

W I S C O N S I N

COUNTY OFFICIAL'S HANDBOOK

4th Edition

A Publication of Wisconsin Counties Association, 2014 Milwaukee
With the support of the UW-Extension's Local Government Center



*This handbook sets forth general
information on the topics
addressed and does not
constitute legal advice.
You should contact your county's
legal counsel for specific advice.*

2014

Published by

Wisconsin Counties Association

22 E. Mifflin St., Suite 900

Madison, WI 53703

1.866.404.2700

www.wicounties.org

4th Edition

The Wisconsin County Official's Handbook: Empowering County Officials through Education

■ Mark D. O'Connell, Executive Director,
Wisconsin Counties Association

As a county official, you are faced daily with the daunting task of understanding a myriad of county issues and implementing complex programs and services. This must be done in such a way as to best meet the needs of your constituents, while holding the line on precious tax dollars. Government at any level is a fluid entity and with constantly changing issues and emerging trends, this is not an easy task.

In your hands is the 4th edition of the *Wisconsin County Official's Handbook*, the most comprehensive document to date on county operations. It was produced by the Wisconsin Counties Association (WCA) staff in response to members' ongoing requests for additional educational materials.

The handbook is comprised of a collection of information covering topics that county officials handle on a regular basis. From an in-depth review of parliamentary procedures to personnel practices to budgeting, this document brings together all areas of county operations in one centralized place.

It is our intention to keep the information provided within these pages current and make any necessary revisions to content. In an attempt to provide you with the most useful document possible, please review it, use it often and give us feedback on its effectiveness. Your feedback is welcome and should be directed to Jennifer L. Bock, WCA's managing editor at 608.663.7188.

WCA is proud of this document and hopes it will become the standard reference document on county government for all county government officials. As with any project, there were many players that made the *Wisconsin County Official's Handbook* possible. We feel fortunate to be surrounded with outstanding individuals who are experts in their field. Their work can be seen within the pages of this document and even more importantly, their contributions toward effective governing will be felt in the years ahead.

The association would like to specifically recognize UW-Extension's Local Government Center (LGC) for not only their continued support in lending their time and expertise in producing this document, but their generous sponsorship of the 4th edition; their contribution allowed for this publication to return to the printed piece you now hold.

Without the generous support of WCA's general counsel, Phillips Borowski, S.C., this document would not be possible. Contributing the firm's professional resources to the production of many of the chapters of this handbook has allowed WCA to produce a document that has exceeded our expectations.

With effective governing as the ultimate destination, it is our hope that the *Wisconsin County Official's Handbook* may be the map to get you there. Enjoy the journey.

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Preface

■ *Joe Heim, Ph.D., Professor, Department of Political Science/Public Administration,
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First of all, congratulations are in order. Congratulations because you have been elected or reelected to one of the 72 county boards in Wisconsin. And secondly, “thank you” because you were willing to place your name before the voters and the public, to undergo their review and to serve the citizens of your county. Public service is one of the basic necessities of a democracy, and county government is a key building block of U.S. politics and our federal system and therefore of American government’s very legitimacy.

This manual will cover such topics as the history of county governments in Wisconsin; the structure of county governments; various state laws governing counties; parliamentary procedure for meetings; budgeting and finance; personnel issues, such as benefits and retirement. Highlighted especially, will be recent changes and issues related to each topic.

I think you will find this manual both interesting and useful from a practical standpoint. There are four underlying themes to this manual: continuity, change, challenges and opportunities.

CONTINUITY & CHANGE

County governments in Wisconsin have long played a significant role in the state’s history. Participation in county government has considerable continuity with the past. As you will see in the following articles, current county functions, structures and procedures are heavily influenced by their historical foundations but also modified by developments during the past 50 years. Counties have changed because of demographic and population trends, as well as economic, social and political pressures. From being largely seen as a “tool” to carry out state-mandated functions, county governments are evolving, essentially on their own, into highly functional and efficient means of delivering local and regional services and programs.

In public administration texts, this is called devolution. As U.S. societies change and become more complex, there has been a shift in the delivery of more of what government does, from federal to state and from state to local units of government. It is my opinion that county government, for a variety of reasons, is best positioned to take advantage of this trend. For reasons related to economies of scale, the need for equity across regions and improved quality of life for more citizens, Wisconsin county governments will become, over time, the local government of choice and the primary unit in the delivery of services in Wisconsin.

CHALLENGES & OPPORTUNITIES

This evolution in county governments has not been nor will be easy going forward. You are a participant in local government at a time of great challenges. These came from changes in the economic and political environment of both the federal government and the state of Wisconsin.

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Among these changes are:

- A decline in federal aid to state and local governments. Due to continuing federal deficits and the emergence of a philosophy of “fend for yourself” federalism over the past 25 years, you cannot expect an increase of financial help from the federal government. The share of county governments’ budgets coming from the federal government has been decreasing for the past 20 years. Federal budget deficits will continue to restrain Federal government for the foreseeable future.
- A leveling off, if not an actual decline, of state shared revenues over the past decade. Local governments have seen their share of the state’s budget decline as other demands have increased (especially Medicaid). The state’s ability and desire to help fund local governments has clearly lessened. In the most current state budget, the trend towards decreasing state shared revenues has slowed. In some areas, such as highways and health and human services, increases have been noted. But the overall county revenue levels remain stagnant. Counties have succeeded, somewhat out of necessity, in doing more with less.
- After decades of steady increases, property values in Wisconsin fell for several years, starting in 2009. While not consistent across the state’s 72 counties, in the past two years a vast majority showed a slight increase in property values.
- The slow growth of per capita income in Wisconsin. Because Wisconsin’s wages have lagged behind the average U.S. income figures for 30 years, an atmosphere of fiscal uncertainty if not crisis has been created. Along with our relatively high taxes (arguably ranked in the top ten states nationally) funding local government is an especially difficult challenge. It goes almost without saying that state mandates will continue to be underfunded.
- The continuation of state imposed caps on property tax increases. This has and will continue to add additional stress for county governments. Together with state required mandates, this has resulted in an occasionally contentious relationship between county and state governments. As you can see, most challenges revolve around the fiscal environment.
- Demographic trends, including widely varying rates of population growth. The aging state population has and will increase the need for county social and long-term care services. Individuals with special needs continue to look to local government for the help that is less forthcoming from the federal government.
- The loss or decline, in some areas, in local flexibility and control. In certain policy areas, such as local control of cell phone towers, frac sand mining restrictions or collaboration between counties, the state has or is attempting to limit local initiatives and authority to set its own rules. Local creativity, flexibility and autonomy appear to be on the decline, at least for the immediate future.
- The challenges are many and these seven are, at best, only a partial list. All of you could add items to this list.

One topic that combines change, challenge and opportunity is that of collective bargaining. The impact of recent state laws regarding most public sector unions is not entirely clear, especially in the long term and, as studies show, varies considerably from one unit of local government to another. The overall effect of these and other challenges may very well add to the fiscal stress of counties and require them to continue to do more with less.

Among the opportunities available to local governments is the ability to innovate in the area of providing municipal services. Sharing, transferring, contracting out or privatizing continue to be available options in the delivery of most services. In my opinion, counties are the ideal local government unit to facilitate the sharing of municipal services within their boundaries. Delivery of many services is susceptible to cost savings through economies of scale. Additionally, the advantages of service equity—when services are delivered in a consistent, reliable and manner area-wide—should be clear to citizens, as well as prospective business developers.

Wisconsin citizens have a long history of active citizen participation in local government, seen by some as a challenge, by others as a positive opportunity. The state's political culture favors participatory, civic-minded and engaged citizens. Generally, local government is viewed very favorably by the public and is seen as clean, efficient and relatively innovative and transparent. While the challenges are many, this civic culture provides a steady and positive level of support for county government's activities.

In an era where trust and confidence in government seems to be on the decline, remember that it is local government that remains closest to the citizens and is generally regarded more highly than state and national governments.

An area of continuing discussion involves county government structure. One is the size of county boards of supervisors. State statute sets the maximum number of seats ranging from 21 to 47, depending on the size of the county's population. While only few counties are at their statutory maximums, most are presently in the upper range of their respective limits. There are clear benefits to large sizes, e.g., more supervisors to do the work and less populated districts can result in closer relationships with more representatives. There also are some drawbacks. Large boards, arguably, can result in longer meetings, less visible county board supervisors and therefore, perhaps, less accountability to the citizens represented and, very often, large numbers of uncontested county board "races." While presently "on the back burner" expect this issue to re-emerge in future years.

A second structural issue involves the "executive branch" of county governments. State statutes allow for the adoption of one of three forms: elected county executives; appointed county administrators; and administrative coordinators (the least powerful of the options, often part-time and, by far, the most popular). While other chapters in this handbook may provide more details regarding these options, suffice it to say the selection of the particular executive type involves the amount of power and range of decisions that county boards are willing to transfer to the head of the administrative branch. As counties grow in number of employees, size of budgets and in

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population, the need for a full-time, day-to-day manager grows. If done carefully, with an eye to the future, county boards can transfer administrative duties to this individual and focus, more efficiently and effectively, on larger policy issues. If counties are to take on increased responsibilities (either delegated from the state or transferred from municipalities), they will need the help and support of professional, administrative managers.

A third issue, one that has only recently emerged, is that of frac sand mining. Counties are increasingly recognizing that this type of mining presents both opportunities, as well as challenges. This also is an example of a change that emergence of which was, only in recent years, added to the list of county issues.

The opportunities are many. If the state is willing, and I believe it is, counties can utilize their assets and grasp these opportunities to be the unit of government best able to govern at the local level.

WHAT YOU CAN DO

In addressing challenges and reviewing opportunities, county board supervisors will find considerable help at their fingertips. For starters, this handbook provides a wealth of information and also references other publications of interest. Utilize it as much as possible. Developing knowledge, understanding and expertise is an essential step. Attend conferences, workshops and conventions that are devoted to county issues, problems and "best practices" solutions. Become active in and view the Wisconsin Counties Association as an asset and ally. Look for opportunities to address challenges as you see them. If you can, be willing to take on leadership roles in your county. Certainly continue to reach out to your constituents and seek their input and encourage their involvement in county government. Wisconsin has a long and proud history of innovation and democratically run government. Part of your responsibility is to continue these traditions.

Counties will need to change in order to meet the challenges of the present and, especially, of the future. And you are a critical element in the present and future success of your county government. I wish you great success in performing your representative role.

Getting Started on the County Board

■ *Josh Bindl, Director of Programs and Services,
Wisconsin Counties Association*

So, you have been elected to the county board. Now what? You likely have a few specific issues that you ran on and are close to your heart. You may even have things that you want to accomplish right away. In your attempt to implement change, there are a few things you should know before you get started.

In the first few days after the election, you will likely receive letters from other supervisors who wish to be elected to a leadership position on the county board. These will primarily come from veteran members of the county board. This provides you with a great opportunity to meet these individuals and learn everything you can about the county. This interaction will allow you to determine where you fit into the current board's ideology, understand the expectations others have of you and learn more about your roles and responsibilities as a county supervisor.

Within a couple of weeks after you are elected, you should learn the committee structure of your county. Ultimately, there is someone, generally the county board chair, who assigns supervisors to committees. You may be given a chance to prioritize the committees on which you wish to be a member. It is a good idea to learn your county's committee structure and the responsibilities of each committee, as every county can be different. With this knowledge, you will be better prepared to select committees in which you have an interest, and in turn, this will give you a better chance of being placed on the committees where the issues important to you will come up for debate.

Be cognizant of the times committees meet and see how they will fit into your schedule. There is often an opportunity to change the meeting time at the first committee meeting, but this may be difficult with a committee full of veteran supervisors who have always met at a certain time.

Once you have received your committee assignments, you may again receive letters and phone calls from supervisors asking for your support as they seek to be an officer of that committee. Your county will either elect committee chairs by vote of the committee or they will be assigned by the county board chair.

Committees work to make recommendations to the full county board. You will quickly learn that committees are where most of the work of the county board gets done. This is a time to work out the problems of any resolution or ordinance before it goes to the floor of the county board. Because of their smaller size, committees are a good place to ask questions and learn more about the issues. Generally, supervisors follow the recommendations of a committee when a piece of policy is brought to the full county board because there is not always enough time for every county board supervisor to be knowledgeable about every issue. Another strategy used by county supervisors is to identify people

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Getting Started

from other committees with similar beliefs and values and examine how they voted on an issue in order to inform your own voting decision.

As you begin to develop an understanding of the committee structure and where you see yourself fitting in, you will want to quickly learn a number of other things that will prove valuable as you move forward. Learning and understanding parliamentary procedure is vital as you will need to use it during official county meetings. To learn more about this, see the chapter in this handbook, *A Few FAQ's on Parliamentary Procedure*.

There are also a number of things you should know about your county. First, you should understand the form of government your county uses. Each county in the state has a statutory obligation to create the office of county executive, administrator or administrative coordinator to oversee the day-to-day operations of the county. Some of the smaller counties have designated an existing county official to also fill this role. It should be noted, a 2011 ruling by the Wisconsin State Attorney General ruled the office of county board chair and administrative coordinator incompatible. The majority of counties hire a full-time employee as administrative coordinator or administrator. Counties may go one step further and allow the public to elect an executive who serves a four-year term. Pursuant to the state statutes, any county with over 500,000 people must elect a county executive. It is important to understand the authority your county has given to the person serving as your county's manager.

Second, you should know the process the county board follows in developing policy. Policy is introduced and voted upon in three ways – ordinances, resolutions and budgets. Every county has different procedures for introducing policy, as well as different procedures for each method.

Veteran supervisors will tell you that the budget is the most important document that passes each year. You should understand where the money comes from – namely, the various taxes and fees your county collects; and, where the money goes – mandated versus non-mandated programs. For more detailed information about county budgeting, refer to the *County Budgets & Financial Management* chapter in this handbook.

It is also important to look at the demographics of the county in conjunction with the budget. This vital information shows how the budget matches the breakdown of people in your county. Demographics will prove valuable when planning for future population changes, such as the aging of the baby-boomer population. A good Internet source for general demographic information is www.census.gov.

Last, but certainly not least, you should know about the Wisconsin Counties Association (WCA), namely who we are and what we do. WCA is an association of county governments assembled for the purpose of serving and representing counties. Under the direction of the WCA Board of Directors, the association's primary focus is representing the interests of counties at the state and federal level. In addition, WCA provides a monthly magazine, *Wisconsin Counties*, an electronic newsletter, *WCA eNews*, as well as a website, www.wicounties.org. Ongoing training and educational opportunities through

seminars, district meetings, the legislative exchange and the annual statewide conference are other resources that are available to the WCA membership. Staff will also come appear before your county board upon request. Finally, WCA is able to offer services to county governments through the WCA Group Health Trust, Wisconsin County Mutual Insurance Corporation and WCA Services, Inc.

The quest for change seldom comes without difficulty. Your career in public service will likely be filled with success and failure. Educating yourself on the information in this handbook will get you started down the right path.

The Evolution of County Government

■ *Wisconsin Counties Association*

County government's roots in Wisconsin run deep. Prior to statehood in 1848, 28 counties were created by the Michigan or Wisconsin territorial legislatures to perform administrative functions for the territorial government. Wisconsin's counties today continue to serve as the administrative entity for state government, providing such services as records management, administration of elections and law enforcement.

The structure of county government today has its roots in Wisconsin's territorial government. Both the supervisory and commissioner forms of government existed in the Wisconsin territory. Today's supervisory form of government ultimately prevailed following a series of court decisions in the late 1800s that ensured constitutionally-required uniformity in our county government system. Since that time, exceptions were made for our largest (Milwaukee) and smallest (Menominee) counties. In 1972, a constitutional amendment eliminated the uniformity requirement for counties, but our supervisory system remains in place.

In what follows, you will find a brief synopsis of the evolution of county government in our state – from Wisconsin's earliest beginnings to the present.

A HISTORICAL TIMELINE OF COUNTY GOVERNMENT

- 1783 Treaty of Paris transfers control of area to U.S.
- 1787 Northwest Ordinance approved. It provides for the creation of five states in the Northwest Territory (Ohio, Indiana, Illinois, Michigan and Wisconsin).
- 1800 Ohio becomes a state. Wisconsin is attached to the Indiana Territory (part of St. Clair County).
- 1805 Michigan Territory is separated from the Indiana Territory.
- 1809 Indiana becomes a state. Wisconsin is attached to the Illinois Territory.
- 1818 Illinois becomes a state. Wisconsin loses 60 miles of southern border (including the Chicago area). Wisconsin is attached to the Michigan Territory. Due to the distance between Wisconsin and Detroit, the territorial capital, three counties are organized in Wisconsin: Brown County in the east, Crawford County in the west, and Michilimackinac County in the north (included the U.P.). These counties perform administrative functions for the territorial government.
- 1823 Counties are made judicial districts by Congress and the first court proceeding is held in Brown County in 1824.

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County Government

- 1829 The population increases in Southwest Wisconsin due to the growth in lead mining. The increased population leads to the creation of a fourth county – Iowa County.
- 1834 Westward migration of Yankees (natives or inhabitants of New England) through the Erie Canal leads to population growth along Lake Michigan. Milwaukee County becomes the fifth county.
- 1836 The Wisconsin Territory is created. The area includes the region that is now the states of Wisconsin, Iowa and Minnesota and parts of the Dakotas. Fifteen new counties are created within the territory: Calumet, Dane, Dodge, Fond du Lac, Grant, Green, Jefferson, Manitowoc, Marquette, Portage, Racine, Rock, Sheboygan, Walworth and Washington. From April 20, 1836, the date the Wisconsin Territory is created, through 1901, the number of counties grows from six to 71.
- 1961 The reservation of the Menominee Indians of Wisconsin, located in Oconto and Shawano Counties, becomes Wisconsin's 72nd county – Menominee County.

GOVERNMENT FUNCTIONS PERFORMED BY COUNTIES BEFORE STATEHOOD (1848)

Counties performed administrative services for the territorial government including the provision of sheriffs, judges, assessors, tax collectors and court clerks.

WISCONSIN'S STATEHOOD EFFORTS

- 1840 The first attempt at statehood fails by popular vote (92 yes, 499 no).
- 1842 The second attempt at statehood fails by popular vote (619 yes, 1,821 no).
- 1843 The third attempt at statehood is defeated in territorial council.
- 1845 The fourth attempt at statehood is defeated in the U.S. House of Representatives.
- 1846 A bill is passed by Congress to "enable people of Wisconsin to form a constitution and state government, and for the admission of such state into the Union." The bill is signed by President Polk on August 10. Popular vote for statehood passes (12,334 yes, 2,387 no). Based on this "enabling act," the people of the territory call a constitutional convention in Madison to draft a fundamental law for governing the state.
- 1847 The first proposal for a constitution is submitted to the people on April 6. The voters reject it on a 14,119 to 20,231 vote.
- 1848 A second convention submits its draft on March 13. It is ratified by a vote of 16,799 to 6,384. On May 29, Wisconsin becomes the 30th state admitted to the Union.

THE CONSTITUTIONAL DEBATE AFFECTING COUNTIES

Type of County Government (Size & Function)

The New York Constitution (supervisor) and Pennsylvania Constitution (commissioner) systems of county government both existed in the Wisconsin Territory. The debate between these forms of county government continued until 1870.

- ❑ Pennsylvania Constitution: Commissioner form of county government calls for a small board elected from precincts to represent the interests of the county at-large. The county serves as the provider of local government services.
- ❑ New York Constitution: Supervisor form of county government – the board of supervisors specifically represents towns and incorporated places. Further, the county provides state administrative services, while towns and municipalities serve as the provider of local government services.

WISCONSIN'S CONSTITUTIONAL SOLUTION

Type of County Government

The framers of the Wisconsin Constitution required the legislature to “establish but one system of town and county government, which shall be as nearly uniform as practicable” (Article IV, Section 23). The meaning of this uniformity requirement was not settled until 1870. After a series of court decisions, the supervisor system prevailed. While the court did not expect all counties to be exactly the same, the court expected “practical uniformity void of needless diversity.”

In 1885, the legislature determined that it was impractical to treat Milwaukee County the same as all other counties. Their action allowed Milwaukee County to elect supervisors from Assembly districts (a practice maintained until 1980). Almost 75 years later, the legislature established a third category of counties, “counties having one town,” to deal with Menominee County. Menominee County was to use the town board plus one at-large delegate to serve as the county board. In 1972, a constitutional amendment deleted the uniformity requirement for counties.

Provision of Services

When Wisconsin became a state in 1848, the new state constitution contained several specific provisions for county government.

- ❑ Article IV, Section 22: “The legislature may confer upon the boards of supervisors of the several counties of the state such powers of a local, legislative and administrative character as they shall from time to time prescribe.”
 - Wis. Stat. Ch. 59 describes a wide variety of duties and permissive authority the legislature has assigned to the county and its officers. It is up to the individual county board to determine how to use the powers delegated by the legislature.
- ❑ Article VI, Section 4: Identifies county officers, as well as the conditions of their election, removal and terms of office. The constitutionally-specified officers are sheriffs, coroners, registers of deeds, district attorneys, judges and clerks of circuit court.

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Note: County treasurers and county clerks were included in 2005 when terms of office for constitutional officers were changed from two to four years.

Counties are viewed as agents of the state because they are required to carry out and/or enforce certain state laws. For example, county sheriffs apprehend violators of state laws, county clerks manage state elections and registers of deeds keep certain state records (birth and death certificates, marriage licenses and property deeds).

RECENT DEVELOPMENTS

- 1970s Counties are given narrow power to control several elements of county board functioning. This is commonly referred to as "self-organizing."
- 1980s Counties are granted "administrative home rule," giving them greater control over organizing their administrative departments.
- Today Counties do not have constitutional home rule authority as cities and villages do. This means that while cities and villages can basically undertake any function that is not expressly prohibited by state statute or the constitution, counties can only undertake a function that is expressly allowed for or mandated by state statute or the constitution. Counties' main function continues to be acting as the administrative arm of state government.

WISCONSIN'S COUNTIES— DATE OF CREATION

Counties are created by legislative act. Depending on the date, Wisconsin's counties were created by the Michigan Territorial Legislature (1818-1836), the Wisconsin Territorial Legislature (1836-1848) or the Wisconsin State Legislature (1848 - present).

Adams (1848)	Forest (1885)	Milwaukee (1834)	Taylor (1875)
Ashland (1860)	Grant (1836)	Monroe (1854)	Trempealeau (1854)
Barron (1859)	Green (1836)	Oconto (1851)	Vernon (1851)
Bayfield (1845)	Green Lake (1858)	Oneida (1885)	Vilas (1893)
Brown (1818)	Iowa (1829)	Outagamie (1851)	Walworth (1836)
Buffalo (1853)	Iron (1893)	Ozaukee (1853)	Washburn (1883)
Burnett (1856)	Jackson (1853)	Pepin (1858)	Washington (1836)
Calumet (1836)	Jefferson (1836)	Pierce (1853)	Waukesha (1846)
Chippewa (1845)	Juneau (1856)	Polk (1853)	Waupaca (1851)
Clark (1853)	Kenosha (1850)	Portage (1836)	Wauzara (1851)
Columbia (1846)	Kewaunee (1852)	Price (1879)	Winnebago (1840)
Crawford (1818)	La Crosse (1851)	Racine (1836)	Wood (1856)
Dane (1836)	Lafayette (1846)	Richland (1842)	
Dodge (1836)	Langlade (1879)	Rock (1836)	
Door (1851)	Lincoln (1874)	Rusk (1901)	
Douglas (1854)	Manitowoc (1836)	St. Croix (1840)	
Dunn (1854)	Marathon (1850)	Sauk (1840)	
Eau Claire (1856)	Marinette (1879)	Sawyer (1883)	
Florence (1881)	Marquette (1836)	Shawano (1853)	
Fond du Lac (1836)	Menominee (1961)	Sheboygan (1836)	

Source: State of Wisconsin Blue Book, 2007-2008, p. 743

County Government Structure

■ Revised by Philip J. Freeburg, J.D., UW-Extension Local Government Center, from original chapter by Dan Elsass.

THE COUNTY BOARD OF SUPERVISORS

The governing body of the county is the county board of supervisors. Supervisors are elected from geographic districts, not at large. After each decennial census, county boards are required to draw up new district boundaries based on a uniform number of residents per district. Supervisory elections are conducted in the April general elections of even-numbered years. In cases where three or more candidates file in the same district for the office, primaries are held on the third Tuesday of February in the same year. Supervisors serve two-year terms, except in Milwaukee County where the term is four years. Each board meets after each election to select a board chairperson and up to two vice-chairpersons. The board chairperson conducts meetings, may make committee appointments as authorized by the board and represents the board by virtue of being the chief elected board official of the county.

The maximum number of supervisors allowed for each board is prescribed in Wis. Stat. § 59.10(3) and is based on the latest census population for each county.¹ Counties with populations of 100,000 to 499,999 are allowed up to 47 board members. Counties with 50,000 to 99,999 may have a maximum of 39 members; those with 25,000-49,999 are limited to 31; and those with 25,000 residents or less may have up to 21. In most of the 72 counties, boards have reduced their membership to below statutory limits. Adjustments to board size can be made after each decennial census to coincide with redistricting and one time between each decennial census by the board or through the petition and referendum process.

The legislature enacted changes to Wis. Stat. § 59.10(3)(cm), in 2006 that allow further reductions during the decade based on the most recent census. It also provides for citizen petition and referendum to reduce board size. Using the authority of Wis. Stat. § 59.10(3)(cm), many Wisconsin county boards have opted to reduce their size, now operating with approximately half their former numbers.

COUNTY BOARD COMMITTEES

Wis. Stat. § 59.13 states "the board may, by resolution designating the purposes and prescribing the duties thereof and manner of reporting, authorize their chairperson to appoint before June 1 in any year committees from the members of the board, and the committees so appointed shall perform the duties and report as prescribed in the resolution."

A county board may establish as many standing and advisory committees as it deems necessary to conduct its business. These are usually created by ordinance or resolution. Due to the size of county boards, much preliminary business and most public hearings are conducted by committees, which then make referrals or recommendations to the full board for final action. State law requires that county

■ ORGANIZATION

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committees be established for major social service programs, such as developmental disabilities and mental health programs. Wis. Stat. § 51.42. It is also required that a separate highway commission be created to oversee road maintenance and other public works. Additional standing committees usually include those dealing with finance, personnel, general administration and intergovernmental matters. Wisconsin county boards often have standing committees assigned to major subject areas, such as public safety and planning/zoning matters. County boards also create numerous advisory committees that are often composed of both citizens and board members. Advisory committees may vote on resolutions, ordinances or financial matters, but their recommendations are only advisory to standing committees and boards, which then make the final decisions. These committees' terms may be set for shorter time periods than standing committees and may "sunset," or cease to exist, after they complete their assigned tasks. A 2003 survey of 33 Wisconsin counties by UW-Extension Ozaukee County faculty showed that an average county surveyed has 17 standing board committees and another 17 advisory committees. Subsequent to the reductions provided for by Wis. Stat. § 59.10(3)(cm), many county boards have consolidated many of their committees to significantly reduce their meeting load.

In addition to committees that the board may create at its own discretion, Wisconsin statutes require certain committees be created. Required committees include:

- Wis. Stat. § 83.015 – county highway committee
- Wis. Stat. § 166.03 – emergency management
- Wis. Stat. § 59.56(3) – extension committee
- Wis. Stat. § 46.82 – commission on aging
- Wis. Stat. § 251.04 – local board of health
- Wis. Stat. § 92.06 – land conservation committee
- Wis. Stat. Ch. 46 & 51 – community programs/social services/human services
- Wis. Stat. § 59.54 – local emergency planning committee
- Wis. Stat. § 45.81 – veterans service commission

It is worth remembering that counties have Administrative Home Rule authority and, other than the required committees, they can add, consolidate, restructure or eliminate committees as they deem necessary.

COMMITTEE ASSIGNMENTS

Generally, the county board chair will appoint the committee chair, as well as individual members, of each committee after surveying board members regarding their particular interests and strengths. Individual members may make requests for specific committee appointments directly to the chair at appropriate times before the committees' memberships are officially set. This is typically done in April or May of years when members are elected. Committee chairs and members may or may not be removed from their duties during the middle of their terms of appointment depending on each county board's adopted rules. Standing committees usually are created by resolution or ordinance and may be

dissolved or re-created every two years following biennial spring elections. These committees usually consist solely of county board member appointees. Short-term or long-term advisory committees may also be appointed by a chair, county executive or administrator to study and report on specific issues.

SELF-ORGANIZED COUNTY OPTIONS

Often it is said that a county board has very little control over its own affairs, policies and procedures, especially when compared to villages and cities which operate under constitutional home rule powers. While this may be true in many cases, provisions in the state statutes do permit the county board some flexibility in setting member compensation, board terms and filling board vacancies.

These provisions, known collectively as “self-organized counties” legislation [Wis. Stat. § 59.10(1)], were passed in the mid-1970s in an attempt to provide more flexibility regarding limited and specific county board matters.² The major options available to county boards after approving this status are:

- ❑ The ability to set staggered terms for supervisors – electing half of them each year, rather than electing them all each even-numbered year.
- ❑ The flexibility in setting board member compensation, including the ability to pay fixed salaries and to pay for additional board or committee meetings in excess of current statutory limits based on population.
- ❑ The right to fill board vacancies by other means, such as by nomination from the board floor and/or the ability to schedule special elections before vacated terms expire.

Two counties already have been assured some rights to self-organization under state statutes without adopting self-organized status and thus have felt no need to enact further self-organizing ordinances. The Milwaukee County Board of Supervisors, by virtue of being the only county in the state with a population in excess of 500,000, has the right to create four-year terms for its supervisors and to set its own supervisors’ salaries, subject to advance approval before the new supervisors take office. Milwaukee County supervisors are also precluded from accepting additional compensation over their annual salaries “for serving as a member of any committee, board or commission appointed by the county board or by the county executive.”

Menominee County is also specifically exempted from state laws regarding terms of office and appointments to vacancies by virtue of being the only county with one town within the county limits. Its town board members and one supervisor representing the only incorporated village in the county also serve as the county board of supervisors and therefore, different provisions apply permitting staggered terms that coincide with town and village elections. However, the board members in Menominee County still are governed by the standard *per diem* compensation limits mentioned later in this chapter for non-self-organized counties.

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TABLE 1: SELF-ORGANIZED COUNTIES*

Adams	1991	La Crosse	1997	Richland	1991
Chippewa	2002	Lafayette	2001	Rock	1985
Crawford	2005	Lincoln	2004	Rusk	1993
Dane	1984, 1974	Manitowoc	1987	St. Croix	2004
Dodge	1991	Marathon	1975	Shawano	1997
Douglas	1999	Marinette	1990	Sheboygan	1985
Dunn	1997	Marquette	1991	Taylor	1978
Green	1990	Monroe	2000	Vilas	2004
Green Lake	1990	Oneida	1991	Washington	2004
Iowa	1995	Pierce	2004	Waupaca	1999
Iron	2004	Polk	2013	Wood	1997
Jefferson	2003	Portage	1995		
Juneau	2003	Racine	2001		

* As of April 2014; Source: Wisconsin Secretary of State.

HOW IS SELF-ORGANIZATION ACCOMPLISHED?

The county board may choose at any time to become a “self-organized county.” This is done by passing an ordinance stating its desire to self-organize and citing its authority to do so under Wis. Stat. § 59.10(1). If the board enacts such an ordinance, a certified copy must be filed by the county clerk with the Wisconsin secretary of state. Following this filing, the county board may adopt policies it desires regarding staggered terms, compensation for board members and the method for filling county board vacancies. This is usually accomplished through the board’s adoption of a series of individual ordinances; each ordinance requires approval by a majority of the entire board membership. While the secretary of state’s office maintains a file of all ordinances passed by counties enacting their self-organized status, the office does not verify the facts behind such documents, nor does it ever withhold approval of any county’s claim of such status after the appropriate filing is made. It also does not exercise any ongoing oversight of counties’ use of such powers.

Note: While county boards must request authority to utilize all three sets of special powers when filing for “self-organized county” status, once the status is obtained, the board is not required to enact ordinances enabling any or all of these provisions under any particular time schedule.

County boards have had the option to self-organize for over 30 years; 37 of 70 eligible counties have passed a local ordinance and are officially listed with the secretary of state’s office as “self-organized” (See Table 1 above). The earliest county to take advantage of this provision was Dane County in 1974. It was followed in 1978 by Taylor County. The most recent county to enact such an ordinance was Polk County, which joined the list in 2013. The 37 self-organized counties are fairly evenly distributed, both geographically and in population.

TERMS OF OFFICE FOR BOARD MEMBERS

Non-self-organized counties must hold an election of the entire county board every two years on the first Tuesday in April in even-numbered years. All terms run simultaneously. This can create a situation where a high number of veteran supervisors are voted out of office or retire from the board in the same year based on a single issue or controversy. In the 2012 election, the Wisconsin Counties Association reported that 22% of supervisory seats across the state changed hands. Self-organized counties are permitted to hold elections in one half of their supervisory districts in April of even-numbered years, and in the other half in April of the odd-numbered years.

COMPENSATION FOR BOARD MEMBERS

A board member's compensation is to be paid on a *per diem* basis and must be based on actual board meetings attended by each member. Members who are absent due to illness, family emergencies, business obligations or other legitimate reasons may not be paid for meetings missed. This provision does not apply to counties that have been certified as "self-organized."

In many counties, members must submit monthly *per diem* request forms to the clerk's office in order to be compensated after attending meetings. The board sets its members' *per diems* at rates it determines. Typical *per diems* range from \$15 to \$50 per meeting. State statutes limit the total number of days in which a county board member can claim the *per diem* regardless of whether additional meetings are required. Specifically, Wis. Stat. § 59.10(3)(h) limits the county from paying supervisors *per diems* for more than 20 days in a calendar year if the county's population is less than 25,000; for more than 25 days if the county population is 25,000 to 99,999; and for no more than 30 days total per year if it is between 100,000 and 499,999.

Similar limitations on additional compensation for committee meetings are applied to non-self-organized counties under Wis. Stat. § 59.13(2)(a) & (b). In counties of less than 25,000 population, supervisors are limited to no more than 20 days of *per diem* pay for committee meetings annually, not more than 10 days of which shall be for services on any one committee. An exception is that the board may increase the number of committee meetings for which a member can be compensated by a two-thirds majority vote. In counties with a population of 25,000 or more, board members are limited to no more than 30 days of extra pay for committee duties unless the board increases the number by the same two-thirds vote. In addition, an attorney general's opinion states that counties may not pay multiple *per diems* for committee meetings held on the same day as board meetings or for multiple committee meetings on the same day, unless the county is self-organized. 79 Op. Att'y Gen. 122 (1990).

In counties with a population of less than 500,000, the board may elect to pay members an annual salary through approval of a two-thirds majority of the members, without declaring itself self-organized. State law permits higher compensation for the county board chair and for up to two vice chairs. Under no circumstances may county boards adjust the compensation of their members or officers during the course of the members' term.

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REIMBURSEMENT FOR TRAVEL TO MEETINGS

County board members are entitled to mileage reimbursement for actual miles traveled to county board and committee meetings. The allowable manner for calculating member mileage reimbursement is stipulated in Wis. Stat. § 59.10(3)(g). A member shall be compensated for actual mileage based on the “usual traveled route” . . . “in going to and returning from” board or committee meetings. Wis. Stat. § 59.22 adds that the rate at which mileage is compensated shall be determined by the county board itself and may be any amount deemed reasonable. The rate is set by resolution or ordinance by the governing body.

In many counties, this means that the county sets a per mile reimbursement rate at or below the IRS maximum allowance as the standard for both employee and board member reimbursement. Amounts over that figure are subject to personal income tax reporting and taxes. The provisions related to “usual traveled routes” do not apply to counties with self-organized status where the board may elect to pay members for routes that contain mileage over and above present statutory limits.

FILLING BOARD VACANCIES

From time to time, due to resignation or death, a vacancy occurs on the county board of supervisors. In self-organized counties, the board may determine the procedure for filling a vacancy. Without self-organizational status, the county board chairperson, with the approval of the board, appoints a qualified elector who is a resident in the vacated supervisory district. The appointed person then serves for the remainder of the term, unless the board orders a special election to fill the vacancy. If a vacancy occurs before June 1 in the year preceding expiration of the term of office, the board may order a special election to fill the vacancy. In the case that the board orders such a special election, the appointed person serves until a successor is elected and qualified. The person elected in a special election serves for the remainder of the unexpired term.

EXECUTIVE AND ADMINISTRATIVE OPTIONS

Prior to 1960, Wisconsin county boards functioned as both the legislative branch and the executive branch. However, as county government became more complex and the population became more urbanized, the state statutes were amended to permit the creation of a separate, elected position of county executive to administer and monitor county departments and exercise other specified powers. This position first was mandated for Milwaukee County in 1960. In 1969, the authority to create an executive position was extended to all counties, regardless of size. Wis. Stat. § 59.17. County executives are elected in the general nonpartisan election on the first Tuesday in April and serve four-year terms.

In 1985, the legislature specified the powers of appointed county administrator. The county administrator is responsible for the annual budget, providing oversight to county department heads and reporting to the county board. Wis. Stat. § 59.18. Wisconsin currently has 11 elected county executives and 23 appointed administrators. Wis. Stat. § 59.19 was created to require all counties that do not choose to create either an administrator or an executive position to designate an administrative coordinator. The

TABLE 2: COUNTY ADMINISTRATIVE OPTIONS

TOPIC	EXECUTIVE (Wis. Stat. § 59.17)	ADMINISTRATOR (Wis. Stat. § 59.18)	ADMIN. COORDINATOR (Wis. Stat. § 59.19)
How Created	Board resolution or citizen petition/referendum	Board resolution or citizen petition/referendum	Board resolution or ordinance
How Chosen	Spring election every four years (nonpartisan)	Appointed by majority vote of county board	Appointed by majority vote of board
Qualifications	U.S. citizen, 18 years of age, county resident	Training, experience, education (no consideration for residence, nationality or political affiliation)	Elected or appointed county official and other qualifications set by board
Source of Powers	State statutes	State statutes	Limited state statutes and board resolution/ordinance
Removal	By governor for cause	By county board majority	By county board majority
Budget Authority	Prepares & presents to board	Prepares & presents to board	Only as authorized by board
Veto Board Actions	Yes	No	No
Department Heads	Appoints (subject to board confirmation), removes at pleasure	Appoints (subject to board confirmation), removes at pleasure	No authority unless granted by board
Advisory Committees/ Boards	Appoints, removes subject to board confirmation unless waived or made under civil service	Appoints, removes subject to board confirmation unless waived or made under civil service	No authority unless granted by board
Coordinate Depts.	Yes	Yes	Only management functions not assigned departments by ordinance or law

administrative coordinator is “responsible for coordinating all administrative and management functions of the county government not otherwise vested by law in boards or commissions, or in elected officers.” In addition, the administrative coordinator is the contact person for official correspondence between the county and departments or agencies of the state of Wisconsin. Thirty-eight counties have selected this form of administration.

