Non-Indian perpetrator, non-Indian victim	State jurisdiction	State jurisdiction

Source: This table was prepared by the Tribal Law and Policy Institute (available at: http://www.tribal-institute.org/lists/jurisdiction.htm). A more detailed summary is available from the United States Department of Justice at: (http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00689.htm).

Civil Jurisdiction

With exceptions, the state also has **civil** jurisdiction over all land in Indian country. This is because in addition to transferring criminal jurisdiction to the state, P.L. 280 also transferred civil jurisdiction to the state, except with respect to the Menominee Reservation.

[9] 18 U.S.C. s. 1151.

P.L. 280's grant of civil jurisdiction, however, is more limited than its grant of criminal jurisdiction. First, the civil jurisdiction conferred by P.L. 280 is adjudicatory, meaning that it pertains to civil actions involving the resolution of disputes, not civil actions involving the regulation of activities. Second, even where the state has civil adjudicatory jurisdiction, tribes may also often exercise concurrent jurisdiction.

On the Menominee Reservation, jurisdiction in civil cases depends on: (1) whether the claim arose on trust land or fee land; and (2) whether any of the parties belong to the Menominee Tribe.

On all reservations there may also be federal jurisdiction in some cases, for example because the plaintiff and defendant are not from the same jurisdiction or because a federal question is involved. In these cases, a tribal court might also have concurrent jurisdiction.

Civil Regulatory Jurisdiction

Greatly simplified, civil regulatory laws are laws that regulate conduct or activities that are not contrary to state public policy. Examples of civil regulatory laws are laws relating to taxation, and employment and workplace regulations.

Because civil regulatory laws, like criminal laws, regulate conduct, it is not always clear whether a particular law is a civil regulatory or criminal prohibitory law. There is no bright line test to resolve this question. Imposing a criminal penalty does not necessarily mean that a law is criminal prohibitory for purposes of analyzing jurisdiction under P.L. 280. Rather, courts generally look to whether a state prohibits certain conduct or permits it subject to regulation. "The shorthand test is whether the conduct at issue violates public policy."[10]

Applicability of State Civil Regulatory Laws. Absent an express federal law to the contrary, activities of American Indians and tribes outside of Indian country are subject to a state's nondiscriminatory civil regulatory laws. An example of an express law to the contrary is a treaty reserving off-reservation rights to hunt, fish, and gather. Generally, however, a state's civil regulatory laws do not apply to tribes or tribal members in Indian country.

States may assert civil regulatory jurisdiction over non-Indians on a reservation under certain circumstances, but they may assert jurisdiction over the activities of Indians for on-reservation activities only in exceptional circumstances.[11] A state must generally overcome two independent but related barriers to show that a state civil regulatory law applies to Indians in Indian country. First, the law must not be preempted by federal law. Second,

[10] See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 209 (1987) ("[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation.").
[11] *Cabazon*, at 215 [citing *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-32 (1983)].

the law may not "unlawfully infringe 'on the right of reservation Indians to make their own laws and be ruled by them.'"[12]

Applicability of Tribal Civil Regulatory Laws. A tribe may exercise civil regulatory jurisdiction over its members on the tribe's reservation or on off-reservation trust land. Tribes also have regulatory authority over the conduct of nonmembers on tribal lands.[13]

In very limited circumstances, a tribe may also regulate nonmembers on nonmember fee lands. These circumstances include regulation, "through taxation, licensing, or other means, the activities of nonmembers who enter into consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." Courts have also stated that a tribe may "exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[14] However, courts have construed these circumstances very narrowly.

Indian Gaming

In response to the growth of gaming on Indian lands in the 1980s, Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988, which provides a framework for regulating gaming on Indian lands. For the purposes of IGRA, "Indian lands" means: (1) all lands within the exterior boundaries of an Indian reservation; (2) any lands that the United States holds in trust for the benefit of a tribe (tribal trust land) or individual American Indian; and (3) all lands held by a tribe or individual American Indian subject to restriction by the United States against alienation and over which a tribe exercises governmental power.[15]

IGRA divides Indian gaming into three classes, each of which is subject to different regulatory oversight. Class I gaming consists of social games for prizes of minimal value or traditional forms of gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations. Class I gaming is not regulated by IGRA; tribes themselves may regulate Class I gaming.

Class II gaming consists of bingo, certain games similar to bingo if played at the same location as bingo, and certain card games if played under particular circumstances. Class II gaming is regulated by the National Indian Gaming Commission, which was established by IGRA.

Class III gaming consists of "all forms of gaming that are not Class I gaming or Class II gaming."[16] Generally, this includes the types of gaming typically associated with casinos, such as slot machines, roulette, and banked card games such as blackjack. A tribe may

---

[12] *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980) [quoting *Williams v. Lee*, 217, 220 (1959)].
[13] *Montana v. United States*, 450 U.S. 544, 564 (1981).
[14] *Id.*, at 566.
[15] 25 U.S.C. s. 2703 (4).
[16] 25 U.S.C. s. 2703 (8).

conduct Class III gaming on Indian lands if: (1) it is located in a state that permits such gaming for any purpose by any person, organization, or entity; and (2) the gaming is conducted in accordance with a tribal-state compact.

Gaming Compacts

Governor Negotiates. Wisconsin statutes authorize the Governor to enter into compacts with tribes under IGRA.[17] The Office of Indian Gaming, within the DOA, assists the Governor and the Secretary of Administration with gaming compact issues.

Each of the tribes in Wisconsin has entered into a compact with the state that permits the tribe to conduct Class III gaming. Among other details, the compacts outline the games that may be played and how they shall be conducted. Generally, the original compacts permitted electronic games of chance with video facsimile or mechanical displays, blackjack, and pull-tabs or break-open tickets when not played at the same location as bingo. The 2003 compact amendments authorized additional games, including craps, keno, and pari-mutuel wagering on live simulcast horse, harness, and dog racing events. In *Panzer v. Doyle*, the Wisconsin Supreme Court held that the Governor lacked the authority to permit these additional games. However, the Court later held -- in *Dairyland Greyhound Park, Inc. v. Doyle* -- that "gaming can be expanded to the extent that the State and Tribes negotiate for additional Class III games."

Duration of Compacts. All of the original gaming compacts -- which were entered into on various dates in 1991 and 1992 -- were for terms of seven years. In 1998 and 1999, the compacts were amended and renewed for additional five-year terms. Compacts with 10 of the 11 tribes were amended and renewed again in 2003. (The 11th compact, with the Lac du Flambeau Band of Lake Superior Chippewa Indians, was automatically extended for five years from July 1, 2004 because neither the state nor the tribe sent a notice of nonrenewal.)

In the 2003 amendments, the provision in each compact that had permitted the state to give timely notice of nonrenewal at five-year intervals was deleted. Instead, the 2003 amendments specified that a compact remains in effect until terminated by mutual agreement of the tribe and the state or by the tribe revoking its own authority to conduct casino gaming.[18]

The compacts and compact amendments are available on the DOA Division of Gaming website, here:

http://www.doa.state.wi.us/divisions/gaming/indian-gaming

In *Panzer v. Doyle,* the Wisconsin Supreme Court invalidated the indefinite duration provision of the state's compact with the Forest County Potawatomi Community, holding that the Governor lacked the authority to agree to a "perpetual contract." In 2005, the state and the Forest County Potawatomi Community entered into a compact amendment

[17] Section 14.035, Stats.

[18] Three of the compacts were also amended to specify that if the provision allowing for indefinite compact terms were to be invalidated by a court, the compact term would be 99 years.

which substituted a 25-year term for the indefinite duration provision, specifying that renewal would occur automatically unless a notice of nonrenewal was served. Similar provisions were later added to the state's compacts with the Ho-Chunk Nation and the Lac du Flambeau Band of Lake Superior Chippewa Indians.

Off-Reservation Gaming

IGRA generally prohibits Type III gaming on land acquired in trust by the U.S. Secretary of the Interior (Secretary) after October 17, 1988 (the general effective date of IGRA), unless that land is located within or contiguous to the boundaries of the reservation of a tribe as those boundaries existed on October 17, 1988.[19] Gaming may, however, be conducted on newly acquired off-reservation trust land if the Secretary, after consulting with appropriate state and local officials (including officials of nearby tribes) determines that gaming on the location would be in the best interest of the tribe and would not be detrimental to the surrounding community. Additionally, the Governor of the state in which the gaming is to be conducted must concur in the Secretary's determination. As with all Class III Indian gaming, Class III gaming authorized under this process must be conducted in accordance with the tribe's gaming compact with the state.

Information on the amounts tribes have paid to the states under the compact amendments, and how this revenue is spent, is available in the Legislative Fiscal Bureau's 2013 Informational Paper #88, *Tribal Gaming in Wisconsin* at: http://legis.wisconsin.gov/lfb

More information on Indian Gaming is available in the Legislative Audit Bureau's Report 12-15, *An Evaluation, Division of Gaming, Department of Administration, available* at: http://legis.wisconsin.gov/lab

Payments to the State. In the initial compacts, the tribes agreed to collectively reimburse the state $350,000 a year for the cost of regulating Indian gaming. Beginning in the 1998 and 1999 compacts, each tribe also agreed to make additional payments to the state. The payment amounts varied by tribe; however, in the first four years of payments, tribal payments averaged $23.5 million annually. The 2003 amendments significantly increased tribal payments for those tribes with larger casino operations.

Tribal-State Relations in Wisconsin

Executive Branch

On February 27, 2004, Governor Doyle issued Executive Order #39, affirming the government-to-government relationship between the state and the tribes in Wisconsin. This order requires Wisconsin's cabinet agencies, whenever feasible and appropriate, to consult the government of a tribe that is anticipated to be directly affected by an action of

[19] 25 U.S.C. s. 2719 (a) (1).

the state agency. All of Wisconsin's cabinet agencies have implemented measures to comply with the order's directive. The Department of Transportation (DOT), for example, entered into a tribal partnership agreement with the 11 federally-recognized tribes, which is designed to facilitate communication between the tribes and the agency on issues of mutual importance.

In addition to this consultation process, Indian gaming serves as a significant point of contact for the executive branch and the tribes. As discussed in the previous section, Wisconsin law delegates to the Governor the responsibility to negotiate gaming compacts with the tribes. Also as discussed in the previous section, the Governor must concur in the Secretary of the Interior's determination before a tribe's off-reservation land may be taken into trust for gaming purposes.

Legislative Branch

Wisconsin law requires the Joint Legislative Council to establish the Special Committee on State-Tribal Relations (formerly known as the American Indian Study Committee) each biennium to study issues relating to American Indians and tribes in Wisconsin and to develop specific recommendations and legislative proposals relating to these issues. By statute, the Special Committee must be comprised of public members, who are recommended by the tribes and GLITC, and legislators.

In recent years the Legislature has invited the tribes each year to present a State of the Tribes address to the Legislature. In 2014, the State of the Tribes address was delivered by Laurie Boivin, Chair of the Menominee Indian Tribe of Wisconsin.

The Special Committee on State-Tribal Relations provides three important functions with respect to the Legislature's relationship with the tribes. First, it serves as a forum within the Legislature in which tribes can raise issues of concern to them. Second, by utilizing the Joint Legislative Council's study committee process, it provides a mechanism for developing legislative proposals on issues around which the tribes and legislators can together build consensus. Third, the Special Committee provides an environment in which legislators and representatives of the tribes can build working relationships with each other.

The Special Committee developed the legislation mentioned earlier in this chapter that expanded the authority of GLIFWC conservation wardens. In addition to this legislation, the committee's work has led to legislation on numerous other topics, including the following:

- The creation of a county-tribal cooperative law enforcement program.
- The protection of human burial sites.
- Granting full faith and credit in state courts for the actions of tribal courts and legislatures.

- Economic development on Indian reservations.
- Indian health issues.
- The enforcement of state laws by tribal law enforcement officers.
- Mutual assistance between tribal and state, county, or municipal law enforcement agencies.

Judicial Branch

Like the Legislative Branch, the Judicial Branch has also created an entity to address issues involving the Wisconsin tribes. The State-Tribal Justice Forum was reestablished in 2006, following the Walking on Common Ground conference, a national gathering of state, federal, and tribal courts, sponsored by the U.S. Department of Justice. The committee's general charge is "to promote and sustain communication, education and cooperation among tribal and state court systems and [to] work to promote initiatives outlined in the final report of the Walking on Common Ground conference." The committee is comprised of various state and tribal judges and other attorneys and officials.

One of the most significant issues the committee has addressed concerns concurrent jurisdiction and the transfer of cases between state and tribal courts. A significant impetus for resolution of this issue was a series of opinions, arising from litigation between a non-tribal member and the Bad River Band,[20] addressing the obligations of circuit courts to confer with tribal courts when the courts have concurrent jurisdiction and the cases are pending in both courts. These decisions prompted two judicial administrative districts of Wisconsin to sign protocols with tribes for allocating jurisdiction when both the tribal court and the state court have jurisdiction and the same issue is pending in both courts.

The text of the rule and its 2009 amendment, and the state-tribal protocols are available on the Wisconsin Court System website at: http://www.wicourts.gov/courts/committees/tribal.htm

In 2007, the Director of State Courts, on behalf of the State-Tribal Justice Forum, petitioned the Wisconsin Supreme Court to create a rule, under the court's statutory rulemaking authority, governing the discretionary transfer of cases to tribal court. On July 31, 2008, the court created s. 801.54, Stats., authorizing a circuit court on its own motion or the motion of any party to transfer an action to a tribal court if it determines that the tribal court has concurrent jurisdiction. The rule directs the circuit court, unless all parties agree to the transfer, to consider a number of factors, such as whether issues in the action require interpretation of the tribe's laws, when determining whether transfer is appropriate.[21]

---

[20] *Teague v. Bad River Band of Lake Superior Chippewa Indians* (229 Wis. 2d 581 (Ct. App. 1999) (Teague I); 2000 WI 79 (Teague II); and 2003 WI 118 (Teague III)).

[21] The court amended this rule in July 2009.

Additional References

1. Wisconsin Legislative Council:

    - Information Memorandum 2013-09, *Law Enforcement in Indian Country: Sovereignty and Jurisdiction*, http://www.legis.wisconsin.gov/lc.

    - Information Memorandum 2013-10, *Law Enforcement in Indian Country: State Laws and Programs*, http://www.legis.wisconsin.gov/lc.

    - Information Memorandum 2013-11, *Law Enforcement in Indian Country: Tribal Institutions*, http://www.legis.wisconsin.gov/lc.

    - Legislative Council Committee webpage for the Special Committee on State-Tribal Relations http://www.legis.wisconsin.gov/lc (select "Study Committees" followed by "2014 Interim").

2. Website of the Division of Intergovernmental Relations, DOA, providing information about the Wisconsin State-Tribal Relations Initiative and other information about tribes in Wisconsin: http://witribes.wi.gov/.

3. Website of GLITC. This website provides links to the websites of all of the tribes in Wisconsin: http://www.glitc.org.

4. Website of GLIFWC: http://www.glifwc.org.

5. Website of Wisconsin Judicare, Indian Law Office. This website provides links to tribal websites, including information about tribal courts in Wisconsin: http://www.judicare.org/content.cfm?PageID=33.

6. Website of the National Conference of State Legislatures (NCSL) relating to state-tribal relations, including links to various NCSL publications and resources: http://www.ncsl.org/programs/statetribe/statetribe.htm.

7. Website of the National Congress of American Indians: http://www.ncai.org/.

Glossary

BIA: Bureau of Indian Affairs. Agency in the U.S. Department of Interior primarily responsible for Indian Affairs.

GLIFWC: Great Lakes Indian Fish and Wildlife Commission. Organization composed of six Chippewa bands in Wisconsin and five Chippewa bands in Michigan and Minnesota which concentrates on Chippewa treaty-guaranteed rights to hunt, fish, and gather.

GLITC: Great Lakes Inter-Tribal Council. Consortium of federally-recognized tribes in Wisconsin (currently not including the Ho-Chunk Nation) and one Michigan tribe.

IGRA: The Indian Gaming Regulatory Act.

Indian country: Generally, all land on reservations, all dependent Indian communities, and all Indian allotments.

P.L. 280: Public Law 280. 1953 federal law transferring federal criminal and civil jurisdiction (but not civil regulatory jurisdiction) to several states (including Wisconsin, other than on the Menominee Reservation) and providing other states the option of assuming such jurisdiction.

Trust land: Land the title to which is held by the United States in trust for a tribe or American Indian.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 27 – TAXES AND REVENUE

This chapter provides a brief overview of taxes and revenues collected by the state, as well as taxes and revenue sources for cities, villages, towns, and counties. These taxes and sources of revenue include the property tax, individual and corporate income taxes, sales tax, excise taxes, public utility taxes, and other state and municipal taxes and revenues.

Scott Grosz, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Property Tax 1
Wisconsin Constitution, Article VIII, Section 1, "the Uniformity Clause" 1
Property Tax Administration 1
Tax Incremental Financing 2
Public Utilities 2
Income Tax 2
Individual Income Tax 2
Corporate Income Tax 3
Taxation of Insurance Companies 3
Recent Legislative Attention to Tax Policy 3
Sales Tax 4
General State Sales Tax 4
County and Special Purpose District Sales Taxes 4
Other Taxes and Revenues 5
Excise and Occupational Taxes 5
Real Estate Transfer Fee 5
Municipal Taxes and Fees 5
Additional References 5
Glossary 6

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Property Tax

Wisconsin Constitution, Article VIII, Section 1, "the Uniformity Clause"

As a percent of the total, the property tax constitutes Wisconsin's largest source of state or local revenue. The foundation for the structure of Wisconsin's property tax is derived from the Wisconsin Constitution. In particular, the Uniformity Clause, art. VIII, s. 1, specifies:

> The rule of taxation shall be uniform but the legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods. Taxes shall be levied upon such property with such classifications as to forests and minerals including or separate or severed from the land, as the legislature shall prescribe. Taxation of agricultural land and undeveloped land, both as defined by law, need not be uniform with the taxation of each other nor with the taxation of other real property…. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.

Courts have interpreted the Uniformity Clause and the state's property tax statutes on numerous occasions. In doing so, a few key themes emerge, including the general requirement that property must be fully taxed or wholly exempt from property taxation, and that property taxes must be levied on property in accordance with the market value of the property. Over the years, the Uniformity Clause has been subject to constitutional amendment, most notably to create an exception for agricultural property regarding the requirement of uniformity. Pursuant to this exception, property taxes on agricultural property are levied in accordance with the rental value of the property for agricultural use.

Except for agricultural property, the Uniformity Clause requires assessments according to market value.

Property Tax Administration

For more information on property taxes in Wisconsin, see chs. 70 and 74, Stats.

Primary administration of the state property tax system occurs at the local level, with oversight provided by the state Department of Revenue (DOR). Using statewide assessment practices prescribed by the DOR, a property's value is determined by a local assessor, followed by aggregate review and "equalization" by the DOR. Several local entities may levy property taxes, including counties, cities and villages, school districts, and technical college districts, as well as certain other special purpose districts. For an individual property subject to

property tax, the total tax due is calculated by applying the mill rate of each taxing jurisdiction to the assessed value of the property.

Tax Incremental Financing

Related to both property taxation and economic development, many Wisconsin municipalities utilize tax incremental financing (TIF) to rehabilitate blighted areas and otherwise encourage growth, particularly industrial growth. Under TIF law, a municipality, with the permission of the other underlying taxation districts, may designate a portion of the community as a TIF district. Following this designation, the taxable value of the district is frozen for a period of time as it relates to the taxes collected by the underlying taxation districts. The municipality creating the district may make investments in the district to encourage growth or rehabilitate blight, with the funding for these investments coming from the taxes generated on new growth (the "tax increment") in the district during its lifespan.

Tax incremental financing is a common economic development tool for municipalities.

Section 66.1105, Stats., is the primary source of statutory information on TIF.

Public Utilities

In lieu of a general property tax, public utilities in Wisconsin are subject to separate taxes, which are levied based on measures of value of company property (*ad valorem*) or measures of the company's profits (gross receipts). Examples of public utilities subject to *ad valorem* utility taxation include: airline carriers, municipal electrical companies, pipeline companies, railroad companies, and telephone companies. Examples of public utilities subject to gross receipts utility taxation include: electric cooperatives, and municipal and private heat, power, and light companies.

