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## MEMORANDUM

TO: Honorable Members of the Legislative Council Special Committee on Local Service Consolidation

FROM: David Callender, Legislative Associate  
Wisconsin Counties Association

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DATE: November 9, 2010

RE: Facilitating Intergovernmental Collaboration for the Provision of Services and the Joint Exercise of Powers

### Background

The Wisconsin Counties Association thanks the Committee for the opportunity to provide this information concerning efforts to allow counties and other local governments the opportunity to collaborate in the joint provision of governmental services. In this era of increasing mandated services and shrinking revenues to offset costs, now more than ever counties have an interest in establishing service delivery methods that maximize efficiencies. To this end, counties have recently succeeded in obtaining the legislative authority to establish intergovernmental commissions allowing for the joint operation of county nursing homes (see Wis. Stat. § 49.49(7)). In addition, counties successfully lobbied for the power to collaborate with other municipalities to create a joint conduit bonding commission, thereby maximizing local government's ability to promote valuable economic development programs (see Wis. Stat. § 66.0304). Expanding upon these recent legislative successes, the Wisconsin Counties Association believes it is in the best interests of state and local government to undertake a review of the statutes that authorize local government service collaboration and make the changes necessary to allow local government leaders the flexibility to generate the efficiencies that will be necessary to deliver services to the citizens they serve.

In reviewing the relevant statutes, it is difficult to identify true "barriers" to intergovernmental cooperation. In fact, Wis. Stat. § 66.0301 contains broad language authorizing collaboration in conceivably every local government service category. Nonetheless, even though broad authority for governmental service collaboration has been available for many years under Wis. Stats. § 66.0301, intergovernmental service collaboration to date has been somewhat limited. Although there are likely many reasons for the lack of collaborative

activities, two possible weaknesses in the statutory scheme have been identified as having the potential to limit collaborative efforts. One such weakness is that sec. 66.0301 conflicts with statutory language contained in other parts of the Wisconsin Statutes that mandate a specific form of collaboration depending upon the actual services to be provided under the auspices of the collaborative entity. A second identified weakness is that sec. 66.0301 does not explicitly set forth the means by which to establish and administer every possible collaboration. To be sure, there is tension between the two weaknesses identified here. One approach gives great flexibility to our governmental leaders to determine how best to collaborate. The other approach, in setting forth specific statutory requirements for collaboration, provides certainty but limits flexibility.

### **Objectives in Establishing Statutory Authority for Collaboration**

The first objective is to ensure that intergovernmental collaboration under Wis. Stats. § 66.0301 is broadly available so that governmental entities may realize the potential benefits of collaboration to the maximum extent they deem beneficial.

The second objective is to minimize potential statutory conflicts or barriers that may serve to limit the use of collaboration as a vital tool to realizing operational efficiencies and coordination in the provision of governmental services.

### **Legislative Approach**

*Supporting Maximum Flexibility.* Section 66.0301 gives broad authority for municipalities to collaborate by contract. Section 66.0301(2) states:

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 . . . for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.

The use of the phrase “in addition to the provisions of any other statute” leads to some uncertainty as to how the authority contained in sec. 66.0301 is to be coordinated with any other statute that expressly permits intergovernmental collaboration for specific purposes. The question is whether the specific requirements contained in other statutes are mandatory or optional. The language contained within sec. 66.0301(2) limiting the powers granted under sec. 66.0301 if “those statutes specifically exclude action under this section” suggests that sec. 66.0301 is subordinate to other statutes permitting collaboration. However, this approach appears to conflict with the further language in subsection (2) stating that 66.0301 should be liberally interpreted in favor of cooperative action.

Although it appears that there was an effort to coordinate the language of Section 66.0301 with other statutory sections in a way favoring the greatest use of collaboration, the potential ambiguity of how other statutes are to be coordinated with Section 66.0301 may, in fact, have the effect of limiting collaboration in the manner contemplated by sec. 66.0301.

One approach to ensuring the broadest use of section 66.0301 would be to clarify the statutes so that municipalities would be free to use either sec. 66.0301 or such other statutory authority. If section 66.0301 were changed in that way, there would be no need to determine in each instance whether section 66.0301 had to be coordinated with other statutory requirements. Freed from the requirement to coordinate with other statutory provisions, municipalities could rely solely on the authority granted in Subchapter III of Chapter 66.

However, there would still be a need to determine whether there were specific statutory or constitutional barriers to collaboration and how these would be addressed. From the standpoint of statutory construction, it would be advantageous to bring any legislative or constitutional limitations or restrictions on collaboration under sec. 66.0301 into the express language of Chapter 66.

*Supporting Specific Legislative Guidance.* By de-linking Section 66.0301 from other statutory sections, the legislature would be free to create other approaches and provide specific models of collaboration without limiting the flexibility granted to all municipalities under Section 66.0301. Those municipalities looking to collaborate but seeking express guidance on how to work collaboratively would have the option to use any other statutory provisions as an alternative to sec. 66.0301.

County highway departments are consistently cited as a prime area for inter-county collaboration among contiguous counties and for intra-county collaboration among counties and any or all towns, villages and cities within the county. Although Wis. Stat. § 66.0301 provides general authority for counties to collaborate in providing highway services, there are statutory inconsistencies regarding the powers of county highway committees and commissioners that may impede a collaborative effort. Therefore, a statutory framework could be created to encourage and guide counties in their efforts to jointly provide highway services.

### **Conclusion**

The Wisconsin Counties Association welcomes the opportunity to work with the Legislature and other local governments throughout the State in crafting legislation that would clarify the existing authority to collaborate and establish a clear alternative method of collaboration. If the goals outlined in this memorandum were achieved, it would provide local governments the tools necessary to accomplish meaningful cooperative service delivery in many areas.