FORMS OF COUNTY GOVERNMENT IN BRIEF

Wisconsin law provides for three forms of county government. Those are the county executive, county administrator and county administrative coordinator. All counties have an elected board of supervisors comprised of members of the electorate with powers authorized by Section 22, Article IV of the Constitution and specified in Chapter 59 of the statutes. The Wisconsin county board is unlike the commission form of government where individual county commissioners are directly responsible for the operational aspects of any county department. In a true commission form of government, which still exists in some states, members of the elected body are assigned responsibility for specific departments, i.e., an elected “commissioner” is assigned to supervise a specific department such as the highway department, veteran’s affairs, social services, etc. The elected official so assigned then actually supervises and directs the operations of that department and controls that department’s budget.

While perhaps desirable because it places an elected person directly in charge of a government operation, critiques have been made that the commission form encourages non-productive competition between commissioners and their respective departments; it distracts from the elected official’s primary responsibility of policy making and planning; and it places a person in charge of a department who

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frequently has no training or experience in government departments that have become increasingly complex. In the most severe cases, this form of government has also been considered more prone to official corruption. Hence, the Wisconsin State Legislature and statutes do not provide for this form of government. The title “supervisor” appears to be a primary source of the misinterpretation of the duties of Wisconsin county boards of supervisors. They do not directly “supervise” under Wisconsin law; they “oversee” through their policy making and budgeting authority.

COUNTY EXECUTIVE (WIS. STAT. § 59.17). In this form of county government, a county executive is elected by the citizens specifically to act in the capacity of Chief Executive Officer (CEO) of the county. While Milwaukee County is required to have a county executive, any county in the state may choose this form of executive structure. This structure is often chosen for reasons such as political climate, complexity of governmental issues in that county, projected growth, or some other issue that compels the citizenry to elect a full-time CEO who answers directly to them.

The county executive coordinates and directs all administrative and management functions, appoints members to boards and commissions (subject to county board confirmation); supervises department heads; submits the annual budget; and holds veto authority over board decisions, ordinances, resolutions and appropriations. The county board can override vetoes of the county executive with a 2/3 majority vote. In short, the county executive is the highest level political leader in the county with powers and a relationship with the board that can be generally equated to those between a mayor and city council or the governor and legislature. While the county board of supervisors is restricted to legislative duties and oversight, the county executive manages and supervises all departments and activities, both day-to-day and long-term via planning. This includes every county action and service except those performed by constitutional officers, such as the sheriff, where the county executive’s authority is essentially limited to budgetary control.

COUNTY ADMINISTRATOR (WIS. STAT. § 59.18). The county administrator form of government is optional. It can be chosen but its adoption is not required anywhere by statute. A county administrator county is very closely related to the city manager form of government at the municipal level and is often chosen because population, growth, and/or complexity of government issues within the county are seen to require a full-time professional manager/administrator to ensure efficient service provision. The county administrator is the chief administrative officer (CAO) of the county and is appointed by the county board “solely on merit” with no weight given to residence, political affiliation, etc. The county administrator coordinates and directs all administrative and management functions of the county government and appoints and supervises department heads subject to county board confirmation.

By law, the county administrator appoints members to boards and commissions, and where statutes give this authority to the county board or its chairperson, subject to board confirmation. The county administrator is responsible for preparing and submitting the annual budget, which requires the board of supervisor’s approval before becoming official. The county administrator answers to the county

board of supervisors as a whole, not to the county board chairperson. A key point here is that the county administrator “supervises” versus “coordinates.” Those department directors, who are not elected or constitutional officers or where the statutes provide otherwise, work for, report to, and are evaluated by the county administrator. Through this supervisory authority, the county administrator is expected to manage or administer the daily business of county government. The county administrator has hiring authority (subject to county board approval) and firing authority over department heads unless that authority is revoked by local ordinance by the board of supervisors.

However, constitutional officers and elected department heads do not fall into this category. They do not “work for” the county administrator; nevertheless, they must recognize the administrator’s authority regarding coordination between departments; resource allocation; and management issues outside of the non-supervised department, which require coordination and support from other county departments. Essentially, the county administrator must foster a relationship of trust and cooperation with those officers and department heads not under his/her supervisory control to effectively manage county operations. County administrators commonly assume additional duties, especially in smaller populated and rural counties, such as human resources director, emergency management director, media spokesperson, and even IT director, which further exemplifies the need for a broad education and experience level for prospective county administrators.

ADMINISTRATIVE COORDINATOR (Wis. STAT. § 59.19). County administrative coordinator is the third form of county government and the least defined by statutes; consequently, it is probably the most misunderstood form. The law provides if a county has not adopted the county executive or county administrator form of government, it must adopt the administrative coordinator form of government. The law provides that an elected official, such as the county clerk, or an appointed official may be designated administrative coordinator, almost as an additional duty.

Historically, some counties utilizing the administrative coordinator option designated the chair of the county board as administrative coordinator. However, on October 27, 2011 the Wisconsin attorney general issued a formal opinion stating that a sitting county supervisor is precluded from accepting any other office or position, including the position of administrative coordinator, because the additional positions are legally incompatible. Under Wisconsin law, any supervisor holding an incompatible position automatically vacates their board membership. Hence, neither the county board chair nor any other member of the board can hold the position of administrative coordinator without resigning his/her position as an elected member of the county board.

The law provides that the administrative coordinator “is responsible for coordinating all administrative and management functions.” The duties and authority of an administrative coordinator are similar to a county administrator. The administrative coordinator’s duties are comparable to those of a city or village administrator who works under a mayor or village board. A village administrator coordinates daily municipal operations but must defer to the village board for final decisions on non-routine mat-

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ters. The county administrative coordinator performs in a similar manner with the county board holding final approval authority over non-routine decisions. With administrative home rule authority, the position of administrative coordinator can be made as strong or as weak as the board chooses via local ordinance. Although the statutes do not give the administrative coordinator supervisory authority over department heads, there are valid reasons for a board of supervisors to give a limited amount of such authority to the administrative coordinator.

The administrative coordinator could, like the county administrator, be assigned additional duties that need to be performed and no other position exists to perform them. The administrative coordinator reports and answers to the board of supervisors and the board chair. When a county comes to the conclusion that a full-time professional is required to perform the duties of either county administrator or administrative coordinator, there are a number of criteria commonly considered essential for that person to be qualified for the position. Persons selected for these positions are generally expected to possess at least a Bachelor's Degree in Public Administration, Business Administration, Finance, Planning, or some other closely-related field. A Master's Degree is often listed as "preferred" on advertisements for such positions. Experience in a staff position and/or as an assistant administrator or coordinator is commonly expected. Often, a period of five years of such experience before entering that primary administrative position is required. Candidates for either of these positions are routinely screened via background checks, criminal history checks, financial records checks, and reference checks prior to an offer being made for the position. A residency requirement is common in rural areas but less so in more urban areas. The county with a county administrator or full-time administrative coordinator should be able to count on an experienced, well-educated manager and leader to keep daily operations and service provision running and operating at an optimal level of efficiency, allowing the board of supervisors to concentrate on long-term visioning and policy.

THE JUDICIAL BRANCH

The 1977 Court Reorganization Act merged Wisconsin circuit courts and county courts into one trial court system under the administration of the Wisconsin Supreme Court and 10 district administrators. The circuit courts are divided into branches within counties, and at least one branch exists in every county, with the exception of six counties that are paired off and share a single judge. The paired counties are: Buffalo/Pepin, Florence/Forest and Shawano/Menominee. Judges' and court reporters' salaries are paid by the state, but most court staff salaries and court facilities are funded by county taxpayers. Circuit court judges are elected to a six-year term in the spring general election by the residents of the counties they serve. Circuit courts are a necessary part of state law, thus judges have implied authority to require local county boards to fund the courts at a level necessary to meet caseloads.

OTHER ELECTED AND KEY APPOINTED OFFICIALS

Under state law, county residents elect certain other county officials. These are the clerk, treasurer, sheriff, clerk of circuit court, register of deeds and district attorney.³ These officials are elected in partisan, general elections that are held on the Tuesday after the first Monday in November in even-numbered years. Since 2008, sheriffs, clerks of circuit court, district attorneys, elected surveyors, registers of deeds, treasurers, county clerks and coroners are elected to four-year terms. The popular election of a county surveyor and coroner is a local option that is on the decline in Wisconsin counties. When a county chooses not to have an elected coroner, the office is appointed and is called a medical examiner. When no candidates file for county surveyor, the board usually hires a state certified land surveyor to perform the duties.

People wishing to hold these offices must be legal residents of the county, U.S. citizens and at least 18 years of age. Other department head positions are appointed by the executive or administrator, and in rare cases by the administrative coordinator, and are confirmed by the county board. Each county board must elect a highway commissioner, whose term is for two years, unless otherwise set by local ordinance. Wis. Stat. § 83.01(1) & (2). Appointment of a head of emergency management services is also required by law. Wis. Stat. § 166.03(4)(a) & (b). A county social or human services director must also be appointed to oversee each county or multi-county department of social or human services. Many counties also have a finance director, corporation counsel, parks director, general services administrator, human resources director and other professional managers to perform other specific duties. Counties also often contract with private attorneys to provide corporation counsel services.

FUNCTIONS AND DUTIES OF WISCONSIN COUNTIES

Unlike Wisconsin cities and villages, counties do not have broad constitutional “home rule” authority. This means that while cities and villages have broad authority to act for the health, welfare and safety of their citizens, counties may only undertake functions that are expressly granted by state statutes. This has resulted in counties being assigned increased tasks on behalf of the state, but having limited authority to address specific local priorities. Major responsibilities required of the county include the provision of most social service programs (child welfare, juvenile justice, senior citizen services, public health, mental health, jail, developmental disabilities, etc.) and for local and state road maintenance. Counties also provide the majority of cultural and recreational amenities (e.g. parks, libraries and snowmobile trails), law enforcement, health services, zoning and road maintenance for citizens in rural, unincorporated areas within their borders. Some of these same services are also provided to cities and villages through joint agreements.

Home rule authority has allowed county government to expand gradually as a regional government in areas such as recycling, water quality management, transportation planning and zoning review, but only in cases where a municipality or group of municipalities have requested the county to do so on their behalf through voluntary agreements.

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Endnotes

1 Exceptions to state limits are Milwaukee County, which may establish its own number of supervisors (currently 19), and Menominee County, which is also a town and has the same seven members on both its town and county board, Wis. Stat. §59.10(2) & (5).

2 UW-Extension Local Government Center Fact Sheet #8: Self-Organized Counties

3 District attorneys are considered state employees for salary purposes

County Departments & Offices

Wisconsin's county governments provide a wide array of services. While many of these services are mandated by state law, counties are statutorily authorized to provide certain discretionary services as well. The Wisconsin Counties Association (WCA) enlisted the assistance of members of a variety county-related organizations in an effort to identify the many functions performed by county government.

The following pages include a compilation of county departments describing their duties, structures, funding mechanisms, statutory authorities, etc. Please keep in mind when reading this section that each of Wisconsin's 72 counties is unique in its delivery of services to the citizens of this state; therefore, your county may provide the service through an alternative structure or not provide the service at all.

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County Departments & Offices

AGING

Aging & Disability Professionals Association of Wisconsin (ADPAW)

The development of a comprehensive and coordinated aging service system, as well as the functions and responsibilities of the Aging Network, are outlined in Title III of the Older Americans Act of 1965, as Amended. The creation of county/tribal aging units is further clarified in the Wisconsin Elders Act—1991 Wisconsin Act 235, Wis. Stat. § 46.82 and Wis. Stat. § 59.53(11). The Wisconsin Elders Act outlines the county/tribal process for establishing by resolution a county or tribal aging unit to administer and provide the services funded under 42 USC 3001 to 3057n, 42 USC 5001 and 42 USC 5011(b).

Funding for county/tribal aging units comes from a variety of sources, including property taxes; fees; donations; and federal, state and local grants.

Duties/Services:

- ❑ Ensure that all older individuals, regardless of income, have access to information, services and opportunities available through the aging unit and have the opportunity to contribute to the costs of services.
- ❑ Plan for, receive and administer funds allocated under the state and area plan on aging.
- ❑ Provide a visible access point of contact for individuals to obtain accurate and comprehensive information about public and private community resources that can meet the needs of older adults.
- ❑ Provide older individuals with the services of a benefit specialist (Wis. Stat. § 46.81).
- ❑ Organize and administer congregate programs that shall include nutrition and may include senior center(s), adult day care or respite programs.
- ❑ Secure a county/tribal-wide transportation system that makes community programs/opportunities accessible to, and meets the needs of, older adults.
- ❑ Ensure that programs and services for older individuals are available to home bound, disabled and non-English speaking persons and to racial, ethnic and religious minorities.
- ❑ Identify and publicize gaps in services needed by older adults and provide leadership in developing services/programs, including recruitment and training of volunteers.
- ❑ Work cooperatively with other organizations to enable their services to function effectively for older adults.
- ❑ Incorporate and promote the participation of older individuals in the preparation of a local comprehensive plan for aging services.
- ❑ Provide information to the public about the aging experience and about resources for and within the aging population.
- ❑ Assist in representing the needs, views and concerns of older individuals and assist older individuals in expressing their views.
- ❑ Advocate on behalf of older individuals to assist in enabling them to meet their basic needs.

In addition, the following duties may also be performed by an aging unit, "if designated:"

- Administer the long-term support community options program under Wis. Stat. § 46.27(3)(b)6.
- Administer pilot projects for home- and community-based long-term support services under Wis. Stat. § 46.271.
- Administer the elder abuse reporting system under Wis. Stat. § 46.90.
- Administer the Alzheimer's disease family and caregiver support program under Wis. Stat. § 46.87.
- Operate the specialized transportation assistance program for a county under Wis. Stat. § 85.21.

AGING & DISABILITY RESOURCE CENTER (ADRC)

Aging & Disability Professionals Association of Wisconsin (ADPAW)

Beginning in 1998, some aging units applied for and received contracts from the Wisconsin Department of Health and Family Services to operate Aging & Disability Resource Centers (ADRCs) under Wis. Stat. § 46.283. ADRCs are service centers that provide a place for the public to get accurate, unbiased information on all aspects of life related to aging or living with a disability. The public can contact ADRCs to receive information and assistance regarding not only the public benefits that may be available, but all of the programs and services available throughout the area. Individuals, concerned families or friends, or professionals working with issues related to aging, physical disabilities, developmental disabilities, mental health issues, or substance use disorders, can receive information specifically tailored to each person's situation. ADRC services can be provided either at the center, via telephone or through a home visit, whichever is more convenient to the individual seeking help.

ADRCs may be operated by aging units, by human/social service agencies, or by newly created public entities. An ADRC can serve a single county or multiple counties.

Duties/Services:

- Engage in a marketing, outreach and public education program to make ADRC services known to members of its target populations.
- Provide information and assistance to members of the target populations and their families, friends, caregivers, advocates and others asking for assistance on their behalf.
- Provide long-term care options counseling and elderly and disability benefits counseling.
- Provide access to publicly funded long-term care programs and services.
- Provide access to mental health and substance abuse services.
- Provide access to other public programs and benefits.
- Short-term service coordination.
- Provide access to emergency services.
- Provide access to elder abuse/adults-at-risk and adult protective services.
- Provide transitional services for young adults with disabilities entering the adult long-term care system and for adults with disabilities transitioning into aging services.
- Provide prevention and early intervention services.
- Provide client advocacy.
- Conduct community needs assessments.

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County Departments & Offices

CHILD SUPPORT PROGRAM

Wisconsin Child Support Enforcement Association (WCSEA)

Wisconsin's Child Support Program is coordinated by the Wisconsin Department of Children and Families, which contracts with 71 county child support agencies to administer the program on a day-to-day basis at the local level. Wisconsin also has several tribal child support agencies that administer the program for cases involving tribal members.

The Wisconsin Child Support Program contributes to the well-being of children and families through the establishment of paternity and the establishment and enforcement of court-ordered child support and medical support obligations. The caseload consists of non-aid applications and public assistance referrals. The child support program also establishes and enforces support orders when children are placed out of the home by the Wisconsin Department of Children and Families. The program uses several tools to enforce child support orders and obtain payments for the family, such as tax intercept, property liens, account seizures, license suspensions, contempt motions and criminal non-support. In addition, in many counties, unemployed child support payers are referred to the Children's First Program to conduct work search activities and find employment.

Duties/Services:

- Establishment of paternity.
- Establishment and enforcement of court-ordered child support and medical support obligations.
- Establishment and enforcement of support orders when children are placed out of the home.

CIRCUIT COURT COMMISSIONER

Wisconsin Association of Judicial Court Commissioners

While all counties must have at least one part-time family court commissioner, some counties choose to appoint attorneys with all the powers of a circuit court commissioner. In Milwaukee County, several court commissioner positions are established by statute. In many cases the litigants will never see a circuit court judge, but they always have the option to request review of the commissioner's decision by a judge. In addition to family law matters, these judicial officers perform the duties and services listed below.

Duties/Services:

- Handle probate, guardianship and mental commitment proceedings.
- Hear small claims trials.
- Conduct initial appearances and set bail on traffic and ordinance civil cases, misdemeanors and felonies.
- Conduct preliminary hearings in felony matters to determine whether the case shall proceed.
- Handle juvenile hearings that are not open to the public.

CLERK OF CIRCUIT COURT

Wisconsin Clerks of Circuit Court Association

Clerks of circuit court are public officials elected in partisan, countywide races. They are statutorily responsible for various record-keeping functions of the courts. As custodians of the courts' records, clerks of circuit court play a significant role in Wisconsin's judicial system.

Duties/Services:

- ❑ **Custodian of the record.** Record keeping for the courts is governed by state statute and Wisconsin Supreme Court rule. These require that clerks maintain records of all documents filed with the courts, keep a record of court proceedings and collect various fees, fines and forfeitures ordered by the court or specified by state statute. Clerks of circuit court must also establish and promote procedures for reasonable access to court records, as well as maintain the confidentiality of records as set forth by statute and court order.
- ❑ **Jury management.** Jury management is also a responsibility of clerks of circuit court. Automation in the courts has made the process of selecting and notifying potential jurors more efficient and has improved record keeping for jury management. Improvements include decreasing the amount of time Wisconsin citizens are obligated to serve to no more than one month of jury service in a four-year period. Clerks work with the director of state courts and the legislature to continue to improve jury management.
- ❑ **Court finances.** Millions of dollars in fees, fines and forfeitures are paid through clerks' offices annually. Clerks of circuit court work to meet this fiscal responsibility with accurate, efficient and effective accounting practices. Financial software, designed in accordance with generally accepted accounting principles, assists clerks in efficiently handling this money.
- ❑ **Court administration.** As local court administrative personnel, clerks of circuit court are at the center of a wide variety of activities and work daily with many different people. Law enforcement; the legal community; local, state and federal agencies; businesses and the general public depend upon the office of the clerk of circuit court to solve a wide range of problems. Clerks of circuit court provide an administrative link between the judiciary and the county boards and the public. Clerks also work closely with other court staff to ensure that the courts run smoothly and efficiently. The administrative responsibilities at the circuit court level involve a variety of tasks. These include budgeting and administering trial court resources, developing effective policies and procedures and recruiting and maintaining competent staff.

COOPERATIVE EXTENSION

UW-Extension

Cooperative Extension is a division of UW-Extension. Cooperative Extension is the *Wisconsin Idea* in action. Cooperative Extension extends the knowledge and resources of the University of Wisconsin to people where they live and work. Cooperative Extension offers quick and convenient access to university research and knowledge through educators in each of Wisconsin's 72 counties, on eight four-year University of Wisconsin campuses, and through three tribes – Lac du Flambeau Tribe in Vilas County, Menominee Nation in Menominee County and Lac Courte Oreilles in Sawyer County.

■ ORGANIZATION

County Departments & Offices

Educational programs include the areas of agriculture and natural resources; community, natural resources and economic development; family living; and 4-H and youth. In addition, Cooperative Extension includes the Wisconsin Geological and Natural History Survey and the Wisconsin Rural Leadership program.

Working with local, state and federal partners, Cooperative Extension offers educational programs that address the learning needs of individuals, families and communities. Cooperative Extension works closely with communities on complex problems that require unbiased, research-based information. More information about Cooperative Extension educational programs and county offices is available online at www.uwex.edu/ces.

Duties/Services:

- ❑ Provide educational programs and research services in the following areas:
 - 4-H, youth development, youth skills, youth leadership.
 - Agriculture, natural resources, agribusiness, horticulture.
 - Community, economic development, natural resources.
 - Family, nutrition education, finances, parenting.

CORONER/MEDICAL EXAMINER

Wisconsin Coroner and Medical Examiners Association (WCMEA)

The Wisconsin Constitution mandates an office of coroner or medical examiner in each of the 72 counties in the state. Each county, except those over 500,000 in population, may choose to elect a coroner or appoint a medical examiner dependent upon county board action. A county under a coroner system may not transition to a medical examiner system while the office of coroner is occupied unless permission is granted by the elected coroner. Once nomination papers have been filed during an election year, transition may not occur until after the election and with the permission of the newly elected coroner. Counties with a population greater than 500,000 must use a medical examiner system. The duties and responsibilities of either the coroner or medical examiner are equivalent. Neither the coroner nor medical examiner needs to be a physician; however, a strong understanding of disease process, pathology and investigative process is desirable. Both offices are governed by Wis. Stat. §§ 979.01, 979.10, Ch. 59 (excerpt), Ch. 69, 146.71, 146.82(a)18.

The coroner, medical examiner or their designee (chosen among deputies) is responsible for responding to death scenes that meet reportable criteria. They initiate an investigation, examine and photograph the deceased and document the circumstances of death. Further, they determine the need for further investigation via autopsy or some other form of physical examination in a clinical setting. Often this requires traveling through unfamiliar regions of the county in all types of weather at any time of day or night. The job requires the ability to access the body in the location found. This may require the need to walk long distances, climb terrain or use special equipment, such as snowmobiles or ATVs.

Duties/Services:

- ❑ Initiate an investigation on all deaths reportable under Wis. Stat. Ch. 979 and contact the appropriate agencies for assistance.
- ❑ Interact with next of kin of deceased, law enforcement personnel, attorneys and physicians.
- ❑ Interview witnesses.
- ❑ Order medicolegal autopsies.
- ❑ Obtain lab samples for testing or screening by the Wisconsin State Laboratory of Hygiene or an independent laboratory.
- ❑ Record facts, observations and conclusions pertaining to the death scene.
- ❑ Determine the cause and manner of death, as well as testify regarding such opinion if requested.
- ❑ Sign death certificates, cremation permits and any other required documents.
- ❑ Complete reports of inquests and investigations.
- ❑ Prepare a budget, develop department policies and enforce existing standard operating policies.
- ❑ Interact with funeral homes, hospitals and other coroners/medical examiners throughout the state.

CORPORATION COUNSEL

Wisconsin Association of County Corporation Counsel (WACCC)

The office of the corporation counsel is authorized by Wis. Stat. § 59.42 to provide necessary civil legal services to county government and its boards, commissions, committees, departments, employees, officers and officials with respect to their official duties. The corporation counsel is appointed by the county executive or administrator, subject to confirmation by the county board. In counties without an executive or administrator, the county board appoints the corporation counsel.

Duties/Services:

- ❑ Prosecute and defend civil legal actions involving the county; coordinate and supervise outside counsel, including counsel assigned by insurance carriers; assist the treasurer in the foreclosure of tax liens; prosecute violations of health, zoning and other ordinances.
- ❑ Research and provide advice on civil matters, including ethics, open meetings, parliamentary procedure and public records issues; draft and issue legal opinions; draft and review ordinances and resolutions; prepare or review contracts, deeds, leases, real estate documents and other legal papers.
- ❑ Work with county departments to secure reimbursement of government expenditures, protect county subrogation rights and collect delinquent accounts.
- ❑ Prosecute mental health, alcohol and drug commitments.
- ❑ Provide legal services in certain cases relating to guardianships for minors and in certain cases relating to guardianship and protective placement that arise because of degenerative brain disorders, serious and persistent mental illness, mental retardation, other developmental disabilities, or similar incapacities incurred at any age.
- ❑ Prosecute or assist with the prosecution of certain matters relating to the determination of paternity and the establishment, modification and enforcement of court-ordered child support obligations.

■ ORGANIZATION

County Departments & Offices

- ❑ Provide legal services in certain cases arising under the Children's Code (Wis. Stat. Ch. 48) for children who are in need of protection and services. *Note: In some counties these duties are performed by the district attorney.*
- ❑ Prosecute certain actions to terminate parental rights when it is in the best interests of the child to do so. *Note: In some counties these duties are performed by the district attorney.*

COUNTY CLERK

Wisconsin County Clerks Association (WCCA)

County clerks are elected constitutional officers established under Article VI, Section 4, of the Wisconsin Constitution. Historically, the county clerk was strictly a clerk for the board of supervisors. In Rev. Stats. 1858, the clerk was called the clerk of the board of supervisors. Duties were primarily to keep a record of the proceedings of the board, to make its entries of all resolutions and decisions, to record its votes, to sign its orders for payment and keep an account thereof, and to preserve and file the accounts acted upon by the board. In 1882, the position was then referred to as county clerk. The clerk of each county performs vital and invaluable services in those areas designated by the legislature in Wis. Stat. § 59.23. However, the county clerk has been designated with additional duties per legislative approval under various state statutes. Some of these duties include issuing marriage licenses, acting as the secretary and official record keeper of the county board, administering the elections process, and filing/recording some financial transactions. Funding for the county clerk's office comes primarily from permit fees and the property tax levy.

Duties of the office vary greatly from county to county. In some counties, the county clerk's office is responsible for accounting, payroll, personnel and data processing functions. Several clerks also act as the county's administrative coordinator. In larger counties, however, these areas have become separate departments. Other duties clerks may perform include issuing conservation licenses, processing passport applications, administering the property and liability insurance for the county, processing tax deeds, and serving as purchasing agent.

Duties/Services:

Services to the County Board

- ❑ Recording secretary
- ❑ Prepare and publish agendas for county board and committee meetings
- ❑ Record meeting minutes for county board and committee meetings
- ❑ Certification of county board actions
- ❑ Publish official proceedings
- ❑ Ensure compliance with open meetings law
- ❑ Ensure compliance with records retention laws
- ❑ Ensure compliance with freedom of information requests

- ❑ Compile/publish/maintain current county directory
- ❑ Sign contracts, deeds and agreements as approved by county board

Election Administration

- ❑ Serve as election officer of the county
- ❑ Receive and file the official oaths and bonds of all county officers
- ❑ Serve as the filing officer for county candidates and referenda questions
- ❑ Prepare and publish election notices
- ❑ Prepare/print/distribute ballots and supplies to municipal clerks

- Program election tabulation equipment
- Maintain Statewide Voter Registration System for general, judicial and special elections
- Provide Statewide Voter Registration System services for local municipalities
- Tabulate and report election results
- Conduct Boards of Canvass and recounts
- Issue Certificates of Election
- Election training for municipal clerks and school districts

Licenses and Permits

- Issue marriage licenses and maintain index
- Issue domestic partnership certificates and domestic partnership terminations and maintain indexes
- Distribute state dog license and supplies to municipal treasurers
- Administer dog license fee accounts
- Process passport applications
- Issue conservation licenses
- Issue hayrack and sleigh ride permits
- Issue pawnbroker and secondhand dealer licenses
- Issue temporary and/or permanent vehicle license plate and registration renewals
- Issue work permits for minors

Financial Functions

- Sign all orders for payment of money directed by the board
- Budgeting
- Apportionment of taxes
- General accounting

- Bonding/borrowing
- Payroll
- Purchasing liability, property and other insurances
- Insurance maintenance
- GASB reporting
- Asset inventory
- Sale of tax deed property

Other Statutory Duties

- Annually compile and transmit list of municipal officers to secretary of state
- Zoning matters
- Farmland preservation
- Library reimbursement requirements
- Timber harvest notices
- Probate claim notices
- Miscellaneous highway department records
- Contracts, leases and agreements
- Claims against the county
- Historical Society

Other Non-Mandated Functions

- Administrative coordinator
- Personnel
- Data processing
- Purchasing
- Facilities maintenance
- Insurance
- Redistricting
- Website maintenance
- Other duties specific to local office

COUNTY FORESTS

Wisconsin County Forests Association (WCFA)

Wisconsin's county forests were originally established in the 1920s when cut over farmlands and woodlands went tax delinquent and became a burden on local governments. Government leaders created a system to provide financial stability for counties and public access to forest lands for Wisconsin's citizens. A state statutory revision created a permanent county forest program in 1963. Even today, counties continue to purchase lands from willing sellers and enter these lands into the county forest program to ensure future public access and sustainably manage and protect these lands.

County forests are governed by the County Forest Law, Wis. Stat. § 28.11, which requires the lands be managed for forestry purposes including timber production, recreation, wildlife habitat and watershed protection. Currently, 29 Wisconsin counties own and manage a total of more than 2.37 million acres of public forest lands.

Each county forest is managed by a professional forest administrator and staff who are accountable to county residents through their county board. These foresters and resource managers have access to assistance from the

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Wisconsin Department of Natural Resources (DNR) and the University of Wisconsin system. County foresters work cooperatively with the DNR, the U.S. Forest Service, the National Park Service and forest-based industries, as well as a number of private conservation and recreation groups. County forests are third-party certified under the Forest Stewardship Council (FSC) and/or Sustainable Forestry Initiative (SFI) forest certification standards.

Income from the sale of forest products on county forest land is used to run county forestry departments, fund recreational opportunities for Wisconsin's citizens and provide relief to county taxpayers through budgetary funding. In 2013, income from the sale of forest products from Wisconsin's county forests was over \$31 million.

Duties/Services:

- ❑ County forests provide a steady reliable source of raw material for Wisconsin's \$18 billion timber industry.
- ❑ County forestry departments protect and manage over 62,500 acres of county-owned lands containing unique, rare, threatened and endangered or special species and ecosystems.
- ❑ County forests provide over 2,000 campsites, more than 400 miles of cross country ski trails and hundreds of miles of hiking trails for public use.
- ❑ County forests provide over 1,000 miles of summer ATV trails, 150 miles of horse trails, 250 miles of mountain bike trails, 730 miles of designated hiking trails and over 4,300 miles of snowmobile trails for public use.
- ❑ There are snowshoe trails, disc golf courses, parks, boat landings and shooting ranges located throughout the county forest system.
- ❑ County forests surround and help to protect thousands of lakes and hundreds of miles of rivers and streams. Canoe trails on wild and scenic rivers meander through county forests.
- ❑ County forests provide landscape scale management opportunities for floral and faunal species.

EMERGENCY MANAGEMENT

Wisconsin Emergency Management Association (WEMA)

As authorized under Wis. Stat. Ch. 323, it is the role of the county emergency management director to develop and implement an emergency response plan (ERP) that is consistent with the Wisconsin Emergency Response Plan. The plans allow counties to successfully mitigate, plan for, prepare for and respond to any hazards that may affect our communities. These hazards range from acts of terrorism to severe weather. In the event the President declares an area a Federal Disaster Declaration under the Robert T. Stafford Act, it is the county emergency management director's responsibility to administer the federal assistance at the local level.

In addition, the county emergency management director is responsible for planning in the event of a release of hazardous chemicals throughout the county. The emergency off-site plans are done in accordance with the Emergency Planning and Community Right to Know Act (EPCRA), which is also known as SARA Title III. The plans are essential for informing first responders and citizens of the hazards that exist within their communities, and to prepare for an emergency response to a hazardous chemical spill. Beyond emergency situations, there are many duties and responsibilities that the director attends to on a daily basis. Along with the duties listed below, additional roles and responsibilities can vary greatly from county to county.

Duties/Services:

- ❑ Administer state and federal grants (EMPG grant, EPCRA grant, EPCRA- Computer and Hazmat Response Equipment Grant, Homeland Security grants, etc.).
- ❑ Create and/or update emergency plans: Emergency Operation Plan, Hazard Analysis Plan, Strategic HazMat Plan and Specialty Plans (i.e. heat, severe cold, power outage, etc.).
- ❑ Prepare and administer the department’s budget.
- ❑ Develop public education programs.
- ❑ Develop training programs for emergency response personnel and the public.
- ❑ Develop tabletop, functional and full-scale exercises to test the response capabilities of local responders.
- ❑ Provide guidance for emergency communications systems (i.e. outdoor warning sirens).
- ❑ Keep an inventory of public and private resources that would be available during a disaster.
- ❑ Establish, maintain and inventory the county’s emergency operations center.

To accomplish these tasks, emergency management directors work closely with all of the first responders in their communities (fire; law enforcement; EMS; public health; public works; human services; volunteer agencies; hospitals; private industry; utilities; mapping professionals; federal, state and local officials; etc.).

FAMILY COURT COMMISSIONER

Wisconsin Family Court Commissioners Association

A circuit court commissioner is appointed in each county by the judge(s) of that county to supervise the office of the family court commissioner. A commissioner is a judicial officer who has powers similar to a judge. Those powers, duties and responsibilities are set by state statute and by the Wisconsin Supreme Court, since a commissioner is part of the judicial branch of government. A commissioner must be a licensed attorney.

The commissioner handles a variety of family law matters and, in many counties, handles other types of cases as well. Family law cases include divorces, the establishment of paternity and setting orders for placement and support of children of unmarried or separated parents, and the enforcement and modification of orders previously rendered in family law cases. In some counties, the commissioner also supervises mediators who assist parents in family law cases with resolving disagreements about the custody and placement of their children. Throughout all his or her duties, a commissioner exercises oversight of the conduct of all who take part in family law cases; this includes the parties to the case, witnesses who may testify at hearings, attorneys (including attorneys appointed as guardian *ad litem* for children) and court staff. A commissioner may also perform weddings.

Funding for the office is received from a variety of sources, including property tax revenue, fees and state grants.

Duties/Services:

- ❑ Grant divorces to parties who have appropriate written agreements.
- ❑ Conduct court hearings and render decisions on issues in family court cases:
 - Paternity, custody and placement of children.

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- Support for children, including responsibility for health insurance, medical expenses and other related financial issues.
 - Assignment of tax dependency exemptions between the parents.
 - Use of and division of property.
 - Responsibility for payment of debts.
 - Maintenance (alimony).
- Administrative responsibilities to ensure efficient yet fair administration of justice.

**except a final, contested divorce trial, which must be held before a judge.*

FINANCE DEPARTMENT/FINANCIAL SERVICES

Wisconsin Government Finance Officers Association (WGFOA)

Financial services is responsible for accurately recording the revenues and expenditures of all county funds according to generally accepted accounting principles. Finance departments are required to report the utilization of the revenues and expenditures to the operating departments, the public and other governmental agencies. The department provides assistance to the county in preparing and administering the annual budget. The financial services department also provides financial analysis and advice to aid in the policy-making process.

Duties/Services:

- Coordinate and implement the risk management and insurance coverage for the county and its departments.
- Coordinate and implement the payroll function for the county.
- Coordinate and implement the general accounts payable and general accounts receivable functions.
- Coordinate and implement the purchasing functions of the county.
- Prepare the countywide budget.
- Prepare the countywide annual financial reporting to the state and federal governments.
- Oversee the annual audit process for the county.
- Manage long-term debt for the county.
- Complete financial analysis for management and the county board.

HIGHWAY & TRANSPORTATION/PUBLIC WORKS DEPARTMENT

Wisconsin County Highway Association (WCHA)

The mission of the county highway department is to construct and maintain the county trunk highway system and maintain the state trunk highway system for the state of Wisconsin on a contract basis. Additionally, the department provides road and bridge maintenance services to local units of government upon request on a cost charge-back basis. The goal is to provide safe, effective and efficient transportation services for the traveling public throughout the state of Wisconsin. The head of the department is the highway commissioner or public works director.

The highway department fulfills its responsibility to maintain a safe, effective and efficient transportation system for the public by performing construction, as well as general and winter maintenance activities. Wisconsin county highway departments are unique within the nation because each of the 72 county highway departments have a yearly contract with the Wisconsin Department of Transportation to provide all maintenance of the state trunk system (numbered highways) across the state.

County government's involvement in transportation services often extends beyond highways. Many counties have a county highway and transportation department or a public works department, both of which provide a wide array of services to county citizens. The public works department in some counties manages county facilities and property, such as highways, parks and landfills. Many counties own and operate a county airport, while some counties provide assistance to municipal-owned and operated airports within their respective county. Further, counties are instrumental in providing elderly and disabled transportation services. All 72 counties provide this service to their county residents. In addition, some counties provide a countywide mass transit or commuter express service.

Duties/Services:

- ❑ General maintenance including patching, crack filling and seal coating of pavement; shoulder maintenance; vegetation control; bridge and culvert maintenance; litter and trash pickup; guard rail installation and repair; signing; pavement marking; and traffic control.
- ❑ Winter maintenance including installation and removal of snow fence, application of sand and salt, plowing, de-icing, shoveling and hauling snow.
- ❑ Road construction activities, along with pavement resurfacing (blacktopping), bridge and culvert installation.
- ❑ Maintenance and repair of numerous "park and ride" lots and several waysides on the state trunk highway system. To effectively accomplish these activities, the department maintains numerous storage and maintenance facilities at various locations throughout the county. There are main shops in each county and numerous "satellite" or outlying shops in strategic locations throughout the county. The satellite locations provide effective and efficient salt storage.
- ❑ Various planning, engineering and administrative functions, ensuring the individual taxpayers receive the full benefits and are provided with the very best of transportation services throughout Wisconsin.
- ❑ Operation of county-owned airports or assistance to municipal airports.
- ❑ Assistance to rail infrastructure, as well as harbor infrastructure.
- ❑ County-wide mass transit services or commuter express services.
- ❑ Transportation services to elderly and disabled county residents.
- ❑ Maintenance of county-owned bike trails.
- ❑ Establishment of Foreign Trade Zones, which is an economic development tool for local businesses that participate in foreign trade.