Income Tax

Individual Income Tax

After the property tax, individual income and corporate income and franchise taxes are the second largest source of revenue in Wisconsin, with individual income tax collections responsible for the vast majority of income tax revenue. Generally, Wisconsin individual income taxes are computed by beginning with a taxpayer's federal adjusted gross income and applying any applicable adjustments that are specified under state law. Marginal individual income tax rates range from 4.0% to

Property tax, income tax, and sales tax are the three primary revenue sources in Wisconsin.

7.65%. Prior to determining a taxpayer's final tax liability, certain credits may be applied. Examples of these credits include credits for property taxes or rent, credits related to certain business pursuits, Wisconsin's earned income tax credit, and a homestead tax credit targeted at low-income households.

State income taxes are described in ch. 71, Stats.

Corporate Income Tax

Determination of corporate income taxes begins with computation of income, a sometimes complex process that may require analysis of a business' in-state and out-of-state activities, business expenses, and relationships between a business and other related business entities. The corporate income tax rate is 7.9%.

Taxation of Insurance Companies

Calculation of Wisconsin taxes for domestic and foreign insurance companies requires consideration of both the corporate income tax, as well as a separate insurance premiums tax, depending on the type of insurance issued. As with other corporate income taxes, the taxation of insurance company income, when applicable, is administered by DOR. The Office of the Commissioner of Insurance administers and collects applicable insurance premium taxes.

Recent Legislative Attention to Tax Policy

The policy topics of tax burden, tax incidence, and the effects of state income taxes on economic development, and revenue and population growth have been of great interest to legislators in recent legislative sessions. In the interim of the 2011-12 Biennium, the Co-Chairs of the Joint Legislative Council convened a steering committee for a symposia series on the state income tax. The Steering Committee on Income Tax received testimony from tax policy experts, including representatives of DOR and local and national tax policy organizations. In the course of its work, the committee received numerous recommendations on state income tax policy, which may be viewed at: http://www.legis.wisconsin.gov/lc.

During the interim of the 2013-14 Biennium, the co-chairs of the Joint Legislative Council continued to study tax policy, convening a steering committee for a symposia series on the personal property tax. That committee's work may be viewed at: http://docs.legis.wisconsin.gov/misc/lc/study/2014/1196.

Sales Tax

General State Sales Tax

Wisconsin law prescribes a statewide sales tax of 5% on the sale of goods and services in the state. Generally, sales of goods are presumed to be subject to sales tax, except as provided by law, while services subject to sales tax are identified by statute. Sales taxes are typically collected by retailers and remitted to DOR. In situations where a taxable sale occurs, but no sales tax is collected by a retailer, state law levies a "use" tax. State law specifies that the consumer must remit use taxes at the time of income tax filing, although compliance with this procedure is known to be minimal. The issue of use tax collection most typically arises in the context of collection of Internet sales and the policy debate surrounding the effect of Internet sales on local "brick and mortar" businesses.

The state, counties, and certain special-purpose districts all have the authority to levy sales taxes.

More information on the state sales tax may be found in subch. III of ch. 77, Stats.

County and Special Purpose District Sales Taxes

In addition to the statewide sales tax, state law authorizes counties to impose a 0.5% general sales tax. Sixty-two counties in Wisconsin have adopted the county sales tax. Further, several local special purpose districts also have the authority to impose sales taxes. In Southeastern Wisconsin, the Southeast Wisconsin Professional Baseball Park District (Miller Park District) levies a 0.1% sales tax in five counties, to be used for assisting in the development of Miller Park. A similar sales tax of 0.5% is levied in Brown County for purposes related to the development of Lambeau Field. Current law specifies the sunset of each of these district sales taxes once certain obligations of each district are satisfied.

For more information on stadium districts, see ch. 229, Stats.

In addition to stadium districts, state law authorizes sales tax to be collected by certain exposition districts and premier resort areas. The taxing authority of these entities, however, is limited to sales of certain products, or to sales relating to certain industries.

Other Taxes and Revenues

Statutes relating to other taxes and revenues include ch. 70 (metalliferrous mining taxes), ch. 77 (real estate transfer fee, and room taxes), ch. 78 (motor vehicle fuel taxes), ch. 139 (alcohol and tobacco taxes), and s. 341.35, Stats. (wheel taxes).

Excise and Occupational Taxes

State law places excise taxes on consumers who purchase certain products as well as occupational taxes on persons who engage in certain occupations. Examples of excise and occupational taxes in Wisconsin include the taxes placed on cigarettes, tobacco products, fermented malt beverages, intoxicating liquor, motor vehicle fuel, coal, oil refineries, grain storage, iron ore, and metalliferrous mining.

Real Estate Transfer Fee

The state imposes a tax of $3 per $1,000 of real estate value on many types of transfers of real estate. Eighty percent of revenue from the transfer tax is paid to the state, while the remaining 20% is paid to the county where the real estate is located. The tax is administered at the local level by the register of deeds, and is collected at the time a transfer of property is recorded.

Municipal Taxes and Fees

In addition to the property tax and local sales tax, certain other taxes are authorized at the local level. These taxes include "wheel" taxes, imposed on vehicles registered in a particular municipality, as well as "room" taxes, imposed on establishments that provide short-term lodging to the public.

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on a variety of topics related to taxes and revenue. The Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.

2. For information on the assessment of property, see the DOR's Wisconsin Property Assessment Manual, at: http://static.revenue.wi.gov/slf/wpam/wpam14.pdf and DOR's Guide for Property Owners, at: http://www.revenue.wi.gov/pubs/slf/pb060.pdf.

3. For information on the appeal of property taxes, see the DOR's Property Assessment Appeal Guide, at: http://www.revenue.wi.gov/pubs/slf/pb055.pdf.

4. For information on general sales taxes, as well as sales tax issues related to specific business operations, see the sales tax publications of DOR, at: http://www.revenue.wi.gov/html/taxpubs.html#sales.

5. For information on the fiscal effect of the state's tax exemptions, see the DOR's Biennial Summary of Tax Exemption Devices, at: http://www.revenue.wi.gov/ra/13sumrpt.pdf.

6. For information on Wisconsin's TIF Laws, see the DOR's "City/Village Tax Incremental Finance Manual," at: http://www.revenue.wi.gov/pubs/slf/tif/cvmanual.html.

GLOSSARY

Ad valorem: Latin for "according to value." In Wisconsin, property taxes are generally levied in accordance with the value of the property or *ad valorem*.

Excise tax: A tax on the sale, consumption, or production of a particular good or service, typically levied in a different amount or measure than the ordinary sales tax.

Levy limit: A cap on the maximum amount of money that a taxing district may raise through property taxation.

Tax incremental financing (TIF): A local economic development tool that allows a municipality to allocate increases in the tax base to specific infrastructure investments.

Use tax: a companion to the sales tax; use taxes are levied on the consumption of goods and services for which a sales tax is due but not collected at the time of sale.

Use value: A term of art that relates to property taxation for agricultural property, which is subject to taxation in accordance to its value as rental property for agricultural purposes.

Wheel tax: A tax on vehicle registration in a particular municipality.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 28 - TRANSPORTATION

The Department of Transportation is responsible for the planning, promotion, and protection of all transportation systems in the state. It oversees programs relating to highways, motor vehicles, motor carriers, traffic law enforcement, railroads, waterways, mass transit, and aeronautics. This chapter summarizes the statutes relating to motor vehicle transportation and provides a brief overview of topics related to state highway and rail programs.

David Moore and Michael Queensland, Staff Attorneys
Wisconsin Legislative Council

Table of Contents

Motor Vehicle Laws 1
- Vehicle Registration 1
- Licensing of Drivers 3
- Motor Vehicle Liability Insurance 5
- Traffic Tickets 5
- Rules of the Road 6
- Vehicle Equipment Standards 7
- Vehicle Size and Weight Limits 7

Agricultural Vehicles 8
- Weight Limitations 9
- Length Limitations 9
- Width Limitations 9
- Height Limitations 10
- No-Fee Permits 10

Highways 10
- State Trunk Highway System 10

Rail Programs 13
- Freight Railroad Assistance 13
- Passenger Railroad Assistance 13

Additional References 14

Glossary 15

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Motor Vehicle Laws

Wisconsin's motor vehicle laws are primarily contained in chs. 340 to 349 and 351, Stats., and chs. Trans 1 to 515, Wis. Adm. Code. Topics covered in these chapters include vehicle registration (ch. 341, Stats.), vehicle titling (ch. 342, Stats.), operator's licenses (ch. 343, Stats.), the financial responsibility of motor vehicle owners and operators (ch. 344, Stats.), the procedure for issuing traffic citations and prosecuting traffic law violations (ch. 345, Stats.), the rules of the road (ch. 346, Stats.), vehicle equipment requirements (ch. 347, Stats.), vehicle size and weight limits (ch. 348, Stats.), the authority of local governments to regulate motor vehicles (ch. 349), and habitual traffic offenders (ch. 351, Stats.). Chapter 340, Stats., defines terms used throughout these chapters.

Vehicle Registration

Upon taking ownership of a vehicle, a person must generally apply for a certificate of title, regardless of whether the vehicle will be immediately operated on public highways. If the person intends to operate the vehicle on public highways, license plates must be displayed on both the front and rear of most types of vehicles. Certain vehicles, such as some types of farm equipment, are exempt from vehicle registration.

The registration for most vehicles must be renewed every year. The Department of Transportation (DOT) is required to send the vehicle owner notice of the date by which a vehicle's registration must be renewed. This notice will list any unpaid parking violations (including applicable towing and storage charges) and other unpaid judgments against the registrant. The vehicle may not be registered until these obligations are addressed. The general initial and yearly registration fee for passenger cars and light trucks is currently $75.

Vehicle Title

If a vehicle is purchased from a licensed dealer in Wisconsin, the dealer will usually process the title and registration application. If a vehicle is purchased privately, the purchaser is responsible for applying to the DOT for a certificate of title and registration of the vehicle. The seller must provide the buyer with an original, assigned title to the vehicle. To assign the title, the seller must complete the odometer disclosure and provide any other required information for assignment on the back of the title. The seller must also provide the buyer with a lien release for each lien listed on the title. Most importantly, the title must be signed by the seller.

Special License Plates

The DOT issues special registration plates for certain authorized special groups. Generally, a fee--in addition to the regular registration fee for the vehicle--is charged for the issuance or reissuance of most special plates.

Various military personnel, veterans, and military medal recipients may obtain license plates designating their military service or achievements.

For certain special group plates, the DOT also collects an additional specified amount, which it then passes to a beneficiary organization. For example, a person interested in supporting endangered resources may obtain a special registration plate with a distinguishing design for a $15 fee, in addition to the regular annual registration fee, and a $25 annual donation. The $25 donation is forwarded to the Department of Natural Resource's endangered species programs. Similar fundraising plates exist for organizations such as Donate Life Wisconsin, the University of Wisconsin, the Wisconsin Women's Health Foundation, the Wisconsin Lions Foundation, and Lambeau Field, among others.

More information about applying for vehicle title and registration is available at: http://www.dot.wisconsin.gov/drivers/vehicles/index.htm

The DOT also issues distinctive registration plates, commonly known as "collector" plates for vehicles registered as special interest vehicles. A vehicle may be registered as a special interest vehicle if it is one of four types of former military vehicles, or if it is a motor vehicle that is at least 20 years old, the vehicle's body has not been altered from the original, and the vehicle is being preserved for its historical interest. Registration as a special interest vehicle permits the owner to re-register the vehicle without paying an additional registration fee. A vehicle displaying special interest vehicle registration plates may not be operated during the month of January; however, a special interest vehicle may be used in the same manner as other vehicles of the same type.

Disabled Parking License Plates and Placards

A person who has a disability that limits or impairs the ability to walk may request a license plate and special identification card entitling him or her to certain parking privileges. These privileges include an exemption from ordinances of general application imposing time limitations of a half hour or more and an exemption from parking meter payment requirements for parking spots with such time limitations. The vehicle may also be parked in marked spots reserved for motor vehicles displaying special registration plates or special registration cards.

For more information about disabled parking, see the DOT website at: http://www.dot.wisconsin.gov/drivers/vehicles/disabled/

Special registration plates are also available to

licensed drivers on whom a disabled person regularly depends for transportation and to employers that provide a vehicle for a disabled employee. Additionally, special license plates are available to veterans who submit a statement from the Department of Veterans Affairs every four years certifying that the veteran has a disability that limits or impairs his or her ability to walk because of injuries sustained while in the active U.S. military service. There is no fee for disabled veteran license plates.

There are exceptions to the general requirement that a driver be licensed to operate a motor vehicle on public highways. For example, a person moving farm equipment between fields or between a farm and a field does not need a license to operate the equipment on a highway.

Licensing of Drivers

Licensing of Drivers in General

To obtain a Wisconsin driver's license, a person must be at least 16 years old and provide documentation of his or her identity and legal presence in this state, among other information. The person must also pass knowledge, vision, and skills tests. The DOT may require certain drivers to undergo medical or other special examinations.

Instruction Permit

A person may receive an instruction permit if he or she is 15-1/2 years of age or older and passes knowledge and vision tests. A driver operating a vehicle under an instruction permit must obey rules regarding who may and who must accompany the driver.

To receive an instruction permit, a driver under the age of 18 must be enrolled in or have completed an approved driver education course. An instruction permit for the operation of Class D vehicles is generally valid for one year. A "Class D" license authorizes a person to operate cars and light trucks. Instruction permits for motorcycle operation (Class M) and commercial vehicle operation (Class A, B, or C) are also available and may have different age requirements and restrictions than Class D instruction permits.

A driver with an instruction permit or probationary license may not drive a motor vehicle while using a cellular or other wireless telephone, except to report an emergency.

Probationary License

Most new drivers are issued a probationary license. A probationary license expires two years from the date of the driver's next birthday.

For more information about laws specific to teen drivers, see the DOT website at:
http://www.dot.wisconsin.gov/drivers/teens/gdlfaqs.htm

Before receiving a probationary license, a driver under the age of 18 must hold an instruction permit for at least six months and may not commit a moving violation during the six months prior to receiving the probationary license. The driver must have completed at least 30 hours of behind-the-wheel training and an approved driver education course and be enrolled in a school program or have completed high school. An application for any license by a person under age 18 must be signed by a parent, guardian, or adult sponsor.

Occupational License

A person whose driving privileges have been suspended or revoked may be eligible for a restricted driver's license called an "occupational license." An occupational license authorizes the holder to drive to and from work, church, school, or other places indicated on the license during specific times of the day. An occupational license may not be used for recreational purposes and the total driving time is limited to 12 hours each day and 60 hours per week. An occupational license may not be issued for the operation of commercial vehicles.

A driver's eligibility for an occupational license depends on the reason that the driver's license was revoked or suspended. For example, a person whose license is revoked under the habitual traffic offender law is not eligible to apply for an occupational license until after a two-year waiting period.

Commercial Driver's License

A commercial driver's license (CDL) is required in Wisconsin to operate commercial motor vehicles (CMVs). CMVs include most vehicles that weigh over 26,000 pounds, carry certain hazardous materials, or are designed or used to carry 16 or more persons including the driver. To receive a CDL, a driver must pass a knowledge test and a driving skills test in the type of vehicle he or she drives. Additional testing requirements are required for certain types of vehicles. A driver may not obtain a CDL until age 18 for travel within the state. The driver must be age 21 to obtain an unrestricted CDL, which allows him or her to operate a CMV outside of the state as well.

More information about CDLs is available from DOT at:
http://www.dot.wisconsin.gov/drivers/drivers/apply/types/commercial.htm

A CDL holder who has been convicted of multiple alcohol or serious traffic violations within certain timeframes is disqualified from operating a CMV.

More information about proof of insurance requirements is available at: http://www.dot.wisconsin.gov/drivers/vehicles/ins-req.htm

Motor Vehicle Liability Insurance

It is unlawful to operate a motor vehicle upon a highway in Wisconsin unless the owner or operator of the vehicle has in effect a motor vehicle liability policy with respect to the vehicle being operated. A person operating a motor vehicle must have proof of this insurance in his or her immediate possession.

Operating a motor vehicle without insurance may result in a fine of up to $500. A driver who fails to show proof of insurance at the time of a traffic stop or accident may be fined up to $10. Offering fraudulent proof of insurance is punishable by a fine of up to $5,000.

Traffic Tickets

Law enforcement agencies in the state issue uniform traffic citations for moving traffic violations. To provide additional uniformity, the Wisconsin Judicial Conference sets "deposit" amounts for traffic offenses, many of which have a range of statutory penalties.

For example, the statutory penalty for speeding in a 65-mile per hour (MPH) speed limit zone is a forfeiture of $50 to $300. The deposit amount for a citation issued to a person traveling 76 to 80 MPH in a 65 MPH zone is $50 and the deposit amount for a person traveling 100 MPH or faster in the same zone is $300.

Each citation also includes a penalty surcharge (26% of the deposit amount) and a jail surcharge/crime lab drug surcharge ($23). Citations processed in county circuit court include a justice information system surcharge/court support services surcharge ($89.50) and circuit court costs ($25). Citations processed in municipal court do not include the justice information system surcharge/court support services surcharge but do include court costs, which the jurisdiction can set from $15 to $28 per citation.

The Judicial Conference publishes a comprehensive bond schedule that outlines the penalty ranges, deposit amounts, fees, and costs for moving violations, and is available online at: http://wicourts.gov/

The amount written on a citation for the 76 to 80 MPH violation example above, then, would be $200.50 if the citation was to be processed in circuit court and $114 if the citation was processed by a municipal court that collects the maximum court costs allowed. The amount on the citation for the 100 MPH or faster violation example would be $515.50 for circuit court or $429 for municipal court.

Demerit Points

In addition to monetary penalties, a person is also assessed demerit points when he or she is convicted of a moving traffic violation. When a driver accumulates 12 or more demerit

points in one year, his or her driver's license will be suspended for a minimum of two months.

The demerit points for particular offenses are listed in the Judicial Conference's bond schedule. For the two speeding examples discussed above, the demerit points are four and six points, respectively. Demerit points are doubled for traffic violations committed by a person with a probationary license or instruction permit who has had more than one traffic violation. The total demerit points assessed to a driver may be reduced in certain ways, such as by taking an approved traffic safety course.

OWI laws for snowmobile operators are in s. 350.101, Stats., and subsequent sections. OWI laws for all-terrain vehicle (ATV) operators are in s. 23.33 (4c), Stats. OWI laws for boaters are in ss. 30.681 to 30.687, Stats.

Rules of the Road

Chapter 346, Stats., contains most of the state's traffic laws. A full discussion of Wisconsin's traffic laws is beyond the scope of this chapter. However, DOT publishes the "Motorists' Handbook," which contains detailed information on the rules of the road as well as other topics of importance to drivers. This handbook can be found at: http://www.dot.state.wi.us/drivers/docs/e-handbook.pdf.

Operating While Intoxicated (OWI)

It is illegal to operate a motor vehicle while under the influence of an intoxicant, a controlled substance, any other drug which renders a driver incapable of safely driving, or any combination of these. It is also illegal to operate a motor vehicle with a prohibited blood alcohol concentration (BAC). Generally, the prohibited BAC in Wisconsin is 0.08. However, the prohibited BAC is lower in some circumstances. For example, the prohibited BAC for a person who has not reached the legal drinking age is 0.0. There are also specific BAC prohibitions for operators of CMVs. Operating under the influence offenses and operating with a prohibited BAC offenses are generally referred to collectively as OWI.

Penalties for OWI and OWI-related laws include restriction of driving privileges, monetary penalties, imprisonment, and ignition interlock device (IID) installation. The severity of penalties depends on various factors, including how many OWI-related offenses the person has committed and the harm caused during intoxicated operation. A complete table of the penalties for OWI offenses is available here: http://www.dot.wisconsin.gov/safety/motorist/drunkdriving/offenses.htm.

