



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON LOCAL SERVICE CONSOLIDATION

FROM: Jessica Karls-Ruplinger, Scott Groz, and Melissa Schmidt, Staff Attorneys

RE: Issues for Consideration by the Special Committee

DATE: November 3, 2010

This Memo responds to a request by members of the Special Committee for additional information on collective bargaining, local recycling programs, joint fire departments and special purpose fire protection districts, and county-based sewer or storm water and surface water management. These issues have been suggested to the Special Committee by members of the committee or by persons testifying before the committee.

Collective Bargaining

The Special Committee requested additional information about the recommendations relating to collective bargaining and local service consolidation presented by Curt Witynski, Assistant Director, League of Wisconsin Municipalities, at its October 5, 2010 meeting.

Collective bargaining between municipal employers and employees is governed by the Municipal Employment Relations Act (MERA), ss. 111.70 to 111.77, Stats. Under MERA, wages, hours, and conditions of employment are mandatory subjects of bargaining. Consequently, a municipal employer is required to collectively bargain with municipal employees regarding wages, hours, and conditions of employment. A municipal employer is not required to collectively bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours, and conditions of employment of municipal employees. [s. 111.70 (1) (a), Stats.]

Collective bargaining issues arise in the context of local service consolidation because consolidation may directly affect employees who are represented by a labor representative under MERA. For example, if two municipalities consolidate a local service, such consolidation may result in the termination or reassignment of some employees.

To facilitate local service consolidation, Mr. Witynski recommended, and the committee could recommend, the following:

- That MERA be amended to require that when consolidation occurs, collective bargaining agreements be renegotiated between the municipal employees and the municipality or entity that will provide the consolidated services.
- That MERA be amended to provide that the decision to consolidate, transfer, or reassign local services and the impact of such decision is a permissive subject of bargaining. This would allow, but not require, a municipal employer to collectively bargain with municipal employees regarding a decision to consolidate, transfer, or reassign local services and the impact of such decision.

Local Recycling Programs and the Department of Natural Resources (DNR) Financial Assistance for Recycling

At its October 5, 2010 meeting, the committee received testimony from the DNR on local recycling programs in Wisconsin as well as financial assistance from the DNR for these programs. In particular, the DNR discussed its Municipal and County Recycling Grant program. For fiscal year 2010-11, this program will provide \$32,098,100 statewide for grants to local units of government acting as “responsible units” for administration of recycling programs. The department described the history of the grant program, noting that as recycling costs have increased, the share of a recycling unit’s costs covered by the grant have decreased from about 50% of costs at the program’s inception to about 25-30% of current costs.

The department also presented information on benchmarks for measuring recycling unit efficiency, and described inefficiencies in the current recycling unit structure. The department provided examples of current collaboration efforts in the provision of recycling services and finished its presentation with an outline of a possible scenario for county-based consolidation of recycling units.

Regarding legislative options on this issue, the committee could recommend the creation of a work group or council on recycling units, to be charged with the task of recommending a model for recycling unit consolidation to the DNR or the Legislature, or both. This course of action, rather than legislation directly mandating a model for recycling unit consolidation, was recommended by the DNR based on its desire for stakeholder input.

Joint Fire Departments and Special Purpose Fire Protection Districts

At the Special Committee’s October 5, 2010 meeting, Public Member Michael Woodzicka asked for information regarding the consolidation of fire services. He also asked for information about whether a town, village, or city could create a special purpose fire protection district, with separate authority to levy taxes to pay for fire protection services.

Under current law, only villages with a population of 5,500 or more and towns are required to provide fire protection services. Any village with a population less than 5,500 and any city may, under current law, provide fire protection services, but the statutes do not require it.

Joint Fire Departments

There are numerous ways for a town, village, or city to provide for fire protection services. Generally, a town, village, or city that provides fire protection services may do so by creating its own department or by contracting with another municipality or private fire company for the services. A town, village, or city may also choose to provide fire protection services in cooperation with another municipality. The most common way that services are cooperatively provided is by the creation of a joint fire department with another town, village, or city. A less common way to provide fire protection services is through a combined protection services department that provides both fire protection and police services. The latter option is limited to villages that created a combined protection services department prior to January 1, 1987.