■ ORGANIZATION

County Departments & Offices

HUMAN SERVICES PROGRAMS

Wisconsin County Human Service Association (WCHSA)

The majority of Wisconsin counties have human services departments (HSD), as defined in Wis. Stat. § 46.23, while other counties have separate social services departments (SSD) and departments of community programs (DCP).

An SSD provides juvenile justice services (Wis. Stat. Ch. 938); child protective services (Wis. Stat. Ch. 48); social services in general, foster care and long-term care programs for the elderly and physically disabled, such as the Community Options Program (Wis. Stat. Ch. 46); adult protective services (Wis. Stat. Ch. 55); guardianships (Wis. Stat. Ch. 880); and economic support, such as food stamps, Medical Assistance and the Wisconsin Home Energy Assistance Program (WHEAP).

Separate DCPs provide inpatient and outpatient mental health and substance abuse services, including outpatient counseling, emergency detentions for the mentally ill, Comprehensive Community Services (CCS), inpatient detoxification for the chemically dependent, as well as services for the chronically mentally ill (Community Support Programs– CSP) and the developmentally disabled (Community Integration Program– CIP) as well as many are the county Aging and Disability Resource Center (ADRC).

By statute, an HSD must include those programs that would otherwise be in an SSD or DCP. Some counties have also chosen to include functions that would otherwise be in a county health department, a county department of aging, and even child support. Many human services departments provide their own mental health and substance abuse services, while others contract these services. Even departments that provide direct services typically spend one-half to two-thirds of their funds on purchased services.

Human services departments are supervised by and receive funds from the state: the departments of health services, children and families, corrections and administration. The funds are federal funds matched by state GPR funding. Below are the most prominent services provided and purchased to serve clients in the particular program areas.

Juvenile Justice

Intake
Assessment
Court-ordered supervision
Case management
Foster care
Group care
Residential treatment
Restitution
Public service
Juvenile detention

Child Protective Services

Intake
Investigation
Court-ordered supervision
Case management
Foster care
Termination of parental rights
Pre-adoption planning

Mental/Behavioral Health

Outpatient counseling
Emergency detentions
Court commitment
Case management
CBRF placement
Intoxicated driver program
Community support program
Detoxification
State institutional placements

Adult Services

Intake and assessment
Guardianships
Personal care
Adult family home
Community-Based Residential Facilities
Court-ordered protective services

Day services
Case management
Home care

Economic Support

Food stamps
Medical assistance
General relief (some counties)
Energy assistance
Burials
Child care
MA transportation
Wisconsin Works (some counties)

LAND CONSERVATION

Wisconsin Land & Water Conservation Association (WLWCA)

Land conservation committees (LCC) and land conservation departments (LCD) were created in 1982 under Wis. Stat. Ch. 92 to develop and encourage implementation of conservation programs. They are the primary local delivery system of natural resource programs. The following are the statutory responsibilities of land conservation committees:

- Provide cost-sharing, technical and planning programs.
- Distribute and allocate funds for conservation activities.
- Actively solicit public participation in planning and evaluation of soil and water conservation programs.
- Adopt and administer soil and water conservation standards.
- Prepare work plans.

Duties/Services:

Duties and services of an LCC/LCD may vary county by county. The following are examples of what these services might include:

- Nutrient management planning.
- Agriculture runoff control.
- Groundwater, lakefront and river protection.
- Urban stormwater runoff management.
- Forestry projects.
- Invasive species awareness and control.

LIBRARY SERVICES

Winding Rivers Library System

Counties have a varying degree of responsibility for public library service, but all counties in Wisconsin assist in the provision of library services to their citizens. The county's relationship to libraries is defined in Wis. Stat. §§ 43.11, 43.12, 43.15, 43.19, 43.21, 43.57, 43.58, 43.60, and 43.64. This relationship can range from the mandatory reimbursement of local libraries in or out of the county for use made by county residents living in municipalities within the county which do not operate libraries (Wis. Stat. § 43.12) to the voluntary establishment of a consolidated county library whose operations are funded primarily by county taxes and which serves all residents of the county (Wis. Stat. § 43.57[1]) or a county library service, also funded by county taxes, which has the specific charge of serving the needs of residents who do not live in communities with libraries (Wis. Stat. § 43.57[3]).

Given the significant level of county reimbursements to local libraries for non-resident use, it is important for county boards to be aware of their opportunity to appoint additional trustees to local library boards. Wis. Stat. § 43.60 presents formulas that specify how many trustees a county is allowed to appoint to a local library board. Essentially, if the proportion of county funding to local funding for library services is high enough, a county

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board chair, with the approval of the county board, can appoint from one to five additional trustees. Appointments can include up to one county supervisor per local library board, with other authorized appointments being citizens-at-large. This direct representation provides county government with the chance to monitor and influence the way in which county support enhances library service for county residents, particularly those in municipalities without libraries.

In the case of a consolidated county library, the county board chair, with the approval of the full board, appoints individuals to a county library board which oversees the administration of the county library. The county library board must include one school district administrator from a district located in whole or in part in the county, and one or two county board supervisors. For a county library service, a similar board is authorized by the county board, but must also include representatives of existing local library boards.

In addition to these relationships, every county in Wisconsin has chosen to participate in a single or multi-county federated public library system, as provided by Wis. Stat. § 43.19. This is funded primarily by state aid payments, but might also be funded in part by county taxes. Federated systems are charged with assisting local libraries (including consolidated county libraries or county library services) by providing three things: assurance that each member library will offer a meaningful level of service to all residents of the member counties at whatever location is convenient for the citizen; support for resource sharing among libraries to assure that public funding provides the optimum benefit without undue duplication of resources; and professional assistance and support for local library staff and trustees in their effort to operate their libraries in the most effective way possible. Federated library systems are governed by citizen boards which are appointed by boards of supervisors of the counties which have joined together to create and maintain the federated system. In order to participate in a federated public library system, county boards are required to prepare and adopt county library service plans that must be updated on a periodic basis according to Wis. Stat. § 43.11. County library service plans may include county library standards if they have been developed in cooperation with the local libraries within the county.

When requested by municipalities, counties must provide exemptions from the county library tax for residents of municipalities that operate libraries and fund those libraries according to the criteria specified in Wis. Stat. § 43.64.

Duties/Services:

- Encourage citizens to be knowledgeable about and actively involved in all levels of their government.
- Assist citizens in obtaining information in various formats on various topics.
- Inform citizens about all aspects of issues relating to social, political and economic concerns.
- Provide community centers to support discussion among citizens.
- Support the development of general library services for all ages.
- Support life-long learning for all county residents.

LOCAL PUBLIC HEALTH DEPARTMENT

Wisconsin Association of Local Health Departments and Boards

Local public health departments are established by Wis. Stat. Ch. 251. A local health department may be established at the county, municipal, city-county, or multi-county level. All local health departments are governed by a board of health that consists of not more than nine members and includes at least one physician and one nurse.

Local health departments provide population health services to promote health and prevent disease. Wisconsin's local health departments vary in size and services offered. Wis. Stat. Ch. 251 and HFS 140 define the scope of services for three different levels of health departments. Level I departments must provide public health nursing services, community assessment, communicable disease prevention and control, chronic disease prevention services, health promotion services and human health hazard abatement or removal. Level II departments provide all of the above services, but in more areas as defined by the state's 10-year health plan. Level III departments provide all of the above services and conduct licensing and inspection programs, comprehensive environmental health services and assure access to a public health laboratory.

Funding for local health departments comes from a variety of sources. The largest single source is the local property tax levy. Other funding sources include fees, state and federal grants, Medical Assistance revenue and private grants.

Duties/Services:

Specific services vary from department to department. The following list provides examples of common health department services:

- Childhood and/or adult immunizations.
- Communicable disease follow-up.
- WIC (Women Infant and Children) nutrition services.
- Prenatal care coordination.
- Tobacco education or cessation classes.
- Community assessments.
- Health education.
- Public health emergency preparedness and response.
- Restaurant and hotel inspections.
- Lead poisoning screening and education.

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NURSING HOMES

Wisconsin Association of County Homes (WACH)

County nursing homes throughout the state have been serving the needs of special residents for over 150 years. Currently, there are thirty-five counties that own and operate healthcare facilities, serving over 5,000 residents. These facilities provide services for varying levels of care; skilled nursing care, assisted living, group homes and other types of supportive care environments. These counties have remained steadfast to their mission to provide services to those with limited care options and limited financial means. Most often these residents have little choices of care facilities outside of county homes due to the challenging nature of their care. Many county owned facilities have established themselves as experts in the field of long-term care and have become specialists in areas of care that few providers are able or willing to offer.

The medical assistance program is the primary payor source for many county homes. Cost of care and services is not covered by the current payment system requiring counties to plan a budget to offset the financial loss. There are a few counties who have expanded services to offset the loss of payment and require little to no county taxes. These types of services include designated short-term rehabilitation programs following a hospital stay for conditions such as a hip fracture, knee replacement surgery or stroke. Other services include housing options, such as senior apartments and assisted living centers.

County owned facilities have a reputation for employee retention and satisfaction. There are over 14,500 community members who come to work every day in their respective service profession. The work-force stability and employee satisfaction has consistently led to positive clinical outcomes overall. County homes have consistently outpaced the private sector in their employee retention rates, which has resulted in the undeniable results of consistent care delivery and quality standards rated above industry standards. The relevancy of these statistics becomes greater when one considers that in nearly every county home across the state, residents with complex medical and behavioral needs can be found.

The healthcare landscape remains in a constant state of uncertainty with challenges faced by the reimbursement system and regulatory demands. However the demand for county services has been on the rise in the areas of short-term rehabilitation and post-acute care, dementia care, end of life care and specialty programs, such as bariatric care and behavioral care. County homes provide invaluable services as well as unique service to the community. The Wisconsin Association of County Homes appreciates the continued support of county nursing homes and their missions of service.

PERSONNEL DEPARTMENT

Wisconsin Public Employer Labor Relations Association & Wisconsin Association of County Personnel Directors

The personnel department helps the county manage its relationships with county employees from hiring through retirement. It is an internal service department that exists to provide support to other county departments, as well as the county board, committees, and the county executive or administrator regarding personnel matters, wages and benefits. Wages and benefits often comprise more than half of the county's total operating budget.

Many counties use the term "human resources" or "employee relations" instead of "personnel," but the two terms mean the same thing (although one must be careful to distinguish human "resources" from human "services", which is an altogether different department). In some counties, the personnel function may be combined with other functions.

Policy development and enforcement is an area the county's personnel department continuously monitors and updates as legislation or internal practices change. Most counties have administration manuals and employee handbooks that are maintained through the personnel department. In addition, internal county departmental policies are reviewed with the personnel department to make sure they are not in conflict with overall county policies.

A personnel department provides services as determined by the county board, but services typically include most of the duties listed below.

Duties/Services:

- Develop, administer, and enforce county personnel policies.
- Negotiate with unions to develop collective bargaining agreements, which determine wages and benefits for county employees.
- Assist county departments in interpreting, enforcing and applying the policies or collective bargaining agreements.
- Administering employee classification and compensation systems.
- Developing and administering employee performance evaluation systems.
- Investigate and resolve grievances.
- Administer the county's health insurance programs for employees (health, life, dental, disability, etc).
- Manage employee leave benefits, such as PTO, vacation time, sick leave, holidays, retirement, life insurance and disability insurance.
- Ensure that the county complies with legal requirements that affect its procedures with employees, such as the Fair Labor Standards Act, Family and Medical Leave Act and the Americans with Disabilities Act.
- Recruit and hire new employees.
- Oversee compliance with federal and state equal opportunity laws.
- Develop and administer county personnel policies.
- Aid other departments in enforcing personnel policies.
- Assist other departments in investigating and handling employee disciplinary issues, including terminations when necessary.

■ ORGANIZATION

County Departments & Offices

- ❑ Manage workers' compensation and unemployment compensation programs.
- ❑ Draft job descriptions for county positions and advise the board when it considers adding or deleting county positions.
- ❑ Maintain personnel files for all employees.
- ❑ Provide training programs for county employees.
- ❑ Coordinate safety and loss control programs for the county.

PLANNING & ZONING DEPARTMENTS

Wisconsin County Code Administrators Association (WCCA)

County planning and zoning functions are authorized under Wis. Stat. § 59.69. Planning authority is granted under Wis. Stat. § 59.69(3) through the preparation and adoption of a county development plan. After the year 2010, if the county wishes to continue to engage in said land use administrative programs, the development plan process is further defined and described in Wis. Stat. § 66.1001. The county zoning function is prescribed in Wis. Stat. § 59.69(5) if the county desires, or has, a county zoning ordinance applicable to unincorporated towns. All counties in the state are required to enact a shoreland and wetland protection program, as a result of the Water Quality Management Act of 1965. Counties are required to adopt said shoreland regulations under Wis. Stat. § 59.692 for unincorporated shoreland pursuant to NR 115 of the Wisconsin Administrative Code. As part of that responsibility, most, if not all, of the counties have a sanitary code enforcement responsibility, which is authorized in Wis. Stat. § 59.70(5)(a) and those responsibilities were a major part of the shoreland regulation enacted in the late 1960s. Some of the zoning code enforcement offices in the counties also have responsibility for construction site erosion and stormwater management, as specified in Wis. Stat. § 59.693. However, many have separate land conservation agencies responsible for this function. Counties are required to regulate land uses in floodplains, pursuant to Wis. Stat. § 87.30 and NR 116 of the Wisconsin Administrative Code. Further, as part of the administrative procedures for the regulation of zoning, pursuant to Wis. Stat. § 59.694, a county board of adjustment is required to be in place to consider and decide upon appeals, special exceptions and variances to the terms and conditions of the zoning ordinance and shoreland and floodland ordinance. Counties are required to regulate non-metallic mines pursuant to Wis. Stat. § 295.13 (1) and NR 135 of the Wisconsin Administrative Code.

Most counties also exercise subdivision plat review authority under Wis. Stat. Ch. 236, whereby subdivisions throughout the county, including incorporated areas, are reviewed pursuant to the provisions of that statute. Some counties, though not many, have also elected to perform building inspection services for the jurisdictional area of their zoning codes, authorized under Wis. Stat. § 59.698. In some counties, the land information and county survey functions, set forth in Wis. Stat. §§ 59.72-59.75, provide for a county surveyor function, land information, land records and for the relocation and perpetuation of section corners and section lines.

Duties/Services:

- Administer and enforce provisions of county zoning ordinances, including regular county zoning, shore-land and floodplain zoning.
- Provide assistance and information to the public regarding land use regulatory controls.
- Prepare comprehensive land use plans for the county, or for individual communities in some cases, and assist in their adoption and implementation.
- Monitor and update comprehensive land use plans as required.
- Evaluate land use decisions based upon adopted comprehensive land use plans.
- Review and approve subdivision plats.
- Review and approve certified survey maps and county plats.
- Receive and prepare applications and provide recommendations for rezoning activities and conditional uses.
- Receive applications for variances, appeals and special exceptions for the board of adjustment; make recommendations for zoning and keep records, prepare hearing notices and other administrative duties.
- Prepare notices for public hearings for rezonings, conditional uses and, in some cases, plats.
- Issue zoning and land use permits, plan of operation and site plan permits and conditional use permits.
- Receive and issue sanitation permits for new septic systems.
- Receive applications and issue permits for erosion and stormwater management activities where applicable.
- Issue building permits and make site inspections where applicable.
- Make field and site inspections for zoning and land use permits, board of adjustment variance applications, conditional use applications, site plan/plan of operation and other enforcement activities.
- Administer floodplain ordinances and make post-flooding site inspections for submittal of damage estimates to FEMA.
- Administer nonmetallic mining and reclamation ordinances mandated by Wis. Stat. § 295 for NR 135.
- Administer the county land records modernization program.
- Coordinate the county geographic information system (GIS) functions.

PUBLIC SERVICE ANSWERING POINT (PSAP)

Wisconsin Chapter, National Emergency Numbers Association (911)

While the organization of a PSAP is built around the concept of the emergency number and the need to respond to calls for service through 911, counties and municipalities throughout the state have used different models to respond to needs. A PSAP may be an independent department or a branch of a larger department, such as the sheriff's department, police department, fire department or emergency management department.

Under the provisions of Wis. Stat. § 146.70, you will find one or more PSAP in each of the counties in Wisconsin. The solutions developed by each PSAP have been as varied as the locations and governmental bodies that are responsible for them. Often referred to as a dispatch center or communications center, the PSAP will answer 911 calls, non-emergency calls and provide the radio communications required to dispatch appropriate services.

■ ORGANIZATION

County Departments & Offices

Over the past 25 years, automation has made the PSAP a hub of communication and computerized activity for all public safety needs. At the same time, each change in technology, such as wireless phones and Voice over Internet Protocol (VoIP), has made it more challenging for the PSAP to provide a service that is consistent with the expectations of the public. One mantra of service to be expected from all PSAPs is, "An emergency call to 911 will result in a prompt response."

Duties/Services:

- Answer 911 calls.
- Answer non-emergency calls.
- Record phone and radio conversations.
- Dispatch appropriate services (police, fire, EMS).
- Operate state TIME system for police (drivers' records/warrants).
- Operate Computer Aided Dispatch (CAD) system.
- Work with GIS information.
- Use electronic investigation to assist police.
- Maintain and verify warrant records.
- Provide public education.

REGIONAL PLANNING COMMISSIONS

Association of Wisconsin Regional Planning Commissions (AWRPC)

Counties form the foundation and boundaries of Wisconsin's regional planning commissions. Local governments petitioning the governors during the period of 1959 through 2007 created the nine regional planning commissions that exist today. Once authorized by the governor and their local governing bodies, a regional planning commission provides planning and coordination services for the physical, social and economic development of its region. Counties participating in a regional planning commission appoint commissioners and, in some cases, the governor and other local governments make appointments as well.

Under Wis. Stat. § 66.0309 regional planning commissions may undertake the following:

- Conduct all types of research studies; collect and analyze data; prepare maps, charts and tables; and conduct all necessary studies for the accomplishment of its other duties.
- Make plans for the physical, social and economic development of the region.
- Publicize and advertise its purposes, objectives and findings.
- Provide advisory services on regional planning problems to the local governmental units within the region and to other public and private agencies in matters relative to its functions and objectives.
- May act as a coordinating agency for programs and activities of local units and agencies as they relate to its objectives.

- ❑ Contract with any local unit within the region to make studies and offer advice on land use, thoroughfares, community facilities, public improvements and encouragement of economic and other developments.

Duties/Services:

- ❑ Prepare multi-county comprehensive regional plans and individual county, city, village and town comprehensive plans.
- ❑ Prepare plans that address special local government concerns, such as parks and recreation; downtown development; hazard mitigation; pavement management; capital improvement; lake management; coastal zone management; economic development; housing assistance; solid waste; sewer service area, and waterfront, harbor and transportation system plans.
- ❑ Provide business and housing revolving loan administrative services, business incubator services, venture capital investment management, civil engineering assistance, forest resource management, air and water quality management, traffic engineering and technology zone business tax credit administration.
- ❑ Administer Metropolitan Planning Organization, economic development district, water quality planning, coastal zone management and State Data Service Center duties as specified by various federal and state acts.
- ❑ Serve as a resource provider, facilitator or liaison on cost-sharing and resource-pooling projects among governments involving shared administrative positions, delivery of government services and joint projects.
- ❑ Write grants for public facilities, industrial parks, transportation access, park and recreation facilities, lake and river management projects, economic development projects, recreation trails and brownfield clean up.

REGISTER OF DEEDS

Wisconsin Register of Deeds Association (WRDA)

The office of register of deeds was established in Wisconsin in 1836. The 1848 Wisconsin Constitution established the office as a constitutional office. It also established the register of deeds office as a permanent element of the county-level governmental structure. Each county in Wisconsin has a register of deeds, with statutory duties outlined in Wis. Stat. § 59.43 and Ch. 69, which defines the duties regarding vital records. Other duties are dispersed throughout the statutes and/or are administrative.

Statutory Duties - mainly Wis. Stat. § 59.43(1):

- ❑ Appoint one or more deputy register(s) for the county (Wis. Stat. § 59.43(3)).
- ❑ Review, record (file as appropriate), scan, e-record and maintain all documents authorized by law to be recorded in the office of the register of deeds by endorsing upon each document the day, hour and minute of reception and the document number, volume and page where same is recorded. Collect a recording fee and also a transfer fee, if required. State transfer fees or exemption numbers on instruments of conveyance.

■ ORGANIZATION

County Departments & Offices

- ❑ Prepare documents for indexing, imaging and e-recording. Use quality control and established procedures. Store back-up copies. Maintain filed/recorded documents. Safely keep and return to the proper party the instruments that have been recorded and processed.
- ❑ Register, index and file all marriages, deaths and births occurring in the county. Perform all other duties related to vital statistics under Wis. Stat. §§ 69.05 and 69.07.
- ❑ Make and deliver to any person, on demand and upon payment of proper fees, certified and uncertified copies of official office records.
- ❑ Record plats, articles of incorporation, firm names and related documents as authorized to be recorded.
- ❑ File, index and maintain military discharges. Prepare certified copies for county veteran's service office and veterans or their dependents that need the copies to receive military benefits as per Wis. Stat. §§ 45.05, 59.535(1)(b).
- ❑ File and index documents pertaining to security interests in real property, crops or fixtures according to the provisions in Wis. Stat. §§ 409.501 to 409.528. File federal tax liens as per Wis. Stat. § 779.97.
- ❑ Record and index marital property agreements and related instruments as per Wis. Stat. § 766.58(11).
- ❑ Record all conveyances of mineral rights per Wis. Stat. § 706.057(7).

Administrative Duties:

- ❑ Interview, hire, train and supervise staff. Develop policies and procedures and monitor workflow and projects to ensure smooth operations of the office. Establish standards, expectations and goals. Develop effective lines of communication so that all staff is kept up-to-date with changes in statutes, administrative codes, ordinances and policies.
- ❑ Assist customers in learning the indexing systems in the register of deeds office so that they may search public records. All records are open for public inspection with the exception of non-marital births, military discharges and the confidential portion of marriage and death records.
- ❑ Make certain that efficient, safe and effective methods are utilized for recording, filing, indexing and capturing images and returning documents to customers. If unable to record or file a document, the register of deeds will explain to the customer, either in writing or verbally, the deficiencies of the document, which render it unrecordable according to state statutes.
- ❑ Prepare and administer the annual budget for the office and submit to county board for approval. Offer resolutions, as appropriate, for introduction by county board members in order to facilitate office operations, projects and goals.
- ❑ Prepare and send billing statements, conduct daily cash balance, make regular bank deposits and transmit all monies collected to the treasurer, including the portion submitted to the state.
- ❑ File monthly reports with various state agencies. Discuss issues and request information from various state agency representatives as needed.

- ❑ Act as liaison with the county board, other elected officials, county departments, professional customers and groups, such as title insurance company representatives, attorneys, surveyors, appraisers, realtors and the general public.
- ❑ Act as county land information officer (LIO) or liaison with the LIO, which has responsibility for modernizing and maintaining efficient and effective land records systems. Interact with land records professionals and GIS professionals from many disciplines.

More information can be found on the Wisconsin Register of Deeds Association Web site at www.wrdaonline.org.

REGISTER IN PROBATE OFFICE

Wisconsin Register in Probate Association (WRIPA)

Pursuant to Wis. Stat. § 851.71(1), the judge(s) of each county shall appoint a register in probate. Appointment may be made only with the approval of the chief judge. Registers in probate are statutorily responsible for various record-keeping functions of the court. As custodians of the courts' records, registers in probate play a significant role in Wisconsin's judicial system.

Duties/Services:

- ❑ Custodians of the Record. Record keeping for the courts is governed by statute and Wisconsin Supreme Court Rule. These require that registers in probate maintain court records of every proceeding in court so that the court record is a complete index or brief history of each proceeding from beginning to final disposition, including records of all proceedings of the court during its sessions. Registers in probate are responsible for the processing and model record keeping of all case types under their supervision, as well as maintaining the confidentiality of those records as set forth by statute and court order.
- ❑ Court Finances. Millions of dollars in fees and reimbursements are receipted and disbursed through the Registers' offices annually. Registers in probate strive to maintain this fiscal responsibility with accurate, efficient and effective accounting practices.
- ❑ Court Administration. Registers in probate have various administrative duties and work daily with a variety of people. District attorneys; law enforcement; the legal community; local, state and federal agencies; businesses and the general public rely upon the office of the register in probate to answer questions and assist in the administrative process of the various case types that fall under the jurisdiction of the register in probate office. Registers in probate provide an administrative link between the judiciary, the county board and the public. Registers also work closely with other court staff to ensure that the courts run smoothly and efficiently.
- ❑ The administrative, fiscal and public relations responsibilities of the registers in probate involve a variety of tasks. These include, but are not limited to, budgeting and administering county and court resources, developing policies and procedures, recruiting, training and maintaining competent staff, acting as liaison between local and state agencies, and assisting the public.

More information can be found on the Wisconsin Register in Probate Association's Web site at www.wriipa.org.

■ ORGANIZATION

County Departments & Offices

SHERIFF

Badger State Sheriff's Association (BSSA)

The office of sheriff is created by the Wisconsin Constitution, Article 6, Section 4. Duties of the sheriff are set forth by Wis. Stat. §§ 59.26 - 59.33. The sheriff is an elected office in each Wisconsin county. Elections for sheriff are held every four years and coincide with the years Wisconsin elects a governor.

The sheriff is the chief law enforcement officer in each county. The sheriff has the authority and duty to enforce state statutes throughout the county regardless of municipal boundaries. The sheriff operates the jail, attends to the circuit court(s), and attends to the service of court papers. Funding for the sheriff's office comes from a variety of sources, including property tax revenue, fees and state grants.

Duties/Services:

- Keep and preserve the peace in their respective counties.
- Conduct criminal investigations.
- Provide traffic enforcement.
- Respond to citizen calls for service, both emergency and non-emergency.
- Maintain and operate the county jail.
- Transport inmates.
- Attend upon the circuit court(s).
- Serve and execute all processes, writs, subpoenas and orders from the courts issued or made by lawful authority and delivered to the sheriff.

SOLID WASTE DEPARTMENTS

Wisconsin County Solid Waste Management Association (WCSWMA)

While many counties in Wisconsin have solid waste departments, some counties do not since those select counties most likely do not operate as the responsible unit (RU) for recycling programs and services in the county. Instead, they have a vertically-integrated private waste company in the area that provides an array of services. There are three essential components to solid waste services: collection, transportation and disposal of material.

Duties/Services:

- Own and operate county landfills.
- Own county landfills and contract out for services.
- Operate a port authority.
- Operate an incinerator program to reduce waste.
- Provide collection services.
- Serve as the RU for recycling programs and services. The county department may provide collection, transportation and disposal services or may opt to contract out a portion of these responsibilities.

- ❑ Provide a yard waste composting collection site for brush and yard waste. Counties utilize the collected materials by turning them into compost and other material that can be utilized by businesses and residents. Provide education to citizens.
- ❑ Provide collection and proper disposal services of household hazardous waste, including pharmaceutical waste, via clean sweep programs.

SURVEYOR

Wisconsin County Surveyors Association

The county surveyor position was one of the original Constitutional offices in county government. Today in Wisconsin, counties can appoint, elect or leave vacant the position of county surveyor. As of 2014, 32 counties have a full-time county surveyor (all appointed) and 30 counties choose to have a part-time county surveyor. Three counties (Iowa, Portage and Sauk) still elect their county surveyor – all three serving on part-time basis. The duties and responsibilities of the county surveyor vary greatly from County to County depending on whether the position is full or part-time. Statutorily, the duties of the county surveyor are set forth in Wis. Stat. §§ 59.45. The county surveyor may appoint and remove deputies at will by filing a certificate with the county clerk. The county surveyor plays a critical role in creating and maintaining accurate tax parcel mapping. In addition, the county surveyor may also serve as a department head, administrator or manager of other county departments or offices, such as real property listing, geographic information systems (GIS) or land information office. Currently, 13 county surveyors serve as the land information officer for their respective county. The county surveyor may also be a part of another county department, such as highway, land information, zoning, planning or land conservation.

The responsibilities of the county surveyor position can be broken down into five main components:

- ❑ Maintenance and preservation of the monuments of the Public Lands Survey System: This network of corner markers – set at roughly half mile intervals – is the key component in nearly every property description in Wisconsin. This network serves as the very foundation of all parcel mapping projects. County surveyors also provide protection for other geodetic survey marks.
- ❑ Maintain survey records: These unique records have been filed with the county surveyor's office since Wisconsin became a state. Today survey maps continue to be submitted to the county surveyor for filing. In many instances, these maps are being digitized and made available on county websites.
- ❑ Survey Map review: In most counties, the county surveyor reviews subdivision plats and certified survey maps. These maps are checked for compliance with Wisconsin Statutes and Administrative Code, as well as local codes and ordinances.
- ❑ Provide services and assistance to other county departments: This work includes providing survey services in the field (verification of existing monuments, field measurements, installation of new monuments and marking lines) as well as in the office (computations, analysis and writing real property descriptions and drafting of maps).

■ ORGANIZATION

County Departments & Offices

- ❑ Assist general public, private sector businesses and government agencies with land surveying and land ownership questions: The county surveyor is uniquely qualified to provide professional assistance when it comes to these varying and often complex and difficult questions.

Duties/Services:

- ❑ Remonumentation of Public Land Survey System corners.
- ❑ Preservation/maintenance of all established Public Land Survey System corners.
- ❑ Preservation of other geodetic monuments
- ❑ Index, file and maintain all survey records.
- ❑ Certified survey map review/subdivision plat review
- ❑ Provide support and assistance to other county departments.
- ❑ Conduct surveys for other county departments
- ❑ Accident and reconstruction surveys.
- ❑ Prepare legal descriptions.
- ❑ Testify in court as an expert witness.
- ❑ Volumes and quantities acquisition and construction staking
- ❑ Oversight of/assistance with GIS development.
- ❑ Assist and prepare parcel mapping.
- ❑ Provide ground control for orthophotography and LiDAR projects.
- ❑ May serve as the Land Information Officer (LIO) for the Land Records Modernization Program.
- ❑ Assist the public and other entities with land surveying and land ownership questions.

TREASURER

Wisconsin County Treasurers Association

The duties of the county treasurer are set forth by Wis. Stat. § 59.25, which includes receiving all monies from all sources belonging to the county, such as real estate taxes, state and federal aids, credits, grants and fees for services provided.

The treasurer's office pays out all monies belonging to the county on the order of the county board, including disbursement for expenses incurred, debt payment and the county's payroll.

Duties/Services:

- ❑ Receipt and deposit of all money; keeping daily balances of bank accounts.
- ❑ Imprint signatures of treasurer, county clerk and county board chair and distribute all checks, including payrolls for all county employees.
- ❑ Invest excess funds to maximize earnings while minimizing risk.
- ❑ Maintain record of all paid and delinquent taxes.
- ❑ Take tax deed on delinquent properties or assisting county clerk with same.

- Assist local municipal treasurers with January and February tax settlements.
- Furnish complete and balanced tax settlement sheets to the Department of Revenue by March 15.
- Settle with all taxing jurisdictions in August for all taxes collected and uncollected.
- Maintain all tax records in the county, print assessment rolls, tax rolls and assist local clerks to balance the same.
- Maintain current lottery credit file, seeking all eligible taxpayers.
- Administer ag-use penalty.
- Serve as treasurer for drainage districts.
- Deliver to county clerk duplicate receipts for all money received.
- Issue tax certificate to parcels with unpaid taxes September 1 each year.
- Imprint signatures and mail all disbursements.
- Distribute National Forest income to municipalities.
- Forward fines and forfeitures, court fees, real estate transfer fees and WLIP recording fees to the appropriate state department.
- Reconcile all bank accounts monthly.
- Pay electronically payroll withholding taxes to state and IRS in timely fashion.
- Report and publish unclaimed funds.
- Prepare and mail delinquent tax notices.
- Certify and maintain lottery credit files on real and personal property.
- Report and pay to DNR managed forest land and private forest crop settlement.
- Print tax sale book.
- Prepare and file sales and use tax reports.
- Certify and sign off that there are no unpaid taxes on properties for purpose of recording plats.
- Certify and sign off that there are no unpaid taxes on properties for timber cutting permits.
- Prepare yearly budget.

VETERANS SERVICES

County Veterans Service Officers Association of Wisconsin

The duties and responsibilities of the county veterans services office are set forth in Wis. Stat. § 45.80. The county veterans service officer (CVSO) is elected by the county board or appointed by the county executive/county administrator. The CVSOs primary function is to act as an advocate for veterans, their dependents and survivors. The CVSO is essentially the liaison between veterans and their benefits and are often the initial contact in the community for veterans services. CVSOs by statute are to perform their duties "separately and distinctly" from any other county department.

Duties/Services:

- Advise persons living in the service officer's county who served in the U.S. armed forces regarding any benefits to which they may be entitled, and assist in any complaint or problem arising out of such service and render to veterans and their dependents all possible assistance.

■ ORGANIZATION

County Departments & Offices

- Make reports to the county board as the county board requires.
- Cooperate with federal and state agencies that serve or grant aids and benefits to former military personnel and their dependents.
- Furnish information about veterans' burial places within the county.
- Disability compensation and/or pension benefits through veterans affairs (VA).
- Apply for G.I. Bill education benefits for veterans.
- Vocational rehabilitation for disabled veterans.
- Assist with federal and state home loans, personal loans and home improvement loans.
- Provide burial benefits (i.e. cemeteries, markers, burial flags, funeral honors, etc.).
- Provide dependent and survivor benefits (i.e. healthcare, education, pensions, etc.).
- Enrollment of veterans into VA medical system.
- Register discharge papers/DD-214's with county.
- Transportation to and from medical care.
- Help determine eligibility and complete paperwork for veterans' homes and long-term care.
- Provide and/or refer veterans to appropriate federal, state and non-governmental emergency financial aid.
- Assist homeless veterans.
- Assist with applications for Wisconsin Department of Veterans Affairs (WDVA) benefits.

VICTIM/WITNESS SERVICES

Wisconsin Victim/Witness Professionals (VWVP)

In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with the criminal justice system, Wis. Stat. Ch. 950 seeks to ensure that all victims and witnesses of crimes are informed of their rights and are provided assistance in the exercise of those rights. County-based victim/witness service programs, with support from the Wisconsin Department of Justice, are tasked by the county board with providing information and services to crime victims and witnesses as they progress through the criminal justice system.

A bill of rights for victim and witness rights (with additional citations) is outlined in Wis. Stat. § 950.04 and 950.06, and Wis. Stat. § 950.055 provides a general description of the minimum level of services to be provided to crime victims and witnesses. Additionally, Wis. Stat. § 950.07 requires that the county board, district attorney, local law enforcement agencies, local social service agencies, victim and witness offices and courts all cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled under this chapter.

In order to receive partial reimbursement by the state for program-related costs, counties must adhere to the Administrative Rules outlined in JUS 12 and provide all of the services outlined by statute. Additionally, victims/witness programs are encouraged to provide services specifically tailored to child victim/witnesses. By providing assistance to crime victims and witnesses and keeping them informed

about their rights, available resources and the criminal justice system in general, victim/witness programs contribute to successful prosecutions and case dispositions by the local district attorney. Victim/witness programs also provide efficient, streamlined referrals to needed resources and an easily accessible point of contact for the criminal justice system. County victim/witness programs ensure that community members who are affected by crime receive services in a manner that is professional, compassionate and fiscally responsible.

Duties/Services:

Wis. Stat. Ch. 950 & 949, JUS 12

General

- Court appearance notification services, including cancellation of appearances.
- Victim compensation and social services referrals, including witness fee collection, case-by-case referrals and public information.
- Escort and other transportation services related to the investigation or prosecution of the case if necessary or advisable.
- Case progress notification services.
- Assistance in providing the court with information pertaining to the economic, physical and psychological effect of the crime upon the victim of a felony.
- Employer intercession services.
- Expedited return of property services.
- Protection services.
- Family support services, including child and other dependent care services.
- Waiting facilities.

Child Victims & Witnesses-specific Services

- Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.
- Advice to the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. The services may include providing assistance in determinations concerning the taking of depositions by audiovisual means under Wis. Stat. § 908.08 or 967.04 (7) and (8) and the duty to expedite proceedings under Wis. Stat. § 971.105.
- Advice to the district attorney concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.
- Information about and referrals to appropriate social services programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

County Departments & Offices

WISCONSIN TECHNICAL COLLEGE DISTRICT BOARDS

Wisconsin Technical College District Boards

While not a formal county department or office, the *Wisconsin Statutes* provide an important role for almost all county board chairs in assuring Wisconsin technical colleges are well-governed. Wisconsin was the first state (1911) to create local schools for vocational, technical, and adult education. When the legislature transformed those schools into a system covering the entire state (Laws of 1965), counties largely organized and petitioned for the creation of districts that would become today's Wisconsin Technical College (WTC) System. As the petitioning authority, counties continue to play a major role in shaping the governing bodies of most WTCs.

County officials serve as the appointing authority for WTC district board members in 14 of the state's 16 districts. County board chairs serve as the appointing authority for 13 districts. The Milwaukee Area Technical College appointing authority includes its three county board chairs plus the Milwaukee County Executive. Any county having territory within these WTC districts is part of the district's appointing authority, ranging from two to 12 counties. School board presidents serve as the appointing authority in two college districts, Fox Valley and Southwest Wisconsin. Wis. Stats § 38.10. While it is common for technical and community college boards to be appointed, Wisconsin is unique in that the nine members are specifically selected to represent district employers, employees, a school district administrator, and a local elected official. Wis. Stat. § 38.08. In addition to these categories, board members are appointed based on a "plan of representation" that is established by the appointing county officials. The plan serves to balance board representation according to county population and other demographic factors.