Implied Consent

Under Wisconsin's "implied consent" law, a person who operates a motor vehicle upon a public highway in this state is deemed to have consented to submit to a chemical test to determine his or her BAC. Upon arresting a person for operating while intoxicated, a law enforcement officer may request the person provide one or more samples of his or her

breath, blood, or urine for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of those substances. The consequences of refusing to comply with this request are as follows:

- When the person obtains any license (including an occupational license) following his or her revocation as described above, the person's operating privileges must be restricted to operating vehicles that are equipped with an IID for a specified period of time. The person must also generally install an IID on each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration.
- The person must obtain a court-ordered assessment of his or her alcohol or controlled substance use and comply with the driver safety plan, which may include education, treatment, or both, that the facility providing the assessment develops for the person. The person must also pay certain associated fees.
- The improper refusal is counted for the purposes of determining the penalties for subsequent improper refusals or OWI convictions.

Under current law, a court must order a person's operating privilege for the operation of "Class D" vehicles be restricted to vehicles that are equipped with an IID and order that each motor vehicle for which person's name appears on the vehicle's certificate of title or registration be equipped with an IID for all first offense drunk drivers who had a BAC of 0.15 at the time of the offense, all repeat drunk drivers, and all drivers who improperly refused to take a required BAC test.

Vehicle Equipment Standards

Chapter 347, Stats., and ch. Trans. 305, Wis. Adm. Code, prescribe equipment standards for motor vehicles operated on Wisconsin roads. Additional equipment standards apply to heavy trucks, trailers, and semi-trailers. These chapters also set requirements for how and when certain equipment is to be used; for example, that headlights and certain other lights must be illuminated during the hours of darkness.

Vehicle Size and Weight Limits

Chapter 348, Stats., imposes height, length, width, and weight restrictions on vehicles and vehicle combinations operated on Wisconsin highways. With exceptions, no person may operate a vehicle that exceeds these limitations on a Wisconsin road unless he or she obtains a permit from the relevant authority to do so. Highway weight limitations depend on a number of factors, including the type of highway, the number and configuration of axles on a vehicle, the type of cargo, and the time of year. Vehicles must comply with both the gross vehicle weight requirements and individual weight requirements for particular axles or wheels.

A permit is typically required if vehicle dimensions (plus the load on the vehicle) exceed 8-1/2 feet wide or 13-1/2 feet tall. Length requirements depend on whether the vehicle is a single vehicle or a combination of vehicles (such as a tractor-semitrailer combination). Generally, a single vehicle may not exceed 45 feet in length, although the length limitations vary for vehicle combinations depending on the vehicle configurations. There are also exceptions to the statutory vehicle size restrictions.

A single trip, consecutive month, or annual permit may be available for a vehicle that exceeds statutory weight limits. However, certain permits may not be issued if a load can reasonably be divided or reduced to comply with statutory limits.

Vehicles carrying certain raw forest products may carry additional weight in winter without a permit when roads are frozen and damage to roads is less likely. The increased limits for highways under the DOT's jurisdiction are triggered when the DOT makes a "frozen road declaration." This declaration usually extends from mid-December until late February or early March. The frozen road declarations for county highways and other local highways are made by local maintenance authorities.

Conversely, the travel of overweight vehicles is restricted during the spring thaw due to the unstable condition of roadways during this period, and allowed vehicle weight may also be restricted for other special or temporary conditions. Special weight limits may also be established for particular bridges and culverts.

Agricultural Vehicles

Agricultural vehicles are treated differently than other vehicles for a variety of circumstances. Depending on its type and use, an agricultural vehicle may be exempt from the registration requirement for highway use and may be subject to different weight and size limitations than other vehicles.

For more information about agricultural vehicles, see the DOT website at:
http://www.dot.state.wi.us/business/ag/index.htm

"Implements of husbandry" and "agricultural CMVs" are the two primary categories of agricultural vehicles defined in the statutes. An implement of husbandry is a vehicle that is manufactured, designed, or reconstructed to be used and is exclusively used in the conduct of agricultural operations. An agricultural CMV is a CMV to which all of the following apply: (1) the vehicle is substantially designed or equipped, or materially altered from its original construction, for the purpose of agricultural use; (2) the vehicle was designed and manufactured primarily for highway use and, with limited exceptions, was manufactured to meet federal motor vehicle highway safety standards; (3) the vehicle is used exclusively in the conduct of agricultural operations; and (4) the vehicle is directly engaged in harvesting farm products, directly applies fertilizer, spray, or seeds to a farm field, or distributes feed to livestock.

Weight Limitations

Except on interstate highways and highways posted with special weight limits, an implement of husbandry or agricultural CMV may operate at a weight approximately 15% higher than weight limitations for other vehicles. In addition, the statutes provide limited exceptions to these weight limitations, including the following:

- Certain implements of husbandry are exempt from per wheel, axle, or group of axles weight limitations on non-state trunk highways, unless the relevant local unit of government has created a limitation by resolution or ordinance.
- There is generally no per wheel, axle, or group of axles weight limitation for an empty potato harvester operated under certain conditions.
- There is no per wheel, axle, or group of axles, weight limitation and no gross vehicle weight limitation, for an implement of husbandry or agricultural CMV being operated or transported by an implement dealer or farmer for purposes of delivery, repair, or servicing and being operated or transported directly between a farmer's owned or leased land and the business of an implement dealer located within 75 miles.
- There is no per wheel, axle, or group of axles, weight limitation and no gross weight limitation, for certain self-propelled implements of husbandry that are traveling between fields or between a farm and a field and are operated on the highway for a distance of 0.5 miles or less.

Length Limitations

Implements of husbandry are subject to length limitations that are greater than the limitations applicable to vehicles generally. If the implement of husbandry is a single vehicle, it may not exceed 60 feet in length; if it is a two-vehicle combination, it may not exceed 100 feet in length; if the vehicle combination is an implement of husbandry train or a truck-drawn agricultural train, its length may not exceed 70 feet or, if it is traveling at a speed of 25 miles per hour or less, 100 feet.

Width Limitations

There is generally no width limitation for implements of husbandry operated on a highway, but certain wide implements of husbandry are subject to lighting and marking requirements that take effect on November 1, 2015. There is also no width limitation if the implement of husbandry is being operated or transported between a farm and an implement dealer that are within a 75 mile radius of each other.

Agricultural CMVs are generally subject to a width limitation of 10 feet. However, an agricultural CMV is subject to a 12-foot width limitation if it is operated for the purpose of spraying pesticides or spreading lime or fertilizer and has extending tires, fenders, or fender flares.

Height Limitations

There is no height limitation for implements of husbandry. However, the operator of an implement of husbandry is responsible for ensuring that there is adequate height clearance between the implement of husbandry and any overhead structure or obstruction, other than any overhead utility line that does not satisfy the requirements of the state electric code or the National Electrical Safety Code.

No-Fee Permits

A highway maintaining authority may issue applicants a no-fee permit authorizing operation of implements of husbandry and agricultural CMVs that exceed statutory length or weight limitations. A no-fee permit is not valid on interstate highways and, as the name suggests, no fee may be charged for issuance or amendment of a no-fee permit or for any study or investigation in connection with the permit application. If a no-fee permit is issued, it may be amended to reflect changes in the applicant's circumstances, including a change in the highways to be traveled.

If a maintaining authority denies an application for a no-fee permit, it must notify the applicant in writing of the denial and the notice must include a reasonable and structurally based explanation of the denial that relates to the preservation of the roadway. If the application is made with respect to certain self-propelled implements of husbandry, the denial must approve a modified application that includes an approved alternate route or map of highways for operation of the implement of husbandry.

A county or municipality may also opt to authorize operation of implements of husbandry and agricultural CMVs exceeding statutory length or weight limitations by adopting a resolution or ordinance to serve as the approved permit. The municipality or county must make copies of the resolution or ordinance readily available to the public.

HIGHWAYS

A map of the state trunk highway system is available at: http://www.dot.wisconsin.gov/travel/maps/sth.htm**.**

See the Legislative Fiscal Bureau 2013 Informational Paper, *State Trunk Highway Program*, for more detailed information about state trunk highways.

Jurisdiction over the highways in Wisconsin is divided among the state and local governments. By statute, "highway" means all public ways and thoroughfares and includes bridges.

State Trunk Highway System

The state is responsible for all highways within the state trunk highway system. Generally, this system is the network of arterial roads that function as corridors for

interstate and inter-regional travel. Currently, this system is comprised of approximately 750 miles of interstate freeways and 11,010 miles of state and U.S.-marked highways. These highways account for approximately 60% of all highway travel in the state.

The state's responsibility for state trunk highways is carried out by the DOT. By statute, the DOT is directed to "have charge of all matters pertaining to the expenditure of state and federal aid for the improvement of highways, and shall do all things necessary and expedient in supervision."

Highway Improvement Program

An integral component of the DOT's responsibility to oversee the improvement of highways is the state Highway Improvement Program. This program is divided into two subprograms: (1) Major Highway Development; and (2) State Highway Rehabilitation.

Major Highway Development

The Major Highway Development subprogram involves selecting, planning, and completing major highway projects. "Major highway project," is defined by statute as a project that has a total cost of more than $5,000,000 and involves any of the following:

- Constructing a new highway 2.5 miles or more in length.
- Reconstructing or reconditioning an existing highway either by: (1) relocating 2.5 miles or more of the existing highway; or (2) adding one or more lanes five miles or more in length to the existing highway.
- Improving 10 miles or more of an existing divided highway having two or more lanes in either direction to meet freeway standards.

Transportation Projects Commission (TPC) and Enumeration

Unlike other highway construction projects undertaken by the DOT, major highway projects must generally receive the approval of the TPC and the Legislature before the project may be constructed. The Legislature's approval of a project is referred to as "enumeration."

Membership of the TPC includes the Governor (who serves as chairperson), three citizen members appointed by and serving at the pleasure of the Governor, five Senators (three from the majority party and two from the minority party), and five Representatives (three from the majority party and two from the minority party), appointed as members of standing committees are. The Secretary of Transportation serves as a nonvoting member.

Current law establishes a procedure and timeline for the TPC to approve the DOT's project recommendations. Greatly simplified, the process is as follows. The DOT must first submit to the TPC a list of potential major highway projects. Next, the DOT must submit to the TPC its recommendations for which of these projects should be approved for the preparation of an environmental impact statement (EIS) or environmental assessment

(EA). After receiving the DOT's recommendations, the TPC then notifies the DOT which projects may move on to the EIS or EA stage.

Approval to prepare an EIS or EA, however, does not authorize the DOT to complete a project. The DOT must also report to the TPC its recommendations for which projects should be enumerated in the next biennial budget. The TPC reviews these recommendations and recommends approval, approval with modifications, or disapproval. The TPC may not recommend approval of a major highway project unless the TPC determines that there is sufficient funding to begin construction of the project within six years. Additionally, it may not recommend approval of the project until the DOT has completed a final EIS or EA, which has been approved by the Federal Highway Administration and reviewed by the TPC.

Once the TPC has recommended approval for the project, the Legislature may enumerate the project. Enumeration gives the DOT the authority to build the project.

State Highway Rehabilitation

The State Highway Rehabilitation subprogram is comprised of three components: (1) existing highways; (2) state bridges; and (3) backbone rehabilitation.

The existing highways component funds projects that resurface, recondition, and reconstruct existing roadways. Resurfacing, reconditioning, and reconstructing are defined by statute as follows:

- **Resurfacing** means placing a new surface on an existing highway to provide a better all-weather surface and a better riding surface, and to extend or renew the pavement life. It generally involves no improvement in capacity or geometrics.
- **Reconditioning** means work in addition to resurfacing. Minor reconditioning includes pavement widening and shoulder paving. Major reconditioning includes improvement of an isolated grade, curve, intersection or sight distance problem to improve safety.
- **Reconstruction** means total rebuilding of an existing highway to improve maintainability, safety, geometrics, and traffic service. It is accomplished basically on existing alignment, and major elements may include flattening of hills and grades, improvement of curves, widening of the roadbed, and elimination or shielding of roadside obstacles.

The state bridges component funds projects to replace or rehabilitate bridges on the state highway system. The backbone component funds various rehabilitation projects on a system of highways the department has designated as the "backbone" system. This is a system of 1,580 miles of critical highways that connect major economic areas within the state.

Rail Programs

Freight Railroad Assistance

The DOT administers various freight rail assistance grants and programs. The two major assistance programs for freight rail in Wisconsin are the Freight Rail Infrastructure Improvement Program (FRIIP) and the Freight Rail Preservation Program (FRPP).

FRIIP

FRIIP was established in 1977 to preserve the availability of rail service in Wisconsin. FRIIP loans may be used for the following purposes:

- Line upgrades that will expand the use of a rail line for the public benefit, including increased passenger service and increased use of double-stack technology and piggyback service.
- Rail branch line stabilization or upgrading.
- Projects associated with rail intermodal facilities, such as terminals, team tracks, docks, conveyers, and other loading and unloading facilities.
- Relocation of a freight rail off-loading facility that has been agreed to by the owner of the facility; the city, village, or town in which the facility is located; and the city, village, or town in which the facility will be relocated.
- Rail line relocation or consolidation.

FRIIP loans must be allocated by DOT on a public interest basis and must include a cost-benefit analysis prior to making a grant. Loans made under FRIIP may be used to cover up to 100% of an approved project's cost.

FRPP

FRPP provides financial assistance to railroads, rail service customers, and governmental units to preserve rail service lines that might otherwise be lost. FRPP provides grants of up to 80% of a project's total cost. Projects may include the purchase of abandoned rail lines to reinstate freight service or preserve the opportunity for future rail service, or the rehabilitation of facilities, such as tracks or bridges.

Passenger Railroad Assistance

The DOT also administers passenger rail programs. For example, the Rail Passenger Service Assistance and Promotion Program authorizes the DOT to do any of the following:

- Conduct financial and technical planning for rail passenger service in this state and evaluate existing rail passenger service.
- Contract with Amtrak, railroads, or other persons to provide rail passenger service or support services, equipment, station improvements, passenger platforms, equipment maintenance shops, parking areas, or other support facilities for rail passenger service.

- Consult with other states and with local governmental units regarding service levels for additional rail passenger service in this state.
- Monitor the quality of rail passenger service in this state.
- Conduct or contract for marketing studies and promotional activities to increase rail passenger service ridership in this state, identify potential riders, and educate the public about the availability and advantages of rail passenger service.
- Apply for and accept federal funds for rail passenger service.
- Acquire equipment or facilities for the purpose of providing rail passenger service or support services for rail passenger service.
- Enter into agreements with other states to assist or promote rail passenger service.

The state currently subsidizes intercity passenger rail for the Amtrak Hiawatha Line, which runs between Milwaukee and Chicago.

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on various transportation topics, including transportation financing, transportation aid, and local transportation assistance programs. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
2. Legislative Audit Bureau Reports at: http://www.legis.wisconsin.gov/lab/:
    - *Construction and Inspection of Asphalt State Highways* (Letter Report, March 2011).
    - *Construction Engineering on State Highway Projects* (Letter Report, May 2009).
    - *Bridge Inspection Program* (Letter Report, February 2008).
    - *Major Highway Program* (Audit Report 03-13).
3. For more information and statistics related to transportation funding in Wisconsin and the DOT budget, see: http://www.dot.state.wi.us/about/budget.htm.
4. To view other topics on DOT's "quick facts and statistics" page, go to: http://www.dot.wisconsin.gov/library/services/ref/quick.htm.
5. For other publications that describe programs and services under the jurisdiction of the DOT, see: http://www.dot.state.wi.us/siteindex/index.htm.
6. For a list of DOT Service Centers, see: http://www.dot.wisconsin.gov/about/locate/dmv/index.htm.
7. For more information on aeronautics, see ch. 114, Stats., or see the DOT website at: http://www.dot.wisconsin.gov/business/engrserv/airports/getting-to-know-us.htm.

8. For more information on railroads, see the DOT website at: http://www.dot.wisconsin.gov/modes/rail.htm; or see the website for the Office of the Commissioner of Railroads at: http://ocr.wi.gov/.
9. For information about freight transportation by water, see the DOT website at: http://www.dot.wisconsin.gov/travel/water/.
10. For information about bicycling in Wisconsin, see the DOT website at: http://www.dot.wisconsin.gov/modes/bicycles.htm.

Glossary

BAC: Blood alcohol concentration.

CDL: Commercial driver license.

EA: Environmental assessment for major highway projects.

EIS: Environmental impact statement for major highway projects.

FRIIP: Freight Rail Infrastructure Improvement Program.

FRPP: Freight Rail Preservation Program.

GDL: Graduated driver license.

GTA: General transportation aids. The largest category of local aid, used to partially offset the cost of maintaining and improving the road system owned by local governments.

IID: Ignition interlock device. Locks the ignition on a vehicle to prohibit the use of that vehicle.

OWI: Operating while intoxicated. Wisconsin's OWI laws and their respective penalties range from fine or forfeiture, jail or imprisonment, suspension or revocation of driving privileges, alcohol assessment, and demerit points.

TPC: Transportation Projects Commission.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 29 – UTILITIES AND ENERGY

For more than a century, certain services--energy and telecommunications services, in particular--have been regulated as natural monopolies, but in recent decades, as strategies have been devised to address the monopoly nature of these services, regulation has been replaced with market competition. Some forms of energy--electricity and natural gas--are provided by public utilities, while others--such as coal and petroleum products--are sold in unregulated markets.

This chapter is in two parts. The first part explores the nature of utility regulation, with particular emphasis on telecommunications and electric utilities. The second part provides a brief overview of energy use in Wisconsin, in general, and describes activities in the state to conserve energy and promote the use of energy derived from renewable resources.

David L. Lovell, Principal Analyst
Wisconsin Legislative Council

Table of Contents

Utilities 1
- Utilities as Regulated Monopolies 1
- Trend Away From Regulation, Toward Competition 2
- State Versus Federal Jurisdiction 3

Telecommunications Utilities 4
- Deregulation of the Telecommunications Industry 4
- Reconsolidation 6
- Current Telecommunications Industry in Wisconsin 6
- Universal Service Fund 9
- Trends in Telecommunications 9

Electric Utilities 10
- Structure of Electric Utilities 10
- Electric Industry Restructuring 11
- Reliability of Electric Power Supply 12
- Current Electric Industry in Wisconsin 13
- Generation 14

Energy 19
- Energy Use in Wisconsin 19
- Transportation Fuels 22
- Renewable Energy 23
- State Energy Policy 24
- State Energy Office 26
- Conservation and Renewable Energy Programs 26
- Low-Income Energy Programs 32

Additional References 32

Glossary 33

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

UTILITIES

Utility services, such as electric power, natural gas, telephone, and water service, are easy to take for granted--they are generally available, reliable, and affordable. But they are also absolutely central to the functioning of our modern society. That general availability, reliability, and affordability did not come about by accident. They result from decades of development by the industries that provide these services and careful regulation by the state and federal governments. What is more, the industries continue to find innovative ways to provide services to the public, as well as finding entirely new services to provide, and regulators continue their efforts to ensure that these services are as universally available, reliable, and affordable as possible.

Q: What energy services does the PSC regulate?

A: Electricity and natural gas. Others, such as fuel oil, liquid petroleum, and coal, are not "natural monopolies."

Utilities as Regulated Monopolies

A public utility is a business that provides a vital service to society and that is considered to be a "natural monopoly"; that is, because of the massive investments in infrastructure required for the industry, it is perceived to be in the public interest to allow a single company to provide the service as a regulated monopoly, rather than having consumers pay for the construction of multiple systems by competing service providers. In Wisconsin, the Public Service Commission (PSC) regulates electric power and natural gas providers, and water and sewer service providers; the PSC retains very limited jurisdiction to regulate telecommunications companies.

The purpose of utility regulation is to protect the public interest while allowing a private concern to act as a monopoly in providing a necessary service. It is designed to ensure that the utility provides adequate service without using its monopoly position to obtain unjust enrichment. In order to be considered adequate, utility service must be available to all who need or want it, and it must be reliable, safe, and reasonably priced. To be considered reliable, the service must be available when needed or wanted, it must

The purpose of utility regulation is to protect the public interest while allowing a private concern to act as a monopoly in providing a necessary service.

Regulation is designed to ensure that the utility provides adequate service without using its monopoly position to obtain unjust enrichment.

be sufficient, and it must meet quality standards. The PSC has a number of tools available to ensure that service meets these expectations.