In some cases, when a town, village, or city decides to consolidate fire protection services by creating a joint fire department, the statutes require that a joint board of fire commissioners also be created to govern the joint fire department.* The size of the board and the length of the commissioners' terms may be determined jointly by the municipalities creating the joint fire department. [ss. 61.65 (3g) (d) 1. b. and 62.13 (2m) (b), Stats.] The statutes require that a joint board of fire commissioners be created when:

- A village with a population of 5,500 or more creates a joint fire department with a town, village of any size, or city. [s. 61.65 (2) (b) 2., Stats.]
- A city creates a joint fire department with another city. [s. 62.13 (2m) (b), Stats.]

Special Purpose Fire Protection Districts

In Wisconsin, a unit of local government may be categorized as either a general purpose district or a special purpose district. Counties, towns, villages, and cities are considered general purpose districts. A special purpose district refers to a unit of local government created for one particular (or "special") purpose. Some examples of a special purpose district include school districts, technical college districts, and sewerage districts. A county, town, village, city, or special purpose district may not enact taxes unless the particular tax is authorized by the state constitution or by state statute. As a result, the statutes specify whether a special purpose district has the authority to levy taxes. Examples of special purpose districts with the authority to levy various types of taxes include school districts, technical college districts, sewerage districts, town sanitary districts, and the Southeast Wisconsin Professional Baseball Park District.

The committee could decide to draft legislation that would: (1) create one or more special purpose fire protection districts in a designated geographical area or areas; (2) allow a town, village, or city to create such a district; or (3) do both.

*Because a town, village, or city may also create joint police departments, a joint fire department may, in some circumstances, be governed by a joint board of police and fire commissioners.

County-Based Sewer or Storm Water and Surface Water Management

At the Special Committee's August 31, 2010 meeting, Public Member Ron Chamberlain suggested a review of storm water management policies and asked for information about expanding the law to permit a county-based storm water management system. Under current law, a municipality (defined as a town, village, city, or metropolitan sewerage district) may manage sewer or storm water and surface water (sewerage) by constructing, acquiring or leasing, extending, or improving any plant and equipment within or without its corporate limits for the collection, transportation, storage, treatment, and disposal of sewage or storm water and surface water. A town, village, or city may arrange for the service to be furnished by a metropolitan sewerage district or joint sewerage system. [s. 66.0821 (2) (a) 1., Stats.]

A municipality may fund the cost of engaging in the activities listed above through its general fund, taxation, special assessment or sewerage service charges, municipal obligations or revenue bonds, or a combination of these sources. [s. 66.0821 (3) (a), Stats.]

Under s. 66.0821 (4) (a), Stats., the governing body of the municipality may:

establish sewerage service charges in an amount to meet all or part of the requirements for the construction, reconstruction, improvement, extension, operation, maintenance, repair, and depreciation of the sewerage system, and for the payment of all or part of the principal and interest of any indebtedness incurred for those purposes, including the replacement of funds advanced by or paid from the general fund of the municipality. Service charges made by a metropolitan sewerage district to any town, village, or city shall be levied by the town, village, or city against the individual sewer system users within the corporate limits of the municipality, and the municipality shall collect the charges and promptly remit them to the metropolitan sewerage district.

If the municipality decides to establish sewerage service charges, the amount charged may be based upon the classification of the property that is benefitted from the sewerage service. For the purpose of making equitable charges for services rendered, property that benefits from the sewerage service may be classified in the following manner:

- If the property benefits from the sanitary sewerage system, the property benefitted may be classified taking into consideration the volume of water, including surface or drain waters, the character of the sewage or waste and the nature of the use made of the sewerage system, including the sewage disposal plant. [s. 66.0821 (4) (b), Stats.]
- If the property is served by the storm water and surface water sewerage system, the property served may be classified, taking into consideration the volume or peaking of storm water or surface water discharge that is caused by the area of impervious surfaces, topography, impervious surfaces and other surface characteristics, extent and reliability of mitigation or treatment measures available to service the property, apart from measures provided by the storm water and surface water system, and any other considerations that are reasonably

relevant to a use made of the storm water and surface water sewerage system. [s. 66.0821 (4) (c), Stats.]

Regarding this issue, the committee could recommend legislation that would permit counties to provide for the collection, transportation, storage, treatment, and disposal of sewage or storm water and surface water, or both, as described in s. 66.0821, Stats. In doing so, the committee would need to address many logistical questions. For example, would the authority given to a county be limited just to storm water and surface water management, or would the authority include sewer management as well? Additionally, how would a county sewerage system interact with a town, village, city, or metropolitan sewerage system? Similarly, would a county have the authority to service the entire county, or only portions of the county not currently serviced?

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