The appointment process takes place beginning on or about March 1 annually or when required to fill a mid-term vacancy. WTC System district board members serve for staggered three-year terms. The appointment committee holds public hearings to consider the plan of representation and the appointments themselves. Candidates – whether first-time or incumbent – must submit applications and references, and must be interviewed in person by the appointment committee.

Information about the WTC System and links to local technical colleges are available at www.wtc-system.edu.

Wisconsin Open Meetings Law

■ Revised by Philip J. Freeburg, J.D., Local Government Law Educator,
from original chapter by James H. Schneider, J.D.

POLICY (WIS. STAT. § 19.81)

Declaration. The legislature declares that state policy is to:

- Enable the public to have “the fullest and most complete information regarding the affairs of government as is compatible with the conduct of government business.”
- Ensure that meetings of governmental bodies are held in places reasonably accessible to the public.
- Ensure that such meetings are open to the public unless otherwise expressly provided by law.

Interpretation. The Open Meetings Law is to be “liberally construed” (i.e. broadly interpreted) to achieve the purpose of open government.

DEFINITIONS; COVERAGE

“Governmental bodies” subject to the Open Meetings Law

- State & local bodies. A “governmental body” under the Open Meetings Law includes any state or local agency, board, commission, committee and council created by law, ordinance, rule or order. Wis. Stat. § 19.82(1). At the local level, bodies covered include county, village and town boards, city councils, school boards, and all their committees, commissions and boards. The term “rule or order” has been broadly interpreted by the attorney general to include formal and informal directives by a governmental body or officer that sets up a body and assigns it duties.¹ Wis. Stat. § 19.82(1). The term would include adopted resolutions or motions.
- Governmental & quasi-governmental corporations; other bodies. In addition to the above, the term “governmental body” under the law includes governmental and quasi-governmental corporations and certain other specified entities. Wis. Stat. § 19.82(1). A governmental or quasi-governmental corporation includes corporations created by the legislature or by other governmental bodies under statutory authorization.² Quasi-governmental corporations are not just those created by a governmental body, but are those corporations that resemble governmental corporations.³ Determining if an entity, such as an economic development corporation, resembles a governmental corporation depends on the totality of facts about the entity determined on a case-by-case basis.⁴ Thus no single factor is determinative, but courts have considered several factors: (1) whether the entity performs or serves a public function, contrasted with any purely private function, even if public function is merely recommending action to a governmental body,⁵ (2) the degree of public funding,⁶ (3) government access to the entity’s records,⁷ (4) express or implied representations that the entity is affiliated with government,⁸ and (5) extent government controls the entity’s operation, such as

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appointing directors, officers or employees, or officials serving in those positions.⁹

- Special and advisory bodies. Special study committees and other advisory committees set up by a local officer, the local governing body or by a body it has created are also subject to the law.¹⁰
- Collective bargaining. A local governmental body conducting collective bargaining is not subject to the law. However, notice of reopening a collective bargaining agreement must be given under the Open Meetings Law and final ratification of the agreement must be done in open session under such law. Wis. Stat. §§ 19.82(1) & 19.86.

"Meetings" under the Open Meetings Law

- Definition. A meeting is defined as a gathering of members of a governmental body for the purpose of exercising responsibilities and authority vested in the body. Wis. Stat. § 19.82(2). The courts apply a purpose test and a numbers test to determine if a meeting occurred.¹¹
- Purpose and numbers tests:
 - Purpose test. This test is met when discussion, information gathering or decision making takes place on a matter within the governmental body's jurisdiction. This test is met even if no votes are taken; mere discussion or information gathering satisfies the test. Notice is therefore required if the numbers test is also met.
 - Numbers test. This test is met when there are enough members to determine the outcome of an action. If the purpose test is also met, then a meeting occurs under the law. The numbers test may be met if fewer than one-half of the members of the body are present – if such number can determine the outcome. This is called a "negative quorum." For example, since amending an adopted municipal budget requires a two-thirds vote, a meeting occurs when one-third plus one of the members meet to discuss the matter.¹² (This number can block the required two-thirds vote to pass a budget amendment.)
- "Walking quorums"; telephone calls; email. A series of gatherings of members of a governmental body may cumulatively meet the numbers test, making a "walking quorum" in violation of the Open Meetings Law if the purpose test is also met.¹³ Telephone conference calls among members, when the two tests are met, qualify as meetings and must be held in such manner as to be accessible to the public, such as with use of an effective speaker system.¹⁴ (Telephone conference meetings should be used rarely and preferably held only after seeking the advice of legal counsel.)
 - Emails, instant messages, blogs and other electronic message forms could also be construed as a meeting of a governmental body. While courts have not addressed this specific issue, the state attorney general's office advises the issue turns on whether the communications are more like an in-person discussion, such as a prompt exchange of viewpoints by members, or more like a written communication, which generally does not raise Open Meetings Law concerns. Because of the risk of a violation, the attorney general's office strongly discourages the members of a governmental body from using email to communicate with members about issues within the body's realm of authority.¹⁵

- ❑ Multiple meetings. A meeting under the law may occur when a sufficient number of members of one governmental body attend the meeting of another body to gather information about a subject over which they have responsibility. Unless the gathering of the members is by chance, a meeting should be noticed for both bodies.¹⁶
- ❑ Presumption of a meeting. If one-half or more of the members of a governmental body are present, a statutory presumption exists that there is a meeting. This presumption can be overcome by showing that the purpose test was not met or that an exception applied. Wis. Stat. § 19.82(2).
- ❑ Certain gatherings not meetings. Chance gatherings, purely social gatherings and joint attendance at conferences, where the numbers test is met, are not meetings if business is not conducted (that is, if the purpose test is not met). Wis. Stat. § 19.82(2).
- ❑ Town & drainage board exceptions. Limited exceptions to when a “meeting” occurs under the Open Meetings Law have been created for town boards, town sanitary commissions and drainage boards gathering to inspect certain public works projects. Wis. Stat. § 19.82(2).

NOTICE & ACCESS

Accessibility. The place of meeting must be reasonably accessible to the public, including persons with disabilities. Wis. Stat. § 19.82(3). Accordingly, the facility chosen for a meeting must be sufficient for the number of people reasonably expected to attend.¹⁷

Public notice; posting. Public notice is required for every meeting of a governmental body. Wis. Stat. §§ 19.83 & 19.84. This notice may be accomplished by posting in places likely to be seen by the public; a minimum of three locations is recommended.¹⁸ The notice requirements of other applicable statutes must be followed. Although paid, published newspaper notices are not required by the Open Meetings Law, other specific statutes may require them.¹⁹ Wis. Stat. § 19.84. If notices are published, posting is still recommended. Posting to the Internet does not meet the statute’s posting requirement, but can be used to supplement the required notice postings.²⁰

Notice to media. Notice must be provided to news media who have requested it in writing. Wis. Stat. § 19.84(1)(b). Notice may be given in writing, by telephone,²¹ voice mail, fax or email. Written methods are preferable because they create a record that can be used to show compliance with this notice requirement. Notice must also be provided to the governmental unit’s official newspaper or, if there is no official newspaper, it must be sent to a news medium likely to give notice in the area.

Notice of certain disciplinary & employment matters. Actual notice must be given to an employee or licensee of any evidentiary hearing or meeting at which final action may be taken at a closed session regarding dismissal, demotion, licensing, discipline, investigation of charges or the grant or denial of tenure. Wis. Stat. § 19.85(1)(b). The notice must contain a statement that the affected employee or licensee has the right to demand that such hearing or meeting be held in open session.

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Timing of public notice. At least a 24-hour notice of a meeting is required; however, if 24 hours is impossible or impractical for good cause, a shorter notice may be given, but in no case may the notice be less than two hours. Wis. Stat. § 19.84(3). This “good cause” provision allowing short notice should be used sparingly and only when truly necessary.

Separate public notice required. A separate notice for each meeting is required. Wis. Stat. § 19.84(4). A general notice of a body’s upcoming meetings is not sufficient.²²

Public notice contents

- Items shown. Notice must specify the time, date, place and subject matter of the meeting. Wis. Stat. § 19.84(2).
- Specificity. The notice must be “reasonably likely to apprise members of the public and the news media” of the subject matter of the meeting. Wis. Stat. § 19.84(2). In other words, the notice must be specific enough to let people interested in a matter know that it will be addressed. The determination on specificity is made on a case-by-case basis using information available at the time of giving notice. What is reasonable specificity based on the circumstances involves three factors:
 - The burden of providing more detailed notice. This factor balances specificity with the efficient conduct of public business.
 - Whether the subject is of particular public interest. This factor considers the number of people interested and the intensity of the interest.
 - Whether the subject involves non-routine action that the public would be unlikely to anticipate. This factor recognizes that there may be less need for specificity with routine matters and more need for specificity where novel issues are involved.²³

The state attorney general advises that a generic meeting notice that contains expected reports or comments by a member or presiding officer should state the subjects that will be addressed in the comments or reports. The attorney general’s office further advises that subjects designated simply as “old business,” “new business,” “miscellaneous business,” “agenda revisions,” or “such other matters as are authorized by law” without further subject designation are inherently insufficient notice.²⁴

- Anticipated closed session. If a closed session on an item is anticipated, notice of such item and closed session must be given and the statutory citation allowing closure should be cited. Wis. Stat. § 19.84(2).
- Consideration limited. Consideration of matters in open and closed session is limited to the topics specified in the notice, except as noted in the following bulleted item. Wis. Stat. §§ 19.84(2) & 19.85(1)(intro.).
- Public comment. The notice may provide for a period of “public comment.” During this period the body may receive information from members of the public and discuss such matters (but may not take action on them unless properly noticed). Wis. Stat. §§ 19.83(2) & 19.84(2).

Openness, recording & photographing. Meetings must be open to all persons, except when closed for a specific purpose according to law (see following heading). Wis. Stat. §§ 19.81(2) & 19.83(1). In addition, the governmental body meeting must make a “reasonable effort to accommodate” persons wishing to record, film or photograph the meeting, provided that such acts do not interfere with the meeting or the rights of participants. Wis. Stat. § 19.90.

PERMITTED EXEMPTIONS FOR HOLDING CLOSED SESSIONS

Policy; strict construction of exemptions. The Open Meetings Law generally declares that it is state policy to provide the public with “the fullest and most complete information regarding the affairs of government as is compatible with the conduct of government business,” and that the law must be interpreted liberally to achieve this purpose (except for the forfeiture provisions, which are interpreted strictly). Wis. Stat. § 19.81(1) & (4). The law further provides that sessions must generally be open to the public. Wis. Stat. § 19.83(1). In light of these provisions, the exemptions in Wis. Stat. § 19.85, that allow closed sessions must be interpreted strictly and narrowly, rather than broadly.²⁵ If there is any doubt as to the applicability of an exemption or, if an exemption applies, the need to close the session should be resolved in favor of openness.²⁶ A closed session may be held only for one or more of the 13 specified statutory exemptions to the requirement that meetings be held in open session. The following nine exemptions are of interest to local government bodies.

“Case” deliberations. Deliberating on a case that was the subject of a quasi-judicial hearing. Wis. Stat. § 19.85(1)(a).

Note: This exemption should seldom be used in light of the narrow judicial interpretation given to it.²⁷

Employee discipline; licensing; tenure. Considering dismissal, demotion, licensing or discipline of a public employee or licensee, the investigation of charges against such person, considering the grant or denial of tenure, and the taking of formal action on any of these matters. The employee or licensee may demand that a meeting that is an evidentiary hearing or a meeting at which final action may be taken under this exemption be held in open session. Employees and licensees must be given actual notice of such hearing or meeting and their right to demand an open session. Wis. Stat. § 19.85(1)(b). If this demand is made, the session must be open.

Employee evaluation. Considering employment, promotion, compensation or performance evaluation data of an employee. Wis. Stat. § 19.85(1)(c).

Criminal matters. Considering specific applications of probation or parole, or strategy for crime prevention or detection. Wis. Stat. § 19.85(1)(d).

Purchases; bargaining. Deliberating or negotiating the purchase of public property, investment of public funds, or conducting other specified public business when competitive or bargaining reasons require a closed session. Wis. Stat. § 19.85(1)(e). The competitive or bargaining reason must relate to reasons benefitting the governmental body, not a private party’s desire for confidentiality.²⁸

■ LAWS OF GOVERNING

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Burial sites. Deliberating on a burial site if discussing in public would likely result in disturbance of the site. Wis. Stat. § 19.85(1)(em).

Damaging personal information. 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, except where the subject's right to open the meeting (see Employee discipline; licensing; tenure above) applies. This exemption may be used only if public discussion would be likely to have a substantial adverse effect on the reputation of the person involved. Wis. Stat. § 19.85(1)(f). Note that this exemption applies to "specific persons" rather than the narrower class of public employee or licensee (compare Employee discipline; licensing; tenure above).

Legal consultation. Conferring with legal counsel about strategy regarding current or likely litigation. Wis. Stat. § 19.85(1)(g).

Confidential ethics opinion. Considering a request for confidential written advice from a local ethics board. Wis. Stat. § 19.85(1)(h).

CONDUCTING PERMITTED CLOSED SESSIONS

Public notice. Notice of a contemplated closed session must describe the subject matter and should specify the specific statutory exemption(s) allowing closure. Wis. Stat. §§ 19.84(2) & 19.85(1). The notice of the subject of a closed session must be specific enough to allow the voting members and the public to discern whether the subject matter is authorized for closed session under Wis. Stat. §19.85(1).²⁹

Convening in open session. The body must initially convene in open session. Wis. Stat. § 19.85(1).

Procedure to close. To convene in closed session, the body's presiding officer must announce in open session, prior to the vote, the nature of the business to be considered in closed session and the specific statutory exemption(s) allowing closure. This announcement must be made part of the record. A motion to go into closed session must be made and a vote taken so that the vote of each member can be determined. Wis. Stat. § 19.85(1). The motion, second and vote must likewise be made a part of the record.

Limits on reconvening in open session. Once a body convenes in closed session it may not reconvene in open session for at least 12 hours, unless public notice of its intent to return to open session was given in the original notice of the meeting. Wis. Stat. § 19.85(2).

Unanticipated closed session. The body may go into an unanticipated closed session, if the need arises, on an item specified in the public notice.³⁰ In such case, the closed session item should be placed at the end of the agenda because the body cannot reconvene in open session without having given prior public notice. This provision on unanticipated closed sessions is very narrow. Whenever time allows, the 24-hour notice provision must be followed or, at a minimum, when there is good cause, the two-hour

notice can be used to give an amended notice of the meeting indicating a closed session on an item that was not previously anticipated.

Recording actions. As with open sessions, motions and votes made in closed session must be recorded. Wis. Stat. § 19.88. Whenever feasible, votes should be taken in open session.

Matters considered. The body may consider only the matter(s) for which the session was closed. Wis. Stat. § 19.85(1)(intro.).

VOTING & RECORDS

Requiring recording of each member's vote. A member of a governmental body may require that each member's vote be ascertained and recorded. Wis. Stat. § 19.88(2).

Recording votes; Public Records Law applicability. In general, motions, seconds and any roll call votes must be recorded, preserved and made available to the extent prescribed in the Public Records Law (Wis. Stat. §§ 19.32-19.39). Wis. Stat. § 19.88. Vote results, even if not by roll call, should likewise be recorded. Certain statutes may require that each member's vote be recorded. For example, motions, seconds and the votes of each member to convene in closed session must be recorded. Wis. Stat. § 19.85(1). In addition, various provisions outside of the Open Meetings Law require keeping minutes of proceedings.³¹

Narrow secret ballot exception. Although secret ballots are generally prohibited under the Open Meetings Law, a narrow exception allows a governmental body to use secret ballots to elect the body's officers. Wis. Stat. § 19.88(1). For example, a county board may elect its chairperson, a city council may elect its president and a committee may elect its chair (unless the committee chair is otherwise chosen) by use of a secret ballot. This narrow exception does not allow secret balloting to fill offices of the governmental unit, such as vacancies in the office of chief executive officer or on the governing body.

SUBUNITS (WIS. STATS. § 19.84(6))

Definition. Subunits are created by the parent body and consist of members who are also members of the parent body.³²

Applicability of Open Meetings Law; exceptions

- Generally, meetings of subunits are subject to the advance public notice requirements of the law.
- However, a subunit, such as a committee of a governing body, may meet without prior public notice during the parent body's meeting, during its recess or immediately after the meeting to discuss noticed subjects of the parent body's meeting.

Procedure. To allow the subunit to meet without prior public notice, the presiding officer of the parent body must publicly announce the time, place and subject matter (including any contemplated closed session) of the subunit in advance at the meeting of the parent body.

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Attendance at closed sessions. Members of the parent body may attend closed sessions of a subunit unless the rules of the parent body provide otherwise. Wis. Stat. §19.89.

PENALTIES & ENFORCEMENT (WIS. STAT. §§ 19.96 & 19.97)

Coverage. All members of a governmental body are subject to the law's penalty provisions. For example, if a committee consists of two governing body members and one citizen member, the law applies to the citizen member just as it does to the other members.

Penalties, liability

- Forfeitures, personal liability. Forfeitures (\$25-\$300) can be levied against governmental body members who violate the Open Meetings Law. No reimbursement for forfeitures is allowed.
- Voiding actions. A court may void any actions taken by the governmental body at a meeting in violation of the Open Meetings Law.
- Prevention & self-protection. Media and persons unhappy with actions of the body are the ones most likely to bring complaints of Open Meetings Law violations. Members can prevent problems by making sure, at the beginning of a meeting, that the meeting was properly noticed. Members should also be sure that topics considered were specified in the notice (unless they are brought up under the public comment agenda item³³) and that proper procedures for closed meetings are followed. Useful protection can come from a clerk's log documenting proper notice, particularly when shorter notice is given or the notice is amended. Members can protect themselves from personal liability by voting to prevent violations, such as by voting against going into an improper closed session. However, if a meeting goes forward over a member's motion or vote in objection, the objecting member may still participate in the meeting.

Bringing an enforcement action. A person may file a verified complaint (see following heading) with the district attorney (DA) to enforce the Open Meetings Law. If the DA does not begin a legal action within 20 days, the person may bring the action and receive actual costs and reasonable attorney fees if he or she prevails. The attorney general (AG) may also enforce the law, but these matters are almost always viewed as local matters for the DA to enforce, rather than of statewide concern appropriate for the AG.

REFERENCE & ADVICE

Refer to Wis. Stat. §§ 19.81-19.98 for the specific wording of the law; the statutes may be accessed on the Internet at <http://legis.wisconsin.gov/rsb/stats.html>. Advice on the Open Meetings Law is available from the county corporation counsel, a municipal attorney or the Wisconsin Department of Justice. *Wisconsin Open Meetings Law, A Compliance Guide (2010)*, by the Wisconsin Department of Justice, may be found on the Internet at <http://www.doj.state.wi.us/dls/open-government>. This guide contains a copy of a verified complaint. The UW-Extension Local Government Center (LGC) has CDs of its Open Government WisLine Series program on the Open Meetings Law and has a DVD on the law available through

the LGC's website, <http://lgc.uwex.edu>. For new developments in Open Meetings Law, follow the LGC's "Local Call" blog at <http://fyi.uwex.edu/localgovcenter>.

Thanks to reviewer Claire M. Silverman, J. D., *League of Wisconsin Municipalities*.

■ Sources, References & Notes

Endnotes

- 1 78 Op. Att'y Gen. 67,69 (1989).
- 2 66 Op. Att'y Gen. 113 (1977).
- 3 *State v. Beaver Dam Area Development Corp.*, 2008 WI 90, ¶44.
- 4 *Beaver Dam*, ¶45.
- 5 *Beaver Dam*, ¶72.
- 6 *Beaver Dam*, ¶66.
- 7 *Beaver Dam*, ¶78.
- 8 *Beaver Dam*, ¶¶73,74.
- 9 *Beaver Dam*, ¶75.
- 10 *State v. Swanson*, 92 Wis.2d 310 (1979), 78 Op. Att'y Gen. 67 (1989).
- 11 *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis.2d 77, 102 (1987); *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis.2d 553 (1993).
- 12 This was the situation in the *Showers* case, above.
- 13 *Showers*, 135 Wis.2d at 92, 100 (quoting *State ex rel. Lynch v. Conta*, 71 Wis.2d 662, 687 (1976)).
- 14 69 Op. Att'y Gen. 143 (1980).
- 15 See the *Compliance Guide*, p. 8, cited above under "Reference & Advice".
- 16 *Badke*, 173 Wis.2d 553, 561.
- 17 *Badke*, 173 Wis.2d 553, 580-81.
- 18 66 Op. Att'y Gen. 93 (1977).
- 19 66 Op. Att'y Gen. 230, 231 (1977); *Martin v. Wray*, 473 F. Supp. 1131, 1137 (E.D. Wis. 1979).
- 20 *AG-Peck Informal Correspondence*, April 17, 2006.
- 21 65 Op. Att'y Gen. Preface (1976).
- 22 63 Op. Att'y Gen. 509, 512-3 (1974).
- 23 *State ex rel Buswell v. Tomah*, 2007 WI 71, ¶¶29-31.
- 24 *Compliance Guide*, p. 12-13; *AG-Thompson Informal Correspondence*, September 3, 2004.; *AG-Ericson Informal Correspondence*, April 22, 2009.
- 25 *State ex rel. Hodge v. Town of Turtle Lake*, 180 Wis.2d 62, 70 (1993).
- 26 The open meeting exemptions permit conducting certain business in closed session, but do not require it. Therefore, they do not create a legal confidentiality privilege protecting disclosure of the content of a closed meeting, such as from discovery in a civil lawsuit. Any confidentiality requirements arise under other laws. *Sands v. Whitnall School Dist.*, 2008 WI 89 (2008).
- 27 See *Hodge*, above.
- 28 *State ex rel. Citizens v. City of Milton*, 2007 WI App 114, ¶¶ 14-15.
- 29 *Compliance Guide*, p. 14; see also *Buswell*, 2007 WI 71, ¶ 37 n.7.
- 30 66 Op. Att'y Gen. 106 (1977).
- 31 See, e.g., §§59.23(2)(a), 61.25(3) & 62.09(11)(b) requiring county, village and city clerks to keep a record of proceedings of their respective governing bodies.
- 32 74 Op. Att'y Gen. 38 (1985).
- 33 §§19.83(2) & 19.84(2). See brief discussion under "Notice & Access" at F. 5.

Wisconsin Public Records Law

■ Revised by Philip J. Freeburg, J.D., Local Government Law Educator,
from original chapter by James H. Schneider, J.D.

POLICY OF ACCESS

Local governments keep a variety of records dealing with citizens, businesses, and government activities. To further the goal of having an informed public, Wisconsin's policy is to give the public "the greatest possible information regarding the affairs of government. . ." ¹ Accordingly, the Public Records Law (Wis. Stat. §§ 19.32-19.37) must "be construed in every instance with a presumption of complete public access, consistent with the conduct of government business." The statute further provides that "denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied." ²

WHAT IS A PUBLIC RECORD?

A public record is a "record" of an "authority."

Items covered. A "record" is defined as "any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an *authority*" (defined below). The term "record" includes, "but is not limited to, written materials, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks." Wis. Stat. § 19.32(2). A website maintained by a public official about government business is also a public record, and access cannot be restricted.³

Items not covered. The term "record" "does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use, or prepared by the originator in the name of a person for whom the originator is working..." This exception is narrowly interpreted. If a draft or other preliminary document is used as if it were a final document, it is not excluded from the definition of record.⁴ Therefore, a "draft" report used to determine policy and notes circulated outside the chain of the originator's supervision, as well as notes used to memorialize a governmental body's activity, are records under the law.

"Record" does not include materials that are the personal property of the custodian and do not relate to the custodian's office. Consistent with that, the Wisconsin Supreme Court has determined that solely personal emails of public employees are not public records.⁵ However, the State Attorney General advises that if any part of an email sheds light on governmental functioning, then it is subject to disclosure.⁶

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Materials to which access is limited by copyright, patent or bequest are not public records, although in certain situations copyrighted material may, under the fair use doctrine, be considered a public record.⁷ Likewise, published materials of an authority available for sale and published materials available for inspection in a public library are not records. Wis. Stat. § 19.32(2).

"Authority." This term is broadly defined in the law to include state and local offices, elected officials, agencies, boards, commissions, committees, councils, departments and public bodies created by the constitution, statutes, ordinances, rules or orders. Wis. Stat. § 19.32(1).

Local governing bodies, offices, elected officials and their committees, boards, and commissions are covered. However, when a public official leaves office they are no longer an "authority."⁸ "Authority" also includes governmental corporations; quasi-governmental corporations; a local exposition district; a long-term care district; any court of law; and nonprofit corporations that receive more than 50 percent of their funds from a county, city, village or town and provide services related to public health or safety to those units. Other factors are applied on a case-by-case basis when determining if an organization is a quasi-governmental entity, such as whether it performs a governmental function, degree of government access to its records, express or implied representations of government affiliation, and extent of government control of the organization.⁹ Finally, subunits of the above are also authorities. Wis. Stat. § 19.32(1).

MANAGEMENT & DESTRUCTION OF RECORDS; REQUESTED RECORDS

Every public officer is the legal custodian of the records of his or her office. Wis. Stat. § 19.21. The statutes provide standards for retaining records and also provide procedures and timetables for transferring obsolete records to the Wisconsin Historical Society or destroying them. Tape recordings of meetings of local governmental bodies made solely for the purpose of making minutes may not be destroyed sooner than 90 days after the minutes of the meeting have been approved and published (if the body publishes its minutes). Wis. Stat. § 19.21(7).

The otherwise legal destruction of records cannot be used to undermine a person's public records request. No record may be destroyed until after a request to copy or inspect has been granted or until at least 60 days after the date of denial of such request (90 days in the case of a request by a committed or incarcerated person). Wis. Stat. § 19.35(5). The right to destroy a record is also stayed if access to the record is being litigated. However, the records retention law, Wis. Stat. § 19.21, is not a part of the Public Records Law and that law therefore provides no remedy for a requester seeking destroyed records, such as deleted emails.¹⁰ Also, it is not a prohibited destruction of a requested public record if an identical copy is destroyed.¹¹

WHAT IS A LOCAL PUBLIC OFFICE?

This term is used in Public Records Law provisions concerning an authority's posting requirement and a requester's right of access to job applications and to other records with personally identifiable information. "Local public office" covers elected officers of local governmental units; a county administrator or administrative coordinator or a city or village manager; appointed local officers and employees who serve for a specified term; and officers and employees appointed by the local governing body or executive or administrative head who serve at the pleasure of the appointing authority. Wis. Stat. § 19.32(1dm). The term also includes appointed offices or positions in which an individual serves as head of a department, agency or division of the local governmental unit.

The term does not include independent contractors; persons who perform only ministerial (i.e. nondiscretionary) tasks, such as clerical workers; and persons appointed for indefinite terms who are removable for cause. Contracted municipal assessors are independent contractors and are therefore not subject to the law.¹² However, local governments may not avoid responsibilities under the Public Records Law by contracting for collection, maintenance and custody of public records and directing document requesters to that contractor.¹³ Also, the term "local public office" does not include any "municipal employee" as defined under the municipal employment relations law. Wis. Stat. § 111.70(1)(i).

The public records provisions on posting and personally identifiable information also apply to a "state public official." Wis. Stat. § 19.32(4). This term includes a municipal judge.

LEGAL CUSTODIANS (WIS. STAT. § 19.33)

In general. The legal custodian maintains public records and has the duty to make decisions regarding access to the records. Wis. Stat. §§ 19.21&19.33. Specific statutes outside of the Public Records Law may establish record-keeping duties. For example, local clerks are designated as records custodians.

Elected officials. The Public Records Law provides in general that elected officials are the custodians of the records of their offices, unless they have designated an employee of their staff to act as custodian. Chairpersons and co-chairpersons of committees and joint committees of elected officials, or their designees, are the custodians.

Other custodians; designation. If one authority (other than an elected official, or committee or joint committee of elected officials, above) appoints another authority or provides administrative services for the other authority, the "parent" authority may designate the legal custodian for such other authority.

State and local authorities (other than elected officials and their committees and joint committees, above), under the Public Records Law, must designate custodians in writing and provide their names and a description of their duties to employees entrusted with records under the custodian. If the statutes do not designate a custodian and the authority has not designated one, the highest ranking officer and the chief administrative officer, if any, are the authority's custodian. An authority or legal custodian (other

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than members of local governmental bodies) must designate a deputy legal custodian to respond to requests for records maintained in a public building.

Records in a public building. The legal custodian of records kept in a public building must designate one or more deputies to act in his or her absence. This requirement does not apply to members of any local governmental body.

OFFICE HOURS & FACILITIES; COMPUTATION OF TIME

Posted notice required - Wis. Stat. §19.34(1). Each authority must adopt and prominently display a notice describing its organization, the times and locations at which records may be inspected, the identity of the legal custodian, the methods to request access to or copies of records and the costs for copies. Wis. Stat. §19.34(1). If the authority does not have regular office hours at the location where records are kept, its notice must state what advance notice is required, if any, to inspect or copy a record. Wis. Stat. §19.34(2)(c). The posted notice must also “identify each position of the authority that constitutes a local public office or a state public office” (see definition above).¹⁴

The posting requirement, however, does not apply to members of the legislature or to members of any local governmental body.

Hours - Wis. Stat. § 19.34(2). An authority with regular office hours must, during those hours, permit access to its records kept at that office, unless otherwise specified by law. If the authority does not have regular office hours at the location where the records are kept, it must permit access upon 48 hours written or oral notice. Alternatively, an authority without regular hours at the location where records are kept may establish a period of at least two consecutive hours per week for public access to records, and may require 24 hours advance written or oral notice of intent to inspect or copy a record within the established access period.

If a record is sometimes taken from the location where it is regularly kept, and inspection is allowed at the location where the record is regularly kept upon one business day's notice, inspection does not have to be allowed at the occasional location.

Computation of time - Wis. Stat. § 19.345. Under the public records provisions (Wis. Stat. §§ 19.33-19.39), when the time in which to do an act (e.g. provide a notice) is specified in hours or days, Saturdays, Sundays and legal holidays are excluded from the computation.

Facilities - Wis. Stat. § 19.35(2). The authority must provide a person who is allowed to inspect or copy a record with facilities comparable to those used by its employees to inspect, copy and abstract records during established office hours. The authority is not required to provide extra equipment or a separate room for public access. The authority has the choice of allowing the requester to photocopy the record or providing a copy itself. Wis. Stat. §19.35(1)(b). In order to protect the original the custodian may refuse to allow the requester to use his or her own photocopier to copy the record.¹⁵

PRIORITY & SUFFICIENCY OF REQUEST

Response to a public records request is a part of the regular work of the office. An authority must “as soon as practicable and without delay” fill a public records request or notify the requester of the decision to deny the request in whole or in part, and the reasons for that decision. Wis. Stat. § 19.35(4). In some cases, the custodian may delay the release of records to consult legal counsel. Specified time periods apply for giving notice of the intended release of certain records containing personally identifiable information on employees and on individuals who hold public office (see below).

A request must reasonably describe the record or information requested. Wis. Stat. § 19.35(1)(h). A request is insufficient if it has no reasonable limitation as to subject matter or length of time represented by the request. For example, a request for a copy of 180 hours of audio tape of 911 calls with a transcription of the tape and log for each transmission was a request without reasonable limitation that may be denied.¹⁶ Although filling a request may involve a large volume of records, at some point a broad request becomes so excessive that it may be rejected.¹⁷

FORM OF REQUEST & RESPONSE; SEPARATION OF INFORMATION

A request may be either oral or written. Wis. Stat. § 19.35(1)(h). If a mailed request asks that records be sent by mail, the authority cannot require the requester to come in and inspect the records, but must mail a copy of the requested record, assuming that it must be released and any required prepayment of fees (see below) has been made. Wis. Stat. § 19.35(1)(h). Also, a response that requires unauthorized costs or conditions is considered a denial even though the response does not use words like “deny” or “refuse.”¹⁸

A request that is granted seldom presents a problem. Denials of requests, however, must be made in accordance with legal requirements. An oral request may be denied orally, unless a demand for a written reply is made by the requester within five business days of the oral denial. Wis. Stat. § 19.35(4)(b).

The request must be in writing before an action to seek a court order or a forfeiture may be started. A written request must receive a written denial stating the reasons for the denial and informing the requester that he or she may file a “mandamus” action (or request the district attorney or attorney general to file such action) in the local circuit court seeking review of the custodian’s determination and an order to release the record (see “Enforcement and Penalties” below). Wis. Stat. § 19.35(4)(b).

If a record contains both information that is subject to disclosure and information that is not, the information that may be disclosed must be provided and the confidential information deleted. Wis. Stat. § 19.36(6).

FORM OF RECORD

Photocopies. Many requested records can be photocopied. The authority may either provide a photocopy of such record to the requester or allow the requester to make the copy (as noted above under “Facilities”). Wis. Stat. § 19.35(1)(b). If the form of the record does not permit photocopying, the requester

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may inspect the record and the authority may permit the requester to photograph the record. Wis. Stat. § 19.35(1)(f). If requested, the authority must provide a photograph.

Tapes. For audiotapes, the authority may provide a tape copy or a transcript, if the requester so requests. Wis. Stat. § 19.35(1)(c). When an audiotape or handwritten record would reveal a confidential informant's identity, the authority must provide a transcript, if the record is otherwise subject to inspection. Wis. Stat. § 19.35(1)(em). A requester has a right to a copy of a videotape that is as substantially as good as the original. Wis. Stat. § 19.35(1)(d).

Digital records. An authority must provide relevant data from digital records in "an appropriate format." It is not necessary for a requester to examine the exact information in an authority's electronic database. This is because the data may be at risk of damage or unwitting exposure of confidential information by complete access to the database. For example, providing property assessment information for all properties in the database as PDF documents satisfied a request for all property data from the digital record.¹⁹

Putting records into comprehensible form. If the record is in a form not readily comprehensible, the requester has the right to information assembled and reduced to written form, unless otherwise provided by law. Wis. Stat. § 19.35(1)(e). Except to put an existing record into a comprehensible form, the authority has no duty to create a new record by extracting and compiling information. Wis. Stat. § 19.35(1)(L). However, the custodian does have to separate information that may be disclosed from that which is being withheld. Wis. Stat. § 19.36(6).

Published records; restrictions on access. A record (other than a videotape) that has been published or will be promptly published and available for sale or distribution need not be otherwise offered for public access. Wis. Stat. § 19.35(1)(g). Note that the definition of "record" above does not include published materials of an authority available for sale and published materials available for inspection at a public library. Wis. Stat. § 19.32(2).

Protecting records from damage. Reasonable restrictions may be placed on access to protect irreplaceable or easily damaged original records. Wis. Stat. § 19.35(1)(k).

WHAT FEES MAY BE CHARGED?

Fees that do not exceed the "actual, necessary and direct" cost of copying, photographing or transcribing a record and mailing or shipping it may be charged to a requester of public records, unless another fee is set or authorized by law. Wis. Stat. § 19.35(3). The authority may reduce or waive fees if that is in the public interest. The Department of Justice recommends a copy charge of about 15¢ per page, and cautions against charges exceeding 25¢ per page, unless a statute provides otherwise or higher costs can be justified.²⁰ As an example of a statute providing for a different fee, the register of deeds may charge \$2 for the first page and \$1 for additional pages for copies of records under Wis. Stat. § 59.43(2)(b). Also, the register, with the approval of the county board, may enter into a contract for the provision of records in electronic format at a price set as provided under Wis. Stat. § 59.43(2)(c).²¹

A copy fee may include a charge for the time it takes a clerical worker to copy the records on a copy machine.²² Costs associated with locating a record may be passed on to the requester only if the location costs are \$50 or more. Computer programming expense required to respond to a request may be charged.²³

Prepayment of fees may be required only if the fee exceeds \$5. However, if the requester is a prisoner who has failed to pay any fee for a previous request, the authority may require prepayment of both the previous and current fee. The cost of a computer run may be imposed as a copying fee, but not as a location fee.²⁴ The cost of separating confidential parts of a record from the parts to be released may not be charged.²⁵

INSPECTION OF PUBLIC RECORDS

Any requester has a right to examine a public record unless access is withheld according to law. As noted above, the presumption is that public records are open. Access to a public record, in accordance with Wis. Stat. §§ 19.35(1)(a) & 19.36(1), may be denied when:

- A state or federal law exempts the record from disclosure.
- The courts have established a limitation on access. This is known as a "common law exemption."
- The harm to the public interest from disclosure outweighs the public interest in inspection. This requires the custodian to perform the "*balancing test*" (below), often with the advice of legal counsel. The balancing test is also a common law doctrine.

LIMITATIONS ON ACCESS UNDER THE COMMON LAW; THE BALANCING TEST

The statute provides that common law principles (i.e. the law developed in published court decisions) on the right of access to records remain in effect. Wis. Stat. § 19.35(1)(a). For example, the common law provides an exception to public access to a district attorney's prosecution files.²⁶ Most importantly, the common law has created the concept of the balancing test (below) to weigh the competing public interests in making the disclosure decision. In a recent case, the court ruled that the above common law exception for records in the custody of the district attorney's office does not allow another custodian, in this case the sheriff's department, to withhold the same record held by the district attorney's office, although the sheriff's department may withhold the record for a sufficient policy reason after applying the balancing test.²⁷

The balancing test. Often no statutory provision or common law ruling answers the question of whether access to a public record may be denied. When the custodian has some doubt about whether to release the record, the balancing test must be performed. Under the common law, public records may be withheld only when the public interest in nondisclosure outweighs the public interest in disclosure.²⁸ The reasons for nondisclosure must be strong enough to outweigh the strong presumption of access.²⁹ The custodian must state specific policy reasons for denying access; a mere statement of legal conclusion is

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inadequate.³⁰ In explaining the denial, it may be helpful to cite statutory provisions (such as the following, if applicable) that indicate a public policy to deny access, even if these provisions may not specifically answer the access question.

Before refusing a request in an unclear situation, or granting a request that may invade a person's privacy or damage a person's reputation, the custodian should consult the county corporation counsel or municipal attorney. The office of the attorney general may also be consulted (see final heading). With the enactment of legislation on personally identifiable information in 2003 (below), the law is clearer than it had been before on these matters.