In many cases, a regulated utility must obtain PSC approval prior to taking major actions, such as changing rates, commencing construction of major facilities, issuing stocks or bonds, or entering into business agreements with certain other entities. For actions that are subject to its approval, the PSC determines whether the action is prudent and in the public interest. The PSC will not allow a regulated utility to take an action that it determines is imprudent. For example, if the PSC determines that construction of a proposed facility is not needed and would create a financial liability for the utility and its ratepayers, it might find that the proposal is not prudent and so not allow it. In such a case, the PSC may deny approval outright, or it may make its approval subject to specific conditions that it considers necessary to protect the public interest.

The PSC approves utility investments if they are prudent and in the public interest.

The rates a utility charges for service are an important aspect of utility service that the PSC reviews. The principal model of rate setting is known as rate-of-return regulation. Under this model, the PSC sets a rate of return that a utility is allowed to earn on the value of its plant and equipment (its capital investments). Rates for service are then established that will produce revenues sufficient to cover the utility's operating expenses and capital investments (the cost of providing utility service) plus the authorized return on its capital investments.

The PSC also promulgates and enforces service rules, which are designed to ensure reliable and safe service and the fair treatment of customers. Service rules address topics such as connection and disconnection of service, metering and billing, security deposits, extension of service to unserved properties, customer service, consumer protection, safety, and service quality.

Trend Away From Regulation, Toward Competition

With new technologies, old assumptions about the monopoly nature of certain utility services no longer hold.

Utility rates were set under rate-of-return regulation for most of the 20th Century and this model still applies to much of the utility industry. Recent technological advances have produced new ways of providing old services, as well as entirely new services. With the new technologies, old assumptions about the monopoly nature of the market for certain utility services no longer hold, and it has become apparent that some utility services can be provided in a competitive market.

Since the 1980s, various service providers have been partially or fully deregulated, alternatives to rate-of-return regulation have been devised, and certain industry sectors have been significantly reorganized. The key policy innovation enabling competition in a "natural monopoly" was to give competitors access to established (termed "incumbent") utilities' transmission infrastructure. The evolution of utility service and utility regulation is ongoing.

State Versus Federal Jurisdiction

The regulation of public utilities is shared between state and federal regulators. There are general principles that set the bounds between state and federal jurisdiction, but their application is not always clear and simple. Some utility transactions are subject to both jurisdictions and in some cases a transaction (such as an interstate merger) may require approval from multiple federal agencies and from agencies in more than one state.

In general, state jurisdiction applies to activities or transactions that occur entirely within one state and that have a retail nature, while federal jurisdiction applies to activities or transactions that cross state lines or that have an interstate or wholesale nature. In the telecommunications sector, this generally means that local telephone service and intrastate long-distance telephone service (toll service within one state) are subject to state regulation, while interstate long-distance service is regulated by the Federal Communications Commission (FCC).

In the electric power sector, federal law gives regulatory jurisdiction to the Federal Energy Regulatory Commission (FERC). In general, state regulators must approve the rates for sales of electric power to end users, while FERC must approve the rates for sales to any entity that will resell the power. FERC has jurisdiction over long-distance transmission of electric power, while the PSC has jurisdiction over local distribution. The PSC has exclusive jurisdiction over the construction and operation of generation facilities, except for nuclear facilities, which are regulated by both the PSC and the federal Nuclear Regulatory Commission. With some exceptions, the sale of generation and transmission facilities and the acquisition or merger of electric utilities are subject to both state and federal regulation.

In general, state jurisdiction applies to activities or transactions that occur entirely within one state and that have a retail nature, while federal jurisdiction applies to activities or transactions that cross state lines or that have a wholesale nature.

Jurisdiction over natural gas companies is similar, with federal regulation of wholesale transactions and interstate pipelines and state regulation of retail sales and distribution systems. Water and sewer utilities usually are strictly local functions and are regulated only by the states.

Telecommunications Utilities

New telecom services--distance learning, telemedicine, etc.--are based on the transfer of data.

The early telecommunications industry offered only one service, utilizing only one technology--the transmission of voice over copper wires. The only distinction made in services was between local and long distance. In the 130 or so years since its birth, the industry has evolved to offer many more services utilizing several technologies. The new services generally are based on the transfer of data: "distance learning" uses telecommunications systems to connect students to classrooms or to online learning materials and libraries use them to make information available to their clients far beyond what they can keep onsite; "telemedicine" allows doctors in rural settings to confer with specialists in major hospitals, to read x-rays or other images, for example, and to monitor patients who are at home; many business functions use telecommunications, including communication within a business, between businesses, and with customers; governments use telecommunications to make their functions transparent to the public and to engage the public in those functions; and many forms of entertainment, such as watching videos or playing games, now rely on telecommunications.

In addition to the old copper wire technology, telecommunications systems now utilize fiber optic cables, coaxial cables (i.e., cable television systems), and radio waves, using either land-based cell towers or satellites for the relay of signals. Internet protocol is one of the most recent developments, including voice over Internet protocol (VoIP) service. VoIP can be used in connection with more than one transmission technologies. It is a manner of formatting information, rather than a distinct transmission technology. What is more, while VoIP signals can travel from one computer to another over the Internet, much VoIP traffic travels from telephone to telephone or from computer to telephone using the publicly switched telephone network for some part of the transmission. Industry representatives indicate that the use of VoIP is significant and growing. Cable providers in Wisconsin use VoIP exclusively, and other landline providers and wireless providers are increasingly using it, as well. Some suggest that the industry, as a whole, will make a complete transition to VoIP in the next 10 years.

Deregulation of the Telecommunications Industry

Dating to the turn of the 20th Century, the telecommunications industry was dominated by AT&T, a holding company consisting of three principal elements: American Bell Telephone, providing voice service; Western Electric, the manufacturing arm; and Bell Laboratories, the research arm. The federal government's first investigation into the monopoly nature of the company was in 1913, by the Interstate Commerce Commission, which was followed by numerous agreements and consent decrees entered into between AT&T and federal regulators. The U.S. Department of Justice commenced a comprehensive challenge to

AT&T's monopoly status in 1974, leading to the 1982 federal court order (referred to as the Modified Final Judgment, or MFJ) that, effective in 1984, broke apart the three arms of AT&T, divided American Bell Telephone into regional Bell operating companies (RBOCs), and opened long-distance telephone service to competition.

Subsequent state and federal legislation has largely deregulated telephone service, working within the framework of the MFJ. The goal has been to create competitive markets in telecommunications services. The strategy devised to get around the natural monopoly nature of telecommunications is to allow competitors to enter the market by using the existing infrastructure of the incumbent service providers.

To enable competition in a natural monopoly, incumbent service providers are required to give competitors access to their existing infrastructure.

The Federal Telecommunications Act of 1996 required incumbent providers of basic local exchange service (incumbent local exchange carriers, or ILECs) to give access to their facilities, at fair wholesale market rates, to competitors that wished to enter the local telephone market (competitive local exchange carriers, or CLECs). It also allowed local telephone service providers to enter the long-distance market and overrode state regulations that restrict competition in telephone service.

Wisconsin regulations developed in the 1980s and 1990s focused on landline systems, designed to protect CLECs from the market power of ILECs. Wireless (cellular) telephone providers were exempt from virtually all PSC regulation. Satellite providers are regulated under federal law, which preempts state regulation of these providers. A series of legislative enactments created a dizzying array of regulatory schemes, from which ILECs were allowed to select. This situation continued through the first decade of this century, until 2011 Wisconsin Act 22 swept away most distinctions between telecommunications service providers and most state regulation of retail telephone service.

Under current FCC interpretations, calls using VoIP that are either initiated or completed from a telephone (termed "interconnected VoIP") are telecommunications services subject to state regulation, while those that are both initiated and completed from a computer are not. Act 22 specified that interconnected VoIP service is exempt from virtually all PSC regulation. With the anticipated complete industry transition to VoIP, this exemption will apply to all voice service.

With the anticipated transition to VoIP, all voice service will be exempt from virtually all PSC regulation.

While the PSC no longer regulates the relationship between telecommunications utilities and their retail customers, federal law gives state regulators a role in inter-utility (or "inter-carrier") relations, enforcing the requirement that ILECs make their facilities available to CLECs. In addition, Act 22 specified that, in general, the rate that an ILEC

charges for making these connections for intrastate service cannot exceed what it charges for interstate service, and authorized the PSC to enforce this requirement.

Reconsolidation

The telecommunications industry has undergone considerable reconsolidation. Some of the RBOCs have re-merged. The RBOCs formed in Illinois, Indiana, Michigan, Ohio, and Wisconsin merged to form Ameritech, which was later acquired by SBC, formerly Southwestern Bell, creating a large telecommunications company providing local service not only in multiple states but in several widely separated regions of the United States. More recently, a merger brought the ILEC services of SBC and the CLEC and long-distance services of AT&T together in one company under the AT&T name.

The telecommunications industry has undergone considerable reconsolidation, nationally and within Wisconsin. In spite of this, the industry today looks nothing like it looked prior to the breakup of the Bell System.

Consolidation of ILECs has occurred within Wisconsin as well. AT&T Wisconsin remains the largest ILEC. However, several mid-sized to large companies have been formed by the merger and acquisition of existing small utilities. Verizon Communications, for example, grew in this manner and then, in 2010, was itself acquired by Frontier North. CenturyLink is a holding company that includes a dozen separate telecommunications utilities and TDS Telecom is a holding company of 19 small utilities.

In spite of this reconsolidation, the telecommunications industry looks nothing today like it looked prior to the breakup of the Bell System. Gone are the regulated monopolies offering voice service only over copper wires in distinct service territories. In their place are a number of major players and numerous smaller companies providing innovative services by multiple technologies in direct competition with each other.

Current Telecommunications Industry in Wisconsin

Voice Service

For some time, traditional phone companies have no longer been the leading providers of voice service, having lost that position to wireless (cell phone) providers. As Table 1 shows, approximately two thirds of voice service subscriptions are wireless, while only a quarter of subscriptions are land lines. VoIP is still a small, but growing portion of the market, for two reasons. First, there is an overlap between landline and VoIP, some VoIP services being carried over land lines. More important, many households have one land line and one

Wireless (cell phone) providers have replaced traditional land-line telephone companies as the dominant providers of voice service.

or more wireless subscriptions, which is why the total number of voice service subscriptions can be 1.5 million more than the state population.

In all three categories of service, the top five providers have the great majority of subscriptions. Two providers, AT&T and Verizon, are in the top five for both wireless and landline. Although data are no longer available by provider, information from 2010 showed AT&T to be the largest provider of voice service.

Table 1. Technologies Used to Provide Voice Service in Wisconsin

	Subscriptions	% of Total	Top Five Companies	% of Sector
Wireless	5,040,000	67%	Cellco Partnership(Verizon), US Cellular (TDS), New Cingular Wireless (AT&T), Sprint Nextel, and Net Lec (Northeast Communications of WI)	94%
Landline	1,770,000	24%	AT&T, CenturyLink, Frontier, TDS, One Communications Corp.	86%
VoIP	660,000	9%	AT&T, Charter, Time Warner Cable, TDS, Vonage	94%
Total	7,470,000	100%		

Source: PSC staff.

Advanced Telecommunications Services; Broadband

The term "advanced telecommunications services" refers to the various data-based services described earlier--distance learning, telemedicine, etc. These functions are considered critical to economic development as well as to the way that our modern society functions. They are highly data-intensive and so are dependent on high-speed data networks. Except where private data networks are used, they require broadband Internet access. The FCC defines "broadband" as any service that provides download speeds of at least 4 megabytes per second (mbps) and upload speeds of at least 1 mbps. Most broadband applications, though, require speeds greater than this.

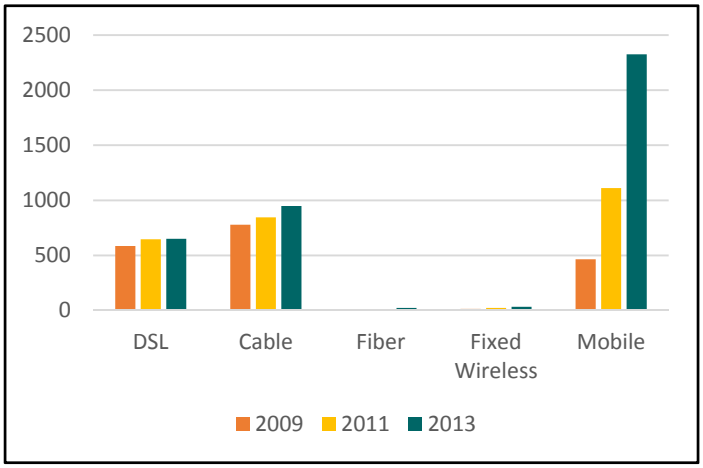
The deployment of broadband facilities continues to grow. However, there are still places with no broadband service.

The deployment of broadband facilities continues to grow. Access is available in almost every telephone exchange (by DSL) or zip code (by cable television), and often by both.

However, there are still places in the state with no broadband service, and the speed of the service available varies greatly.

Broadband service can be provided using any of several technologies. As Figure 1 shows, by 2011, wireless broadband subscriptions surpassed DSL and cable subscriptions, and have increased over 100% between 2009 and 2011 and again between 2011 and 2013. Cable and DSL broadband subscriptions also continue to increase but at a slower pace. Though a very small portion of the market, fiber and fixed wireless subscriptions are becoming more common.

Figure 1. Technologies Used to Provide Broadband Service in Wisconsin (thousands of subscribers)
Source: PSC staff.



Using federal stimulus funds, the PSC launched a broadband deployment effort. As part of this effort, it contracted with LinkWISCONSIN to create an interactive map of the state showing where broadband service is available. This map will help policymakers to develop programs to stimulate the deployment of broadband facilities and consumers to locate Internet service providers offering broadband service in their areas. In addition, the PSC has established and facilitated the work of nine regional broadband planning teams to address broadband infrastructure needs on a more local level. Building on the regional plans developed by these teams, the PSC has developed a "Playbook for Broadband Progress." As the title suggests, this is not a plan but rather is a compendium of strategies or "plays" that state and local government agencies, broadband service users and providers, and others can use to foster the deployment of broadband facilities.

The LinkWISCONSIN interactive map of broadband service availability in Wisconsin is available at this address: http://www.link.wisconsin.gov/lwi/default.aspx

The 2013-15 Biennial Budget Act (2013 Wisconsin Act 20) created the broadband expansion grant program. Under this program, the PSC awards grants for the purpose of constructing broadband infrastructure in underserved areas of the state, meaning areas served by fewer than two broadband service providers. For-profit and not-for-profit organizations, including cooperatives and telecommunications utilities, may apply for grants; in addition, a municipality may submit a joint application with another eligible applicant. Act 20 appropriated $500,000 annually for broadband expansion grants. The first grants were awarded in May 2014, funding six projects in rural areas of northern and western Wisconsin.

Video Service

Subscription video service ("cable TV") was initially offered by cable television companies, using coaxial cable technology, and by satellite companies. Land-based delivery of video services in Wisconsin was dominated by Time Warner and Charter Communications. At about the time that cable companies began competing with telecommunications companies in the delivery of voice service, telecommunications companies began competing with cable companies in the delivery of video service. AT&T is now a third dominant video service provider in Wisconsin.

For most of its history, land-based video service was regulated by municipalities under franchise agreements negotiated by municipalities and service providers. Legislation in 2007 replaced municipal franchises with state franchises, issued by the Department of Financial Institutions (DFI). At this time, there are 35 active video service franchises. The three dominant companies provide service primarily in eastern and central Wisconsin. The remaining franchise holders are mostly small cable or telephone companies, including some municipal and cooperative telephone companies, located throughout the state.

Universal Service Fund

To help ensure that everyone can obtain and afford telecommunications service, the state created the Universal Service Fund (USF) in 1997. From the USF, the PSC provides direct assistance to low-income customers and customers in high-cost areas of the state. It also assists disabled customers to obtain equipment to give them access to telecommunications and provides funding for deployment of essential telecommunications services, such as telemedicine services in rural areas. The Legislature sets the budget for the program; the PSC then apportions the cost among the telecommunications providers in the state, which collect the funds from customers as a fee on their bills. The budget for all programs funded from the USF is about $42.7 million in each year of the 2013-15 fiscal biennium. There is also a federal USF. It is funded in the same manner as the state USF, and provides similar services.

Trends in Telecommunications

Technology

The growing dominance of wireless providers for both voice and broadband service is a very significant trend. This development is made possible by the on-going evolution of the transmission network from copper wire to optical fiber, and the switching of transmission from analog to digital format. The end point of this trend is not known, but it seems unlikely that we will see the end of landline service altogether.

Another significant trend is the growing reliance by telecommunications providers on VoIP, especially when bundled with an Internet access subscription. Some envision a complete conversion to VoIP in the next decade or so, while others think that some remnants of the publicly switched telephone network will remain for some time beyond that. Because the

state does not have jurisdiction to regulate computer-to-computer VoIP, and because 2011 Act 22 exempts interconnected VoIP from all retail regulations (apart from the collection of certain fees), the conversion to VoIP has the potential to complete the deregulation of retail telecommunications service in Wisconsin.

Universal Access to Service

When 2011 Act 22 repealed most regulations on retail telecommunications service, it ended the "obligation to serve," the duty of ILECs to serve as "providers of last resort." When telecommunications utilities enjoyed monopolies in their local service territories, this policy had ensured that any person could obtain landline telephone service at a reasonable cost. In repealing the obligation to serve, the act recognized the growing dominance of wireless service and the competition that had developed among multiple landline, cable, and wireless providers. The new regime relies on this competition, rather than regulation, to ensure that all customers have access to service and to discipline pricing among competitors.

Some observers suggest that competition may not be sufficient in hard-to-serve areas. In some places, abrupt topography makes wireless service unreliable. They note that Act 22 repealed the requirement for PSC approval prior to abandonment of service and facilities. These observers fear that ILECs will abandon landline service in high-cost, rural areas, leaving some customers with few, if any, reliable options. The ILECs respond to these concerns that they have no intention to abandon any services or facilities, and PSC staff is not aware of any such abandonments having occurred.

Electric Utilities

Structure of Electric Utilities

The three components of the electric power system are generation, transmission, and distribution.

In Edison's time, individual electric power plants were built to serve a single city; distribution lines connected these power sources to the customers. Over time, as service was extended beyond the cities, it became apparent that system reliability could be improved and economies of scale could be achieved by connecting neighboring power plants. These interconnections also allowed electric utilities to buy electric power from neighboring utilities. These developments established the three components that make up the electric power system: facilities for the generation of electric power; networks of high-voltage transmission lines to carry power between utilities, or to load centers within a utility's service territory; and networks of low-voltage distribution lines to carry power to end users.

The early electric power industry consisted of vertically integrated monopolies. That is to say, each utility served an exclusive service territory and provided all three functions of

electric utilities--generation, transmission, and distribution. These monopolies were strictly regulated under the rate-of-return model, as they are today. However, substantial regulatory innovations have been made, principally affecting the structure of the utilities, for which reason these innovations are commonly referred to as "restructuring."

Electric Industry Restructuring

The restructuring of the electric power industry has, in general, the same goals as the deregulation of the telecommunications industry--to obtain the benefits of competitive markets in the production and delivery of electric power. It has been prompted by a number of factors. A key factor is the fact that the cost of producing electric power varies from plant to plant, depending on things such as the age and efficiency of the plant and the cost of the fuel used. However, utility customers pay a price that reflects the cost of production from all generation facilities that a utility uses. Large users of electricity, in particular, would like the ability to access the wholesale market to buy power directly from the least expensive source. This led to an interest in creation of competitive retail markets for electric power.

The restructuring of the electric power industry has, in general, the same goals as the deregulation of the telecommunications industry--to obtain the benefits of competitive markets in the production and delivery of electric power.

Issues of wholesale competition are subject to federal jurisdiction and so depend on the actions of Congress and FERC; issues regarding retail energy markets, in particular the question of allowing end users to buy electric power directly from the provider of their choice, are governed by the states.

Wholesale Competition

Congress and FERC have made very substantial progress in the creation of competitive wholesale markets in electric power. With enactments dating to 1978, Congress authorized non-utility entities to compete with electric utilities in producing power, and required the owners of electric transmission lines to let any generator transmit power over their lines at approved and published rates.

Much progress has been made in creating a nationwide competitive wholesale electric power market, but states have varied greatly in creation of competitive retail markets.

In numerous subsequent orders, FERC has worked to create conditions in which the owners of generation and transmission facilities are not able to gain unfair advantage over competitors. It has done this, in particular, through ordering the "structural separation" of generation functions from transmission functions, and by setting standards for regional transmission organizations (RTOs), ensuring that all

participants in the market have equal and fair access to the transmission functions that are necessary for the market to work.

Retail Competition

The states vary greatly in the actions they have taken to create competitive retail electric power markets. Some states enacted sweeping restructuring laws, allowing retail competition for all customers, splitting vertically integrated utilities into separate generation, transmission, and distribution entities, and creating market-based mechanisms to set prices for electric power. California led the retail competition experiment in the late 1990s and was followed by about half of the states. However, the system California designed to set market prices failed spectacularly in 2000 and 2001, causing extreme spikes in the cost of electricity and contributing to widespread blackouts. The failure was due in part to extreme weather events and inadequate facilities, but was due in substantial part to flaws in the market design and manipulation of the wholesale market by power generators and traders. Following this crisis, California significantly curtailed its retail market experiment, several other states repealed their restructuring legislation, and several more tabled pending restructuring legislation.

Wisconsin did not fully restructure its electric utility industry.

Other states did no more than conduct studies of retail electric competition. In Wisconsin, the PSC initiated an incremental process to make the reforms it considered necessary precursors to the creation of a retail power market. However, it did not complete this process and the subject never came to the Legislature. At this time, 18 states operate some form of retail electric power market.

Reliability of Electric Power Supply

During the 1990s, when restructuring dominated the electric utility policy arena, electric utilities largely deferred decisions regarding construction of new generation and transmission facilities. One reason for this was uncertainty about the future regulatory landscape, in particular the ability of investors to fully recover their investments in these highly capital-intensive facilities. However, demand for electric power continued to grow throughout this period. As a result, Wisconsin and many other states found themselves on the verge of a power supply crisis.

Legislation around the turn of the century was designed to facilitate the construction of need electric power infrastructure.

This developing crisis was brought to light dramatically in 1997 when a period of exceptionally hot weather produced record demand for electricity, which taxed the transmission system and threatened to bring it down entirely. The Wisconsin Legislature responded with a series of enactments to strengthen the system and facilitate the construction of needed facilities. Legislation in 1997 and 1999 brought about the

separation of generation and transmission facilities in much of Wisconsin by calling for the formation of an independent transmission company within the framework of an RTO. The purpose and result of these changes were to increase system reliability by strengthening wholesale electric markets and bringing regional coordination to the system, consistent with the FERC actions described earlier.

Additional enactments were designed to facilitate the construction of needed generation and transmission facilities. In particular, efforts were made to shorten and streamline the process by which proposed construction projects are reviewed and approved, including the coordination of the Department of Natural Resources' (DNR) environmental permitting process with the PSC's review. Legislation also provided revenue enhancements to municipalities in which utility facilities are located. The purpose was to provide financial mitigation to municipalities for the impacts of a facility on a community and to thereby reduce potential local opposition to the siting of new facilities.[1]

Current Electric Industry in Wisconsin

The developments described above have transformed a vertically integrated industry into a more diverse industry with varying degrees of vertical integration or separation. As in the telecommunications industry, consolidation of energy utilities has also occurred. Nationwide, mergers and acquisitions have created a number of very large, multi-state utilities often in the form of holding companies. In Wisconsin, Alliant Energy was formed by the merger of Wisconsin Power and Light Company (WP&L) with two Iowa utilities; Wisconsin Energy, the parent company of Wisconsin Electric Power Company (WEPCO), grew within the state by acquiring Wisconsin Gas, one of the major natural gas utilities of the state; and Northern States Power-Wisconsin (NSPW) is a subsidiary of Xcel Energy, a company with operations in eight states from Michigan to Texas. Most recently, in June 2014, Wisconsin Energy announced an agreement to acquire Integrys Energy Group, the parent company of Wisconsin Public Service Corp. This trend has not been followed by the small investor-owned utilities, nor by the municipal utilities or cooperatives.

Developments in the last 35 years have transformed a vertically integrated industry into a more diverse industry with varying degrees of vertical integration or separation.

[1] In addition, utilities often voluntarily agree to make "mitigation" payments to the communities that are host to their facilities.

Generation

Electric generation plants can be categorized by their use. Base load plants are those that run essentially all the time, to meet the base level of electricity that is needed continuously. Peak load plants ("peakers"), on the other hand, are run only when needed to meet peaks in demand. There are both daily and seasonal demand peaks. Air conditioning uses a great deal of electricity, producing a summertime peak in demand. There is also a noticeable peak around the winter holidays, due to the popularity of outdoor lighting during this time. On a daily basis, high summer temperatures lead to peaks in demand in the late afternoon, when people are coming home from work and cooling down their homes. In between base load and peak load plants are what are sometimes called intermediate load plants. Base load plants tend to be large (capacities of 500 MW and higher) and very expensive to build but inexpensive to run. Coal and nuclear plants provide the greatest share of base load generation. Some renewable resource, such as water and biomass, contribute to base load generation; wind power is an intermittent resource, providing power only when there is sufficient wind. Combined cycle gas turbines (CCGT) are commonly used as peak load plants. These are efficient and flexible plants. They can be built in various sizes, often less than 100 MW, and can be turned on and off fairly easily, compared to coal and nuclear plants. When natural gas prices were high, CCGTs were used almost exclusively to meet peak demand, but with the current low price of gas, they are increasingly being used for intermediate and even base load.

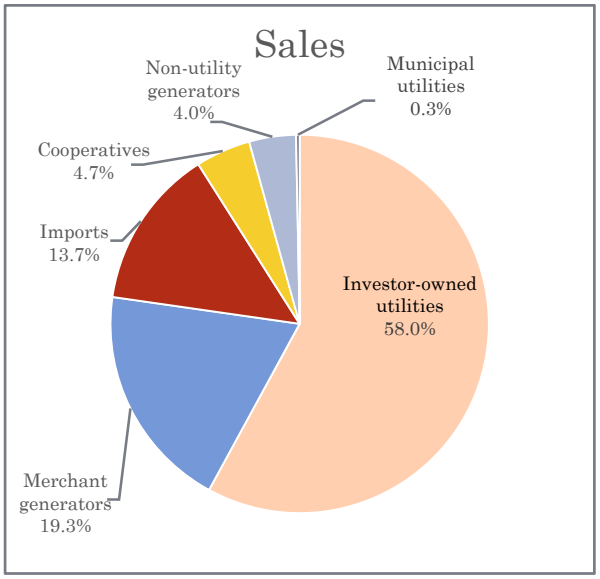
Coal and nuclear power plants run almost continuously, providing base load. Natural gas-fired plants are used as needed to meet peak demand, and are increasingly being used for intermediate and base load.

All of the major electric utilities in Wisconsin own generating facilities, as do some of the smaller utilities. Some generating facilities are owned by non-utility companies, termed independent power producers (IPPs) or merchant generators. Merchant generators are not regulated by the PSC, though they are often affiliated with regulated utilities; it appears that at least one Wisconsin utility has a merchant generator affiliate. Merchant generators most often own renewable resource generation (primarily wind and water) and CCGTs; also, as is described below, the operating nuclear plants in Wisconsin are owned by merchant generators.

Wholesale electric cooperatives and municipal electric companies are entities that supply electricity at wholesale to their member electric cooperatives and municipal utilities, respectively. Dairyland Power Cooperative (DPC) and Wisconsin Public Power, Inc. (WPPI) are the principal players in this arena. Both own small amounts of generating capacity and purchase the majority of their electricity from other generators.

The majority of electricity used in Wisconsin is generated by investor-owned utilities. (See Figure 2.) Merchant generators provide the next largest share. The non-utility generator category in the figure is mostly large industrial energy users that generate electricity for their own use and sell excess power into the grid. The import category is electricity purchased from generators in neighboring states.

Figure 2. Sources of Electricity (2012)
Source: Department of Administration (DOA), State Energy Office.



There are four nuclear generating units in Wisconsin. The oldest is the La Crosse Boiling Water Reactor, built as a demonstration facility in 1967 by the Atomic Energy Commission and DPC. It is now owned by DPC, which closed the plant in 1987 and has recently begun to decommission it. The three other nuclear generators were built by Wisconsin utilities and later sold as part of a nationwide trend in which utilities are reducing their risk by selling their nuclear plants to a relatively few national companies that are specializing in the operation of nuclear plants. NextEra, the parent company of Florida Power and Light, owns and operates the two-unit Point Beach facility, which is licensed to operate into the 2030s. Dominion Energy, of Virginia, bought the Kewaunee Nuclear Generating Station, but closed the facility in 2013 and is beginning the process of decommissioning it.

Spent fuel is a continuing issue for nuclear generating plants. In the absence of a federal disposal facility, generators are forced to store the material on-site. After a number of years of storage in pools, spent fuel is moved to above-ground dry cask storage. DPC has moved all spent fuel from the La Crosse facility into dry-cask storage, and Dominion Energy will do the same with the spent fuel at Kewaunee. Both will have to continue to safeguard this material indefinitely, even though the plants are no longer operating.

A relatively few national companies now specialize in the operation of nuclear power plants.

The last decade or so saw a substantial amount of construction of new electric generation capacity in Wisconsin. Nearly 2,000 megawatts (MW) of coal-fired base load generation has been built, although nearly 1,000 MW of coal-fired generation has been either retired or converted to use natural gas. At the same time, from these conversions and new construction, nearly 3,000 MW of gas-fired generation has been brought on line. In addition, about 900 MW of wind generation has been built. All of the coal-fired facilities

have been built by public utilities; some of the gas-fired and wind-powered projects have been built by public utilities, as well, though a number have been built by merchant generators.

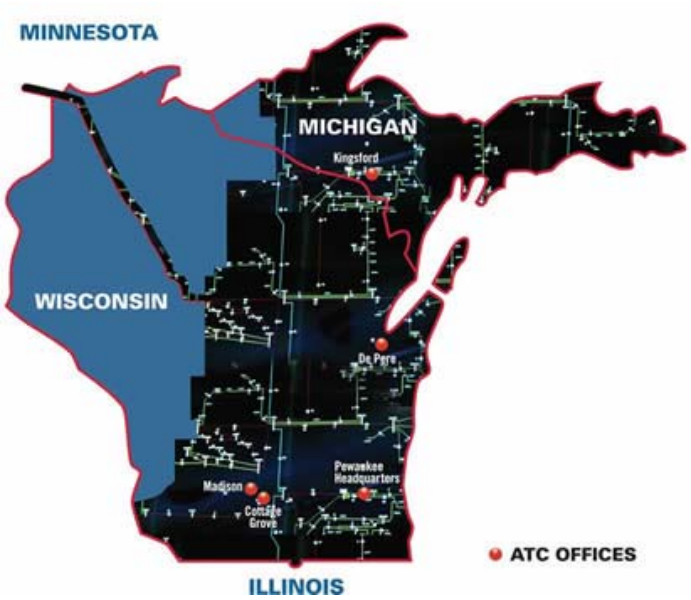
This building cycle appears to be slowing. As of this writing, no proposals for new electric generating facilities are pending before the PSC. One wind project has been approved but not built yet, and one or more utilities are studying possible new gas-fired generation projects.

Transmission

In response to the late-1990s legislation described earlier, the utilities in the eastern 2/3rds of the state--WEPCO, Wisconsin Public Service Corp. (WPSC), WP&L, and Madison Gas and Electric Co. (MG&E)--created the American Transmission Co. (ATC) and contributed their transmission facilities in Wisconsin, northern Illinois, and the Upper Peninsula of Michigan to it. In addition, two municipal electric companies (WPPI and Badger Power Marketing), and a number of municipal utilities and cooperatives have invested in ATC, giving them a share in the company's transmission facilities. The two entities that own the bulk of the transmission facilities in western Wisconsin, NSPW and DPC, retained ownership of those facilities at the time ATC was formed. Figure 3 shows the service area of ATC.

The transmission network in southern and eastern Wisconsin is owned by the American Transmission Company. Northern States Power-Wisconsin owns the bulk of the remaining transmission lines in Wisconsin.

Figure 3. American Transmission Co. Service Area



At the time that ATC was formed, Wisconsin faced serious transmission problems. In particular, there were transmission "bottle necks" which, under the regional power market described below, increased the cost of transmitting power to Wisconsin users. In addition, the growing interest in renewable energy, especially wind power, created the need for new lines to carry this power from the scattered generation sites to users.

Note: The diagonal line across northwestern Wisconsin is the Arrowhead-Weston transmission line.
Source: ATC website: About Us--Service Area, http://www.atcllc.com/about-us/servicearea.

Major investments are being made in the transmission grid in Wisconsin to address these issues and to ensure the overall reliability of the system. Since it became operational in 2001, ATC has invested $3.2 billion to upgrade more than 1,780 miles of existing lines, construct more than 580 miles of new lines (including the Arrowhead-Weston and Rockdale-West Middleton lines), and make other system improvements. Some of these improvements have increased the efficiency of the system by reducing line losses--the loss of electric power as heat--meaning that more of the electricity put into the transmission system reaches end users. ATC anticipates investing an additional $3.0 to $3.6 billion in the next 10 years in similar projects.

Major investments are being made in the transmission grid in Wisconsin.

Northern States Power - Wisconsin (NSPW) is also making transmission system improvements. CapX2020 project, an 800-mile transmission project of 11 utilities in four states, is now under construction, and NSPW is developing a number of other projects, including new construction as well as upgrades of existing facilities.

Because of the regional nature of modern energy markets and the fact that the various electric utilities' transmission systems are interconnected and interdependent, regional planning is critical for maintaining a reliable and efficient system. Numerous regional initiatives, involving utilities, regulators, and regional system operators, are ongoing for this purpose. One of the key issues in the Midwest is planning the transmission facilities that will bring energy from wind farms in the Great Plains to the major population centers in the Great Lakes region.

The Midcontinent Independent System Operator (MISO) is a key player in both the generation and transmission of power. It is a membership organization consisting of power generators, power traders, transmission companies, and other entities in a region that includes all or part of 15 states and one Canadian province, from Ohio and Michigan west to Nebraska, Montana, and Manitoba. MISO was originally established as an RTO which, under FERC regulations, was responsible for ensuring the reliability of the transmission system within its region and was required to prepare comprehensive plans for the transmission system. MISO has expanded its functions and now also manages a regional power market, which uses an auction process to set daily wholesale prices of power at more than 1,700 discrete locations throughout its region. It also determines the dispatch of generating facilities within its region as needed to meet demand and maintain the functioning of the transmission system.

The Midwest Independent System Operator (MISO) is a key player in both the generation and transmission of electric power in all or part of 15 states and one Canadian province.

Distribution

Electric utilities and cooperatives are the only entities that may provide retail electric service in Wisconsin. There are five "major" electric utilities in the state, although they vary substantially in size. (See Table 2 and Figure 4.) In addition, there are six small investor-owned utilities and 82 municipal utilities. Rural electric cooperatives are another important part of the retail electric service market. Apart from the requirements of the State Electrical Code, cooperatives are not subject to PSC regulation. There are 24 cooperatives serving rural areas, primarily in the western and northwestern parts of the state.

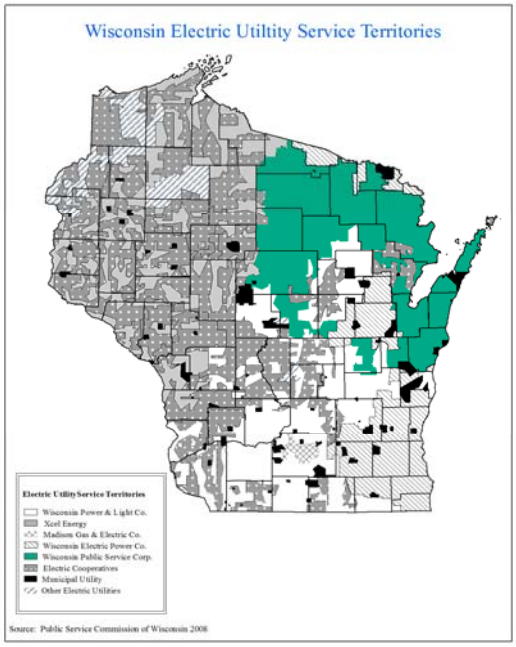
Electric utilities and cooperatives are the only entities that may provide retail electric service. Cooperatives are generally exempt from PSC regulation.

Table 2. Retail Electric Sales by the Five Largest Utilities (2013)

Utility	Sales (Thousands of MW Hours)	Revenues ($ Millions)
Wisconsin Electric Power Co. (Wisconsin Energy)	25,828	$2,992
Wisconsin Public Service Corp. (Integrys)	10,826	$990
Wisconsin Power and Light Co. (Alliant Energy)	10,430	$1,005
Northern States Power Co.--WI (Xcel Energy)	6,561	$646
Madison Gas and Electric Co.	3,318	$409

Source: PSC, from Utility Annual Reports.

Figure 4. Electric Utility Service Territories



Source: PSC staff.

Emerging Issue: Distributed Generation and Third-Party Ownership

Distributed generation, in the broadest sense, is any generation that is not a large, centralized generating station, though the statutes define it as being no larger than 15 MW. It can use any source of energy, even small, modular nuclear generating units, but often uses renewable resources such as water, sun light, or biogas. Distributed generation can be owned by the incumbent electric utility, by the end user of the electricity, or by a third party. To encourage development of distributed generation, Wisconsin has standards for interconnection between these generators and utility networks.

Distributed generation is often sited at or near the location of one or more end user. The end users can be as small as an individual home or as large as a major manufacturing or commercial facility. Epic, the medical software company, is a good example of what can be done. It has constructed a 10 MW wind farm at Springfield. Currently, it sells the output of this facility into the grid, but it is in the process of building an underground transmission line to bring the power directly to its Verona campus. It has installed 1.5 MW of solar generating capacity in the form of roof-top panels and is planning two biodigester projects, one on site to manage food and garden waste and another in collaboration with nearby farmers.

Federal law requires electric utilities to buy electricity generated by non-utility entities, large and small, in their service territories. The price a utility pays for this electricity is set in tariffs, approved by the PSC. Utilities generally pay their "avoided cost," that is to say, what it would have cost the utility to generate the electricity itself. For very small facilities, some utilities have observed a "net metering" policy, which is to say that the utility pays the generator the same amount it charges to sell electricity, for an amount of electricity up to the amount the utility sells to that customer – equivalent to running the meter forward when the utility is delivering electricity to the customer and running it backward when it is receiving electricity from the customer. For electricity beyond that amount, the utility pays either the avoided cost or a price in between.

Third party ownership of distributed generation is an increasingly popular option and business model. Most end users of electricity do not have the technical expertise to operate their own energy system, nor the capital to install it. Companies with the necessary expertise and capital will install and operate a system for an end user. While this arrangement works well for the two parties, it raises legal questions and concerns for the incumbent utility. In particular, if the third party sells electricity to the end user, does that make it a public utility, operating without a certificate from the PSC in the incumbent's exclusive service territory? In addition, does this relationship relieve the incumbent of its obligation to provide service to the end user? If not, how does the incumbent recover its cost of providing stand-by service? The PSC could resolve these issues. However, given the fundamental policy choices involved, some suggest that they may be best resolved by the Legislature.

ENERGY

It is no exaggeration that almost every modern human endeavor is dependent, directly or indirectly, on some external source of energy. This part of this chapter provides a brief overview of energy use in Wisconsin and describes state policies and programs related to the production and use of energy.