Using Open Meetings Law exemptions in the balancing test. The statutory exemptions under which a governmental body may meet in closed session under Wis. Stat. § 19.85(1) of the Open Meetings Law indicate public policy, but the custodian must still engage in the balancing test and may not merely cite such an exemption to justify nondisclosure.³¹

These exemptions include the following: deliberating concerning a quasi-judicial case; considering dismissal, demotion, licensing or discipline of a public employee; considering employment, promotion, compensation or performance evaluation of a public employee; considering crime prevention or crime detection strategies; engaging in public business when competitive or bargaining reasons require closure; considering financial, medical, social or personal histories or disciplinary information on specific persons which would be likely to have a substantially adverse effect on the person's reputation if disclosed; and conferring with legal counsel for a governmental body on strategy for current or likely litigation.

EXAMPLES OF STATUTORY LIMITATIONS ON ACCESS

Records requested by prisoners & committed persons - Wis. Stat. § 19.32. The definition of "requester" itself results in a limitation on access. "Requester" does not include any person who is "committed" or "incarcerated" unless the person requests inspection or copies of a record that contains specific references to that person or to his or her minor children if the physical placement of the children has not been denied to the person. Release of records to a committed or incarcerated person is, of course, subject to records that are otherwise accessible under the law.

Certain law enforcement investigative records - Wis. Stat. § 19.36(2). Access to these records is limited where federal law, as a condition for receipt of aid, provides limitations.

Computer programs; trade secrets - Wis. Stat. §§ 19.36(4) & (5). The computer program itself is not subject to inspection and copying, although the information used as input is, subject to any other applicable limitations. See also "Digital records" above under the heading "Form of Records."

Identities of applicants for public positions - Wis. Stat. § 19.36(7). Records that would reveal the identities of job applicants must be kept confidential if the applicants so request in writing. However, the identities of "final candidates" to "local public office" may not be withheld. A final candidate is one who

is one of the five most qualified applicants, or a member of the final pool if that is larger than five. If there are fewer than five candidates, each one is a final candidate.

Identities of law enforcement informants - Wis. Stat. § 19.36(8). Information that would identify a confidential informant must be deleted before a requester may have access to the record.

Employee personnel records & records of public officers (see below) - Wis. Stat. §§ 19.36(10)-(12).

Financial identifying information - Wis. Stat. § 19.36(13).

Personally identifiable data that contains an individual's account or customer number with a financial institution (such as credit card numbers, debit card numbers and checking account numbers) may not be released, unless specifically required by law.

Ambulance records - Wis. Stat. § 146.50(12). Records made by emergency medical technicians and ambulance service providers are confidential patient healthcare records, although certain information on the run is open to inspection.

Patient healthcare records - Wis. Stat. §§ 146.81-146.84.

Law enforcement officers' records of children & adult expectant mothers - Wis. Stat. §§ 48.396 & 938.396.

Public library user records - Wis. Stat. § 43.30.

Certain assessment records. Personal property tax returns are confidential, except that they are available for use before the board of review. Wis. Stat. § 70.35(3). Property tax income and expense information, used in property valuation under the income method, are confidential. Wis. Stat. § 70.47(7)(af). Real estate transfer returns are also confidential, with specified exceptions. Wis. Stat. § 77.265.

Personnel files - Wis. Stat. § 103.13. An employer (whether a government or non-government employer) must allow an employee to inspect his or her personnel documents, at least twice a year, within seven working days after the request is made. The employee may submit a statement for the file that disputes information in it, if the employee and employer cannot agree to a correction. The statement must be attached to the disputed portion of the record and included with the record when released to a third party. Exceptions to the employee's right to inspect include the following records: investigations of possible criminal offenses; letters of reference; test documents, other than section or total scores; staff management planning materials, including recommendations for future salary increases and other wage treatments, management bonus plans, promotions and job assignments, and other comments and ratings; personal information that would be a "clearly unwarranted invasion" of another person's privacy; and records relevant to a pending claim in a judicial proceeding between the employee and employer.

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PERSONALLY IDENTIFIABLE INFORMATION

Introduction. In 1991 the legislature created provisions in the Public Records Law to help preserve the privacy of individuals. Generally, a person who is the subject of a record with personally identifiable information has greater access to that record than is otherwise available under the Public Records Law and may seek corrections to the information contained in the record. The 1991 legislation also created a subchapter on “personal information practices.”

The section following this one covers important legislation designed to provide clarification on access to certain records containing personally identifiable information, primarily in the records of employees and local public officers.

Definitions - Wis. Stat. § 19.32. “Personally identifiable information” means “information that can be associated with a particular individual through one or more identifiers or other information or circumstances.” Wis. Stat. §§ 19.32(1r) & 19.62(5). (See the following exceptions for what this term does *not* include.) A “person authorized by the individual” means a person authorized in writing by the individual to exercise the rights to access records with personally identifiable information; the individual’s parent, guardian or legal custodian, if the individual is a child; the guardian of an individual adjudicated incompetent in this state; or the personal representative or spouse of a deceased individual. Wis. Stat. § 19.32(1m).

Right to inspect: exceptions - Wis. Stat. § 19.35(1)(am). In addition to a requester’s general right to inspect public records under Wis. Stat. § 19.35(1)(a)(above), a requester, or a person authorized by that individual, has the right to inspect and copy any record containing personally identifiable information pertaining to the individual that is maintained by an authority. However, this right of access does *not* include the following records:

- Investigations, etc. Any record with information collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding, or any record collected or maintained in connection with any such action or proceeding.³²
- Security issues. Any record with personally identifiable information that, if disclosed, would:
 - Endanger an individual’s life or safety.
 - Identify a confidential informant.
 - Endanger the security of specified facilities and institutions, including correctional, mental health and other secured facilities, a center for the developmentally disabled and a facility for the care of sexually violent persons.
 - Compromise the rehabilitation of a person incarcerated or detained in one of the facilities listed above.
- Record series. Any record which is part of a record series, as defined in Wis. Stat. § 19.62(7), that is not indexed or arranged so that the authority can retrieve it by use of an individual’s name, address or other identifier.

Contractors' records - Wis. Stat. §§ 19.36(3) & (12). The general right to access records of a contractor produced under a contract with an authority under Wis. Stat. § 19.36(3) does not apply to personally identifiable information. Such information on an employee of a contracting employer subject to the prevailing wage law cannot generally be accessed, except information on employee work classification, hours of work and wage or benefit payment information may be released.

Responding to requests - Wis. Stat. § 19.35(4)(c). The authority must follow a specific procedure when it receives a request from an individual or a person authorized by the individual to inspect or copy a record with personally identifiable information pertaining to the individual. In these cases the requester generally has a right to inspect and copy a record. Wis. Stat. § 19.35(1)(am). However, this right does not extend to a number of situations and records (see "Right to inspect; exceptions" and "Contractors' records" above).

The authority must first determine whether the requester has a right, under the general Public Records Law, to inspect or copy the record with personally identifiable information. If the requester has such a right, the authority must grant the request. This determination may involve the balancing test (above). If the authority determines that the requester does not have the right to inspect or copy the record under the general Public Records Law, then the authority must determine whether the requester has the right to inspect or copy the record under the specific provisions of the law applicable to personally identifiable information, and grant or deny the request accordingly.

If the requested record contains information pertaining to a record subject other than the requester, or other than the record subject in a situation where the request is by a person authorized by that record subject, the provisions of Wis. Stat. § 19.356 on notice to a record subject apply. See the section below on "Personally Identifiable Information on Employees, Local Public Officers & Other Records Subjects."

Correction of personally identifiable information - Wis. Stat. § 19.365. An individual or person authorized by the individual may challenge the accuracy of personally identifiable information pertaining to the individual in records to which they have access by notifying the authority in writing of the challenge. The authority must then either correct the information or deny the challenge. If the challenge is denied, the authority must notify the challenger of the denial and allow the individual or person authorized by the individual to file a concise statement with the disputed portion of the record setting forth the challenge to the information. Only a state authority is required to give reasons for a denial of a challenge. The challenge provision does not apply to records transferred to an archival depository or when a specific state or federal law governs challenges to the accuracy of the record.

Personal information practices - Wis. Stat. §§ 19.62-19.80. Wis. Stat. § 19.65 provides that an authority must develop rules of conduct for employees who collect, maintain, use, provide access to or archive personally identifiable information and must ensure that these persons know their duties relating to protecting personal privacy.

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Wis. Stat. §§ 19.65-19.80 also have provisions concerning the accuracy of data collection and the sales of names or addresses. An authority that maintains personally identifiable information which may result in an adverse determination against an individual's rights, benefits or privileges must, to the greatest extent possible, collect the information directly from the individual, or verify the information, if obtained from another person. Wis. Stat. § 19.67. Also, an authority may not sell or rent a record containing an individual's name or address of residence, unless specifically authorized by state law. Wis. Stat. § 19.71.

PERSONALLY IDENTIFIABLE INFORMATION ON EMPLOYEES, LOCAL PUBLIC OFFICERS & OTHER RECORD SUBJECTS

Introduction. The release of records affecting the privacy or reputational interests of public employees has involved a good deal of legal uncertainty. Under Wisconsin Supreme Court decisions, custodians have been required to notify the subject when such records were requested and proposed to be released to give the record subject an opportunity to seek judicial review.³³ However, as explained in the prefatory note to 2003 Wis. Act 47, those cases did not establish criteria for determining when privacy and reputational interests are affected or for giving notice to affected parties. Nor did these cases address the issue of whether the same analysis applies to records of private employees.

The legislature in Wis. Stat. § 19.356, codified these cases in part, but under this act the rights apply only to a limited set of records. The statute's procedure for notice and review now applies to four categories of records relating to employees, local public officers and other record subjects:

- Records of "record subjects" (i.e. persons who are the subject of personally identifiable information in public records) which, as a general rule, do not require notice prior to allowing access.
- Records of employees and other record subjects that may be released under the balancing test only after providing the record subject with notice of impending release of the record and the right to judicial review prior to release of the record.
- Records of local public officers that may be released under the balancing test only after providing notice to the record subject of the impending release of the record and the right to augment the record.
- Records of employees and local public officers that are generally closed to access.

General rule regarding notice & judicial review - Wis. Stat. § 19.356(1). An authority is not required to notify a record subject prior to allowing access to a record containing information on the person, except as authorized in Wis. Stat. § 19.356 (see following) or as otherwise provided by statute. Nor is the record subject entitled to judicial review prior to release of the record. (Of course, a specific statute concerning access may apply and the authority may need to conduct the balancing test.) The statute goes on to provide when notice and an opportunity for judicial review are required prior to release of records.

When notice to employee/record subject required; opportunity for judicial review - Wis. Stat. §§ 19.356(2)-(8). The authority must provide written notice to the record subject, as specified in the statute, prior to releasing any of the three following types of records containing personally identifiable information pertaining to the record subject if the authority decides to allow access to the record. The authority in its notice must specify the requested records and inform the record subject of the opportunity for judicial review. The notice must be served on the record subject within three days of deciding to allow access; service is accomplished by certified mail or by personal delivery. The records requiring notice prior to release are as follows:

- Disciplinary matters. A record containing information relating to an employee that is created or kept by the authority and is the result of an investigation into a disciplinary matter involving the employee or the possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer. The attorney general interprets this provision to be limited to disciplinary matters or possible employment-related violations by an employee of the employer in which the record was prepared by the employer, rather than by another entity.³⁴ In addition, if a private employer is involved, the attorney general reasons that the private employee may block access to the record, as noted below under "Records of other employers."
- Subpoenas; search warrants. A record obtained by the authority through a subpoena or search warrant. Note that this provision does not limit its applicability to employees; it applies in general to any record subject to whom the record pertains.³⁵
- Records of other employers. A record prepared by an employer other than an authority if the record contains information relating to an employee of that employer, "unless the employee authorizes the authority to provide access to that information." The attorney general interprets this provision to mean that an authority may not release personally identifiable information pertaining to the employee of a private employer unless the employee consents.³⁶

The requirement of notice prior to release of the above information does not apply to the release of the information to the employee or to the employee's representative under the statute relating to an employee's access to his or her own personnel records (Wis. Stat. § 103.13); nor does the notice requirement apply to release of the information to a collective bargaining representative.

Within 10 days of service of the notice of the intended release of the records, the record subject may start a court action to have the access to the records blocked. The statute provides a procedure for expedited judicial review of the authority's decision to release records and also provides that the records may not be released within 12 days of sending a notice or during judicial review periods.

When notice required to person holding local public office; opportunity for comments - Wis. Stat. § 19.356(9). A different approach applies to the release of records with personally identifiable information pertaining to a person who holds a "local public office" (e.g. a governing body member, elected or appointed officer or department head) or a "state public office" (e.g. a municipal judge). Under this

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procedure, the authority must inform the record subject within three days of the decision to release the records to the requester. This notice is served on the officer by certified mail or personal delivery and must describe the records intended for release and the officer's right to augment the record. Note that the officer (unlike an employee under the previous heading) who is the record subject does not have the right of judicial review. Instead, the officer who is the record subject has the right to augment the record that will be released to the requester with his or her written comments and documentation. This augmentation of the record must be done within five days of receipt of the notice.

Employee/officer records generally closed to public access.

- Employee records closed to public access - Wis. Stat. § 19.36(10). An authority is generally prohibited from releasing the records listed below. However, this general prohibition on release does not apply if another statute specifically authorizes or requires release. Nor does the prohibition on release apply to an employee or his or her representative accessing the employee's personnel records under Wis. Stat. § 103.13 or to a collective bargaining representative for bargaining purposes or pursuant to a collective bargaining agreement. The employee records which are not generally open to public access are as follows:
 - *Addresses, telephone number, social security number.* Information concerning an employee's home address, home email address, home telephone number and social security number, unless the employee authorizes the authority to provide access to such information.
 - *Current criminal/misconduct investigations.* Information relating to the current investigation of a possible criminal offense or possible misconduct connected with an employee's employment, prior to disposition of the investigation.³⁷
 - *Employment examinations.* Information pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited.
 - *Employee evaluations.* Information relating to one or more specific employees used by an authority or the employer for staff management planning, including performance evaluations, recommendations for future salary adjustments or other wage treatments, management bonus plans, promotions, job assignment, letters of reference, or other comments or ratings relating to employees.
- Local public officers' records closed to public access. Wis. Stat. § 19.36(11). As with employees, certain records on individuals holding a local public office, as broadly defined, may not generally be released to the public. However, this general prohibition on release does not apply if another statute specifically authorizes or requires release. Nor does the prohibition on release apply to a local public officer who is an employee accessing his or her personnel records under Wis. Stat. § 103.13. The records on local public officers which may not generally be open to public access are as follows:
 - *Addresses, telephone number, social security number.* Information concerning the individual's home address, home email address, home telephone number and social security number, unless the individual authorizes the authority to provide access to such information.

- *Exceptions.* This prohibition on release, however, does not apply to the release of the home address of an individual who holds an *elective* public office or who, as a condition of employment as a local public officer, is required to reside in a specific location. This exception allows the public to verify that its elected officials and other officers or high-level employees (who fill a position that falls under the definition of "local public office") subject to residency requirements actually live in the community or meet the applicable requirement.
- Employee records under public works contracts. Wis. Stat. § 19.36(12). Unless access is specifically authorized or required by a statute, an authority may not provide access to a record prepared or provided by an employer performing work on a project in which the employer must pay prevailing wages if the record contains the name or other personally identifiable information relating to an employee of the employer, unless the employee authorizes access. Wis. Stat. § 19.36(12). However, as previously noted, information concerning an employee's work classification, hours of work and wage and benefit payments received for work on the project may be released.

ENFORCEMENT & PENALTIES

The Public Records Law provides for forfeitures, court orders, actual and punitive damages to enforce the law. Wis. Stat. § 19.37.

Court order to allow access. A person who has made a written request for access to a public record may bring an action for a writ of mandamus asking the court to order release of withheld information. This procedure does not require following the notice-of-claim law applicable to many suits against the government. In contrast to the procedure under the Open Meetings Law, a person seeking release of a public record does *not* have to initially refer the matter to the district attorney. However, the person may request the district attorney or the attorney general to seek mandamus. A committed or incarcerated person has no more than 90 days after denial of a record request to begin an action in court challenging the denial.

A requester who prevails in whole or substantial part may receive reasonable attorney fees, actual costs, and damages of at least \$100. The costs and fees must be paid by the authority or the governmental unit of which it is a part and are not the personal liability of the custodian or any other public official. A committed or incarcerated person, however, is not entitled to the minimum \$100 damages, although the court may award damages. Also, in a request for personally identifiable information under Wis. Stat. § 19.35(1)(am) (above) there is no minimum recovery of \$100 in damages. Instead, actual damages may be recovered if the court finds that the authority acted in a willful or intentional manner.

The law also provides for the award of punitive damages to the requester if the court finds that the authority or legal custodian arbitrarily and capriciously denied or delayed their response or charged excessive fees. However, punitive damages may only be awarded as part of a mandamus action to compel delivery of records, not as a separate claim for violation of the Public Records Law after documents were released.³⁸

Public Records Law

Forfeiture. The district attorney or the attorney general may seek a forfeiture against an authority or custodian who arbitrarily and capriciously denies or delays response to a records request or charges excessive fees. The statute provides for a forfeiture of not more than \$1,000 along with the reasonable costs of prosecution.

REFERENCE AND ADVICE

Local officials who have questions on the Public Records Law should contact their unit’s legal counsel. Also, any person may contact the attorney general (the Wisconsin Department of Justice) to request advice on the Public Records Law. Wis. Stat. § 19.39.

Refer to Wis. Stat. §§ 19.31-19.39 for the specific wording of the law; the statutes may be accessed on the Internet at <http://folio.legis.state.wi.us>. There is a *Wisconsin Public Records Law, Compliance Outline (2012)*, by the Wisconsin Department of Justice, which may be found on the Internet at <http://www.doj.state.wi.us/dls/open-government>.

The UW-Extension’s Local Government Center (LGC) has CDs of its Open Government *WisLine Series* program on the Public Records Law. Check the LGC website - <http://lgc.uwex.edu>. On the LGC website you will also find the *Fact Sheet #7: The Wisconsin Public Records Law, April 2004*, on which this chapter is based. For new developments in Public Records Law, follow the LGC’s “Local Call” blog at <http://fyi.uwex.edu/localgovcenter>, or go to the LGC’s website and click on the “Local Call” link.

Information on public records management and destruction may be found on the websites of the Wisconsin Historical Society and the Public Records Board of the Department of Administration. Go to www.wisconsinhistory.org and enter “Local Government Records Program” in the search box. This links to the *Wisconsin Municipal Records Manual* and other information of interest. At www.doa.state.wi.us, enter “Public Records Board” (search without quotation marks).

■ Sources, References & Notes

Endnotes

- 1 Wis. Stat. §19.31.
- 2 *Ibid.*
- 3 See the *Compliance Outline*, p. 3, cited above under “Reference & Advice”. Opinion of Att’y Gen. to Gail Peckler-Dziki, OAG 6-09 (December 22, 2009).
- 4 *Fox v. Bock*, 149 Wis. 2d 403 (1989); 77 Op. Att’y Gen. 100, 102-03 (1988).
- 5 *Schill v. Wis. Rapids Sch. Dist.*, 2010 WI 86. ¶137.
- 6 Memorandum from J.B. Van Hollen, Attorney General, to Interested Parties (July 28, 2010), available online at http://www.doj.state.wi.us/news/files/Memo_InterestedParties-Schill.pdf
- 7 *Zellner v. Cedarburg School District*, 2007 WI 53, ¶¶ 25-31, 56.
- 8 *AG-Seiser and Bunge Informal Correspondence, October 4, 2010.*
- 9 *State v. Beaver Dam Area Development Corp.*, 2008 WI 90, ¶¶44-45, 66, 72-75, 78.
- 10 *Gehl v. Connors*, 2007 WI App 238, ¶¶ 12-15.
- 11 *Stone v. Board of Regents of the University of Wisconsin*, 2007 WI App 223, ¶¶ 11-27.
- 12 *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶78.
- 13 *WIREdata, Inc. at* ¶89.
- 14 Wis. Stat. §19.34(1).
- 15 *Grebner v. Schiebel*, 240 Wis.2d 551 (Ct. App. 2001).
- 16 *Schopper v. Gebring*, 210 Wis. 2d 209 (Ct. App. 1997).

- 17 *Gehl v. Connors*, 2007 WI App 238, ¶¶ 17-24.
- 18 *WIREdata, Inc. v. Village of Sussex*, 2007 WI App 22 ¶57; application distinguished by *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69 ¶55 (*WIREdata II*).
- 19 *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶¶ 97-98.
- 20 See the *Compliance Outline*, p. 50, cited above under "Reference and Advice"
- 21 *Opinion of Att'y Gen. to John Muench, Barron County Corp. Counsel*, 1-03 (October 2, 2003).
- 22 72 Op. Att'y Gen. 150 (1983).
- 23 *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶107.
- 24 72 Op. Att'y Gen. 68 (1983).
- 25 *Milwaukee Journal v. City of Milwaukee*, 2012 WI 65 ¶58.
- 26 *State ex rel. Richards v. Foust*, 165 Wis. 2d 429 (1991).
- 27 *Portage Daily Register v. Columbia Co. Sheriff's Department*, 2008 WI App 30, ¶¶ 15-22.
- 28 Wis. Stat. § 19.35(1)(a); *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 683 (1965).
- 29 *Matter of Estates v. Zimmer*, 151 Wis. 2d 122 (Ct. App. 1989).
- 30 *Village of Butler v. Cohen*, 163 Wis. 2d 819 (Ct. App. 1991).
- 31 §§§ 19.35(1)(a); *Zelner v. Cedarburg School District*, 2007 WI 53, ¶¶ 47-58.
- 32 *Seifert v. School District of Sheboygan Falls*, 2007 WI App 207, ¶¶ 35-36.
- 33 *Woznicki v. Erickson*, 202 Wis. 2d 178 (1996); and *Milwaukee Teachers' Education Association v. Milwaukee Board of School Directors*, 227 Wis. 2d 779 (1999).
- 34 *Opinion of Att'y Gen. to James R. Warren*, OAG 1-06 (August 3, 2006).
- 35 *Ibid.*
- 36 *Ibid.*
- 37 *Zelner v. Cedarburg School District*, at ¶ 32-39.
- 38 *The Capital Times Co. v. Doyle*, 2011 WI App 137.

Conflicts of Interest & Ethics

■ *Atty. Andrew T. Phillips and Atty. Patrick C. Henneger,
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CONFLICT OF INTEREST

The law prohibiting public officials from engaging in official conduct that produces a private benefit is long-standing. The leading treatises recognize the common law doctrine that a public officer is forbidden from placing himself or herself in a position where private interest conflicts with public duty. (63A Am. Jur. 2d Public Officers and Employees, 322 (1984))

State law prohibits public officials from using their official position for personal gain. Wis. Stat. § 946.13 prohibits a public officer from negotiating, bidding for, or entering into a contract in which he or she has a private pecuniary interest if, at the same time, he or she has a role to play in an official capacity in the making of that contract. *State v. Venema*, 2002 WI App 202, ¶ 13, 257 Wis. 2d 491, 650 N.W.2d 898. Wis. Stat. § 946.13 is directed not at corruption but at conduct presenting an opportunity for corruption. Because a public officer's judgment may be impaired when the officer transacts government business in which he or she has a personal economic interest, the statute attempts to prevent public officers from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with the danger that they will advance a private interest rather than a public good. *Id.*

According to Wis. Stat. § 946.13, any public officer or public employee who engages in the following conduct is guilty of a Class I felony:

- In his private capacity, negotiates or bids for or enters into a contract in which he has a private pecuniary interest, direct or indirect, if at the same time he is authorized or required by law to participate in his capacity as such officer or employee in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion on his part. Wis. Stat. § 946.13(1)(a).

The elements necessary to prove a violation of this provision are: (1) that the defendant was a public officer or employee; (2) that the defendant negotiated, bid for or entered into a contract in a private capacity; (3) that the defendant had a private pecuniary interest in the contract; and (4) that the defendant was authorized or required by law to participate in the making of the contract in a capacity as a public officer or employee. WIS JI-CRIMINAL 1740.

- In his capacity as such officer or employee, participates in the making of a contract in which he has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on his part. Wis. Stat. § 946.13(1)(b).

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The elements necessary to prove a violation of this provision are: (1) that the defendant was a public officer or employee; (2) that the defendant participated in the making of a contract in a capacity as a public officer or employee OR that the defendant, in a capacity as a public officer or employee, performed a function requiring the exercise of discretion in regard to a contract; and (3) that the defendant had a private pecuniary interest in the contract. WIS JI-CRIMINAL 1741, 1742.

There are several exceptions to the prohibition in Wis. Stat. § 946.13. The most common exception is contracts that do not involve receipts and disbursements by the state or its political subdivision aggregating more than \$15,000 in any year. Wis. Stat. § 946.13(2)(a).

Court cases and attorney general opinions addressing various applications of the statute have concluded the following:

- A county board supervisor who votes to pay vouchers for county purchases from store owned by supervisor violates Wis. Stat. § 946.13(1)(b). OAG 42-87. However, the supervisor can avoid a violation of subsection (b) by abstaining from voting on the vouchers related to his business.
- A village board member may not accept a community development block grant program loan in excess of the statutory sum or perform work for a third person who has obtained a loan under the program in excess of the statutory sum. 76 Op. Att’y. Gen. 278 (1987).
- County board supervisor violates Wis. Stat. § 946.13(1)(a) by selling land owned by the supervisor to the county where the value of the sale exceeds the statutory limit. OAG 22-87.
- County board member, employed by a law firm which is retained by a third party to negotiate the purchase of a county facility, may avoid a violation through abstention from acting on the contract in an official capacity and through noninvolvement in negotiating, bidding or entering the contract with the county on behalf of the third party. 75 Op. Att’y. Gen. 172 (1986).
- A contract does not have to be in existence for a violation to occur. Because negotiation ordinarily precedes the formation of a contract, and it is these pre-contractual bargaining relationships that raise the specter of self-interest if one of the parties is also a public official, the negotiation itself may trigger a violation. *State v. Venema*, 2002 WI App 202, 257 Wis. 2d 491, 650 N.W.2d 898 (Ct. App. 2002).

The question often arises as to the legal consequences associated with a contract that was procured in violation of the conflict of interest prohibition. According to Wis. Stat. § 946.13(3), a contract entered into in violation of this section is void and the state or the political subdivision on whose behalf the contract was made incurs no liability thereon. (Contract includes a “conveyance.”)

The attorney general has provided guidance on how an official can avoid violating Wis. Stat. § 946.13, such as:

- Abstaining from voting on or debating the contract or any matter relating to the contract;
- Refrain from personally or by agent negotiating or entering into the contract in a private capacity;

- ❑ Refrain from performing in regard to the contract some official function requiring the exercise of discretion. 52 Op. Att’y. Gen. 367 (1963).

However, abstaining from voting does not avoid a violation of Wis. Stat. § 946.13(1)(a) because a violation only requires authority to act, not actual action. *State v. Venema*, 2002 WI App at ¶ 11, n. 3; 76 Op. Att’y Gen. at 93. Moreover, performance of some official function requiring the exercise of an official’s discretion with regard to the contract either before or after execution violates Wis. Stat. § 946.13. 63 Op. Att’y. Gen. 44 (1974).

ETHICS FOR LOCAL GOVERNMENT OFFICIALS

Wis. Stat. § 19.59 sets forth a code of ethics for local public officials. A “local public official” is defined as a person who holds “local public office.” “Local public office” as defined by Wis. Stat. § 19.42(7w) includes:

- ❑ An elective office of a local governmental unit such as a county.
- ❑ A county administrator or administrative coordinator.
- ❑ An appointive office or position of a local governmental unit in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.
- ❑ An appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor.

Wis. Stat. § 19.59 prohibits the following actions:

1. A local public official cannot use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. Wis. Stat. § 19.59(1)(a).

“Immediate family” is defined as an individual’s spouse and an individual’s relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support. Wis. Stat. § 19.42(7).

An individual is “associated” with an organization if the individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent. Wis. Stat. § 19.42(2).

A local public official is not prohibited from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by Chapter 11.

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2. A public official cannot solicit or accept from any person, directly or indirectly, anything of value if it could be reasonably expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local official. Wis. Stat. § 19.59(1)(b).
 - "Anything of value" includes money, property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not cover "hospitality" unrelated to government business.
 - Exception to permit a local public official to engage in outside employment. Wis. Stat. § 19.59(1)(b).
 - In interpreting a parallel statute applicable to state officials (Wis. Stat. § 19.45(3)), the Wisconsin Ethics Board interprets "expected to influence" in the following manner: "It would be unreasonable to expect a gift of not more than \$25 to influence an individual's judgment. It would be unreasonable to expect a favor or service from an individual or from an organization without any special interest in the actions of a public body to influence an official affiliated with that body."

***Note: The local ethics code for public officials does not include a provision parallel to Wis. Stat. § 19.56 allowing state elected officials to "retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting" related to a topic of legislative, administrative, executive or judicial processes or proposals.*
3. No local public official may give or withhold his or her vote or influence or refrain from taking official action with respect to any proposed or pending matter upon condition that any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to a candidate, a political party, any person who is subject to a registration requirement under Wis. Stat. § 11.05, or any person making a communication that contains a reference to a clearly identified local public official holding an elective office or to a candidate for local public office. Wis. Stat. § 19.59(1)(br).
4. No local public official may take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest. Wis. Stat. § 19.59(1)(c)1.
 - In interpreting parallel state statute applicable to state officials [Wis. Stat. § 19.46(1)(a)], the Wisconsin Ethics Board issued a memorandum indicating that a state official may participate in an action "...even though the action will affect the official or an organization with which the official is associated..." as long as:
 - The official's action affects a whole class of similarly situated interests;
 - Neither the official's interest nor the interest of a business or organization with which the official is associated is significant when compared to all affected interests in the class; and
 - The effect of the official's actions on the interests of the official or of the related business or organization is neither significantly greater nor less than upon other members of the

class. See Wisconsin Ethics Board memorandum *Private Interest in Official Action* (November 1, 1989).

- In 2007 Wis. Eth. Bd. 09, the Ethics Board advised:
 - If a matter before the board is reasonably likely to have more than a trivial, insignificant, or insubstantial financial impact on a supervisor, then the supervisor should abstain from discussion, deliberation, and votes on the matter.
 - If the matter before the board will have no effect or only a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor should participate.
 - If reasonable people cannot reasonably foresee the effect of a board of supervisors' action on a supervisor's financial interests or disagree about whether the effect will be positive or negative or will be substantial or insignificant then the supervisor's financial interest is too speculative to deny the supervisor's participation in related discussion, deliberation, and votes, and the supervisor should participate unless, in the supervisor's judgment, to do so would undermine public confidence in the decision or in government.
5. No local public official may 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 official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated. Wis. Stat. § 19.59(1)(c)2.

Wis. Stat. § 19.59(1)(c) does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance. Wis. Stat. 19.59(1)(d).

The application of the ethics statute to local officials creates problems in the insurance arena. For example, the State Ethics Board has analyzed the statute in the following manner in dealing with insurance issues:

- 2000 Wis. Eth. Bd. 02 – In the case of a county board supervisor who has been selected as a member of an insurance company's board of directors by the company's organizer, the supervisor should not participate in county board consideration, discussion, or votes to award a contract to the company or to change county policy to permit the purchase of services from the company.
- But see 2000 Wis. Eth. Bd. 04 – The Ethics Board advises that in the case of a local official who has been elected to serve on the board of directors of a municipal mutual insurance corporation by a government approved process, to represent the local government's interests on the board, Wis. Stat. § 19.59 does not bar the official from participating in the local government's consideration, discussion, or votes to award a contract to or change government policy to permit the purchase of services from the corporation.

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Both criminal and civil penalties may apply if a local public official violates the ethics code. Criminal penalties apply if the violation is found to be intentional. The penalty for intentionally violating Wis. Stat. § 19.59(1)(a), (b) or (c) is a fine of not less than \$100 nor more than \$5,000 or imprisonment not more than one year in the county jail or both. Wis. Stat. § 19.58(1)(a). Any person who intentionally violates Wis. Stat. § 19.59(1)(br) is guilty of a Class I felony punishable by a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months.

One sure way for an official to insulate him or herself from liability under the ethics statute is to take advantage of the mechanism in the statutes that allows for requests for advisory opinions. In short, an individual may request an advisory opinion, in writing, either personally or on behalf of an organization or governmental body pursuant to Wis. Stat. § 19.59(5)(a). Such request should be directed to the county or municipal ethics board, if there is one or, in the absence of a county or municipal ethics board, a county corporation counsel or attorney for a local governmental unit.

It is prima facie evidence of intent to comply with Wis. Stat. § 19.59 or any ordinance enacted under Wis. Stat. § 19.59 when a person refers a matter to a county or municipal ethics board or a county corporation counsel or attorney for a local governmental unit and abides by the advisory opinion, if the material facts are as stated in the opinion request.

Pursuant to Wis. Stat. § 19.59(6), the Government Accountability Board (formerly the Wisconsin Ethics Board) must review (but is not required to respond to) opinion requests concerning the statutory local code of ethics submitted by certain requestors:

- Any county corporation counsel.
- Any attorney for a local governmental unit.
- Any “statewide association of local governmental units.”

COUNTY ETHICS CODES (WIS. STAT. § 19.59(1M)-(4))

Any county, city, village or town may enact an ordinance establishing a code of ethics for public officials and employees of the county or municipality and candidates for county or municipal elective offices.

Any such ordinance must specify the positions to which it applies. The ordinance may apply to members of the immediate family of individuals who hold positions or who are candidates for positions to which the ordinance applies. An ethics ordinance may contain any of the following provisions:

- A requirement for local public officials, other employees of the county or municipality and candidates for local public office to identify any of the economic interests specified in Wis. Stat. § 19.44.
- A provision directing the county or municipal clerk or board of election commissioners to omit the name of any candidate from an election ballot who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.
- A provision directing the county or municipal treasurer to withhold the payment of salaries or expenses from any local public official or other employee of the county or municipality who fails to disclose his or her economic interests in accordance with the requirements of the ordinance.

- ❑ A provision vesting administration and civil enforcement of the ordinance with an ethics board appointed in a manner specified in the ordinance.
- ❑ Provisions prescribing ethical standards of conduct and prohibiting conflicts of interest on the part of local public officials and other employees of the county or municipality or on the part of former local public officials or former employees of the county or municipality.
- ❑ A provision prescribing a forfeiture for violation of the ordinance in an amount not exceeding \$1,000 for each offense. A minimum forfeiture not exceeding \$100 for each offense may also be prescribed.

INCOMPATIBILITY OF PUBLIC OFFICES

COMMON LAW DOCTRINE THAT EXISTS INDEPENDENT OF ANY STATUTORY CONFLICT OF INTEREST.

Two offices or positions are incompatible if there are potential conflicts of interest between the duties of the offices or positions.

General Tests For Incompatibility

- ❑ If one of the offices or a position is subordinate to the duties of the other in one or more significant ways, such as being subject to the disciplinary, appointment or removal power of the superior office or position, or the superior office regulates the compensation of the other, then the two may be said to be incompatible.
- ❑ The mere physical inability of a person to perform the duties of both offices or the position and the office does not, of itself, have any bearing on incompatibility. It is the character of the offices, rather than the physical condition or ability of the individual holding the position and the office or the two offices, that is determinative.
- ❑ Where the existence of the second office precludes the continued existence of the first office or position, no incompatibility exists. For example, if several school districts were dissolved and consolidated into a newly-created district, a school board member of any of the dissolved districts could ordinarily become a school board member of the newly-formed school district.
- ❑ A situation that involves two different persons in two different positions does not raise questions of incompatibility of offices and positions, i.e., one spouse occupies an office or position and the other spouse assumes an apparently incompatible office or position. Although the incompatibility doctrine is not implicated, there may be serious potential conflicts of interest. See *Otradovec v. City of Green Bay*, 118 Wis. 2d 393, 347 N.W.2d 614 (Ct. App. 1984); 58 Op. Att'y. Gen. 247 (1969); 74 Op. Att'y. Gen. 50 (1985); 76 Op. Att'y. Gen. 156 (1987).

When an individual accepts an office that is incompatible with the one he or she presently holds, the consequences are severe. The individual vacates the first office by operation of law. *State v. Jones*, 130 Wis. 572, 110 N.W. 431 (1907); *but see also Otradovec v. City of Green Bay*, 118 Wis. 2d 393, 347 N.W.2d 614 (Ct. App. 1984)(the public officer can choose which position to keep).

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Offices Found to be Incompatible

- ❑ County supervisor and county employee. Wis. Stat. § 59.10(4) provides that "[n]o county officer or employee is eligible for election or appointment to the office of supervisor, but a supervisor may also be a member of a committee, board or commission appointed by the county executive or county administrator or appointed or created by the county board, a town board, a mosquito control district, the common council of his or her city, the board of trustees of his or her village or the board of trustees of a county institution appointed under s. 46.18."
- ❑ County supervisor and county administrative coordinator. OAG 01-11.
- ❑ Conflict can also exist between a public office and a position. For example, the office of alderperson was found to be incompatible with the position of residential appraiser in assessor's office. *Otradovec v. City of Green Bay*, 118 Wis. 2d 393, 347 N.W. 2d 614 (Ct. App. 1984).
- ❑ County board member and county/city hospital board member are incompatible offices. 66 Op. Att'y. Gen. 145 (1977).
- ❑ Town clerk and town treasurer determined incompatible. 68 Op. Att'y. Gen. 393 (1970).
- ❑ School board member and school district employee are incompatible. Unpublished Op. Att'y. Gen. May 31, 1985; See also *Tarpo v. Bowman Public School District No. 1*, 232 N.W.2d 67 (N.D. 1975); *Vistocky v. City Council of City of Garfield*, 273 A. 2d 597 (1971).
- ❑ Town board member and sanitary district commission member determined incompatible. 69 Op. Att'y. Gen. 108 (1980).
- ❑ Office of coroner and deputy coroner are incompatible with position of city police officer. 78 Wis. Op. Att'y. Gen. 178 (1989).

Offices Found to be Compatible

- ❑ Office of county supervisor and position of assistant state public defender are compatible. 75 Op. Att'y. Gen. 178 (1986).
- ❑ Register of deeds found compatible with office of school board member. Unpublished Op. Att'y. Gen. (1977).
- ❑ Offices of county assessor and town supervisor are compatible. 63 Op. Att'y. Gen. 599 (1974).
- ❑ Village president and supervisory deputy sheriff determined compatible. 76 Op. Att'y. Gen. 156 (1974).
- ❑ School board member and chairperson of town board held probably compatible. 74 Op. Att'y. Gen. 50 (1985).
- ❑ School board member and position as unpaid coach in the school district are likely compatible. 2006 Wis. Eth. Bd. 01.

Public Bidding Requirements

■ Atty. Andrew T. Phillips and Atty. Patrick C. Henneger,
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Counties, under certain circumstances, are required to put contracts out for bid and award such contracts to the lowest responsible bidder. What follows is an analysis of the statutory bidding requirements for counties.

The public policy goals of encouraging legitimate competition; guarding against favoritism, improvidence, extravagance, fraud and corruption, and securing the best work or supplies at the lowest price practicable are reflected in the enactment of bidding statutes such as Wis. Stat. § 66.0901 (bidding procedure applicable to all political subdivisions) and Wis. Stat. § 59.52 (29). See *Blum v. Hillsboro*, 49 Wis. 2d 667, 671, 183 N.W. 2d 47 (1971) citing McQuillin, *Municipal Corporations*, 29.29.

Wis. Stat. § 59.52(29)(a) provides the framework for the analysis of a county's statutory obligation to let contracts for public work. The statute states:

Public work, how done: public emergencies. (a) All public work, including any contract for the construction, repair, remodeling or improvement of any public work, building, or furnishing of supplies or material of any kind where the estimated cost of such work will exceed \$25,000 shall be let by contract to the lowest responsible bidder. Any public work, the estimated cost of which does not exceed \$25,000, shall be let as the board may direct. If the estimated cost of any public work is between \$5,000 and \$25,000, the board shall give a class 1 notice under Ch. 985 before it contracts for the work or shall contract with a person qualified as a bidder under s. 66.0901(2). A contract, the estimated cost of which exceeds \$25,000, shall be let and entered into under s. 66.0901, except that the board may by a three-fourths vote of all the members entitled to a seat provide that any class of public work or any part thereof may be done directly by the county without submitting the same for bids. This subsection does not apply to public construction if the materials for such a project are donated or if the labor for such a project is provided by volunteers. This subsection does not apply to highway contracts which the county highway committee or the county highway commissioner is authorized by law to let or make.

Based upon this statute, there are four classifications of contracts. The first class consists of those "public work" contracts having a value of less than \$5,000. Contracts falling within this classification need not be advertised or let in accordance with any competitive bidding structure. The second class consists of those contracts that are not for the provision of "public work." Like the contracts in the first

Public Bidding

class, these contracts need not be advertised or let in accordance with any competitive bidding structure. The third class consists of those “public work” contracts having a value of between \$5,000 and \$25,000. While these contracts need not be let to the lowest responsible bidder, the statute mandates that a county publish a class 1 notice prior to awarding the contract or, in the alternative, award the contract to a qualified bidder under Wis. Stat. § 66.0901. The fourth and final class of contracts consists of those “public work” contracts having a value in excess of \$25,000. These contracts must be let to the “lowest responsible bidder” in accordance with Wis. Stat. § 66.0901 unless the county board approves by three-fourths vote to perform the public work directly by the county without submitting the same for bids.

The Wisconsin Supreme Court has stated that “the determination of the question of who is the lowest responsible bidder does not rest in the exercise of an arbitrary and unlimited discretion, but upon a bona fide judgment, based upon facts tending to support the determination.” *Aqua-Tech v. Como Lake Protect. & Rehab. Dist.*, 71 Wis.2d 541, 549, 239 N.W.2d 25 (1976). In fact, a bidder may ask the court to issue an injunction if the reviewing court determines that the bidding authority acted in an arbitrary or unreasonable manner in deciding to award the contract to one other than the low monetary bidder. *Id.*, 71 Wis.2d at 551–52. An unsuccessful bidder could pursue injunctive relief and recover its reasonable and necessary expenditures in preparing its bid, plus the costs of obtaining the bonds required by the specifications, but not its loss of profit. *Id.* at 553-54.

Notably, Wis. Stat. § 59.52(29)(a), which ordinarily requires competitive bidding on county public work projects, “does not apply to highway contracts which committee or the county highway commissioner is authorized by law to let or make.” *Id.*; see also OAG 5-09. Instead, Wis. Stat. §§ 83.03 and 83.04 apply to the advertisement of county highway contracts.

Wis. Stat. § 83.03 authorizes a county board to construct or improve or repair any highway or bridge in the county. Wis. Stat. § 83.04 provides that all highway improvements made by the county highway committee shall be by contract, unless the committee determines that some other method would better serve the public interest. *Id.* The manner of advertising for bids and the forms of bids, contracts and bonds must be substantially those used by the Wisconsin Department of Transportation (DOT). *Id.*

If it is deemed inadvisable to let a contract for highway construction, the county highway committee may direct the county highway commissioner to proceed with the construction as noncontract work, and the commissioner may, under the supervision of the committee, employ and purchase the necessary labor and materials. *Id.*

DEFINITION OF PUBLIC WORK, MATERIALS AND SUPPLIES

In *Cullen v. Rock County*, 244 Wis. 237, 12 N.W.2d 38 (1943), the Supreme Court established that if a contract falls outside statutory restrictions related to how a contract must be let, a county is free to let its contracts without notice and competitive bidding restraints. Subsequently, in *Menzl v. Milwaukee*, 32 Wis. 2d 266, 145 N.W.2d 198 (1966), the Court reaffirmed this position by holding that “[i]f the contract in question is not subject to the provisions of the bid section, the city is not bound by that type of procedure and . . . may contract on the basis of reasonable business judgment with one who is not the low bidder.” *Id.* (citing *Cullen, supra.*). Therefore, if a contract is unrelated to the provision of supplies or materials and is not for the construction, repair, remodeling or improvement of any public work, a county need not follow a competitive bidding process unless the county, by ordinance, requires a competitive bidding process.

In *Joyce v. County of Dunn*, 192 Wis. 2d 699, 531 N.W.2d 628 (Ct. App. 1995), the Court of Appeals concluded that contracts for the purchase of “equipment” are not included within the definition of those items that must be let by competitive bid. In its analysis, the Court agreed with the attorney general’s long-held opinion that items classified as “equipment,” as opposed to “supplies” or “materials,” are exempt from the statutory bidding requirement even though a municipality may contract for hundreds of thousands of dollars of equipment without competitive bid. Therefore, the first part of any analysis of a county’s obligation to let a contract by competitive bid requires a determination of whether the contract calls for the provision of “equipment,” “materials” or “supplies.”

The attorney general has opined that the term “supplies” is “ordinarily considered to mean something that is used or consumed or which is capable of such use.” OAG 86-77. The term “materials” is “usually understood to mean something that enters into or forms part of a finished structure or which is capable of such use.” *Id.*

Given this definitional framework, the attorney general has found that the statutory bidding requirements are inapplicable to contracts involving the purchase of a movable diesel engine (OAG 55-77), the purchase of police cars (OAG 86-77) or the purchase of FM radio equipment (OAG 35-88).

In addition, our courts have consistently held that the procurement of services requiring professional or technical expertise are not subject to the bidding statutes. *Aqua-Tech, supra*, 71 Wis.2d at 546; OAG 43-87. For example, counties contracting for the design and implementation of computer systems, programs and applications would not be required to let such contracts according to the competitive bidding statute because these types of contracts clearly involve services requiring technical and professional expertise.

ACQUISITION OR TRANSFER OF REAL PROPERTY

Questions often arise concerning the application of the bidding statute to contracts for the acquisition or transfer of real property. Unlike public work contracts, contracts for the acquisition or transfer of property are not subject to the competitive bidding requirements in Wis. Stat. § 59.52(29). Pursuant to Wis. Stat. § 59.52(6), a county has the authority to acquire, lease or rent property without regard to the

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bidding requirements in Wis. Stat. § 59.52(29). Wis. Stat. § 59.52(6)(a) states that a county board may “acquire, lease or rent property, real and personal, for public uses or purposes of any nature.” Pursuant to Wis. Stat. § 59.52(6)(c), the board may direct the county clerk to “lease, sell or convey or contract to sell or convey any county property, not donated and required to be held for a special purpose, on terms that the board approves.”

The applicability of the bidding statutes when leasing property was addressed in *Kranjec v. City of West Allis*, 267 Wis. 430, 66 N.W. 2d 178 (1954). The Supreme Court upheld the dismissal of a claim that alleged the City of West Allis was without authority to lease city property without first complying with the competitive bidding process. In its decision, the Court stated:

Our attention is not directed to any statute that requires the city to lease property by the competitive bid method, such as the statute prescribes for contracts for public works. Municipalities have the same right, unless restricted by statute, to convey property as they have to acquire property, and such matters are within the reasonable discretion of the proper municipal authorities. *Id.* at 434.

Implicit in the Court’s decision is the recognition that the statutes regarding competitive bidding do not cover the acquisition or transfer of real property. However, it is important to remember that many counties have enacted ordinances regarding bidding on certain contracts. Such ordinances are separate and distinct from the requirements set forth in Wis. Stat. § 59.52(29) and should be consulted prior to making a final determination as to the bidding requirements in a particular situation.

Other than local ordinances, the only constraint upon a county’s authority to enter into contracts involving the acquisition or disposition of property is that a county must exercise “reasonable business judgment” when entering into the contract. *Cullen v. Rock County*, *supra*. at 240. In determining whether a county has exercised “reasonable business judgment,” courts have consistently held that because a county board of supervisors is a legislative body directly responsible to its electorate, a court will not question a board’s exercise of discretion “except for an abuse equivalent to fraud.” *Joyce*, *supra*, 192 Wis. 2d at 709.

Therefore, while a county board of supervisors is required to exercise “reasonable business judgment” with respect to purchasing or leasing property, a court will, in all but the most egregious of cases, defer to the board’s exercise of discretion.

COOPERATIVE BIDDING AMONG COUNTIES, THE STATE AND OTHER MUNICIPALITIES

In situations where the contract requires adherence to the procedural mandate of Wis. Stat. § 66.0901, a county must comply with that statute. However, in situations where Wis. Stat. § 66.0901 is inapplicable, Wis. Stat. §§ 16.73 and 66.0301 encourage a cooperative bid-sharing system. Wis. Stat. § 16.73(1) states (in relevant part):

The [Department of Administration] may enter into an agreement with a municipality or group of municipalities, and municipalities may enter into agreements with each

other, under which any of the parties may agree to participate in, administer, sponsor or conduct purchasing transactions under a joint contract for the purchase of materials, supplies, equipment, permanent personal property, miscellaneous capital or contractual services. This subsection does not apply to construction contracts that are subject to s. 16.855 or 66.0901.

Similarly, Wis. Stat. § 66.0301(2) provides as follows:

Subject to s. 59.794 (2) [limiting action by Milwaukee County], and in addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. . . . This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state.

Read in conjunction with one another, these two statutes provide a sound legal basis for counties to cooperate with one another in making purchasing decisions. Wis. Stat. § 66.0301 evinces a strong legislative presumption in favor of a cooperative effort in making purchasing decisions. Moreover, Wis. Stat. § 16.73(1) represents an explicit statutory authorization to share purchasing responsibilities for materials that are not subject to the requirements of Wis. Stat. § 66.0901.

USING A REVERSE AUCTION TO LET CONTRACTS

A county may also consider using an Internet-based reverse auction system to let contracts. A “reverse auction” is a procedure in which a county seeking to purchase supplies or services advertises the maximum price that it is willing to pay for the supply or service. Vendors then are instructed to offer bids at or below the price listed by the county, with the county authorized to select a winning bid from those submitted.

The reverse auction system can be used by a county if the contract is for the provision of: (1) equipment; (2) public work and public work-related materials or supplies, the value of which does not exceed \$4,999.99; or (3) public work and public work-related materials or supplies, the value of which is between \$5,000 and \$25,000 if the county has given a class 1 notice of the reverse auction or the person to whom the contract is awarded is a qualified bidder under Wis. Stat. § 66.0901. For a public works contract with a value that exceeds \$25,000, a county is subject to the competitive bidding requirements in Wis. Stat. § 59.52(29).

Contracts for equipment and contracts having a value of less than \$5,000 are not regulated, as discussed above. Therefore, there is no statutory impediment to implementing a reverse auction system for these two types of contracts.

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APPLICATION OF THE PUBLIC PURPOSE DOCTRINE

When reviewing a county's authority to enter into a contract, whether through a competitive bidding process or otherwise, it is necessary to consider the impact of the public purpose doctrine. In *State ex rel. Wisconsin Dev. Authority v. Damman*, 228 Wis. 147, 280 N.W. 698 (1938), the Wisconsin Supreme Court explained the public purpose doctrine as follows:

The course or usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, and the objects and purposes which have been considered necessary for the support and proper use of the government are all material considerations as well as the rule that to sustain a public purpose the advantage to the public must be direct and not merely indirect or remote.

Therefore, while a county may not be required to follow the bidding statute in a particular situation, it still must ensure that its expenditure passes constitutional muster by having a public purpose.

A Few FAQs on Parliamentary Procedure

■ Dan Hill, Local Government Specialist, UW-Extension Local Government Center
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Newly elected county board supervisors typically have a desire to make changes in some aspect of county government. Many run for office on a platform to make changes. To do so requires an understanding of the principles of deliberation in a public body.

Most units of government adopt *Robert's Rules of Order, Newly Revised* (RONR) as their parliamentary authority. RONR spells out the rules of engagement so that debate, discussion, and decision-making are transacted in an orderly way – balancing the protection of the rights of individual members with the rights of the group. However, units also have the authority to create their own procedural rules that take precedence over RONR.

To the uninitiated, Robert's Rules of Order can seem complicated and arcane, conjuring images of men in long, black robes and powdered wigs rigidly restricting participation to obstruct their opponents. The spirit of parliamentary procedure is just the opposite. Used as intended, parliamentary procedure enhances the democratic decision-making process by helping governmental bodies fairly weigh and consider the ideas and opinions of *all* members.

Nevertheless, if you are going to play the game, you had better know the rules. To that end, here are answers to some of the frequently asked questions covering the basics of parliamentary procedure.

WHAT ARE THE PROCEDURES FOR GETTING A PROPOSAL CONSIDERED BY THE GOVERNMENTAL BODY?

Step 1. *Member obtains the floor.* Depending on the formality of the group, this can be done in a variety of ways. In large, formal groups, the member stands when no one else has the floor, addresses the chair, receives recognition from the chair, and then speaks in debate or makes a motion. In a smaller, informal group, the member simply raises his/her hand and begins to speak once recognized by the chair.

Step 2. *Member makes a motion.* The member states the proposal for the group to take a specific action or take a particular stance.

Note: The maker of the motion should agree with it as RONR prohibits the maker of the motion from speaking against it. On the other hand, the maker of the motion may vote against it.

Step 3. *Another member seconds the motion.* Another member who deems the motion worthy of consideration says – without obtaining the floor – “I second the motion,” “I second it,” or simply, “Second.”

The purpose of the second is to make sure that at least two members think the issue is important enough to bring before the body. The person who seconds the motion does not necessarily agree with

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it, only that it should be discussed and decided upon. In fact, a member may disagree with the proposal but seconds the motion so that the body will be on record as having opposed it.

If the motion does not receive a formal second, but members of the body begin to discuss the merits of the motion, the motion has, in effect, been seconded. Subsequent action on the motion – debate, voting, etc. – is in order.

Step 4. *Chair states the question on the motion.* Once the motion has been made and seconded, the chair restates the motion. Usually the restatement follows this form, “It has been moved and seconded that...” By restating the motion, the chair formally places the motion before the body and assures that everyone heard the same proposal and can, thereby, keep debate focused on the motion at hand.

Here lies a turning point in the proceedings. Up until the time that the chair restates the motion, the maker of the motion owns the motion and may change it or withdraw it without the consent of the body. Once the motion has been restated by the chair, it belongs to the group and any modifications to the motion, including withdrawal, must have the consent of the body.

Step 5. *Members debate.* It is during this step of the process that the members of the body may undertake a host of possible actions including discussion of the merits of the proposal, changing the wording of the motion, delaying action on the proposal, and referring the motion to a committee.

The maker of the motion has the right to be the first to address the body. Thereafter, members obtain the floor in the usual way. RONR limits speeches to no more than 10 minutes, with members permitted to speak no more than twice on the same motion in the same day. While each member has the right to speak twice, no member should be allowed to speak a second time when a member who has not yet spoken desires the floor.

During debate members should:

- Address comments to the chair, not toward another member.
- Refrain from referring to the motives of other members.
- Avoid side conversations; speak only when they have the floor.
- Limit their comments to those pertinent to the issue under discussion.

Step 6. *Putting the motion to a vote.* The chair does not have unilateral authority to end debate. However, the chair should pay close attention to the debate and, when it is clear that discussion is finished, ask, “Are you ready for the question?” or “Are you ready to vote on the motion?” If any member seeks to continue debate and discussion, the chair should permit it.

Alternatively, a member may make a motion to close debate or “move the previous question.” Because this motion limits members’ rights, it requires a supermajority vote of two-thirds to pass.

Step 7. *Members vote.* Once it has been determined that the body is prepared to vote, the chair is ready to put the question to a vote. At this time, the chair should restate the exact wording of the motion

that the body will be deciding upon. It is sound practice for the chair to state at this time the effect of an “aye” vote and of a “no” vote.

The presiding officer then tells the members what method of voting will be used – voice vote or counted vote are most typical. (*Note: A recorded vote is often required. Most local government decisions should be made by a counted vote. Substantive decisions, such as ordinances, budgets, and resolutions, call for visible, counted votes.*)

The chair first asks for those in the affirmative, “aye”, and then the negative, “no”, responses. Counted votes may be taken by members raising their hands, standing, roll call, signed ballots, or machine. The chair should always call for the negative vote no matter how overwhelming the result may seem.

It should be noted that members can change their vote up until the time that the vote is announced by the chair.

Step 8. Chair announces results. The chairperson announces the results of the vote – if known, the number of votes on each side followed by whether the motion passes or fails. The announcement should also include the effect of the vote – “We will purchase the equipment,” or “We will not create the proposed new position.”

WHAT IS THE PROPER WAY TO MAKE A MOTION?

The proper way to make a motion is, “I move that. . .” Be precise and specific. It is a good idea to write a motion prior to presenting it. This increases the likelihood of clarity. The note can then be passed on to the meeting chair.

In most situations, avoid making “negative” motions. Because motions usually propose that the group take action, whenever possible, state the motion in the affirmative. Motions proposing that the group *not* take a particular action require that members vote “yes” on taking an action they disagree with. This could easily lead to confusion.

Above all, avoid the use of the phrase “so moved.” While it may seem like an innocent shortcut, making a motion by merely stating “so moved” can create much confusion. Typically, this shortcut is taken in a committee setting after there has been some debate or discussion on a topic. One member proposes an action that the committee should take and another member states “so moved,” the motion is seconded, and the chairperson takes the vote. It may not be until the minutes are distributed at the following meeting that the members determine that they had each interpreted the motion in different ways! Don’t let the secretary translate your motion for you. Be specific and clear the first time.

MAY THE PRESIDING OFFICER VOTE?

According to RONR, the presiding officer, as a member of the body:

... has the same voting right as any other member. Except in a small board or committee, however—unless the vote is secret—the chair protects his impartial position by exercising his voting right only when his vote will affect the outcome, in which case he can either vote and thereby change the result, or he can abstain.

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RONR further states that in small boards and committees where there are not more than about a dozen members present:

- *The Chairman need not rise while putting questions to a vote.*
- *If the Chairman is a member, he may, without leaving the chair, speak in informal discussions and debate, and vote on all questions.*

The chairperson may not vote twice – once as a member of the board and then again as the chair. Each person, no matter their role, is entitled to only one vote.

WHAT ARE SOME FREQUENT PROCEDURAL ERRORS TO AVOID?

Adoption of informational reports. Reports from officers, department heads, committees, boards, or commissions should not be approved or adopted. Adopting a report creates an expectation that the recommendations included in the report will be enacted. This is usually not the body's intent. To avoid confusion, the presiding officer need simply acknowledge the report and thank the presenter.

"So moved." The use of this phrase, addressed earlier, potentially creates confusion and the adoption of motions with unintended consequences.

Calling the question. A member, tired of debate, rises and states, "Madam Chair, I call the question" and expects debate to end immediately. RONR gives no such power to any one individual. A member who "calls the question" does not simply end debate and require that a vote be taken instantly. A motion "calling the question" should be treated as a motion to end debate or "move the previous question." The motion requires a second and a two-thirds majority vote to pass. Once passed, the chair must put the question to a vote.

WHAT IS THE PROPER PROCEDURE FOR AMENDING A MOTION?

At times, a motion is made that is not acceptable as is. The body may then amend – alter the wording of – the motion that is already on the floor to make it satisfactory to a majority. The motion to amend takes the form, "I move to amend the motion by..." The member then has three choices: 1) inserting or adding words; 2) striking (deleting) consecutive words; or 3) striking and inserting. In making the motion to amend the member specifies the location for the deletions and/or insertions. The amendment must relate to the subject of the motion it is amending.

A motion to amend may be amended. In other words, a member may move to amend a primary amendment with a secondary amendment. Primary and secondary amendments require a second and a majority vote to pass. A motion to amend a secondary amendment is out of order.

MAY A GOVERNMENTAL BODY HAVE ITS OWN RULES THAT CONFLICT WITH ROBERT'S RULES OF ORDER?

Governmental bodies are encouraged to have their own rules that specifically address certain situations. Local units of government often adopt their own rules related to citizen participation during meetings

of the governmental body, participation in debate, absences, procedures for putting items on the agenda, election of officers, and who presides if the chair is absent. Of course, rules adopted by the local unit may not conflict with any state or local law.

In any situation where business is brought before the county board or a committee, it is critical that the chairperson ensure that the business has been properly noticed under Wisconsin's Open Meetings Law or that an exception to the Open Meetings Law applies. Federal and state laws take precedence over local rules. Local rules take precedence over RONR.

HOW DO I KNOW IF A MOTION IS "IN ORDER"?

This is perhaps the most complicated of the questions. Nevertheless, if you understand the parliamentary concept of *precedence* you are well on your way to understanding when motions are "in order." (A chart showing the rank of privileged and subsidiary motions can be found in most reference books on Robert's Rules of Order.)

Only one main motion at a time is allowed on the floor. Any main motion should be ruled out of order if it is made while another main motion is pending. Motions have rank and a motion is not in order if another motion of higher rank is pending. Main motions are lowest in rank.

Subsidiary motions relate to the treatment of main motions and other motions. Subsidiary motions are *applied to another motion and, if adopted, do something to the other motion*. They are in order when a main motion is pending. The seven subsidiary motions are ranked among themselves. From highest rank to lowest rank, they are as follows:

- "Lay on the table"
- "Previous question"
- "Limit or extend limits of debate"
- "Postpone to a certain time"
- "Commit (or Refer)"
- "Amend"
- "Postpone indefinitely"

Privileged motions rank higher than any subsidiary motion or main motion and, as such, are in order when those are pending. Privileged motions are not applied to other motions; rather, they relate to the meeting itself. The five privileged motions are ranked among themselves. From highest rank to lowest rank, they are as follows:

- "Fix the time at which to adjourn"
- "Adjourn"
- "Recess"
- "Raise a question of privilege"
- "Call for the orders of the day"

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Incidental motions relate to the conduct of the meeting rather than to other motions. In general, an incidental motion is in order when it relates to the business at hand. Incidental motions are not ranked as are subsidiary and privileged motions. Some common incidental motions are as follows:

- "Point of order"
- "Appeal"
- "Suspend the rules"
- "Division of a question"
- "Withdraw a motion"
- "Parliamentary inquiry"
- "Point of information"

Members chairing meetings should check the rules for each motion. Rules include whether the motion requires a second, is debatable, is amendable, and the vote required for passage.

HOW SHOULD THE MOTIONS BE HANDLED?

Assume for the moment that the chair has handled his job correctly and there are four motions currently pending – the main motion, a primary amendment, a secondary amendment, and a motion to refer to committee. For example, a main motion is pending to "purchase a backhoe for the parks department." A motion is then made to amend the main motion by "adding the words 'at a cost not to exceed \$75,000' after the word 'purchase.'" While discussing the motion to amend, another member moves to make a secondary amendment (amending the amendment) by "striking \$75,000 and inserting \$100,000." At this point another member moves to "refer this motion to the Parks and Recreation Committee."

All of these motions are in order because each succeeding motion is of higher rank than the previous. The body will then dispose of these motions in reverse order. Think of these motions as nested cups, one inside another. The most recently added cup must be dealt with first.

In our example, the body will vote first on the motion to refer to the Parks and Recreation Committee. If the motion to refer fails, the vote on the secondary amendment is taken up, followed by the amendment to the main motion, and finally the main motion.

The vote on each subsequent motion incorporates the changes enacted by the subsidiary motions. If the secondary amendment passes then the decision on the primary amendment becomes a vote on whether to "add the words 'at a cost not to exceed \$100,000' after the word purchase." Assuming this primary amendment passes, the motion before the body is to "purchase at a cost not to exceed \$100,000 a backhoe for the parks department."

IN WHAT WAYS CAN THE BODY REVISIT A DECISION?

There are four principle ways that a body can change its mind – rescind, renew, reconsider and amend something previously adopted. Keep in mind that the Wisconsin Open Meetings Law requires that proper notice must be issued in order to address these main motions. Any action taken to reverse a

decision previously adopted does not release the body from any contractual agreements entered into as a result of the original decision.

- ❑ Rescind. The motion to rescind nullifies resolutions, policies and ordinances previously adopted by the body.
- ❑ Renew. A motion that failed to pass may be brought up by any member at subsequent meetings of the body. The motion is said to be renewed. RONR allows for motions to come up at subsequent sessions "unless it has become absurd."
- ❑ Reconsider. The motion to reconsider is often misunderstood and misused. Members are advised to use the motion to reconsider only when new information presents itself during the course of the same meeting at which the original proposal was adopted. At subsequent meetings, renew, rescind and amend something previously adopted are the preferred choices. The motion to reconsider may be made only when no other motion is pending before the body. The maker of the motion to reconsider must be a member who voted on the prevailing side of the motion under question.
- ❑ Amend something previously adopted. This motion changes a previously adopted motion. Do not confuse this motion with the *subsidiary motion to amend*. The motion to amend something previously adopted is handled as a main motion.

HOW CAN A BODY DELAY OR AVOID TAKING ACTION ON A MOTION?

There are three motions that delay action on a pending motion – postpone indefinitely, postpone to a certain time, and table or lay on the table. There is also a fourth, very simple, yet seldom used way to delay or avoid action – withdrawing the motion.

- ❑ Postpone indefinitely. Members should use this motion only when their intention is to kill the motion under consideration. Passage of the motion to postpone indefinitely equates to voting the measure down without having to vote against the measure.
- ❑ Postpone to a certain time. There are occasions when the body needs more information or more time to make a decision. The intent is not to kill the motion, but rather to make the decision when more information is available or the right people are present. The motion should include when the body should address the proposal under consideration. The motion to postpone to a certain time may merit the status of most underemployed parliamentary motion. This is the motion that should be used when members want to make a decision about an issue but need more time before deciding. Many boards use the motion to table (more properly, "lay on the table") when they should be using the motion to postpone to a certain time. The motion to postpone is not proper unless it indicates a specific date or event, e.g., the next board meeting.
- ❑ Lay on the table. The motion to lay on the table is properly used only when urgent business presents itself or when something else needs to be addressed while a main motion is on the floor. The intention is to set the discussion of the current motion aside temporarily and resume the debate during the current or next meeting. A motion to table is in order when the work of the group is

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interrupted. It is not the proper motion to buy time for the body. To resume debate on a motion that has been laid on the table requires a motion to remove the motion from the table. The motion to remove from the table can be made, subject to the Open Meetings Law, when no motion is on the floor during the current or subsequent meeting.

- Withdrawing the motion. Remember that once a motion has been made, seconded and restated by the chair that it belongs to the body.

WHAT ARE THE MOST COMMON PARLIAMENTARY ERRORS COMMITTED BY MEMBERS OF GOVERNMENTAL BODIES?

- The motion to “table” when the intention is to “postpone to a certain time.”
- The use of the phrase “so moved” when the proposal is something more than a routine matter, such as approving the minutes or adopting the agenda.
- The assumption that debate and discussion must end simply because one member states, “I call the question.”

ARE THE RULES THE SAME FOR COMMITTEES OR SMALLER GROUPS?

Understandably, the rules are less formal for committees and smaller groups. RONR describes a smaller group as one that includes up to “about a dozen members.”

- Members may raise a hand instead of standing when seeking to obtain the floor and may remain seated during debate and discussion.
- Members may speak as often as they like.
- Informal discussion is permitted before a motion is pending. The reality is that in most committee meetings members address an issue by discussing it first. During the course of debate and discussion, a solution or proposal to address the issue arises. This proposal, then, becomes the basis for a motion.
- The chair need not rise when putting a motion to a vote.
- The chair may, without leaving the chair, speak in informal discussions and in debate and vote on all questions.

■ Sources, References & Notes

FOR MORE INFORMATION

A Guide to Parliamentary Procedure for Local Governments in Wisconsin by Larry Larmer provides an excellent, user-friendly overview of parliamentary procedure. This guide gives readers guidance related to the implication of the Open Meetings Law on conducting meetings.

Robert's Rules of Order, Newly Revised 11th Edition, is the current edition.

ISSUE FOCUS

Participation in Meetings via Teleconference

■ Dan Hill, Local Government Specialist, UW-Extension Local Government Center

As communication technology advances and becomes more economical and more accessible, local government officials will want to understand the appropriate use of telecommunications for their participation in meetings of local governmental bodies. Conducting meetings electronically – via phone conference, webinar, or videoconference – has many advantages. Participation is convenient, it allows for participation by those who otherwise could not attend, scheduling is easier, it saves money, and the meeting may be archived with the press of a button.

Electronic meetings can present challenges for participants, however. Technical problems could occur during the meeting and limit meaningful participation. Training may be needed to enable all members to make proper use of the technology. Chairing an electronic meeting requires different skills than those needed in a face-to-face meeting. Key messages communicated through body language and voice intonation are lost during an electronic meeting, increasing the likelihood for miscommunication. Finally, participants in electronic meetings miss out on the bonding and relationship building that occurs during meetings when everyone is physically present.

WISCONSIN OPEN MEETINGS LAW IMPLICATIONS

Beyond the advantages and disadvantages of electronic meetings, officials must also understand the implications of Wisconsin's Open Meetings Law on participation in meetings of governmental bodies via electronic media. The spirit and intent of the Open Meetings Law is captured in its first two paragraphs:

19.81(1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

19.81(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.⁴

ATTORNEY GENERAL'S OPINIONS

As long ago as 1980, the Wisconsin attorney general issued an opinion stating that teleconference calls are acceptable, but are not the most desirable way to conduct a meeting of a governmental body and should be used sparingly, while keeping in mind the intent of the Open Meetings Law.² The opinion makes several critical points.

■ MEETING GUIDELINES

Teleconference Meetings

The fact that members of a governmental body participating in a conference call are not present together in the same room does not mean that they are not convened. The attorney general notes that to argue otherwise would allow members of a governmental body to circumvent the law merely by conducting their business via any number of electronic media.

The opinion also states that if the public and the media can effectively monitor the proceedings, a teleconference may then be considered to provide reasonable access. What is important here is that the public and media have the same access to the discussion as the members of the governmental body who are participating in the meeting. A meeting conducted via electronic equipment that did not allow for the public and the media to effectively monitor the proceedings would not be in compliance with the law.

The attorney general identifies a number of specific kinds of meetings that would be inappropriate for teleconferences. The list includes: hearings that require public input; settings where seeing the demeanor or body language of someone giving testimony might be important; and when complex plans, drawings, and charts are displayed and explained.

This 1980 opinion also cites an earlier attorney general opinion,³ in which the attorney general provides this broad caution: *The test to be utilized is whether the meeting place is "reasonably accessible," and that is a factual question to be determined in each case.*

Interestingly, the opinion notes that electronic meetings that are properly conducted have the potential to make meetings *more* accessible to the public than the traditional meeting held in a single location where members of the governmental body are physically present. For example, this could be accomplished if the meeting were conducted with multiple public listening sites.

GUIDANCE FOR LOCAL GOVERNMENT

Of course, in 1980 the attorney general could not have envisioned the advances in videoconferencing technology. The opinion only referred to meetings conducted via audio teleconference. Nevertheless, it seems clear that, no matter what technology they employ, local units of government should use electronic means only sparingly to conduct meetings, and only when the technology does not interfere with the public's right to effectively monitor the proceedings. Local government bodies who choose to meet via electronic technology should keep these points in mind.

□ Need for a Special Local Rule

Units of government anticipating the need to meet electronically should adopt a local rule that authorizes the body and its committees to conduct meetings electronically. Most local units of government in Wisconsin have adopted Robert's Rules of Order, Newly Revised (RONR) as their parliamentary authority. RONR does not authorize electronic meetings unless they are authorized in the bylaws,⁴ thus the need for the unit of government to adopt its own local rule. (*Note:* There is no statute that allows a member to *demand* the right to participate electronically. It is a request subject to established local rules.)

If a governmental body adopts local rules authorizing electronic participation in meetings, the body should also consider including rules that address member participation. These rules address:

- How far in advance of the meeting must a request be made? How will the governmental body respond to a request of a member(s) to participate electronically in a meeting? Who responds to the request – the chair, the clerk?
- The criteria to be used to allow electronic participation. Only to be used to establish a quorum? Only one member of the body? Only emergency/special situations, or is a member who spends winter months in Arizona allowed to participate monthly?
- Any limits on electronic participation.

□ Limits on Who Connects Electronically

If all members of a governmental body are in separate locations and attend a meeting via speaker phone, it is hard to imagine that a citizen attending the meeting would be able to truly monitor which governmental body member was speaking and how each voted on an issue of concern to that citizen. In this example, one could question whether the meeting was reasonably accessible to members of the public and whether the public had the fullest and most complete information regarding the affairs of government.

If only one member of the governmental body calls into the meeting and the remaining members are physically located in the same room communicating with the remote member via a speaker phone, the public could more easily monitor the proceedings. It would be clear to all attending who was speaking at the other end of the conference line. In this scenario, it is more likely that the public would have reasonable access to the proceedings.

□ Meeting Management

- **Need for a Physical Meeting Location.** When a meeting will be held electronically, a central meeting place must also be identified where members of the governmental body and the public may gather.
- **Simultaneous Participation.** The format chosen for the electronic meeting should provide for communication by all of the members at the same time, just as though all the members were present in the same room.
- **Obtaining the Floor.** For small boards and committees meeting face-to-face in a single location, obtaining permission to address the body rarely becomes an issue. Members rely on body language and other cues to note when another member wants to speak and when it is appropriate to speak. These cues are not apparent during electronic meetings, so the presiding officer should let the members know what they should do to obtain the floor.

■ MEETING GUIDELINES

Teleconference Meetings

- **Quorum.** Business cannot be conducted during a meeting of a local governmental body unless a quorum is present. The presiding officer will need to identify ways to assure that a quorum is achieved and maintained throughout the meeting.
- **Voting.** Voice votes, the most common method of voting among local units of government in Wisconsin, can be confusing when taken during a teleconference meeting. It is nearly impossible to determine if a quorum has voted. It is also difficult to determine how many votes were in favor of the motion and the number opposed. When meeting electronically, the preferred method of voting, albeit a bit slower, is the roll call vote.
- **Closed Sessions.** Closed sessions present another layer of challenges. Officials who meet electronically and need to move into executive session will need to have procedures in place to ensure that unwelcome guests cannot enter or remain in the closed session. Once the body returns to open session from the closed session, non-participants must have a way of being notified that they are welcome to rejoin the meeting.
- Choose Appropriate, Reliable Technology
 - **Glitches.** Often, local officials choose to meet electronically because it allows the body to achieve a quorum that might not otherwise be achieved. This may occur on small boards or committees if a member suffers an injury that limits travel or a member has to leave town unexpectedly. The members of the governmental body who decide that they want to meet in this fashion will certainly want to have confidence that the equipment will operate properly throughout the meeting. They may decide that it is better to employ a tried and true technology, such as an audio conference, versus a more advanced technology, like a webinar, that without good internet access might fail during the meeting. A technology that becomes inoperable could result in a loss of a quorum when the remote member is disconnected, thereby defeating the original purpose for convening the meeting electronically. It is advisable for the governmental body to have a backup plan in place in the event that a technical problem occurs during the meeting.
 - **Volume.** Equipment chosen to broadcast to the public should be sufficient to make the speaker's voice heard everywhere in a crowded meeting room. Certain mobile phones may be inaudible to the public attending the meeting and thus limit their access to the proceedings.
 - **Visibility.** Visibility could become an issue that interferes with the public's access rights if the device in the meeting room does not display images that allow the public to monitor the proceedings. A meeting held via video conference, for example, could present a monitoring problem for the public if the size of the screen in the meeting room is too small or provides insufficient clarity.

CONCLUSION

While the attorney general has opined that teleconferences may be conducted in such a way as to comply with the Open Meetings Law, local government officials would do well to use electronic media sparingly and cautiously. Meetings of governmental bodies that connect members via teleconference, videoconference, or webinar should be extraordinary occurrences, rather than the ordinary. At the very least, a local rule should be adopted for fair, consistent and effective use of electronic communications for meetings.

■ Sources, References & Notes

Endnotes

- 1 Wis. Stat. §§ 19.81(1), 19.81(2)
- 2 69 Op. Att’y Gen. 143-146 (1980)
- 3 67 Op. Att’y Gen. 126 (1978)
- 4 Robert, Henry M. *Robert’s Rules of Order, Newly Revised*. (2011) 11th Edition. p 97. Philadelphia: DaCapo Press.

County Budgets & Financial Management

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INTRODUCTION

The preparation and approval of a county budget is probably the single most important duty of local government officials because it determines what services will be provided, to what extent they will be provided, and how they will be funded. This affects every citizen in the county.