Energy Use in Wisconsin

Energy is used for many purposes and in many forms. In rough approximation, about one-third of Wisconsin's energy use is for transportation, about one-fourth is for manufacturing,

and the balance is used mostly in residential and commercial buildings--for heating, cooling, lighting, and other functions. Agriculture accounts for the small remaining fraction of our total energy use.[2] (See Figure 5.) The largest share of the energy used in the state is in the form of petroleum (used primarily for transportation), followed by natural gas and electricity. (See Figure 6.) Figure 6 shows coal as accounting for only 3.8% pf energy used in Wisconsin. However, the full importance of coal is seen by adding the coal used to generate electricity to this, which brings this figure up to 15.2%, a four-fold increase.

Figure 5. End Use of Energy by Economic Sector (2011)

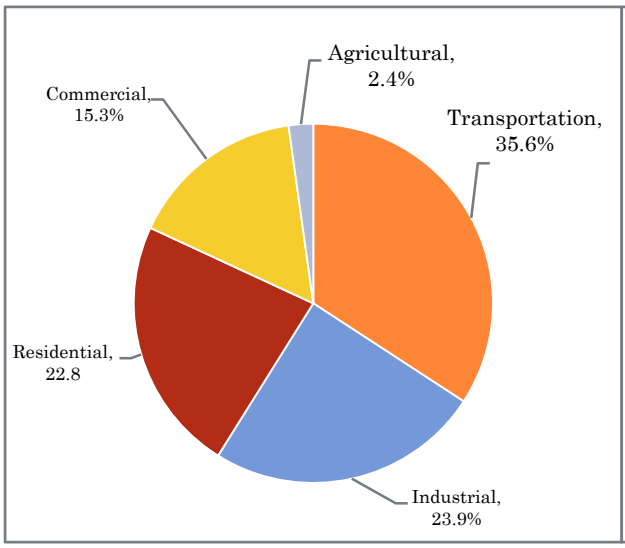
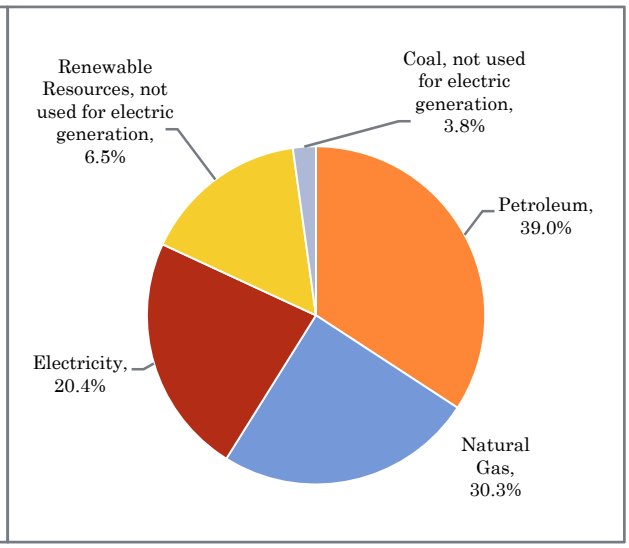


Figure 6. End Use of Energy by Fuel (2011)



Source: DOA, State Energy Office.

Electricity is a form of energy that is generated from other forms of energy. Figure 7 shows electric generation capacity in Wisconsin by fuel type. The largest share of generation capacity is provided by coal-fired facilities, with natural gas-fired generation close behind. These are followed, in order, by nuclear power, petroleum-fired generation, and the several forms of renewable energy, although the renewables collectively, exceed petroleum.

Actual generation shown in Figure 8, follows a somewhat different pattern. Coal and nuclear power plants run almost continuously, while most, but not all, natural gas- and petroleum-fired power plants run only as needed to meet demand. As a result, as shown in these figures, coal and nuclear facilities provide larger proportions of the total electricity generated in the state than their proportion of capacity, and gas and petroleum facilities produce proportionately far less.

[2] These figures refer to "end use" energy, the energy that reaches the end user. "Resource energy," in contrast, includes the energy that is lost in the production and delivery of energy to end users.

Figure 7. Electric Generation Capacity, by Fuel Type (2012)

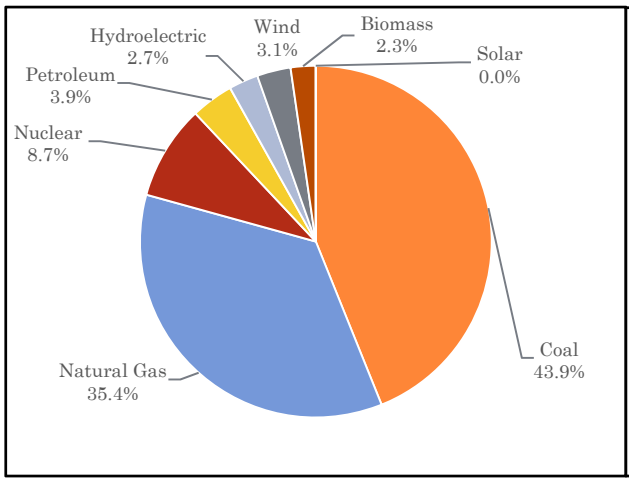
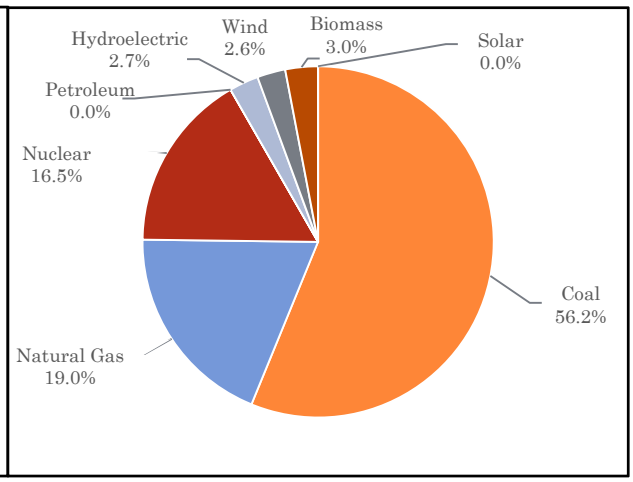


Figure 8. Actual Electric Generation, by Fuel Type (2012)



Source: DOA, State Energy Office.

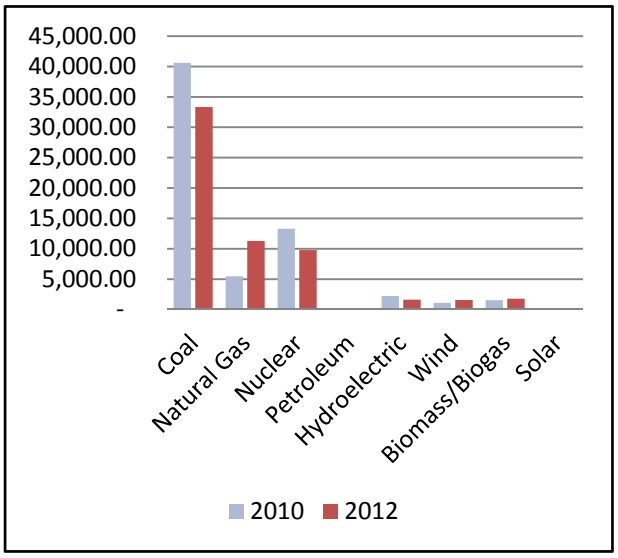
For further information on energy use in Wisconsin, including the annual Energy Statistics Book, see: http://energyindependence.wi.gov/section.asp?linkid=1733&locid=160

There is a growing emphasis on renewable energy. The term refers to energy from sources that can be replenished, such as biomass (plant matter and animal waste, generally), or that are inexhaustible, such as sunlight, wind, or water.[3] Many forms of renewable energy are natural, but energy derived from agricultural, industrial, or municipal waste are also generally considered renewable. Many renewable resources are used to make electricity, including sunlight, wind, water, biomass, and geothermal heat. Others, such as biomass and various waste materials, are used to make liquid or gaseous fuels, such as ethanol and methane (often referred to as "biogas"). Still others, such as sunlight and geothermal sources, are used as direct sources of heat, for heating buildings and for industrial processes, among other uses.

The mix of fuels used to generate electricity is changing. (See Figure 9.) In particular, the dominance of coal is decreasing. In spite of the recent construction of several large coal-fired facilities, the retirement of some facilities and conversion of others to natural gas, described earlier, has reduced the proportion of coal-fired generation capacity. Actual generation by coal has also dropped. The role of nuclear generation is also declining. However, the information in Figure 9 does not reflect the closing of the Kewaunee Nuclear Generating Station, which occurred in 2013. The 2014 figures will show a significant reduction in nuclear capacity and generation. At the same time, the role of natural gas has increased.

[3] An alternative definition of "renewable resource" is any energy source that is not a fossil fuel, excluding nuclear energy.

Figure 9. Electric Generation by Fuel
Source: DOA, State Energy Office.



The decline of coal and the rise of natural gas may be explained in financial terms. Two sets of regulations, relating to the emission of toxic pollutants and to the interstate transport of certain air pollutants, could require the owners of coal-fired generation to make extensive and very expensive up-grades to their facilities. Although the U.S. Supreme Court has upheld both sets of regulations, in general terms, they are still the subjects of litigation, and it is not known when they will be implemented. In addition, in June 2014, the President announced regulations on carbon dioxide emissions; however, the final form these regulations will take and when they will be implemented, even if they will be implemented, are still unknown.

At the same time, natural gas prices have been low. What is more, gas-fired electric generation facilities can be built in smaller units than coal-fired facilities, and at a lower cost per MW of capacity.

A third factor is the growing role of renewable energy, driven in part by popular demand, but primarily by the renewable portfolio standard, described later in this chapter.

These factors together appear to have triggered, or at least contributed to the downward trend of coal. It is not clear how long the trend will continue, or how far it will go. The utilities have long anticipated the federal regulations on air pollution and have factored the anticipated cost of them into their decision making. These costs and the current low cost of natural gas have no doubt influenced their decisions on what new generation to build.

To the extent that future regulation of carbon dioxide emissions is expected, there is an increasing interest in "carbonless" electric generation. This includes two categories. First, the use of biomass to generate electricity cycles carbon from short-term repositories or "sinks" (e.g., forests or crops) rather than removing it from long-term sinks, such as coal and oil deposits. Some energy sources, though, are almost totally carbonless. These include certain renewable energy sources, such as wind and hydro power, and nuclear generation.

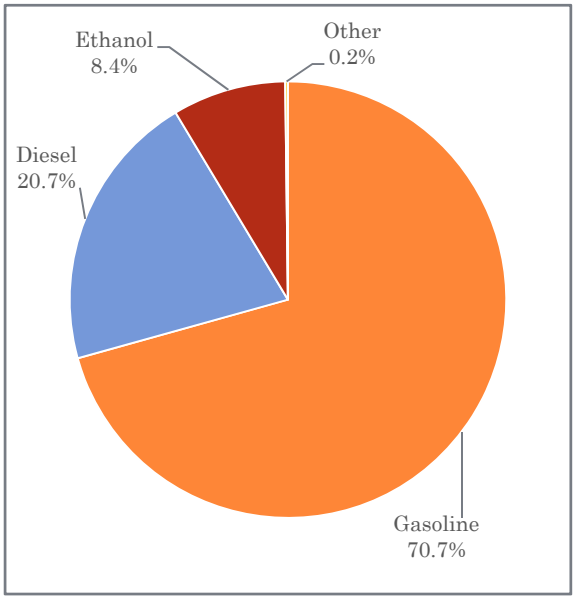
Transportation Fuels

The great bulk of transportation fuel used in Wisconsin, as elsewhere, is gasoline and diesel. (See Figure 10.) However, use of alternative fuels is growing. While there is no state mandate for the blending of alternative fuels with other fuels, federal law requires suppliers to utilize certain amounts of renewable fuels. Ethanol is the principal renewable

fuel available and so, under this federal mandate, it has become a significant portion of the transportation fuel supply.

Three other alternative fuels, compressed natural gas, liquid propane gas, and liquid natural gas, are a very small (0.2%) but growing component. The principal users of these fuels are commercial and municipal fleets, which have their own, centralized fueling facilities. Expansion of their use is limited by the general lack of fueling stations available to the public and the limited availability of vehicles designed to use these fuels.[4]

Figure 10. Transportation Fuel Use (2013)



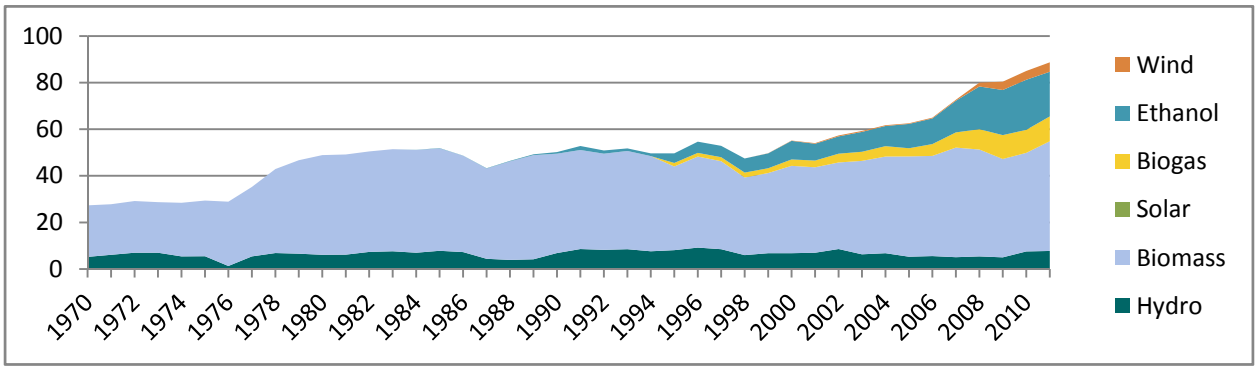
Note: "Other" consists of compressed natural gas, liquid propane gas, and liquid natural gas, in decreasing order.

Source: DOA, State Energy Office.

Renewable Energy

Wisconsin has long used energy from biomass and hydro power. (See Figure 11.) Initially, the biomass used was primarily waste from logging and forest products industries. That use has continued, even expanded, at the same time that other biomass resources have been exploited. While hydro power capacity has not increased in a long time, production of hydroelectric power varies from year to year, based on stream flow. Use of other renewable energy sources, biogas, ethanol, and wind, has become significant in just the past two to three decades.

Figure 11. Energy Derived from Renewable Resources



Source: DOA, State Energy Office.

[4] Because the data regarding fuel use is based on gas tax reports, it does not include fuels used by tax-exempt entities, primarily state agencies and municipalities. The actual total use of "other alternative fuels" in particular is higher than shown in Figure 10.

State Energy Policy

The state energy policy is set forth in s. 1.12, Stats. The policy is in five parts. The first part relates to energy conservation. It states that a state agency or local governmental unit shall investigate and consider the maximum conservation of energy resources as an important factor when making any major decision that would significantly affect energy usage.

The second part of the energy policy establishes three goals relating to the generation and use of energy:

- To reduce the ratio of energy consumption to economic activity in the state, referred to as the "energy intensity" of the state economy. This goal seeks to increase the overall energy efficiency of the state's economy by reducing the amount of energy consumed per unit of economic activity.
- To base all new capacity for electric generation on renewable energy resources, to the extent feasible.
- To increase the forested area of the state, in order to ensure a future supply of wood fuel and reduce atmospheric carbon dioxide.

The five-part state energy policy is designated to guide the state in decisions affecting its own energy use and regulatory actions affecting others' energy use.

To monitor progress toward achieving the first of these goals, the DOA is required to develop an index of the energy intensity of the state economy and report annually to the Legislature regarding progress made. To monitor progress made toward achieving the third goal, the DNR is required to submit a biennial report to the Legislature regarding the extent of forest lands in the state and their potential to provide wood fuel.

The third part of the energy policy is a priority list of options for meeting the energy demands of all energy users in the state. It states that, "to the extent cost-effective and technically feasible," options for meeting energy demands should be considered in the order of the priority list. The options, in order, are the following:

- Energy conservation and efficiency.
- Noncombustible renewable energy resources.
- Combustible renewable energy resources.
- Nonrenewable combustible energy resources, in the order listed:
    - Natural gas.
    - Oil or coal with a sulfur content of less than 1%.
    - All other carbon-based fuels.

The fourth part of the policy is a pair of directives to state agencies and local governmental units. First, it requires that, in designing all new and replacement energy projects, state agencies and local governmental units rely, to the greatest extent feasible, on energy efficiency improvements and renewable energy resources. Second, it requires that, to the greatest extent feasible, state agencies and local governmental units design all new and replacement energy projects following the priority list in the third part of the policy.

The fifth part of the policy is a priority list of options for the siting of electric transmission facilities, similar to the priority list for meeting energy demand. It states that, "to the greatest extent feasible that is consistent with economic and engineering considerations, reliability of the electric system, and protection of the environment," transmission routes should be selected making use of the following types of corridors, in the order listed:

- Existing utility corridors.
- Highway and railroad corridors.
- Recreational trails, to the extent that the facilities may be constructed below ground and that the facilities do not significantly impact environmentally sensitive areas.
- New corridors.

The DOA and the PSC are required to implement the priority list of energy sources in designing and implementing energy programs and making energy-related decisions and orders. The DNR, the Department of Transportation, and the PSC are required to implement the transmission corridors priority list in making all decisions, orders, and rules affecting the siting of new electric transmission facilities.

The energy policies are binding only on state agencies and local units of government, although they also serve as encouragement to others to follow a similar path in meeting energy needs.

In addition to the policies in s. 1.12, Stats., the PSC is required, upon request, to analyze the impact that a bill or proposed rule will have on the cost or reliability of electricity generation, transmission, or distribution of fuels used in generating electricity and to prepare a report including findings and conclusions. A request for this analysis may be made by the chair or ranking minority member of the standing committee of the Legislature to which the proposal has been referred or, if not referred to a standing committee, by the Speaker of the Assembly or the President of the Senate. The purpose of such a report is to ensure that the Legislature and its committees know the impact that a given proposal will have on the cost or reliability of electric power prior to taking action on the proposal.

The energy policies in s. 1.12, Stats., apply only to state and local governments, although they serve as encouragement to others to follow a similar path in meeting energy needs. The policies do not dictate the outcome of any individual agency decision; rather, an

agency's compliance with the policies is reflected in the process the agency uses in reaching decisions, as well as the overall pattern of the agency's decision.

State Energy Office

The State Energy Office (SEO) in the DOA performs a variety of functions focused on the development and use of clean and renewable energy resources and improving the efficiency of energy use. Much of its work involves administering federal energy contracts and deploying federal funds to businesses and local governments. It also provides information to the public and elected officials. Currently, the SEO is launching a program to assist local governments and schools with technical assistance on energy retrofits; it is also providing cost sharing grants to trucking firms to help them reduce diesel engine idling. It also administers a number of programs providing financial and technical support, often targeted at the development of specific energy resources or applications, and assists local governments to identify and implement energy efficiency and renewable energy projects.

The State Energy Office promotes energy efficiency and renewable energy through information services, technical and financial assistance, and other activities.

The SEO has a number of other responsibilities including the collection and publication of statistics regarding energy use in Wisconsin and oversight of the state's alternative fuels fleet program. It also has emergency management functions relating to petroleum fuel supplies pursuant to the state's Energy Assurance Plan.

Conservation and Renewable Energy Programs

Since the 1970s, Wisconsin has had active programs to advance both the efficiency with which we use energy and the use of renewable energy resources. Although transportation and other energy sectors have been addressed by the programs, the greatest focus is efficiency in the use of electric power, in the building sector and the generation of electricity from renewable resources.

"Focus on Energy"

The state's principal conservation and renewable energy program is known as the Focus on Energy program. Under this program, all investor-owned electric and gas utilities are required to collectively fund and contract for the administration of statewide energy efficiency and renewable resources programs. Each utility must spend an amount equal to 1.2% of its annual operating revenues for these programs, which collectively, based on recent utility revenues, is approximately $100 million. The PSC is directed to oversee the programs, setting goals and priorities, establishing program design standards, and coordinating all energy efficiency and renewable resource programs.

Focus on Energy is the state's principal conservation and renewable energy program.

Program activities include educating energy users (residential, commercial, institutional, and industrial) regarding opportunities to save money through reducing their energy use, and providing technical and financial assistance for energy users to purchase efficient appliances, lighting, and mechanical equipment, to weatherize their homes, to increase the efficiency of industrial processes, and to install renewable energy systems. The programs include concerted efforts to encourage the formation of private markets for energy conservation activities and energy efficient equipment that will, in the long run, function independent of the program.