County leaders prepare their budgets in a quickly changing and increasingly difficult environment. Citizens simultaneously ask local leaders to hold the line on taxes and provide the same level of services as they have had in the past while the state limits the amount of taxes that can be levied. This is made even more challenging when considering that most county services are mandated by the state.

This chapter is a compilation written for new county supervisors who want to gain an understanding of county budgets. It is designed to provide county leaders with an overview of budgeting ideas, suggestions and terms. While there are specific details in this chapter, it should not be considered a comprehensive document. Not all county budget processes are the same. It is recommended that you use this guide in addition to exploring your county's process.

Current law allows counties to levy a property tax and requires every county to prepare an annual budget. Wis. Stat. § 65.90 sets out the process and documentation requirements for the county budget. The statutory requirements for budget documents, such as public notice and comment, do not differ significantly from the requirements to adopt local ordinances. In effect, this gives budget documents the same authority as laws.

Other relevant sections of the Wisconsin statutes and constitution are:

- Wis. Stat. § 59.60. This section explains the budget procedures required for counties with a population of 500,000 or more. Currently only Milwaukee County falls under this category, but any county with an executive or administrator may choose to be subject to this statutory procedure.
- Wis. Stat. § 66.0602. This section establishes limits on the county's operating levy. This limit has changed over the past few years. As of 2014, the levy is not allowed to increase by a percentage that exceeds the greater of 0% of the change in property values due to net new construction. This section also outlines exemptions to this rule, such as debt, and outlines the rules for exceeding the limits through referendum. Counties that exceed the limit face penalties, including dollar-for-dollar reductions in state aid for the amount the county exceeds the limit.

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- ❑ Wis. Stat. § 67.04(1), Wis. Stat. § 67.045. These sections detail the conditions and procedures for issuing new debt.
- ❑ Art. XI (2), Wis. Const. This article limits the amount of debt principal a county can incur to 5% of its equalized value.

PURPOSE OF A BUDGET

- ❑ An accounting document (record & control expenditures)
- ❑ A management document (determine who can spend how much)
- ❑ A decision-making document (basis for sound decision-making by council & staff)
- ❑ A communications document (inform the public of how tax dollars are being spent and policy priorities of county government)

THE BUDGET CALENDAR

The following is a budget calendar for a typical county budget process. Each county may take different steps at different times or have different players involved, but statutes define certain steps. Also, the fiscal year for all counties in Wisconsin coincides with the calendar year. When reviewing this list, understand that it is a model intended to provide a basic understanding of the steps taken to approve the budget.

- ❑ July
 - Budget coordinator* sets up budget worksheets.
- ❑ Early July
 - Budget guidelines and revenue estimates established.
- ❑ Mid-July
 - Departments prepare budget requests.
- ❑ August
 - Departments review their requests with oversight committee.
- ❑ Mid-August
 - Budget coordinator re-estimates proposed tax levy and other revenue sources.
- ❑ September
 - Week 1 - Departments submit committee-approved budgets to budget coordinators.
 - Week 2 - Departments review budgets with budget coordinator.
 - Week 3-4 - Finance committee reviews compiled budget requests, requests department information and makes changes.
- ❑ Early October
 - Finance committee submits amended budget proposal to county board for review and changes
- ❑ Early November
 - County board conducts public hearing on budget.¹ (before budget is passed)

- ❑ Mid-November
County board adopts budget at board meeting.
- ❑ End of November
Mill rate worksheets are submitted to county clerk.
- ❑ Early December
County treasurer provides property tax bills to municipal clerks for mailing to taxpayers.

**The budget coordinator may be the county executive, administrator, administrative coordinator, finance director, clerk, county board chair, or other officer designated by the county board. If the county has an executive or administrator established by ordinance, state law requires that these individuals present an annual budget for county board consideration.*

The county clerk must publish a Class 1 notice for the public budget hearing and a summary of the budget. The budget summary must include: (1) all revenues, (2) all expenditures, (3) percent change between current and proposed budget, (4) beginning and year-end general and proprietary fund balances, (5) total revenues and expenditures by fund type, and (6) notifications of any increase or decrease.

BUDGET STRUCTURE AND ACCOUNTING

Government budgets use “fund” accounting methods and are commonly structured with the components and ordered as follows:

- ❑ Overview.
- ❑ Summary.
- ❑ Revenues.
- ❑ General Fund.
- ❑ Special Revenue Funds.
- ❑ Debt Service Fund.
- ❑ Capital Fund.
- ❑ Proprietary/Enterprise Funds.
- ❑ Fiduciary Funds.

Overview

The overview is a narrative used to give the reader an idea of what the budget hopes to accomplish, what is different from last year’s budget, and any pertinent information not obvious in the budget.

Summary

In the summary, Wis. Stat. § 60.90(3) requires the summary to show the percentage difference between the current budget and proposed budget for:

- ❑ General property taxes.
- ❑ Total revenues.
- ❑ Total expenditures.

■ OPERATIONS

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Revenues

The revenues component is where the budget shows the projected income for the coming fiscal year and includes all anticipated incoming money, including:

- Property tax revenue.
- State shared revenues.
- Fees for services.
- Sales tax revenue (where applicable).
- Anticipated grants, loans, etc.

It is critical to be aware that governments will not receive all revenues at the beginning of the year. Both taxes and state shared revenues are received incrementally, making proper cash flow management essential. Major purchases or expenditures must be scheduled to coincide with points when cash will be available unless borrowing is planned or a sufficient reserve exists to cover the expenditure. Property taxes and state shared revenues are received in two payments. Each of these four payments arrives at different times of the year. Further, these funds cannot be expended prior to receipt unless the local government does short-term borrowing or uses funds from a general fund reserve.

In review, government accounting practices routinely include the following funds: the general fund, special revenue funds, capital project budget or fund, the debt service fund, proprietary funds and fiduciary funds. These funds are described in detail below.

General Fund

The general fund is where the government's day-to-day operations are budgeted and represents the largest fund in the governmental budget. Some examples of expenditures under the general fund are:

- Payroll.
- Small IT purchases.
- Benefits.
- Electricity.
- Office Supplies.
- Vehicle repairs.
- Fuel.

Another part of the general fund is the general fund reserve. Maintaining a general fund reserve or contingency fund is essential to cover unplanned expenditures or when expenditures cannot wait for a revenue payment. A typical guideline for general fund reserve or contingency fund is somewhere between twenty percent and forty percent of general fund expenditures.

Special Revenue Funds

Special revenue funds are often considered to be for *insulated departments*. Their funding comes at least partially from special revenues that cannot be used for any other purpose than specified in the fund and

by law. They are considered *insulated* because part or all of their revenue is not subject to general fund reductions or restrictions. Some examples of these funds and their revenues are:

- ❑ Library Systems - Special Tax & Charges.
- ❑ Public Health Dept. - Special Tax & State Grants.
- ❑ Highway Commission - State Road Aids.

Debt Service Fund

The debt service fund is the portion of a government budget that includes the payments of principal, interest, and fees on loans, bonds, and any other government debt. Proper accountability of debt service is essential for future borrowing. A common error in calculating the debt service amounts is to not include the annual holding or management fee applicable to governmental debts and/or bonds.

Capital Fund

The capital budget/fund is where major capital purchases and projects are planned and budgeted. A commonly used guideline is that any program or purchase of a non-expendable piece of equipment valued at over \$10,000 should be listed as a capital budget item. The capital budget/fund is as much about planning as budgeting. Commonly, capital budgets/funds cover five-year periods and relate directly to the government's strategic plan.

Proprietary/Enterprise Accounts

Proprietary funds include both enterprise accounts and internal service funds. Enterprise accounts are the portion of a budget supporting an enterprise, such as a water and sewer utility, a government-owned electric utility, a business incubator or some other specialized, restricted use funds where the government is operating an "enterprise" in a manner similar to a private business and is considered to be separate from other governmental operations. Generally, enterprise account activities are expected to be financially self-sufficient, meaning little or no general fund support should be needed. Enterprise funds commonly require oversight by a commission that is separate and distinct from the governing body.

Internal service funds are funds within the budget that pay for expenses from a number of departments through a single account. For instance, all departments with employees enrolled in the government's health insurance program would contribute the appropriate amount into the internal service fund for the number of employees in its department and the premiums are paid from the one Internal Service Fund to save confusion and work. These are sometimes referred to as "pass through funds" or "pass through accounts."

Fiduciary Funds

Fiduciary funds are special funds that cover such accounts as:

- ❑ Public Pension Trusts.
- ❑ Private Purpose Trusts.
- ❑ Investment Trusts.
- ❑ Agency Funds.

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All of the aforementioned funds are restrictive-use funds. Monies in those funds cannot be used to cover deficiencies in the general fund unless the action is done as a loan, with a formal payback schedule, and done by resolution of the governing body. To knowingly violate this provision can be prosecuted as a criminal action.

Undesignated or “slush” funds are not allowed. In local governments, all incoming revenue must be shown in budget documents and assigned to a fund and all expenditures must be accounted for under the budget

TYPES OF BUDGETS

There are various ways that budget coordinators approach a budget. Local government budgets are normally organized according to Governmental Accounting Standards Board (GASB) recommendations and should also comply with Generally Accepted Accounting Principles (GAAP). The process of developing a budget, as well as the responsibility for managing that budget, varies from county to county. To have an understanding of the county budget, it is important to know the parts of the budget, the process the budget goes through, the types of budgets and the primary budget players. You should check with your county officials to understand the details of the local budget process. In general, the person who bears the responsibility for the budget dictates the form. However, a county may have an adopted budget ordinance that outlines the process. The following is a list of the major forms that a budget may take.

Line Item Budget. The line-item budget is perhaps the most commonly used form as it is relatively easy to prepare and implement. It also provides for financial accountability and control. Each expenditure that a department may make in a year is grouped so that it can be reported on one line. These are independent from the programs for which the resources are budgeted. Examples include salaries, postage, supplies, travel, training and equipment. There are limitations inherent to a line-item budget. These budgets do not show how expenditures are divided among various programs. It is also difficult to compare the results of a program with the resources the program was given as many services are provided through the collaboration of one or many departments.

Incremental Budget. Another popular method of preparing a budget that works hand-in-hand with line item budgeting is incremental budgeting. Whether making cuts or providing an increase, this form treats every area of the budget the same by applying the same percentage increase or decrease to each line item. Increases or decreases are often tied to county indexes, such as percentage growth in personal income, the consumer price index, equalized property values, or a combination of the above. Although this method can be efficient, effective and fair, it provides for little debate on what priorities the county should consider in terms of service delivery.

Program Budget. Program budgeting is an attempt to eliminate the separation between program planning and budget planning that exists in line-item budgets. Instead of organizing the budget based on uniform expenditures, program budgeting organizes it based on individual programs. Funds are

allocated along program, rather than department, lines. It focuses on goal attainment and effectiveness in demonstrating desired outcomes. The problem with this type of budgeting is the complexity it generates. There is a heavy reliance on analytical techniques, such as cost-benefit analysis, to determine the best allocation of resources. Performance-based budgeting works best with a program budget as its starting point.

Performance Budget. Performance budgets are based on the assumption that presenting performance information alongside budget amounts will improve budget decision making by focusing funding choices on program results. Performance budgets focus on missions, goals and objectives to explain why money is being spent and provide a way to allocate resources to achieve specific results. This form focuses on the outputs that the resources deliver, in other words, the return on investment.

The performance budget is a contract for desired levels of service that are evaluated based on how the programs are achieving their pre-stated goals. Programs or functions that perform well receive larger increases and those that perform below agreed goals receive small increases or even decreases. The weaknesses of this budget type lie in the objectivity of the desired performance level, as well as how to handle underperforming departments that may be vital to public safety, health or welfare, or are mandated by state or federal law. Performance-based budgeting cannot begin until a system of performance measures are instituted. Further, a functional performance-based budgeting system cannot be expected to produce the long-term desired results in the first year of its inception. Positive, valid decision-making data will commonly take three to five years to collect.

Zero-Base Budget. The premise of zero-base budgeting is to promote cost-efficiency of services through the ranking of each service. Departments go through an exercise that is premised on the notion that each budget year, they start with no budget and then must go through the exercise of determining, for each service they provide, what they would do if they had to cut, expand or keep the service at the same level of funding as the prior year. They order by rank each addition or subtraction to give decision makers a good picture of what is important and what they could sacrifice. Not only is this process time consuming, but it gives budget preparers the opportunity to save their department from cuts by proposing the elimination of popular but not necessarily essential public programs.

Decision Packages. An alternative approach to zero-based budgeting is organizing information into decision packages, i.e. incremental spending levels that reflect varying levels of effort and costs. In theory, each department prepares at least three packages:

- Base-level funding: meeting the program's minimum requirements.
- Current-level funding.
- Enhanced package funding: address unmet needs.

Packages from all departments are then ranked according to perceived need for the package. This methodology relies on subjective judgment of decision-makers in ranking packages. Packages are

■ OPERATIONS

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then either adopted for funding or rejected in total. In theory, the decision-makers may decide not to renew funding for existing program and shift those funds to another, possibly entirely new, program. In reality, this reallocation rarely occurs.

Target-Base Budget. During times of cutting the overall budget, target-base budgeting can prove to be useful. Instead of calculating the property tax levy after department heads have submitted their budgets, it is done at the beginning of the process and available resources are allocated based on historical allocations. Often leaders set aside a discretionary amount of funds to provide additional funding to certain areas based on justification from the department. Although target-base budgets can prove to be useful in budget-cutting situations, it does not provide for much vision on the part of department heads or decision makers.

Government efficiency approaches, i.e. the concepts within Lean Government, Lean Six Sigma, and other efficiency methodologies, can be also adapted to the budgeting process with significant success.

OPERATING VS. CAPITAL BUDGETS OR (GENERAL FUND VS. CAPITAL FUND)

Generally, there are two different kinds of budgets that counties prepare – the operating budget and the capital budget.

The operating budget appropriates monies to fund general government services and purchases for a number of programs or functions. This is the primary budget and runs for one fiscal year. Operating budgets are based on statutorily required and discretionary services that are reviewed and evaluated on a program or line item basis. Various examples of programs and departments in this budget include parks, elections, general government and sheriff's operations, highways and libraries. Each funding area consists of items, such as wages, benefits and other compensation; supplies, travel and training for staff; insurance; certain equipment purchases; contracted services; and debt repayment. Funding for the operating budget is provided through general revenues that the county may take in, such as taxes, fees, intergovernmental aids and other general revenues. Individual departments or offices may not retain unspent revenues in the general fund budget at the end of the fiscal year. Instead they will lapse into the county's general fund reserves. These funds must then be approved by the county board for reallocation before use in the following year's budget.

The other budget that counties may prepare is the capital budget or capital fund. This budget is prepared for multi-year projects, such as land acquisition, building or construction projects, equipment purchases and infrastructure maintenance. The typical time frame for funding these capital improvement projects is five years. County boards need to review this capital budget plan periodically to make modifications and shift resources as necessary. The plan outline in a capital budget is used as a visionary tool for the county. In contrast to the operating budget, capital projects can be funded through "pay as you go" funds, debt financing, build to lease, or public trust fund loans. For debt financing, the most common way to fund capital projects is to sell general obligation bonds on the private bond market. Debt financing allows local decision makers to spread the cost out over the useful life of the project.

SOURCES OF REVENUE

Property Taxes. Property taxes are the largest source of local tax revenue for counties (\$2.01 billion in 2013). The state has regulated how much counties and municipalities can raise through the property tax by limiting “levy” increases to a certain percentage or the percentage change in net new construction, whichever is greater, since 2005. The allowable percentage increase has shifted from year to year, as have the allowable adjustments. For 2013 and 2014, the allowable percentage increase is 0% or the change in property values due to net new construction. However, the law allows that counties that did not use their full percentage increase from the prior year to carryover up to 1.5% of the prior year’s levy.

1992 Levy Rate Limits. The state legislature repealed the county operating tax rate limit in 2013. Had the legislature not done so, several counties would have had to decrease their property tax levies while experiencing increased service demands from the economic recession.

Sales Taxes. Another source of revenue for counties is the local sales tax. Wisconsin law allows counties to collect a 0.5% sales and use tax on goods and services purchased within that county. The 0.5% is added to, or “piggy-backed” onto, the state sales tax rate of 5% and also applies to the same goods and services as the state tax. Not all counties impose a local sales tax. Currently, 62 of 72 counties have approved ordinances authorizing the Wisconsin Department of Revenue to collect the additional 0.5% on their behalf. In 2013, the 62 counties imposing the optional sales tax collected \$307.3 million.

Intergovernmental Revenues. Intergovernmental revenues include direct federal aid, state aid, federal aid paid through the state, and aid from other local governments. The rationale behind state aid to local governments includes: (1) spreading the costs of government to people who do not pay local property taxes; (2) tax base equalization; (3) replacing lost tax base; (4) reducing the burden of local taxes; and (5) funding for local mandates imposed by state government. The best example of this is municipal aid, formally known as “shared revenue payments,” that the state makes to counties and other local units of government.

Permits/Fees/Fines. This category of revenue is a listing of major non-property tax-related, locally generated revenues. The following is a list of all other miscellaneous sources of revenues, with examples, that a county may receive and use at its discretion in the annual operating budget:

- ❑ Fines and Forfeitures– traffic fines.
- ❑ Certificates– birth, marriage, death.
- ❑ Special Fees– court filings, health.
- ❑ User Fees– parks, snowmobiles.
- ❑ Contracts for Services– town road, jail space.
- ❑ Sale of Materials– asphalt, salt, sand.
- ❑ Permits– building, zoning.
- ❑ County Operations– revenue from enterprise funds.

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AREAS OF SPENDING

Counties provide many different services to residents. Created by the state, counties often provide services mandated or controlled by state officials. Counties are only able to budget for items that they are mandated or authorized to provide. Below are some examples of both mandated and discretionary areas of spending. This list is not meant to be comprehensive, but to provide a starting point for understanding mandated and authorized areas of spending.

State-Mandated Areas of Spending

- ❑ Human services programs.
- ❑ Juvenile justice services.
- ❑ Courts and related costs.
- ❑ Constitutional officers' responsibilities.
- ❑ Jail maintenance.
- ❑ Public health.

State-Authorized Areas of Spending

- ❑ Parks and conservation.
- ❑ Levels of Community Option Program (COP) and Community Integration Program (CIP) funding.
- ❑ Transportation.
- ❑ County administration.
- ❑ Planning and zoning.
- ❑ UW-Extension and educational services.
- ❑ Airports, parking and convention facilities.
- ❑ Contributions to organizations.

FREQUENTLY USED BUDGETING TERMS

There are numerous terms used in budgeting that are not commonly used in everyday life. Below are several of the most common terms that you may hear.

- ❑ Appropriation – a legal authorization of a governing body to allow public officials to spend a specified amount of money, during a specified amount of time, on a specified program.
- ❑ Capital Asset – items such as buildings, machinery, and equipment that have a useful life of many years and cost a significant amount of money.
- ❑ Capital Improvement Plan – a plan for the acquisition of capital items over a number of years. The plan details timing, cost and financing methods of the purchases.
- ❑ Capital Outlay – money spent on new capital items.
- ❑ Debt Service – money spent for the repayment of principal and interest owed to outside lenders.
- ❑ Depreciation – the portion of the total capital asset charge as an expense to a particular period of time. For example, a police car that is bought this year will have a useful life of a certain number of

years. Each year a portion of the total value of that car is accounted for until the county no longer uses the vehicle.

- ❑ Encumbrance – commitments to pay for equipment, goods or services without the payment being made. Often this is for contracts that have yet to be performed.
- ❑ Enterprise Fund – a way of accounting for the expenditures and revenues of an activity in which the county partakes. This is run like a private business enterprise because it is expected to be self-supporting, with minimal support from the general fund. Common enterprise funds include county farms, airports, parking garages, expo centers, zoos, healthcare centers, and nursing homes.
- ❑ General Fund – basic fund accounted for in the annual budget that keeps track of each of the department accounts.
- ❑ Unreserved Fund Balance – money from prior year budgets that have been determined by auditors to be free to be used for any legitimate county purpose.

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INTRODUCTION TO COUNTY PERSONNEL PRACTICES

Counties are responsible for providing efficient and effective services to its citizens. As such, a county's most important resource is county personnel who provide the services. County boards play a critical role in establishing personnel policies which impact whether the county can attract and retain high-quality personnel to provide high-quality county services. Therefore, it is important that county board supervisors be familiar with basic concepts surrounding personnel systems in order to provide effective policy direction to county employees.

Since the enactment of 2011 Wisconsin Act 10, the terms and conditions of employment for most county employees are set by the county board directly or through policy delegation. Counties typically adopt an employee handbook, which contains guidance on the county's policies surrounding terms and conditions of employment such as paid leave benefits, hours of work, discipline and discharge, technology use and workplace harassment. An employee handbook is an important device for setting expectations of employees and provides consistency in county personnel practices. Employee handbooks should be reviewed and updated at least every two years to ensure compliance with current law. Regular review of the handbook also confirms that the handbook reflects current personnel practices and presents an opportunity to revise policies that have proven to be inefficient or ineffective.

Administrative manuals are another useful means of ensuring that county operations and services are consistently high-quality, cost-efficient and in compliance with federal, state and local laws. Administrative manuals set forth county administrative policies and practices for management employees to follow. Administrative policies include areas such as budget procedure, approval process for creating new positions or filling vacant positions, hiring procedures, job descriptions, employee orientation, performance evaluations, employee disciplinary procedure, harassment and discrimination investigations and procurement practices. Administrative policies can be established in any area or situation where the county wants to follow a standard practice to achieve a consistent and more effective outcome.

Although the county board sets the terms and conditions of employment for most employees, a limited number of county employees maintain collective bargaining rights which require a county to bargain over terms and conditions of employment. Transit employees (whose positions are supported by federal transit funds that prevent changes to collective bargaining) and public safety employees (i.e. deputy sheriffs and EMT workers) have the right to bargain over wages, hours, and conditions of employment with two exceptions. Public safety employees cannot bargain over health plan selection

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and design (such as co-pays or deductibles) but they can bargain over health insurance premiums. Also, counties cannot bargain to pay the required employee contribution to the Wisconsin Retirement System for public safety employees hired on or after July 1, 2011.

Non-supervisory employees who are not “public safety employees” or “transit employees” (as defined by Wis. Stat. § 111.70) have very narrow bargaining rights. If these employees, known as “general municipal employees,” are included as part of a collective bargaining unit, the county is prohibited from bargaining with employees in the collective bargaining unit over any term or condition of employment other than “total base wages.” Total base wage bargaining involves bargaining over an increase to the total wages of all employees in the bargaining unit and bargaining the distribution of the wage increase among the employees in the unit. The right to bargain total base wage increases is limited. Total base wage increases cannot exceed the change in the consumer price index (CPI-U) unless authorized by referendum. Total base wage agreements also cannot be longer than one year.

Given the limited nature of collective bargaining for general municipal employees, many general municipal employees have chosen not to form collective bargaining units. If a general municipal employee is not included in a collective bargaining unit, then the employee is considered “non-represented” and the county is not constrained by the CPI-U limitation in terms of wage increases.

General municipal employees who are included in a collective bargaining unit are required to certify their exclusive bargaining representative (typically a union) in a certification election each year. If a majority of employees in the bargaining unit vote in favor of certifying the representative, then the representative is certified to represent the unit for an additional year. If a bargaining unit chooses not to go through the annual certification process or the representative does not receive a majority vote in the certification election, then the exclusive bargaining representative is decertified and the employees in the bargaining unit become non-represented employees. The general municipal employees then cannot be included in a substantially similar collective bargaining unit for 12 months from the date of decertification.

The following chapter is a brief overview of employment laws that regulate employment practices.

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EMPLOYMENT RECORDS

Pursuant to Wis. Stat. § 103.13, an employer must permit an employee to inspect or copy any personnel documents which are used or which have been used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, termination or other disciplinary action, and medical records. The right to inspect or copy personnel documents does not apply to the following:

- ❑ Records relating to the investigation of possible criminal offenses committed by that employee.
- ❑ Letters of reference for that employee.
- ❑ Any portion of a test document, except that the employee may see a cumulative total test score for either a section of the test document or for the entire test document.
- ❑ Materials used by the employer for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments or other comments or ratings used for the employer's planning purposes.
- ❑ Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- ❑ An employer who does not maintain any personnel records.
- ❑ Records relevant to any other pending claim between the employer and the employee which may be discovered in a judicial proceeding.

If the employee disagrees with any information contained in the personnel records, a removal or correction of that information may be mutually agreed upon by the employer and the employee. If an agreement cannot be reached, the employee may submit a written statement explaining the employee's position. The employer shall attach the employee's statement to the disputed portion of the personnel record. The employee's statement shall be included whenever that disputed portion of the personnel record is released to a third party as long as the disputed record is a part of the file.

Important: Documents containing an employee's medical information must be maintained in a separate file from the employee's personnel file. Any medical information should be disseminated to people only on a "need to know" basis. If there is no legitimate reason to disclose the information to a person, the information must remain confidential.

OVERTIME & FAIR LABOR STANDARDS ACT (FLSA)

The Fair Labor Standards Act ("FLSA") has two primary requirements: (1) that employers compensate their hourly wage employees at no less than the prevailing minimum wage subject to any state or local minimum wage requirements; and (2) that employers pay overtime to their employees at the rate of one and one-half times the employee's normal hourly rate for all hours worked in excess of 40 in a week.

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Under the FLSA, employees fall into two categories – those who are exempt from minimum wage and overtime pay requirements and those who are not exempt. Non-exempt employees enjoy all of the protections provided by the FLSA, and generally are paid on an hourly basis. To qualify for an exemption, employees generally must (1) meet certain tests regarding their job duties, and (2) be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department of Labor's regulations.

EXEMPT EMPLOYEES

There are several classifications of employees that fall under the FLSA exemptions. The most common exemptions are for executive, administrative, professional and computer employees.

Executive Employee Criteria. An "executive" exempt employee is one who:

- Primarily manages a department or subdivision;
- Directs the work of two or more full-time employees or the equivalent; and
- Has the ability to hire, fire and discipline, or recommend changes in status.

Examples may include:

- Payroll Manager.
- Building & Grounds Director.
- Human Resources Manager.
- Business Operations Manager.
- Accounting Manager.
- Department heads, such as land conservation director, child support director, forest administrator, zoning administrator, social services director.

Administrative Employee Criteria. An "administrative" exempt employee is one who meets all of the following criteria:

- Primary duties consist of office or non-manual work;
- Duties are directly related to management policies or general business operations; and
- Performance of job customarily and regularly requires the exercise of discretion and independent judgment.

Examples may include:

- Human Resources Generalist.
- Internal Auditor.
- Budget Analyst.
- Grants Specialist.
- Office Manager.
- Deputy County Clerk or Deputy Register of Deeds.

Learned Professional Criteria. A “learned professional” exempt employee is one whose position:

- Requires advanced knowledge in a field of science or learning;
- Is predominantly intellectual;
- Is acquired by a prolonged course of specialized instruction.

Examples may include:

- Physician (M.D., D.D.S.).
- Certified Nurse Practitioner.
- Architect.
- Lawyer.
- Teachers & Professors.
- Clinical Social Worker.
- Registered Nurse.

Computer Professional Criteria. A “computer professional” is someone employed as a computer systems analyst, programmer, software engineer, or similar skilled worker whose primary duties consist of:

- Applications of systems analysis techniques;
- Design, development, documentation, analysis, creation, testing or modification of computer systems or programs; or
- Design, documentation, testing, creation or modification of computer programs related to machine operating systems.

Caution: The exemption does not apply to positions involving repair or maintenance of computer hardware, networks, or equipment. Also, general IT “help desk” employees are usually nonexempt under the FLSA because their primary duty is not design, development, testing, creation, etc.

NON-EXEMPT EMPLOYEES

Non-exempt employees are those whose job duties do not meet the executive, administrative, professional, computer professional or any other exempt employee category under the FLSA.

Compensable Work Time. Non-exempt employees must be paid for all “hours worked.” “Hours worked” means time suffered or permitted to work. The work week may begin on any day and may be different for different employees. If the employer knows or has reason to believe that an employee is working, that time is work time. For example, the work week for employees in the county clerk’s office may begin on Sunday, whereas the work week for human services employees begins on Monday.

Partial Overtime Exemption for Law Enforcement Personnel Paid on a Work Period Basis.

The FLSA generally requires employers to pay employees overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay. However, Section 7(k) of the FLSA provides a partial overtime pay exemption for public employees engaged in law enforce-

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ment activities, including security personnel in correctional institutions, who are employed on a “work period” basis.

A “work period” may be from seven consecutive days to 28 consecutive days in length. 29 C.F.R. § 553.201, § 553.224. For work periods of at least seven but less than 28 days, overtime pay for law enforcement employees is required when the number of hours worked exceeds the number of hours that bears the same relationship to 171 as the number of days in the work period bears to 28. 29 C.F.R. § 230. For example, sheriff’s deputies must receive overtime after 86 hours worked during a 14-day work period, or overtime after 128 hours in a 21-day work period. *Id.*

FLSA VIOLATIONS

Penalties. Employers are potentially subject to the following penalties for FLSA violations:

- ❑ Unpaid wages (two - three years of back wages).
- ❑ Fines of up to \$10,000.
- ❑ Imprisonment of up to six months.
- ❑ Liquidated damages (two times the amount of actual damages).
- ❑ Attorney’s fees and costs of litigation.

FAMILY & MEDICAL LEAVE ACTS: STATE AND FEDERAL OBLIGATIONS

The Family and Medical Leave Act (FMLA) became law in 1993. The purpose of the FMLA is to provide certain types of employees with unpaid leave due to a serious health condition or to care for a sick family member or a new child.

The Wisconsin Family and Medical Leave Act (WFMLA) exists for the same purposes as the FMLA. The requirements for covered employers and employees differ, however, and there are instances where an employee may be covered by one and not the other.

Where an eligible employee’s leave qualifies under both the FMLA and WFMLA, the employer should run both leaves concurrently under both laws. The rules of the Act that provides greater leave rights always apply.

FEDERAL FAMILY AND MEDICAL LEAVE ACT (FMLA)

Covered Employees. An employee is covered by the FMLA if he/she:

- ❑ Has been employed by the employer for at least 12 months; and
- ❑ Has worked at least 1,250 hours during the previous 12 months preceding the leave.

Reasons for Leave. An eligible employee may take FMLA leave for the following reasons:

- ❑ The birth of a son or daughter and to care for that child;
- ❑ Placement of a son or daughter for adoption or foster care;
- ❑ To care for a spouse, son, daughter or parent (parents-in-law not included) with a serious health condition;

- ❑ The employee's own serious health condition; or
- ❑ Due to any qualifying exigency arising out of the fact that a child, spouse or parent of the employee is on covered active duty, or has been notified of an impending call or order to covered active duty in the Armed Forces.

"Serious health condition" means an illness, injury, impairment, physical condition or mental condition that involves:

- ❑ Inpatient care (i.e. an overnight hospital stay).
- ❑ Continuing treatment by a healthcare provider.

"Continuing treatment" includes:

- ❑ A period of incapacity that lasts three consecutive days and treatment two or more times OR one treatment followed by continuing treatment under the supervision of a healthcare provider.
- ❑ Incapacity due to pregnancy or prenatal care.
- ❑ Incapacity due to treatment for a chronic serious health condition (i.e. asthma, diabetes).

"Qualifying exigency" includes:

- ❑ Short-notice deployment.
- ❑ Military events and related activities.
- ❑ Childcare and school activities.
- ❑ Financial and legal arrangements.
- ❑ Counseling.
- ❑ Rest and recuperation.
- ❑ Post-deployment activities.
- ❑ Parental care.
- ❑ Additional activities not encompassed by any of the above, but agreed to by the employer and employee.

Leave Available An employee is entitled to 12 work weeks of unpaid leave in a 12 month period. The 12 month period, or "leave year," can be calculated using:

- ❑ Calendar year;
- ❑ A fixed 12 month period (i.e. fiscal year, employee's anniversary date, etc.); or
- ❑ A rolling 12 month period measured backward from the date the FMLA leave is taken by the employee.

Recent changes to the FMLA allow eligible employees who are family members of covered service members to take up to 26 workweeks of leave in a single 12-month period to care for a covered service member ("military caregiver leave").

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If a husband and wife are employed by the same employer, they are entitled to a combined 12 weeks of leave if the leave is taken for:

- The birth of a child or to care for a child;
- The placement or care of a child for adoption or foster care; or
- The care of a parent with a serious health condition.

For military caregiver leave, a husband and wife employed by the same employer are entitled to a combined total of 26 weeks of leave.

Intermittent or Reduced Leave. Intermittent leave = leave that is taken in separate blocks of time.

Reduced leave = leave that reduces the number of hours an employee can work in a day or week. Intermittent or reduced leave can be taken as follows:

- When medically necessary due to the serious health condition of the employee or the employee's immediate family member or the serious injury or illness of a covered service member.
- For the birth of a child or the placement of a child for adoption or foster care only if the employer agrees.

Substitution of Leave. Under the FMLA, an employee can request OR an employer can require an employee to substitute other paid leave for FMLA leave.

Notice/Designation Procedures. Pursuant to the FMLA, employers are required to make certain information available to their employees. In addition, an employee wishing to take FMLA leave must provide notice to his or her employer in the manner proscribed by the FMLA. Once an employee has requested FMLA leave, his or her employer must provide the employee with an eligibility notice and a designation notice, which is intended to let the employee know whether his or her leave qualifies for FMLA. The notice requirements for employers and employees are as follows:

The employer must:

- Post notice in a conspicuous place explaining an employee's rights and responsibilities;
- Incorporate FMLA information in its employee handbook or, if no handbook, provide written guidance on FMLA when leave is requested; and
- Provide written notice to the employee designating leave as FMLA leave.

The eligibility notice and the designation notice should generally be given within five business days of an employee's request for leave, and the designation is to be made before the leave is taken unless there is insufficient information about the leave. An employer can designate leave as FMLA-qualifying after an employee returns if the employer:

- Did not know the employee's leave was FMLA-qualifying until the employee returned; or
- Knows of the reason for leave but is unable to confirm that the leave is FMLA-qualifying.

An employee desiring to take FMLA leave must:

- ❑ Give 30 days notice if leave is foreseeable or give notice as soon as practicable if leave is unforeseeable (notice can be given verbally).

Continuation of Health Benefits. The employer must continue the employee's health benefits unless the employee elects to discontinue benefits. The employee must still pay required premiums, and the employer can discontinue coverage if the employee's premium payment is over 30 days late.

Job Restoration. After taking FMLA leave, an employee is generally entitled to the same or equivalent position (with equal pay, benefits, etc.). However, job restoration can be denied if:

- ❑ The employee would not otherwise have been employed at the time of return (i.e. layoff or shift elimination);
- ❑ The employee is unable to perform an essential function of the job; or
- ❑ The employee is a "key employee."

WISCONSIN FAMILY AND MEDICAL LEAVE ACT (WFMLA)

Covered Employees. An employee is covered by the WFMLA if he/she:

- ❑ Is employed by a covered employer;
- ❑ Has worked for the same covered employer for at least 1,000 hours in the last 52 consecutive weeks; and
- ❑ Has worked for at least 1,000 hours in the last 52 weeks for the covered employer.

Reasons for Leave. An eligible employee can take WFMLA leave for the following reasons:

- ❑ The birth of the employee's natural child (if leave begins within 16 weeks after the birth);
- ❑ The placement of a child for adoption with the employee (foster care is not covered);
- ❑ To care for a spouse, domestic partner, child, parent or parent of a domestic partner with a serious health condition; or
- ❑ The employee's own serious health condition.

"Serious health condition" means a disabling physical or mental illness, injury, impairment or condition involving any of the following:

- ❑ Inpatient care;
- ❑ Outpatient care that requires continuing treatment or supervision by a healthcare provider.

Leave Available. An employee is entitled to 10 weeks of unpaid leave during the calendar year, broken down as follows:

- ❑ 6 weeks for the birth or adoption of a child;
- ❑ 2 weeks to care for a child, spouse, domestic partner, parent, or parent of a domestic partner suffering from a serious health condition; and
- ❑ 2 weeks for the employee's own serious health condition.

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Even if a husband and wife are employed by the same employer, there is no limitation on the amount of leave each spouse can take.

Intermittent and Reduced Leave. Intermittent and reduced leave is permitted for all types of leave recognized under the WFMLA.

Substitution of Leave. Under the WFMLA, an employee may substitute paid leave for WFMLA leave, but an employer cannot require the employee to do so.

Notice Procedures. Wisconsin employers are required to make WFMLA information available to their employees. In addition, an employee requesting leave must provide reasonable notice to his or her employer. The notice requirements for employers and employees are as follows:

The employer must:

- ❑ Display DWD poster explaining an employee's rights and responsibilities under the WFMLA;
- ❑ An employer with 25 to 49 employees must post its policy (even if the policy does not provide leave);
- ❑ An employer with 50 or more employees must post its policy or statement that it provides the same benefits as available under the WFMLA.

An employee desiring to take WFMLA leave must:

- ❑ Give reasonable advance notice in a reasonable and practicable manner.

Continuation of Health Benefits. The employer must continue the employee's health benefits unless the employee elects to discontinue benefits. The employee must still pay required premiums, and the employer can discontinue coverage if the employee's premium payment is over 30 days late.

Job Restoration. After taking WFMLA leave, the employee must be:

- ❑ Returned to the same job, if vacant; or
- ❑ If the same job is not vacant, placed in an equivalent position.

AMERICANS WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act (ADA) is intended to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.

Title I: Regulation of Employment. Title I of the ADA provides that employers may not discriminate against a qualified individual with a disability because of the disability of such individual in regard to:

- ❑ Job application procedures.
- ❑ The hiring, advancement or discharge of employees.
- ❑ Employee compensation.
- ❑ Job training.
- ❑ Other terms, conditions and privileges of employment.

A “qualified individual with a disability” is “an individual with a disability who satisfies the requisite skills, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.”

Disability. “Disability” means:

- ❑ A physical or mental impairment which substantially limits one or more of the major life activities;
- ❑ A person who has a record of such impairment; or
- ❑ A person who is perceived to be disabled.