Chicago Bridge and Iron (formerly Shaw Environmental and Infrastructure) has the contract to administer the Focus on Energy program. Its 2011-2014 contract sets goals for energy savings by the program. In 2013, with a year remaining on the contract, it had achieved 91% of its goal for natural gas savings and 97% of its goal for electricity savings. An independent auditor found a cost-effectiveness ratio of 3.41, meaning that for every dollar spent, the program returns $3.41 in energy savings and environmental benefits.

The statutes give municipal electric utilities and electric cooperatives the option of joining the Focus program or conducting what are termed "commitment to community" programs, in which the utility or cooperative provides a program similar to Focus to its customers or members. All 82 municipal utilities have joined the Focus program, as have about half of the 24 electric cooperative.

Renewable Portfolio Standard

An RPS requires suppliers of electric power to include a specified amount of power from renewable resources.

To further stimulate the development of renewable energy resources, the state has adopted a renewable portfolio standard (RPS). An RPS is a requirement that suppliers of electric power include in their portfolio of electric supply a specified amount of generation capacity that is derived from renewable resources. Electric power suppliers may comply with the standard by generating electricity from renewable sources, buying electricity from another generator that uses renewable sources, or buying credits from another supplier that has generated or bought more electricity from renewable sources than required to meet the standard. Credits are banked and traded through the Midwest Renewable Energy Tracking System (MRETS), a regional, private sector clearinghouse. The RPS applies to both electric utilities and rural electric cooperatives.

The original RPS, created by 1999 Wisconsin Act 9, called for utilities to provide 2.2% of their sales from renewable resources by 2011. As the utilities had already surpassed the original requirement, 2005 Wisconsin Act 141 increased the standard to approximately 10% by 2015. PSC staff report that all electric providers are in compliance with their obligations

under the RPS, and that most have substantial credit accounts in MRETS. In addition, the state-wide goal has already been met.

Building Codes

In addition to the programs described above, the state promotes energy conservation in the private sector through building codes promulgated by the Department of Safety and Professional Services (DSPS). The codes relating to commercial buildings, historic buildings, and rental residential units include explicit energy conservation codes; the Commercial Building Code also incorporates by reference the entire International Energy Conservation Code, developed by the International Code Council. In many other portions of the building codes, such as the design standards for one- and two-family dwellings, the DSPS considers energy conservation in setting specific standards. In some instances, such as lighting standards for commercial buildings, the statutes direct the DSPS to consider energy efficiency in designing standards.

Tax Incentives for Renewable Energy

Tax exemptions and credits are often used for policy purposes. With regard to renewable energy, they are used to lower the cost of installing or using renewable energy systems, the purpose being both to help individuals and companies to use renewable energy and to stimulate markets for the required equipment.[5] Solar and wind energy systems are exempt from the property tax, and the following are exempt from the sales and use taxes:

Tax exemptions and credits encourage the use of renewable resources by reducing the cost.

- Biomass that is used for fuel sold for residential use.
- Any residue that results from the harvesting of timber or the production of wood products that is used as fuel in a business activity.
- Certain equipment that generates energy from wind, sunlight, or agricultural waste, and electricity or energy produced by such equipment.

In addition, individuals and companies can claim credits for the following against their income taxes, subject to certain limitations:

- A refundable credit[6] equal to 10% of the amount paid for the purchase of equipment used primarily to harvest or process woody biomass for use as fuel or as a component of fuel.

---

[5] In addition to the exemptions and credits that specifically target renewable energy systems, certain broader exemptions and credits, such as the property and sales tax exemptions for certain machinery and equipment used in manufacturing, can also be applied to these systems.

[6] When a refundable tax credit exceeds the claimant's tax liability, the claimant receives a payment for the difference between the amount of the credit and the tax liability; for a nonrefundable credit, no such payment is made, although unused amounts generally can be carried forward and used in future years.

- A nonrefundable credit up to $.10 per gallon of biodiesel fuel produced by the claimant.
- A nonrefundable credit up to 25% of the cost of installing or retrofitting fuel pumps to dispense ethanol or biodiesel fuel blended with gasoline.

Private Sector Activities

The private sector plays an important role in improving energy efficiency.

The private sector plays an important role in improving the energy efficiency of buildings. As noted earlier, Focus on Energy works extensively with the private sector. Another group of players, known generically as energy service companies (ESCos), are also important. They include some well-known names, such as Johnson Controls and Westinghouse. Some electric utilities act as ESCos for their customers. A model that ESCos use frequently is called "performance contracting" or "shared savings." Using this model, an ESCo makes an analysis of the energy use in a client's building and makes efficiency improvements to the building. In some cases, it will take over the management of a building's energy using systems. The ESCo then recovers its costs by retaining a share of the savings the client realizes as a result of the efficiency improvements. ESCos have mostly worked with governmental agencies and institutions, such as schools, universities, and hospitals, but Johnson Controls is expanding into the residential sector in Wisconsin.

Energy Use by State Government

State government is one of the largest energy users.

For many years, there have been various programs to reduce energy use by state government. These programs serve several purposes. They reduce one of the largest sources of energy demand in the state and save taxpayers significant amounts of money in avoided energy costs. In addition, they encourage similar conservation efforts in other sectors of the economy by demonstrating the effectiveness and feasibility of new, efficient energy systems. Also, at least in theory, these programs stimulate production of new, efficient energy systems by creating demand for them, helping to bring down their cost to the general public.

Construction and Renovation of State Buildings

The Legislature has established a number of requirements for state construction and remodeling projects, including the use of life-cycle cost analysis of building projects and the energy-consuming systems used in such projects, development of energy standards for state buildings that exceed the requirements of the State Building Code, incorporation of passive solar designs in building projects, and use of active solar, photovoltaic, geothermal, and other renewable energy sources to the extent feasible. The statutes also direct the State Building Commission to ensure that central steam generating facilities built by the state, to serve state buildings, are designed for the cogeneration of steam and electricity and are

designed to utilize biomass and refuse-derived fuels, to the greatest extent feasible. In addition, the statutes authorize the DOA to invest in energy-saving improvements to state buildings where the cost savings from reduced energy use will cover the cost of the improvements in a reasonable time. Similarly, the DOA may enter into performance contracts with third parties for this purpose. To finance energy improvements under these initiatives, the Legislature authorized $30 million bonding revenue in the 2007-09 fiscal biennium, $50 million in the 2009-11 fiscal biennium, and $100 million in the 2011-13 fiscal biennium.

A separate program targets the energy use of the six state agencies that consume the great majority of electricity purchased by the state (the Departments of Administration, Corrections, Health Services, Public Instruction, and Veterans Affairs, and the University of Wisconsin (UW) System). First, each agency must prepare a biennial energy cost reduction plan that includes all system and equipment upgrades that will pay for themselves over the life of the systems or equipment. Second, the DOA was required to set goals for the use of renewable electric energy by each agency, with the overall goal that 10% of all state agencies' electric energy use is derived from renewable resources by 2007, and 20% by 2011.

Building on these statutory requirements, former Governor Doyle and Governor Walker have issued executive orders intended to further reduce energy use by the state. Under the orders, the DOA must, among other things, do the following:

- Using fiscal year (FY) 2005 as a base year, reduce energy use in all state facilities by 10% by FY 2008, and 20% by FY 2010.
- Ensure that new buildings are constructed to be 30% more energy efficient than the Commercial Code.
- Establish sustainable building guidelines applicable to the construction, operation, and maintenance of all state buildings. The guidelines are to be based on the Leadership in Energy and Environmental Design (LEED) rating systems for new and existing buildings.

The Conserve Wisconsin Initiative has significantly reduced energy use by state agencies, conserving resources and saving taxpayer money.

The DOA is implementing the executive orders and the statutory requirements together as the Conserve Wisconsin Initiative. While some specific goals have not been met, the DOA has accomplished much under these programs and directives. From 2005 to 2010, the state reduced its total energy use by 9.8%. Reductions by individual agencies ranged from a 3% reduction by the Department of Corrections to a 52.8% reduction by the State Fair Park. In addition, the six agencies that are required to prepare biennial energy cost reduction plans continue to prepare and implement their plans, with assistance from the DOA. Individual energy

improvements have included energy audits, lighting upgrades, and window and steam trap replacements.

The DOA has prepared sustainable building guidelines and guidelines to achieve greater energy efficiency in new state buildings than would be realized under the Commercial Building Code, which it has incorporated into its master specifications and design guidelines for state building projects. Using these guidelines, the new administration building on the UW-Oshkosh campus was built to LEED standards. Through this and other projects, the DOA staff have been able to document that the cost of construction to LEED standards is no greater than the cost of "conventional" construction. They also report that contractors and trades people are well versed in the necessary construction techniques and equipment.

With regard to energy purchased by the state, staff at the DOA report that the statutory goal that 10% of all electricity purchased by the state be from renewable resources was met by 2008, and that, in 2010, 16% of the state's electricity use was from renewable resources.

State-Owned Heating Plants

The state owns and operates over 30 plants that generate steam for the heating and cooling of buildings at UW campuses, prisons, veterans homes, and other state institutions. About half of them burn coal; the remainder burn natural gas. Collectively, these plants represent a very large portion of the state's energy consumption and greenhouse gas emissions.

In part in response to lawsuits alleging Clean Air Act violations at some of the state's coal-fired heating plants, the DOA has converted several of these plants, including the plant on the UW-Madison campus and the Capitol Heat and Power Plant in Madison, from coal to natural gas. DOA projects that these and other planned projects will reduce the state's use of coal by more than 80% by 2015, in comparison to 2007. These projects are effectively changing the state's fleet of heating plants from one dominated by coal combustion with natural gas back-up to one dominated by natural gas combustion with coal back-up.

State Procurement

State agencies are required to apply life-cycle cost analysis in purchasing supplies and equipment, whenever such analysis is appropriate. More specific requirements apply with regard to energy-consuming equipment that costs more than $5,000 per unit. In the past, DOA has made extensive use of such analysis in the selection of automobiles and copiers, in particular. In 2008, it incorporated "green" purchasing guidelines relating to energy-consuming equipment into the state procurement manual. The guidelines require the purchase of energy equipment identified under either the EPA's Energy Star Program or the U.S. Department of Energy's Federal Energy Management Program, and the application of life-cycle cost analysis for types of equipment not covered by those programs.

The DOA also operates an alternative fuels program for the state automotive fleet. The statutes require the DOA to promote the use of alternative fuels and, by executive order,

Governor Doyle directed the DOA to reduce the use of petroleum-based gasoline in state-owned vehicles by 20% by 2010 and by 50% by 2015; and to reduce petroleum-based diesel fuel use by 10% by 2010 and by 25% by 2015.

Low-Income Energy Programs

For information regarding Home Energy Plus, including where to apply for assistance, see: www.homeenergyplus.wi.gov

The DOA administers low-income energy assistance programs under the program name Home Energy Plus. The programs are funded with federal funds received by the state and fees collected by electric and natural gas utilities and remitted to the state, and are implemented by contract agencies at the county level. The programs offer a variety of services, including direct bill payment assistance for some customers who are unable to make full payments, and early intervention programs to identify and assist customers in danger of falling behind in bill payments. The programs also provide financial assistance for the installation of insulation and other energy conservation measures in the homes of low-income families to reduce the total energy needs of the homes, thereby making energy more affordable for those families. In addition, the programs provide emergency furnace repair or replacement assistance.

Additional References

1. Legislative Council Staff: http://www.legis.wisconsin.gov/lc
   - *Regulation of Telecommunications Services*, Information Memorandum 2011-07 (June 2, 2011).
   - *Municipal Regulation of Wind Energy Systems (2009 Wisconsin Act 40)*, Information Memorandum 2009-05 (October 27, 2009).
   - *The New Law Relating to State-Issued Franchises for Video Service Providers*, Information Memorandum 2008-01 (January 15, 2008).
   - *2005 Wisconsin Act 141: Energy Efficiency, Renewable Energy, and Energy Policy*, Information Memorandum 2006-01 (March 30, 2006).
2. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on various state programs, including taxation and regulation of public utilities and other utilities topics. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
3. Legislative Audit Bureau: http://www.legis.wisconsin.gov/lab
   - Audit Report 11-13, *Focus on Energy* (December 2011).
   - Heating Assistance and Weatherization Services (audit in progress November 2012).
4. Broadband resources:
   - LinkWISCONSIN: http://www.linkwisconsin.org/lwi/default.aspx?bhcp=1.

- Broadband Reference Guide: http://psc.wi.gov/utilityInfo/tele/broadband/documents/BroadbandReferenceGuide.pdf.
- Broadband Expansion Grant Program http://psc.wi.gov/utilityInfo/tele/broadband/grants/bbGrantJan2014.htm.

5. Low-Income Energy Programs:

   http://homeenergyplus.wi.gov.

6. Governmental Agencies' Internet Sites:

   - Wisconsin PSC: http://psc.wi.gov.
   - Wisconsin DOA, State Energy Office: http://energyindependence.wi.gov/index.asp?locid=160.
   - FERC: http://www.ferc.gov/.
   - FCC: http://www.fcc.gov/.
   - Federal Energy Information Administration: http://www.eia.doe.gov/.

GLOSSARY

CLEC: Competitive local exchange carrier.

FCC: Federal Communications Commission.

FERC: Federal Energy Regulatory Commission.

ILEC: Incumbent local exchange carrier.

IPP: Independent power producer.

NRC: Nuclear Regulatory Commission.

RPS: Renewable portfolio standard.

RTO: Regional Transmission Organization.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2015-16

CHAPTER 30 - VETERANS

The Wisconsin Department of Veterans Affairs provides a variety of benefits and services to eligible veterans of the U.S. Armed Forces, and, in some instances, their family members, as well as assistance in filing claims for federal veterans benefits. The Department of Veterans Affairs also operates three veterans homes, three veterans cemeteries, and a veterans museum.

Chad Brown, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Veterans Affairs 1

State Veterans Programs and Services 2

- Eligibility Requirements 2
- Funding 3

Veterans Education Benefits 3

- Tuition Residency for Wisconsin Veterans 3
- Wisconsin GI Bill 3
- VetEd Tuition Reimbursement Program 4
- Federal Post 9/11 GI Bill 5

Veterans Loan Programs 5

- Housing and Home Improvement Loans 5

Veterans Grant Programs 6

- Retraining Grant Program 6
- Assistance to Needy Veterans Grant Program 6
- CVSO Grant Program 6
- Grants to Nonprofit Organizations 6

Other Veterans Programs and Services 7

- Veterans and Surviving Spouse Property Tax Credit 7
- Assistance With Filing U.S. DVA Claims 8
- Post-Traumatic Stress Disorder (PTSD) Outreach and Referral Services 8
- Veterans Assistance Program 8
- Employment and Training Services 8
- Veteran Employment Grants 9
- Military Funeral Honors Program 9
- Supermarkets of Veterans Benefits 10
- Mission: Welcome Home Program 10

State Veterans Facilities 10

- Veterans Homes 10
- Veterans Cemeteries 11
- State Veterans Museum 11

Additional References 12

Glossary 12

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

VETERANS AFFAIRS

The Department of Veterans Affairs (DVA) operates under the direction and supervision of a Secretary of Veterans Affairs, who is required to be a veteran. The Secretary is nominated by the Governor and confirmed by the Senate. Prior to nominating the Secretary, the Governor must personally consult with the presiding officers of at least six Wisconsin veterans organizations. In addition to the position of Secretary, there is a nine-member Board of Veterans Affairs (the "Board") that is comprised entirely of veterans. Board members are appointed by the Governor for staggered four-year terms and are subject to Senate confirmation. There must be a board member from each of the state's eight Congressional districts.

The DVA Secretary is given the authority to promulgate rules and must provide a copy of any proposed rule to the Board for review. The Board may make written comments on the rule, which must be included in the rule analysis submitted by DVA.

The Council on Veterans Programs ("the Council") is comprised of representatives of organizations that have a direct interest in veterans affairs. The Council advises the Board and DVA on solutions and policy alternatives relating to the problems of veterans. The Council and DVA, jointly or separately, are required to submit a biennial report to the Legislature, including a general summary of the activities and membership of the Council and each organization represented on the Council over the past two years.

Under state law, each county must have a county veterans service officer (CVSO) and provide the CVSO with office space and clerical assistance. The DVA provides grants to counties for maintaining and operating CVSO offices. The primary duties of CVSOs are to advise veterans of state and federal benefits and services to which they may be entitled and assist them in applying for those benefits and services. CVSOs also may provide information to members of the National Guard and Reserves and their families about benefits to which they may be entitled, necessary military points of contact, and general deployment information. A number of Wisconsin tribes and bands have tribal veterans service officers, known as TVSOs.

A link to a listing of all CVSOs and TVSOs is available at:

http://dva.state.wi.us/cvso

The DVA's assistant deputy secretary is the agency's chief legislative liaison and can provide assistance with constituent and legislative inquiries and direct people to other sources of information on veterans programs and services. In addition, DVA produces a biennial guide to all state veterans programs, benefits, and services, which may be accessed on the DVA website.

State Veterans Programs and Services

Wisconsin veterans are eligible for a number of benefits and services in addition to those provided by the U.S. Department of Veterans Affairs (U.S. DVA). State veterans programs are available in such areas as housing, education, employment, health care, subsistence aid, and transportation. The following discussion provides an overview of major programs; more extensive information about these and other benefits and services is available on the DVA website.

DVA has a toll-free number for information about veterans benefits at: (800) WIS-VETS [(800) 947-8387].

Eligibility Requirements

To receive state veterans benefits and services, a veteran must meet certain general eligibility requirements relating to military service and state residency which are set forth in state statutes. Family members of deceased or disabled veterans may also be eligible for certain benefits. Some veterans programs have additional requirements.

Military service. To fulfill the military service requirement for receipt of most veterans benefits, a person must have served for one of the statutorily specified periods of active duty (other than active duty for training purposes) under honorable conditions in the U.S. Armed Forces or in forces incorporated in the Armed Forces. These statutorily specified periods include peacetime service of the lesser of two years or initial term of enlistment. They also include service of 90 days during a war period as defined in Wisconsin Statutes. For example, the Afghanistan War period commenced on September 11, 2001, and will continue until a date specified by the Department of Defense. Those who served honorably for 90 days during this time period meet the eligibility requirement.

Information on eligibility for specific state veterans programs, and applications, is available on the DVA website at: http://www.dva.state.wi.us/benefits or from the CVSO offices.

State residency. With certain exceptions, to be eligible for benefits, a veteran must be a resident of Wisconsin and living in the state at the time of making an application. If a family member of a deceased veteran is applying for benefits, the veteran from whom the applicant derives eligibility must meet **one** of the following conditions:

- The veteran's selective service local board, if any, and home of record at the time of entering service (as shown on the separation-from-service or "DD-214" report) were in Wisconsin.
- The veteran was a resident of Wisconsin at the time of entry into active duty.
- The veteran was a resident for any consecutive 12-month period after entry and before the date of application for benefits or death.

Veterans who are otherwise eligible and are serving on active duty do not have to be living in Wisconsin on the date of application to qualify for DVA benefits. If the DVA once determines that a veteran meets the 12-month residency requirement, the veteran never has to reestablish that he or she meets the residency requirement when applying for any other benefit that requires that residency. Certain programs require that the veteran have entered service from Wisconsin.

Funding

The Veterans Trust Fund (VTF) finances many programs and services for Wisconsin veterans including, for example, education grants, retraining grants, state veterans cemeteries, and others. In addition to funding these veterans programs and services, appropriations from the VTF are also used for the cost of salaries and fringe benefits, supplies, and services related to the administration of veterans programs. State taxpayers may contribute to the VTF by designating an amount on the Wisconsin individual or corporate income tax form.

Veterans Education Benefits

Wisconsin provides a number of education benefits for state veterans that are in addition to available federal benefits. The various programs have different eligibility criteria, including varying state residency requirements.

Tuition Residency for Wisconsin Veterans

Wisconsin law provides that an eligible veteran who entered active duty from Wisconsin but who is nonetheless considered a nonresident for tuition purposes by the University of Wisconsin (UW) System is entitled to a 100% remission of nonresident tuition. The person must meet the definition of "veteran" in ch. 45, Stats., and be a resident of and living in Wisconsin at the time of registering at an institution. The remission of nonresident fees does not apply to Wisconsin Technical College System (WTCS) schools because eligible veterans in the WTCS are granted statutory residency status. 2013 Wisconsin Act 56 also gives veterans and members of the armed forces priority in registering for courses at UW System and technical colleges.

Wisconsin GI Bill

The Wisconsin GI Bill provides a 100% waiver ("remission") of tuition and fees for eligible veterans and their dependents for up to eight full-time semesters or 128 credits, whichever is longer, at any UW System or WTCS institution. The remission applies to both undergraduate and graduate level study.

DVA information about the Wisconsin GI Bill and applications is available at: www.WisVets.com/Education

The Wisconsin GI Bill applies to all degree credit courses, including distance education, online, cost recovery courses, and the UW-Madison Executive MBA program.

UW System has a "Frequently Asked Questions" (FAQs) document concerning the Wisconsin GI Bill at: http://www.uwsa.edu/acss/student/WI_GI_Bill_FAQs.htm?

With some exceptions, veterans and qualifying dependents are required to exhaust federal GI Bill benefits prior to using the Wisconsin VetEd benefits. VetEd benefits may be reduced for courses commencing later than 10 years after separation from service.

Remission for veterans. To be eligible for the tuition remission, the veteran must be verified by DVA as being a Wisconsin resident for purposes of receiving state veterans benefits, as having been a Wisconsin resident at the time of entry into the Armed Forces, and as meeting any one of a number of service-related conditions. An eligible veteran who entered the service as a Wisconsin resident but is nonetheless considered by the UW System to be a nonresident for tuition purposes is also eligible to receive 100% remission of the nonresident portion of the tuition. Beginning in the fall semester of 2013, residency was expanded to veterans who lived in Wisconsin for at least five consecutive years immediately preceding the beginning of any school semester or session, even if they were not residents of Wisconsin at the time of entry. This newly expanded residency does not, however, extend to family member education benefits.

The veteran must submit both an application for GI Bill benefits to the educational institution and a form requesting certification of eligibility to the DVA. The DVA determines the eligibility of the veteran and notifies the institution of its determination. There is no time limit within which the benefit must be used and the veteran may attend school full-time or part-time.

Remission for family members. Spouses, unremarried surviving spouses, and children of veterans who entered service from Wisconsin may also receive the tuition remission if the veteran died in the line of duty while in active, National Guard, or Reserves service or received at least a 30% service-connected disability rating. These spouses and children must be resident students (interpreted as residents for tuition purposes) and may receive the remission only during the first 10 years following the veteran's death or receipt of disability rating. For an unremarried surviving spouse of an eligible veteran who had a child with the veteran, the remission applies until 10 years after the youngest child that the spouse had with the eligible veteran reaches or would have reached 18 years of age, or during the first 10 years after the veteran died, whichever is longer. The child of an eligible veteran may receive the remission if the child is at least 17, but not yet 26, years of age.

VetEd Tuition Reimbursement Program

The VetEd Program reimburses veterans for tuition and fees paid for courses taken as undergraduates at the UW System, the WTCS, or private higher education institutions. The maximum number of credits for which a veteran may receive reimbursement is based on the amount of time the veteran served on active duty. The maximum reimbursement cannot exceed what the UW-Madison charges for the same number of credits.

VetEd reimbursement will be reduced to the extent that tuition and fees have already been paid by other grants, scholarships, and remissions, including the Wisconsin GI Bill and the Post 9/11 GI Bill. Veterans may apply for VetEd through their CVSO or online at the DVA website.

Federal Post 9/11 GI Bill

Information about the Federal Post 9/11 GI Bill is available at: www.WisVets.com/Education

The Post 9/11 GI Bill took effect on August 1, 2009. It provides funding for up to 36 months (four academic years) of tuition, books, and living expenses without contributions from the individual while in service, for veterans who served after September 11, 2001. For some qualifying veterans, this benefit can be transferred to a spouse or child. Qualification for transfer can be subject to conditions relating to being in the service on the eligibility date and continued service after that date, as well as other conditions. Veterans and their qualifying dependents must use the Federal GI Bill and any other federal benefits to which they are entitled, prior to using the Wisconsin GI Bill.

Veterans Loan Programs

Effective December 1, 2011, the DVA has enacted an indefinite moratorium on its loan programs. Information on these programs is included in this chapter as there are a number of these loans outstanding, but the department is no longer accepting new applicants. The DVA is referring those veterans needing assistance with home loans to the Wisconsin Housing and Economic Development Authority Advantage Program, which can be found at: http://www.wheda.com/root/BusinessPartners/MortgageLenders/Dynamic.aspx?id=2214. Ordinarily for first-time home buyers only, this restriction is waived for veterans.

Please note that the department is not currently issuing new loans under this program.

Housing and Home Improvement Loans

Veterans Primary Housing Loan Program

The Veterans Primary Housing Loan Program provided fixed-rate mortgage loans to qualifying state veterans to purchase or construct a home. Members of the National Guard and Reserves who had served for six consecutive years and who were living in the state at the time of application were also eligible for the program. The DVA is the program lender, with funding for loans coming from the proceeds of state bond issuances. The state program is separate from the federal Home Loan Program administered by the U.S. DVA. Veterans were required to make a down payment on the home of at least 5%, unless the

veteran was totally and permanently disabled. There was no private mortgage insurance requirement. The loan principal amount was limited to 2-1/2 times the median sales price of a Wisconsin home. The outstanding loans are secured with a mortgage on the properties and the homes must be the veteran's primary or secondary residence (primary in the case of two- to four-unit residences).

Home Improvement Loan Program

Under the Home Improvement Loan Program, veterans could borrow up to 90% of their home's equity for additions, construction of a garage, repairs, and remodeling.

Personal Loan Program

The Personal Loan Program provided multi-purpose, low-interest loans of up to $25,000 to eligible veterans or the unremarried surviving spouse or child of a deceased veteran. In some cases, a remarried spouse or parent of a veteran's child could have been eligible for a loan to pay for the education of the veteran's children.

Veterans Grant Programs

DVA administers a number of grant programs for veterans and veterans organizations.

Retraining Grant Program

Under this program, veterans who are underemployed or recently unemployed may apply for up to $3,000 a year for up to two years if they demonstrate financial need while enrolled in a training program that is expected to lead to employment. The DVA may pay a retraining grant directly to the veteran's employer if the veteran is in a structured on-the-job training program.

Assistance to Needy Veterans Grant Program

This program provides limited financial emergency assistance to financially needy veterans or their dependents who have exhausted all other sources of aid. The grants may be used for specified health care or subsistence needs or for economic emergency assistance for spouses and dependents of activated or deployed service members. There is a cumulative lifetime grant award limit of $7,500.

CVSO Grant Program

The DVA provides grants to counties for maintaining and operating a CVSO and improving service to former military personnel. A county's grant is based on whether the county veterans service officer is full-time or part-time and the county's total population.

Grants to Nonprofit Organizations

2013 Wisconsin Act 190 created a new grant program administered by the DVA. Under the program, the DVA may award up to a total of $250,000 in grants to nonprofit organizations

that provide financial assistance or other services to veterans and their families. The maximum amount that may be granted to a nonprofit organization per fiscal year is $25,000.

Other Veterans Programs and Services

Veterans and Surviving Spouse Property Tax Credit

Wisconsin law provides a property tax credit to veterans with a 100% disability or their surviving spouses and the surviving spouses of service members who died while on active duty. The credit is equal to the amount of property taxes paid during the year on a principal dwelling.

A FAQs document on this tax credit is available on the Wisconsin Department of Revenue (DOR) website at: http://www.revenue.wi.gov/faqs/ise/vetprop.html

A veteran must be at least 65 years of age and meet all of the following conditions to qualify for the tax credit:

- Served on active duty under honorable conditions in the U.S. Armed Forces or in forces incorporated in the U.S. Armed Forces.
- Was a resident of Wisconsin at the time of entry into active service or was a resident of Wisconsin for any consecutive five-year period after entry into that service.
- Is currently a resident of Wisconsin for purposes of receiving veterans benefits under ch. 45, Stats.
- Either has a service-connected disability rating of 100% from the U.S. DVA or is considered individually unemployable and is rated 100% disabled on that basis.

To qualify for the tax credit as a surviving spouse, a person must be the unremarried surviving spouse of **one** of the following, as verified by the DVA:

Forms are available on the DVA website (www.WisVets.com/forms), from the DOR (www.dor.state.wi.us), or by calling the DVA toll-free at 1-800-WIS-VETS (1-800-947-8387). See DVA 10106, the application/instructions booklet, on the DVA website (www.WisVets.com/taxes).

- A veteran who met all of the above conditions.
- An individual who died in the line of duty while on active or inactive duty for training purposes as a member of the National Guard or a reserve component of the U.S. Armed Forces and who was a resident of this state at the time of entry into that service or who had been a resident of Wisconsin for any consecutive five-year period after entry into that service, and died in the line of duty as a Wisconsin resident.

Assistance With Filing U.S. DVA Claims

The claims assistance office may be reached at (414) 902-5757.

The DVA maintains a claims assistance office at the U.S. DVA Regional Office in Milwaukee and develops and files all federal disability and pension claims for veterans in Milwaukee County, in addition to assisting the county veterans services officers in most other counties in developing those claims.

Post-Traumatic Stress Disorder (PTSD) Outreach and Referral Services

DVA is required to provide services related to PTSD to service members and veterans, including at least one of the following: (1) outreach services to service members and veterans who may be experiencing PTSD; or (2) information on the availability of PTSD medical services and referrals to those services. The DVA works with the UW System and provides grants to the Center for Veterans Issues, in Milwaukee, to fulfill this requirement.

Veterans Assistance Program

The Veterans Assistance Program helps homeless veterans and those at risk for becoming homeless receive job training, education, counseling, and rehabilitative services (such as alcohol and other drug abuse (AODA) counseling) in order to become employed, find affordable housing, and develop living skills. Regional veterans assistance centers (VACs) or "homeless transition sites" have been established to provide "one-stop shopping" for services for homeless and at-risk veterans. The VACs are located at the veterans homes at King and Union Grove, at Fort McCoy, and in the Oak Grove building on the campus of the Northern Wisconsin Center at Chippewa Falls. Funds for the sites come from the DVA and the U.S. DVA. The program also provides funds for the Center for Veterans Issues in Milwaukee for outreach services to homeless veterans with PTSD.

Veterans with a characterization of service other than a dishonorable discharge are eligible to participate in the program and there is no state residency requirement for the program. The program assists veterans' families to obtain housing, but cannot feed or house a veteran's spouse (unless also a veteran) or children.

Employment and Training Services

Vow to Hire Heroes Act

The federal Vow to Hire Heroes Act created the Veterans Retraining Assistance Program (VRAP), which offers up to 12 months of retraining assistance to qualified unemployed veterans between the ages of 35 and 60. To be eligible, a veteran must not be eligible for any other VA education benefit programs, not be in receipt of VA compensation due to Individual Unemployability and not be enrolled in a federal or state job training program.

Military Training Credit for Credentialing

2011 Wisconsin Act 120 provided for consideration of equivalent military training in satisfying credentialing requirements for licenses and affiliated credentials administered by state agencies such as the Department of Safety and Professional Services, the Department of Children and Families, the Department of Health Services, the Office of the Commissioner of Insurance, the Department of Public Instruction, Division for Libraries, Technology and Community Learning, and the Department of Transportation.

Employment Assistance

The DVA provides a wide array of employment and training services for veterans, including transition assistance to veterans leaving active service, job placement, coordinating approvals for training courses, entrepreneurial training, recruiting veterans to return to Wisconsin following military service, and reducing barriers to licensure necessary for employment. Also, the Office of Veterans Services in the Department of Workforce Development (DWD) provides an employment service placement program and a job training placement service program for veterans through 22 Wisconsin job centers and 65 additional outreach locations, including correctional facilities and CVSOs.

The DVA also works with the Employer Support of the Guard and Reserve Program in providing resources for employers on the benefits of hiring veterans.

Veteran Employment Grants

2013 Wisconsin Act 20 created a grant program for employers hiring disabled veterans. The veteran must have a service-connected disability rating of at least 50%. The grants can be for as much as $4,000 in the year of hire and $2,000 per year for the next three years of employment.

Military Funeral Honors Program

The DVA administers the Military Funeral Honors Program to honor veterans who served in the U.S. Armed Forces, National Guard, or Reserves with assistance from veterans service organizations (VSOs) and active and reserve components of the U.S. Armed Forces. The VSOs may be reimbursed up to $50 for providing honor guard details at a veteran's funeral. The Adjutant General of the Wisconsin National Guard may activate Guard members to provide military funeral honors. Depending on availability of personnel, various types of honors may be rendered, including firing rifle volleys, sounding Taps, and folding the flag for presentation to the veteran's next-of-kin.

For information about military funeral honors, call: (877) 944-6667 or (608) 261-0510.

Supermarkets of Veterans Benefits

The DVA periodically sponsors "supermarkets" of veterans benefits in various communities around the state, at which representatives of local, state, federal, and nonprofit agencies come to a central location to provide one-stop shopping for veterans needing information and assistance concerning benefits, programs, or services. At this central location, veterans may, among other things, establish their eligibility for state veterans benefits, apply for a range of benefits, loans, and grants, receive a health screening and enroll in the federal veterans health care program, and obtain assistance in obtaining military medals and records.

Information about the Mission: Welcome Home Program is available on the DVA website or via email to: MWH@dva.state.wi.us

Mission: Welcome Home Program

The DVA administers the Mission: Welcome Home Program to help returning veterans transition back to everyday life. The program provides information about and access to federal and state veterans benefits and outreach and assistance to veterans and their families.

The DVA has hired a coordinator for veterans services for women. The coordinator may be contacted at: WomenVets@dva.state.wi.us

State Veterans Facilities

Veterans Homes

There are currently three veterans homes in Wisconsin, located in King in Waupaca County, Union Grove in Racine County, and Chippewa Falls in Chippewa County. Wisconsin veterans are eligible to become residents of a veterans home if they have served on active duty for two or more years or the full period of their initial service obligation, whichever is less. They are also eligible if they served on active duty for at least 90 days, one day of which must be within a wartime period. Spouses of eligible veterans may also live at the home.

An applicant must be a state resident on the date of admission to the home and must have been a state resident either upon entering the service or for any 12-month period after enlistment and before the date of application. The veteran must also be permanently incapacitated due to physical disability or age.

The Veterans Home at King provides residential care, nursing and medical services, food services, and social and counseling services to its resident veterans and eligible dependents. There are currently four licensed skilled nursing care buildings, 14 cottages for married couples who are able to care for themselves, and other support facilities. 2013 Wisconsin Act 187 added to the 2013-15 Authorized State Building Program a project involving the construction of the John R. Moses Skilled Nursing Facility at the Wisconsin Veterans Home at King. The project is planned to be funded with $52 million in program revenue-supported borrowing and $28 million in general fund-supported borrowing.

The Veterans Home at Union Grove has two community-based residential facilities for veterans and their spouses who require limited nursing care, a residential care apartment complex, a skilled nursing care facility, and a campus activities center.

The Veterans Home at Chippewa Falls is a 72-bed skilled nursing facility. It has two neighborhoods, each having two 18-bed households.

In August 2010, the Legislative Audit Bureau (LAB) released a letter report, *Rate Setting at the Wisconsin Veterans Homes*, available at: http://www.legis.wisconsin.gov/lab

In February 2011, the LAB released a report, *Wisconsin Veterans Homes*, available at: http://www.legis.wisconsin.gov/lab

Veterans Cemeteries

There are three state-run veterans cemeteries in Wisconsin (in addition to the Wood National Cemetery in Milwaukee, which reached capacity in 1996): the Central Wisconsin Veterans Memorial Cemetery at King, the Southern Wisconsin Veterans Memorial Cemetery at Union Grove, and the Northern Wisconsin Veterans Memorial Cemetery at Spooner. Veterans who meet specified requirements are eligible for burial at a Wisconsin veterans cemetery. A veteran must have been discharged or released from active duty under any conditions other than dishonorable or must have died while on active duty. In addition, the veteran must either have entered military service from Wisconsin, have been a resident of Wisconsin at death, or have entered military service from another state but been a Wisconsin resident at some point for at least 12 consecutive months after entering service.

A person who was a Wisconsin resident at the time of death and served at least 20 years in the National Guard or Reserves and qualified for retirement pay (or would have qualified had death not occurred before age 60) is also eligible for burial at a Wisconsin veterans cemetery. Veterans and their spouses may preregister for burial at one of the three state cemeteries on a form available on the DVA website or from a CVSO or the cemetery. Currently, no fee is charged for burial of an eligible veteran, but a fee is charged for family members. DVA may assess funeral directors involved in interments the amount necessary to reimburse DVA for the average cost of providing specified services and items.

State Veterans Museum

The DVA operates the Wisconsin Veterans Museum on the Capitol Square in Madison. The Museum's mission is to acknowledge, commemorate, and affirm the role of Wisconsin veterans in the United States' military past by means of instructive exhibits and other educational programs. In addition to state funding, the private, nonprofit Wisconsin Veterans Museum Foundation contributes funds to the museum.

Additional References

1. The Wisconsin DVA website: http://dva.state.wi.us/default.asp.
2. The U.S. DVA website: http://www.va.gov/.
3. A list of CVSOs can be found at: http://dva.state.wi.us/CVSO.asp.
4. Information on education benefits can be found on the UW System website at: http://www.uwhelp.wisconsin.edu/paying/veterans.aspx.
5. Information on the Wisconsin GI Bill can be found on the UW System website at: http://gibill.wisconsin.edu/.
6. Information on the Federal Post-9/11 GI Bill can be found at: http://www.gibill.va.gov/benefits/post_911_gibill/index.html.
7. A fact sheet on transferring Post-9/11 GI Bill benefits to a dependent can be found at: http://www.gibill.va.gov/documents/factsheets/Transferability_Factsheet.pdf.
8. Additional information on the VOW to Hire Heroes Act is available at: http://www.benefits.va.gov/VOW/docs/VOW_Factsheet.pdf.
9. Additional information regarding the application of military education, training, or experience to professional credential requirements can be found at: http://docs.legis.wisconsin.gov/2011/related/lcactmemo/sb357.pdf.
10. Additional information on an income and franchise tax credit for hiring unemployed disabled veterans can be found at: http://docs.legis.wisconsin.gov/2011/related/lcactmemo/sb369.pdf.
11. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on various state programs, including programs for veterans. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.

Glossary

CVSO: County Veterans Service Officer.

DD-214: Department of Defense Form 214, or "Certificate of Release or Discharge from Active Duty." One of the most commonly used documents by veterans to support a determination of eligibility for benefits.

DVA: Department of Veterans Affairs (in this document, refers to the Wisconsin Department of Veterans Affairs).

Post-9/11 GI Bill: Federal program providing education benefits to veterans who have served on active duty since September 11, 2001. Largely replaced the Montgomery GI Bill, though veterans entitled to Montgomery GI Bill benefits in some cases can choose between the two.

PMI: Private Mortgage Insurance. This insurance is typically required by the lender and paid by the borrower on mortgages obtained with less than 20% down.

PTSD: Post-Traumatic Stress Disorder.

Veteran with service-connected disability: A veteran who has an illness or injury incurred in or aggravated by military service as determined by the U.S. DVA.

TVSO: Tribal Veterans Service Office.

U.S. DVA: U.S. Department of Veterans Affairs.

Veterans Trust Fund (VTF): A fund designed to provide services to veterans including assistance for employment, housing, health care, education, and transportation.

VRAP: Veterans Retraining Assistance Program. A program created under the VOW to Hire Heroes Act of 2011 offering 12 months of training assistance to unemployed Veterans who are at least 35 years old but no older than 60.

WI GI Bill: Tuition remission program established in Wisconsin Statutes providing tuition remission for Wisconsin Veterans.

WTCS: Wisconsin Technical College System.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304