Disability does not include:

- ❑ Sexual behavior disorders.
- ❑ Pregnancy.
- ❑ Homosexuality/bisexuality.
- ❑ Pyromania.
- ❑ Compulsive gambling.
- ❑ Kleptomania.

“Physical or mental impairment” includes:

- ❑ Physiological disorders;
- ❑ Disfigurement or anatomical loss which affects the neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, and lymphatic, skin or endocrine systems; or
- ❑ Mental or psychological disorders such as mental retardation, organic brain syndrome, emotional or mental illness and special learning disabilities.

“Major life activities” means activities such as:

- ❑ Taking care of oneself.
- ❑ Working.
- ❑ Performing manual tasks.
- ❑ Breathing.
- ❑ Walking.
- ❑ Speaking.
- ❑ Seeing.
- ❑ Hearing.

“Essential functions” means:

- ❑ The fundamental job duties of the employment position.
- ❑ It does not include the marginal functions of the position.

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Reasonable Accommodation. Employers are required to make a “reasonable accommodation” for the known physical or mental limitations of a qualified applicant or employee with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship.

The reasonable accommodation obligation is ongoing and applies to all aspects of employment, including equal opportunity to the application process. Reasonable accommodations must be evaluated on a case-by-case basis focused on the following two factors:

- The specific abilities and functional limitations of a particular applicant or employee with a disability; and
- The specific functional requirements of a particular job.

Basic Principles. A reasonable accommodation must:

- Provide an opportunity for an individual with a disability to achieve the same level of performance or to enjoy benefits or privileges equal to those of a similarly situated nondisabled person. However, an employer need not:
 - Eliminate an essential function of the job (unless the claim is based upon the Wisconsin Fair Employment Act, which may require job restructuring).
 - Lower production standards, whether qualitative or quantitative, that are applied uniformly to employees with and without disabilities. However, an employer may have to provide reasonable accommodations to enable an employee with a disability to meet the production standard.
 - Provide an accommodation that is primarily for personal use.

An accommodation need not be the best accommodation available, as long as it is effective. Also, an employer may not require a qualified individual with a disability to accept an accommodation. But, if the employee needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept an effective accommodation, the employee may not be qualified to remain on the job.

Responding to Requests. An employer should respond to a request for a reasonable accommodation as quickly as possible because unnecessary delays can result in a violation of the ADA. Factors considered in determining whether a delay is unreasonable include:

- The reason(s) for the delay.
- The length of the delay.
- How much the individual and the employer each contributed to the delay.
- What the employer was doing during the delay.
- Whether the required accommodation was simple or complex.

Employer-Initiated Accommodation. An employer should initiate the reasonable accommodation process without being asked by the employee if the employer:

- Knows the employee has a disability;

- ❑ Knows, or has reason to know, that the employee is experiencing workplace problems because of the disability; and
- ❑ Knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation.

Undue Hardship. An employer is not required to make a reasonable accommodation if it would impose an undue hardship on the operation of its business. An undue hardship is an action that requires "significant difficulty or expense," including any accommodation that is:

- ❑ Unduly costly;
- ❑ Extensive;
- ❑ Substantial;
- ❑ Disruptive; or
- ❑ Would fundamentally alter the nature and operation of the business.

Factors to be considered in determining whether an accommodation would impose an undue hardship include:

- ❑ The nature and cost of the accommodation;
- ❑ The financial resources of the facility making the accommodation and the effect on expenses and resources of the facility;
- ❑ The size, number of employees, and type and location of the facilities of the employer; and
- ❑ The impact of the accommodation on the operation of the facility that is making the accommodation.

Examples of Reasonable Accommodations. The following are some examples of accommodations that have been considered reasonable:

- ❑ Making facilities accessible to and usable by an individual with a disability;
- ❑ Restructuring a job by reallocating or redistributing marginal job functions;
- ❑ Altering when or how an essential job function is performed;
- ❑ Part-time or modified work schedules;
- ❑ Obtaining or modifying equipment or devices;
- ❑ Modifying examinations, training materials or policies;
- ❑ Providing qualified readers and interpreters;
- ❑ Reassignment to a vacant position; and
- ❑ Permitting use of accrued paid leave or unpaid leave for necessary treatment.

Penalties Under the ADA. Employers who violate the ADA may be liable for:

- ❑ Compensatory punitive damages for intentional acts;
- ❑ Back pay;

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- ❑ Interest on the judgment;
- ❑ Attorney's fees and costs of litigation, and
- ❑ Injunctive relief.

Pecuniary and future non-pecuniary losses are capped as follows:

- ❑ 15 – 100 employees: \$50,000.00.
- ❑ 101 – 200 employees: \$200,000.00.
- ❑ 201 – 500 employees: \$200,000.00.
- ❑ More than 500 employees: \$300,000.00.

FAIR EMPLOYMENT REGULATIONS

CIVIL RIGHTS ACT

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of:

- ❑ Race.
- ❑ Religion.
- ❑ Color.
- ❑ National Origin.
- ❑ Sex.

Covered Employers. Title VII applies to all employers and employment agencies with 15 or more employees and unions with 15 or more members, as well as federal, state and local government employers.

Limitations on Employers. Title VII prohibits discrimination by employers against employees or job applicants with regard to:

- ❑ Hiring;
- ❑ Promotion;
- ❑ Discharge;
- ❑ Compensation;
- ❑ Terms, conditions and privileges of employment; and
- ❑ Classifying, limiting or segregating employees or applicants.

Limitations on Labor Organizations. Title VII prohibits discrimination by labor organizations in:

- ❑ Limiting, segregating or classifying membership or applicants for membership; and
- ❑ Referral of individuals for employment.

Unintentional Discrimination. This refers to an employer that has a policy or practice that is neutral on its face but impacts persons from a protected class. Examples include:

- ❑ Minimum height requirements (women, Hispanics, Asians).
- ❑ Certain educational requirements.

- ❑ Physical agility tests (women).
- ❑ "No beards" policies.
- ❑ Cognitive ability tests (**Subject to business necessity rule).

Religious Practices. An employer must accommodate an employee's religious practices unless doing so would pose an undue hardship. "Religious practices" include moral or ethical beliefs as to what is right or wrong which are sincerely held with the strength of traditional religious views.

Filing Charges. Charges must be filed within 180 days of the allegedly discriminatory act, or within 300 days if there is a state or local fair employment practice agency. In Wisconsin, charges must be filed within 300 days pursuant to the Wisconsin Fair Employment Act.

Penalties Under Title VII. Employers who violate Title VII may be liable for:

- ❑ Injunction;
- ❑ Reinstatement/hiring/promotion with back pay and benefits;
- ❑ Front pay;
- ❑ Attorney's fees and costs of litigation;
- ❑ Compensatory damages; and
- ❑ Punitive damages for unlawful intentional discrimination.

Damages are capped the same as under the ADA.

WISCONSIN FAIR EMPLOYMENT ACT (WFEA)

The Wisconsin Fair Employment Act (WFEA) prohibits discrimination on the basis of:

- ❑ Age;
- ❑ Race;
- ❑ Creed (religion);
- ❑ Color;
- ❑ Disability;
- ❑ Marital Status;
- ❑ Sex (including sexual orientation);
- ❑ National origin;
- ❑ Ancestry;
- ❑ Arrest record;
- ❑ Conviction record;
- ❑ Membership in the National Guard, state defense force, or any military reserve unit; and
- ❑ The use or nonuse of lawful products off the employer's premises during nonworking hours.

The WFEA also restricts the use of lie detection and genetic testing.

ISSUE FOCUS

Wisconsin Retirement System

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Every county in Wisconsin is required to participate in the Wisconsin Retirement System (WRS) with the exception of Milwaukee County, which operates its own retirement system. Counties that participate in the WRS are required to enroll eligible employees into the retirement system. Generally, an employee is eligible to participate in the WRS unless one of the following applies:

1. The employee was initially employed before July 1, 2011, and is not expected to work at least one-third of what is considered full-time employment by the Department of Employee Trust Funds (600 hours). However, if the employee (initially employed before July 1, 2011) subsequently works 600 hours in a 12-month period, the employee automatically becomes eligible to participate in the WRS;
2. The employee was initially employed on or after July 1, 2011, and is not expected to work at least two-thirds of what is considered full-time employment by the Department of Employee Trust Funds (1200 hours). However, if the employee (initially employed on or after July 1, 2011) subsequently works 1200 hours in a 12-month period, the employee automatically becomes eligible to participate in the WRS;
3. The employee's expected duration of employment is less than one year; or
4. The employee is not otherwise eligible to participate under Wis. Stat. § 40.22(2).

Participating employees generally fall into one of four categories:

1. General participants. These are employees who are not covered by any other category.
2. Protective occupation under Social Security. These are employees:
 - a. Whose principal duties (51% or more) meet all of the following requirements as defined in Wis. Stat. § 40.02 (48)(a):
 - Involvement in active law enforcement or active fire suppression or prevention;
 - Frequent exposure to a high degree of danger or peril; and
 - A high degree of physical conditioning; or
 - b. Who meet the principal duties test above and whose occupation is listed under Wis. Stat. § 40.02 (48) (am), including sheriffs and deputy sheriffs.
3. Protective occupation not under Social Security. These employees are firefighters who meet protective requirements.
4. Elected officials. This category includes local elected officials other than a county sheriff.

WRS

It is important to properly classify employees because the required employer and employee contributions are different depending on the employee's category. Also, employees' collective bargaining rights are determined by their WRS classification. Public safety employees (i.e. deputy sheriffs) with expanded collective bargaining rights under Wis. Stat. § 111.70 must meet the definition of a protective occupation participant under Wis. Stat. § 40.02(48) and be classified as such. *See* Wis. Stat. § 111.70(1) (mm). Municipal employees who are not classified as a protective occupation participants have limited bargaining rights under Wis. Stat. § 111.70. *See* Wis. Stat. § 111.70(4)(mb).

Retirement contributions and benefit payments vary depending on the category of the participating employee. General participants are required to pay one-half of the total actuarially-required contribution rate approved by the Employee Trust Funds Board. The total actuarially-required rate for general participants in 2014 is 14.0%, meaning that the employee contributes 7.0% of their earnings (the gross amount paid to an employee as salary or wages) and the county contributes 7.0%.

Protective occupation participants with Social Security are required to pay the same employee contribution rates as general participants, although the total actuarially-required rate is higher. For example, the total actuarially-required rate for protective occupations with Social Security in 2014 is 17.1%, but the employee-required contribution is 7.0% (the amount paid by general participants) and the county contributes 10.1%.

Elected officials, other than a county sheriff, are required to pay one-half of the total actuarially-required contribution rate approved by the Employee Trust Funds Board. The total actuarially-required rate for elected officials in 2014 is 15.5%. Therefore, the elected official contributes 7.75% and the county contributes 7.75%.

Generally, a municipal employer, such as a county, cannot pay the employee's required contribution to the WRS. However, a municipal employer can pay the employee's contribution in the following circumstances:

- Certain protective occupations, such as deputy sheriffs and EMT workers can bargain to have the county pay the employee's required contribution if the employee was hired before July 1, 2011.
- A municipal employer is required to pay on behalf of a "non-represented law enforcement managerial employee" the same WRS employee contributions that are paid by the municipal employer for "represented law enforcement personnel." There is no definition of "non-represented law enforcement managerial employee" but it is interpreted to mean a county sheriff, chief deputy and other law enforcement supervisory personnel. The term "represented law enforcement employees" refers to represented public safety employees, such as deputy sheriffs and EMT workers. In other words, if the county pays the entire employee contribution to WRS on behalf of deputy sheriffs, then it will pay the entire employee contribution for the sheriff and other non-represented law enforcement managerial employees. This exemption only applies to non-represented law enforcement managerial employees who are initially employed by the county before July 1, 2011 or who are initially employed as represented law enforcement personnel before July 1, 2011 and subsequently become non-represented law enforcement personnel with the same employer.

ISSUE FOCUS

Employee Health Benefits

■ *Josh Bindl, Director of Programs and Services, Wisconsin Counties Association*

Although health insurance in the United States dates back to the Civil War era when coverage was offered against accidents from travel by rail or steamboat, employee benefit plans began to take hold in the 1940s and 1950s. Wage freezes imposed by the federal government during World War II forced employers to be creative with their benefit packages to attract workers. Healthcare coverage was an inexpensive option to attract and retain workers.

In the 1950s and 1960s government began to expand its healthcare coverage costs. The social security program began providing disability benefits in 1954. Medicare and Medicaid were created in 1965.

The 1980s and 1990s saw a rapid rise in the cost of healthcare. Employers began looking for options to control this growing expense. At that time the majority of employer-sponsored group insurance plans were fee-for-service arrangements. "Managed care plans" became the perceived solution to the problem of escalating costs. Recent years have seen the rise of "consumerism" as the next potential solution to the growing problem. However, recent changes in health insurance trends, coupled with passage and implementation of the Patient Protection and Affordable Care Act (ACA) in 2010, have made it difficult for the average citizen to understand the health insurance marketplace.

This chapter is intended to provide county officials with an overview of employee health benefits options and terminology. From basic acronyms to the more cutting-edge area of consumerism, this chapter should provide a foundation to understanding employee health benefits.

SELF-INSURED VS. FULLY INSURED

Counties have the option to either self-insure their employee health benefit liability or purchase a fully insured product that passes the risk on to another entity. The option to self-insure becomes more viable as the number of county employees increases. Self-insuring requires more analysis and oversight on the part of the county as the county must manage the liability it is taking on.

The maintenance of a loss reserve is of significant importance to the financial health of a county self-insuring its employee health benefit liability. A loss reserve is defined as the money held in an account to be made available when health claims costs exceed the amount of money the county allocated for claims in any particular year. This money is also available in the event the county no longer wants to be self-insured. If the county switches to a fully insured product they would still be responsible for claims incurred before the fully insured product became effective. In simple terms, if an employee went to the doctor on December 31 and the county purchased a fully insured product effective January 1, the county is responsible for paying for that claim even though the claim will not be seen by the county until sometime after December 31. Claims that have been incurred, but not yet reported to the claims

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administrator, are referred to as IBNR (incurred but not reported). The delay between the incurred date and the paid date is referred to as claim lag.

How much is enough to hold in reserve is up for debate. Generally, two to three months worth of paid claims costs is an appropriate range, but counties of smaller size generally need more than this. Just because a county has fewer employees does not mean they cannot have consecutive years of severe claims, often caused by chronic illnesses or conditions.

One tool to effectively manage the liability that self-insuring presents is through the purchase of reinsurance. Reinsurance can be purchased to cover the most severe claims and/or claim years. Specific stop-loss is one type of reinsurance coverage. Counties can purchase specific stop-loss to cover an individual employee's claims once they exceed a certain amount for a year. This threshold is called the specific attachment point. For example, if an employee's claims are \$225,000 for a given year and a county purchased reinsurance with a \$100,000 specific attachment point, the county would pay \$100,000 and the reinsurance company would pay \$125,000 to cover that individual's claims.

Another type of reinsurance which can be purchased to curb a county's exposure to medical expense costs is an aggregate stop-loss policy. This type of reinsurance covers the costs associated with all claims for all covered individuals during the entire plan year. For example, if a county usually experiences \$3,000,000 in medical claims each year, it may want to purchase an aggregate stop-loss reinsurance policy to cover claims over some specified amount in excess of \$3,000,000. The reinsurance carrier will usually set the aggregate limit at a percent of paid claims or total premium.

Self-funding has its advantages and disadvantages. In theory, self-funding will be more cost-effective in the long run than a fully insured plan because the gains for better-than-expected claim years belong to the county and do not become profit for the third-party insurer. Another advantage is that the county retains control over the health benefit program. The county will be working directly with its vendors and not through an intermediary.

However, self-funding is not a good option for every county. In considering whether to self-fund, the first step is to assess the risk your county is willing to bear for your health benefit plan. A county must be comfortable in trading the security of a fully insured plan for the chance that actual costs could exceed the premium contributed in a given year. Associated with this is the long-term ability of your county to set aside dollars for years when claims and administrative expenses exceed premiums. Some counties have underfunded their health benefit reserve, which leaves them in an unsound financial position. Counties must also assess if self-funding will save them any money. As an alternative, many not-for-profit options for insuring your health benefit plan exist today. These entities do not seek profit from each county they insure; rather, they pool liabilities and collectively balance good and bad claim years. Pooling can also eliminate the need for some vendors and increase the purchasing power of all of the counties, thus driving down administrative costs.

HEALTH BENEFIT CONSULTANTS

As the cost of providing employee health benefits increases, so too does the complexity. For help sorting through new products and services, as well as considering self-funded versus fully insured plans, counties can turn to the expert advice of health benefit consultants. There are a wide variety of types of health benefit consultants, who also can take the name of agents and brokers. Knowing the difference and asking the right questions of your consultant is as important as knowing the premium and benefit variations between plans.

Many agents and brokers receive commissions for insurance placement services. When working with agents, brokers and consultants, it is of critical importance to know how they are getting paid. Some counties will pay them directly for their knowledge and services, but that does not prevent them from receiving a commission from companies for placement of the county's business with that company. Knowing where your health insurance expert can receive extra money will allow you to guard against any bias they may have.

HEALTH BENEFIT PLANS

Employee health benefit plans have many moving parts. Understanding how each part works will help in understanding which changes will have the greatest impact on premium and utilization. Whether self-funded or fully insured, it is important to closely manage claims experience to keep premiums down. Knowing utilization trends allows counties to not only stay ahead of cost drivers, but also allows fully insured counties to compare their claims experience with the amount they are paying in premium. Ask to see if your third-party administrator (TPA) has reports available for your county's claims experience.

Deductibles, coinsurance and co-pays are three of the tools used to share the cost of health benefit plans with employees. However, deductibles and co-pays should be looked at as more than just cost-sharing tools. Deductibles and co-pays can be used to shape certain behaviors, ultimately impacting health plan utilization.

Deductibles are an amount the policyholder must pay out-of-pocket for their healthcare before the health plan pays. A deductible is a way of reducing the cost of the health plan by making the policyholder spend their own money for their healthcare needs in the early stages of care. Deductibles can be especially effective as the deductible amount goes up and is coupled with a health reimbursement account (see section on consumerism).

Coinsurance is a tool used to get employees to contribute for their health benefit coverage. This can be used to steer employees to use providers in the network. With coinsurance, the employee often has a specified percentage contribution towards the cost of the premium. The advantage of coinsurance is if the health plan premium increases 15% the employees share in that increase. The disadvantage of coinsurance is that once it is paid the employee has little to no incentive to make health spending decisions based on the price of the care.

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Co-pays are amounts that a policyholder must pay before the health plan will pay the remainder. Co-pays can be on visits and services, as well as on prescription drugs. These must be paid each time that particular service or prescription drug is obtained. With co-pays, employees pay as they use the service, even if they have already met their deductibles. Starting in 2014, the ACA does not allow for co-pays once the policyholder has met their out-of-pocket maximum.

How these tools interrelate is the key to shaping behavior in your county's health plan. For example, if an employee develops an illness on Sunday at 2:00 p.m. they must decide when to be seen by a doctor. Being seen Sunday evening by an emergency room doctor would be more expensive than being seen Monday by appointment. If the health plan has only coinsurance there is no incentive for the employee to take cost into consideration and wait until Monday. Further, if a higher co-pay is in place for emergency room visits versus regular doctor appointments, the employee will have an incentive to wait until Monday if the illness does not require urgent care.

One concern with all of the tools that share the cost of the health benefit plan with employees is that it can become too burdensome on the employee. Employers provide the health benefit with the intention of it being a benefit, not something that costs the employee a significant portion of their earnings. For low-income employees this can be a significant concern. A tool for addressing this concern is the out-of-pocket maximum. When the out-of-pocket maximum is reached the health plan pays all further covered costs and the employee's obligation ends.

In addition to the cost-sharing tools, another method of reducing the county's health benefit costs is by adopting a managed care model. The basic health benefit plan can take the shape of a health maintenance organization (HMO), preferred provider organization (PPO) or point of service plan (POS). All three are remaining trends of the managed care trend from the 1980s and 1990s.

Health maintenance organizations are organizations of doctors, hospitals and other healthcare service providers who sign a contract with the HMO. The cost savings idea behind an HMO is that once in the system, the employee's care will be managed and unnecessary services will be eliminated. With an HMO the employee must stay within the system unless they are referred out to a specialist.

PPOs are networks of medical providers that charge on a fee-for-service arrangement, but fees are based on a negotiated, discounted fee schedule. Under the PPO scenario the discounts are provided based on the promise of a large volume of business. Steerage is the term used to describe the practice of encouraging employees to use one provider over another. Employees can receive care outside the network, but receiving care from an out-of-network provider can have costly consequences to the employee through increased coinsurance and co-pays.

POS plans are like HMO and PPO plans in that they enroll employees with a primary care physician who has signed a contract for discounted pricing. Where the POS plan differs is that employees can obtain care out of network if they choose; however the employee must check in with their primary care physician in order to have the health plan cover the maximum amount. This plan is still cheaper than the absence of a network because the employee is still having their care managed by a primary care physician.

With all of the moving parts of a health benefit plan, counties must be aware of adverse selection. Whether self-insured or fully insured, adverse selection happens when more than one health plan exists in the same county. Adverse selection occurs when employees with low claims choose one plan and employees with high claims choose another. Employees will have the ability to choose a plan based on what will save them the most money. Counties should structure their benefits so employees choose either “yes” or “no” to one plan of health benefits.

In order to counter adverse selection, counties should make benefit changes and offer plans based on pools of employees, such as the sheriff’s department, highway department, human services, administration, etc. This ensures that the plan has a balance between employees with low claims and high claims.

CONSUMERISM

Consumerism in healthcare is based on the idea that individuals should have greater control over decisions affecting their healthcare. The belief is that giving individuals the tools and information they need to have more control over their healthcare will result in better treatment outcomes at a smaller price. Increasing the awareness of the total cost of healthcare results in engaged consumers who drive down the costs through competition and informed decision making.

At the heart of the consumerism trend are high-deductible health plans (HDHPs), health savings accounts (HSAs) and health reimbursement arrangements (HRAs). HDHPs generally result in lower insurance premiums with smaller future increases in premium. Often HDHPs are coupled with either an HRA or HSA due to the financial strain HDHPs place on employees.

An HRA is a specified dollar amount that a county can pledge to an employee for the reimbursement of qualified medical expenses and insurance premiums. With an HRA the county has greater leeway in defining how the funds will be utilized. Also, limits can be put in place for the amount available for carry-over each year.

	<u>HRA</u>	<u>HSA</u>
Account Owned By	Employer	Employee
Who Maintains Interest Received on Account	Employer	Employee
Benefits Levels	Same as Current (Including Co-pays)	Need to Change Benefit Levels – Minimum Requirements (No Co-pays)
Funding	Employer	Employer and/or Employee
Unused Benefit Dollars	Employer Decides Rollover – Yes or No	Continuous Rollover of Funds

In addition to HSAs and HRAs, there are other critical components needed to gain the benefits of consumerism. Consumer-driven healthcare encourages healthy behavior. Employees should not pay out-of-pocket for items such as routine physicals, immunizations, prenatal care, etc. In the long-term,

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these items are expected to save the health plan money through early detection and prevention of catastrophic claims. The ACA mandates specific preventative care be paid for at 100%.

Wellness is another important piece of the consumerism trend and its popularity has grown in a corresponding fashion. Healthy eating, walking programs, weight loss programs, health club memberships and healthy living seminars have become a part of many workplaces. Employers see the benefits of healthy employees through increased productivity, as well as savings to the health plan.

Many counties have seen the benefits of consumerism through an increase in communication between employees and management. Not only have communications on health benefits increased, but they are often times more productive. Both sides are experiencing problems created by the growing cost of healthcare and are eager to work together to find solutions.

One approach to increasing communication has been the formation of an insurance committee made up of representation from both employees and management. Here both sides are part of the development and implementation of the health plan. Employee and management officials hear each other's perspectives as changes are brought forward for review. They also spend time educating themselves on overall claims experience and optional health benefits. It is common for insurance committees to create highly successful wellness programs, as individuals serving in this capacity are knowledgeable of the types of activities that will have the farthest reaching impact in their workplace.

CONCLUSION

Employee health benefits have come a long way since the Civil War Era. As advancements in healthcare continue, so too does the increased cost of the services. This escalation of cost makes it increasingly important to stay on top of the trends in employee health benefits.

Emergency Management

■ *David L. Maack, CEM, CPM, WCEM, Emergency Management
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There is a phrase amongst emergency managers – “It is not a matter of if but when disaster happens.” Are you prepared? No one wakes up and says today there is going to be a disaster. Disasters are unexpected; they overwhelm first responders; and lives, health and the environment are often endangered. At a very minimum, emergencies and disasters are disruptive and often occur at the most inopportune times. Therefore, we need to foster an attitude of both personal and community preparedness.

Each county in Wisconsin is required to have an emergency management program. The structure of these programs may vary by county but all counties have the same responsibilities. These responsibilities are outlined in Wis. Stat. § 323.14, which requires that each county board “shall develop and adopt an emergency management plan and program that is compatible with the state plan of emergency management.”

A good emergency management program is built upon relationships that have been fostered over time. While most emergency management programs are small and have limited budgets, a good emergency manager brings not only a wealth of experience to the table, but a broad network of contacts. A good emergency manager has the ability to bring together an extensive, as well as diverse group of people to focus on the emergency.

County emergency management departments need to be on the frontlines of developing disaster plans; coordinating training, drills and exercises; and educating the public. Most emergency management offices in Wisconsin are small; and because disasters are not a daily or even a monthly occurrence, the departments often are often overlooked – that is, until something happens.

Simply designating an emergency manager does not protect an elected official from bearing responsibility during a disaster. The public expects elected officials to be at the forefront of response and recovery efforts. They look to elected officials for direction and reassurance.

Elected officials set the tone and direction in the community for prevention, mitigation, preparedness, response and recovery activities. They do so by providing policy, mission, direction and authority. Actions taken during an incident can either help or hinder the desired outcome. Therefore, it is important that elected officials understand what their role is prior to a disaster.

Not only do elected and appointed officials need to be ready to respond to disasters, they should also take preemptive measures to mitigate or lessen the effects of disasters on their communities. While you may not be able to prevent floods or tornadoes from hitting your community, you can lessen the damage of disasters by utilizing the tools of policy making, such as flood plain management, land use

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planning, as well as enforcing safety standards that keep people from putting their lives and economic welfare in danger.

Sadly, many communities do not address mitigation until they are in the recovery phase of a disaster. However, it has been proven that mitigation saves money. A 2005 study by the Multihazard Mitigation Council documented that for every \$1 spent on mitigation, an average of \$4 is saved – a pretty good return on an investment.

When disaster strikes, response activities are critical and everyone should know their role. The county Emergency Operations Plan and supporting annexes or Emergency Support Functions outline those responsibilities. In larger disasters, an emergency operations center (EOC) is often established. An EOC is a multi-agency coordination system in which elected and senior officials from various agencies gather to coordinate the overall response to an event. While the field commander manages the incident at the scene and makes tactical decisions, the role of the EOC is to look at the big picture, anticipate needs, coordinate resources and make policy decisions. This frees up the field incident commander to focus on tactical operations.

One of the tools that county executives and county board chairs have is the ability to declare a county state of emergency. Depending on your county's local ordinances, declaring a county state of emergency not only provides additional powers during the declaration, but also positions the county to request additional state and federal assistance.

It is also important that counties submit damage assessment reports to Wisconsin Emergency Management (WEM) within 12, 24 and 72 hours. While initial damage assessment estimates may be rough, it is imperative that a plan is in place to accurately document and assess both public and private sector damage. This will help WEM determine if there is sufficient damage to request the Federal Emergency Management Agency (FEMA) to conduct a preliminary damage assessment or if the local municipality could be eligible for reimbursement through the Wisconsin Disaster Fund. Depending on the incident, recovery may be long term. Clean-up and debris removal could take weeks, if not months. If a community is devastated, the rebuilding process could take years.

In the midst of disasters, typical functions like garbage pick-up, street repairs, and other vital services are often delayed because those workers are reassigned to disaster response. Depending on the size and type of the disaster, departments, such as human services, register of deeds, planning and development, purchasing and finance could also be involved, as well as law enforcement, fire, public works, and medical examiner/coroner.

While the public will be patient during the initial few days of an emergency, if they are not directly affected, they expect that government will provide the same general services that it did prior to the disaster. This poses challenges because staff is usually stretched thin responding to and then recovering from a disaster. Learning to balance long-term recovery with the day-to-day expectations of a community is essential.

COUNTY OFFICIAL RESPONSIBILITIES

Each disaster is unique, but common threads run through each. Knowing the types of hazards that could impact your community will, however, aid you in preparing for those emergencies or disasters.

STEPS ELECTED AND SENIOR OFFICIALS SHOULD TAKE PRIOR TO A DISASTER INCLUDE:

1. Familiarize yourself with Wis. Stat. Ch. 323. This not only outlines your responsibilities, but it also outlines additional powers that you will have during a disaster.
2. Review emergency ordinances to ensure they are adequate. Define emergency powers and add a provision for declaring a local/county state of emergency.
3. Integrate emergency management into all departments that may be called upon to respond to provide support during a disaster.
4. Ensure that your community's comprehensive emergency management/operations plan is current and compliant with the National Incident Management System (NIMS).
5. Know what your responsibilities are and participate in disaster drills/exercises.
6. Develop and support the establishment of an Emergency Operations Center (EOC).
7. Develop or maintain a Continuity of Operations/Continuity of Government Plan (COOP/COG). In the private sector, this would be similar to a Business Continuity Plan.
8. As a part of your COOP/COG plan, identify alternate facilities in which to operate out of in the event that your primary facilities are damaged or in an evacuation zone. These alternate facilities may be in another jurisdiction if necessary.
9. Develop a community-based mitigation process to implement a hazard mitigation plan. This is critical for receiving hazard mitigation funds after a disaster occurs.
10. Develop mutual aid agreements with other agencies and jurisdictions.
11. Foster the creation of a Long Term Recovery Committee to plan and guide local recovery issues.

STEPS ELECTED AND SENIOR OFFICIALS SHOULD TAKE DURING A DISASTER INCLUDE:

1. Maintain a presence in the EOC.
2. Consider the need for issuing an emergency declaration or proclamation. This can help position your community to receive additional state and federal assistance.
3. Understand the incident objectives, provide visible leadership and set policy.
4. Exercise sound reasonable judgment and make decisions with appreciation of legal considerations. Follow your unique standard of care.
5. Prioritize resources.
6. Communicate to the public the nature of event, status of community response, and what individuals should do.
7. Utilize mutual aid with neighboring jurisdictions.

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8. Promote the timely completion of Preliminary Damage Assessments by individuals and businesses.
9. Document, Document, Document!

STEPS ELECTED AND SENIOR OFFICIALS SHOULD TAKE AFTER A DISASTER INCLUDE:

1. Tour damaged areas and meet with impacted residents.
2. Develop a recovery plan and work with state and federal agencies to secure recovery funds.
3. During the recovery process, consider mitigation projects that could lessen or prevent future damage.
4. Work with the Long Term Recovery Committee to address long-term needs for survivors.
5. Participate in 'after action' reviews/critiques.

Emergency management is like an insurance policy. You hope that you will never have to use but when you do, you want the assurance that it will be there. If elected and senior officials do not put the time in on the front end, they will spend ten times more on the back end trying to understand and deal with the ramifications of not being prepared.

Human Services: A Primer

■ Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs,
Wisconsin Counties Association

COUNTIES ARE REQUIRED BY STATE LAW TO PERFORM HUMAN SERVICES FUNCTIONS ON BEHALF OF THE STATE.

County governments serve as the administrative arm of the state. One of the most prevalent examples is county administration of social/human services programs. County responsibilities are found throughout the Wisconsin State Statutes:

Wis. Stat. Ch. 46: Social Services

Wis. Stat. Ch. 48: Children's Code

Wis. Stat. Ch. 49: Public Assistance and Children and Family Services

Wis. Stat. Ch. 51: State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act

Wis. Stat. Ch. 55: Protective Service System

Wis. Stat. Ch. 938: Juvenile Justice Code

Wisconsin state statute requires counties to create social or human services departments, create oversight committees or human services / social services boards (statutes also specify board membership), and sign contracts with the state for the provision of human services programming. The statutes also assign counties primary responsibility for the care, well-being, and treatment of certain populations. Examples of these statutory mandates include:

- Wis. Stat. § 46.22. County Social Services. (1) COUNTY DEPARTMENT OF SOCIAL SERVICES. (a) *Creation*. Except as provided under s. 46.23 (3)(b), the county board of supervisors of any county with a population of less than 500,000, or the county boards of 2 or more counties, shall establish a county department of social services on a single-county or multi-county basis. The county department of social services shall consist of a county social services board, a county social services director and necessary personnel.

Note: Wis. Stat. § 46.23 allows counties to create departments of human services.

- Wis. Stat. § 51.42 (1)(b). County liability. The county board of supervisors has the primary responsibility for the well-being, treatment and care of the mentally ill, developmentally disabled, alcoholic and other drug dependent citizens residing within its county and for ensuring that those individuals in need of such emergency services found within its county receive immediate emergency services. This primary responsibility is limited to the programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

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- Wis. Stat. § 938.06(2)(a). In counties having less than 750,000 population, the county board of supervisors shall authorize the county department or the court, or both, to provide intake services under s. 938.067 and the staff needed to provide intake services under s. 938.069. Intake services shall be provided by employees of the court or the county department and may not be subcontracted to other individuals or agencies, except as provided in par. (am). Intake workers shall be governed in their intake work, including their responsibilities for requesting the filing of a petition and entering into a deferred prosecution agreement, by general written policies established by the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district.

CATEGORIES OF HUMAN SERVICES PROGRAMS PROVIDED AT THE COUNTY LEVEL

County social / human services departments provide an array of services, ranging from services to children in the Birth to Three program to our aging population in the adult protective services system.

County human services programs can be categorized in five broad areas:

- Children and Families, includes child protective services
- Behavioral Health, includes mental health and alcohol and other drug abuse services
- Juvenile Justice
- Long-Term Support, includes services for children and adults with disabilities, as well as services to the aged
- Economic Support, includes eligibility determinations for the FoodShare and Medical Assistance programs

MAJOR FUNDING SOURCES

Funding for county social / human services programs comes from a variety of sources, including state and federal funds, as well as county property tax levy.

- Community Aids
 - A combination of state and federal funds utilized for the provision of human services in two broad areas: (1) social services for low-income persons and children in need of protection and services; (2) services for persons with needs relating to mental illness, substance abuse or developmental disabilities.
 - Distributed from two state departments: Department of Health Services (DHS) and Department of Children and Families (DCF).
 - Counties are required to provide a 9.89% match to receive community aids funding.
 - 2013 Funding Levels:
 - Community Aids (DHS): \$189,880,831
 - Children and Family Aids (DCF): \$66,475,500

- Youth Aids
 - An annual allocation of state and federal funds from which a county may pay for juvenile delinquency-related services, including out-of-home placements and non-residential, community-based services for juveniles.
 - Distributed from the Department of Corrections.
 - 2013 Funding Level: \$90,749,774.
- Income Maintenance Administration Allocation
 - A combination of state and federal funds provided to county income maintenance consortia to perform the eligibility determination and management functions associated with several federal and state programs, including Medical Assistance and FoodShare.
 - 2013 Base Funding Level: \$26,463,302.
 - 2013 Increase for ACA Implementation: \$15,531,918.
- County Property Taxes
 - The amount of state and federal funding paid to counties does not cover county costs associated with the provision of the statutorily required services. As a result, counties have a significant financial investment, or “overmatch” in human services programming.
 - Overmatch amounts:
 - Community Aids: \$411.6 million in 2012.
 - Youth Aids: \$116,942,815 in 2010.
 - Income Maintenance: \$28,540,357 in 2011.

ONLINE RESOURCES

There is a wealth of resources available to county officials from local, state and federal web sites. From in-depth research to the status of legislation, the information available to you as a county official through the web is truly limitless. Below is a sampling of the Web sites that have proven to be beneficial to county officials.

NATIONAL

National Association of Counties (NACo) - www.naco.org

National Conference of State Legislatures - www.ncsl.org

The United States House of Representatives - www.house.gov

The United States Senate - www.senate.gov

The White House - www.whitehouse.gov

STATE

State of Wisconsin - www.wisconsin.gov

- Note: All state departments such as the Wisconsin Department of Revenue and the Wisconsin Court System can be accessed through this site.

UW-Extension Local Government Center - www.uwex.edu/lgc

UW-Extension Cooperative Extension - www.uwex.edu/ces

STATE ASSOCIATIONS

Wisconsin Counties Association - www.wicounties.org

- Note: All 72 counties' Web sites can be accessed through the WCA Web site at www.wicounties.org, "County Directory."

League of Wisconsin Municipalities - www.lwm-info.org

Wisconsin Alliance of Cities - www.wiscities.org

Wisconsin Taxpayers Alliance - www.wistax.org

Wisconsin Towns Association - www.wisctowns.com

Transportation Development Association of Wisconsin (TDA) - www.tdawisconsin.org

COUNTY ASSOCIATIONS

Wisconsin Association of County Personnel Directors - www.wacpd.org

Wisconsin County Code Administrators - www.wccadm.com

Wisconsin County Forests Association - www.wisconsincountyforests.com

Online Resources

COUNTY ASSOCIATIONS

Wisconsin County Highway Association - www.wcha.net

Wisconsin County Treasurer's Association - <http://mylocalgov.com/wcta/index.asp>

Wisconsin County Human Services Association - www.wchsa.org

Wisconsin Emergency Management Association - <http://wema.us>

Wisconsin Land and Water Conservation Association - www.wlwca.org

Wisconsin Land Information Association - www.wlia.org

Wisconsin Register of Deeds Association - www.wrdaonline.org

Wisconsin Sheriffs and Deputy Sheriffs Association - www.wdsda.org

County Veterans Service Officers Association of Wisconsin - www.wicvso.org

NEWS SERVICES

Governing Magazine - www.governing.com

The Wheeler Report - www.thewheelerreport.com

NACo County News Online - www.countynews.org

WisPolitics - www.wispolitics.com

www.uwex.edu/ces



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