

Chapter M

Municipal and County Government

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Wisconsin municipal and county government and its relationship to state government has long been a focus of attention in the Wisconsin Legislature. Wisconsin's political culture has traditionally favored a strong, autonomous system of local government. Concerns with maintaining a relatively high level of government services at the local and state level while reducing, or not increasing, the tax burden have led to formal reviews of local government and the state's role in local government.

Issues of current interest involving the state and local government include:

- Local government organization, including the size and number of governmental units.
- The efficiency and consolidation of government services (including barriers to and incentives for consolidation).
- Land use, local boundaries, and annexation.
- State and local government finances and taxation.

Legislation on these subjects and related issues will continue to be before the Wisconsin Legislature in upcoming legislative sessions. In addition to the brief coverage of some of these issues in this chapter, note that issues of revenue and funding are also addressed in Chapter O of the Briefing Book, entitled *State and Local Revenue System*.

Background

The general characteristics of Wisconsin's 72 counties, 1,259 towns, 190 cities, and 402 villages¹ are summarized below. They are commonly referred to as general purpose local governmental units, as distinguished from special purpose units of local govern-

ment such as school districts, sanitary districts, and inland lake districts. While there are similarities and differences across each type of general purpose local government in Wisconsin, there is also substantial diversity within each type.

Counties

Counties and municipalities are creatures of the state in the sense that their existence depends on laws enacted by the Legislature. The Legislature also largely determines the powers and duties of counties and municipalities, although as described below, cities and villages have constitutional “home rule” authority to determine their local affairs and government.

Wisconsin’s 72 counties serve the dual functions of general purpose units of local government and administrative arms of the state. The counties vary in size from 232 square miles (Ozaukee County) to 1,545 square miles (Marathon County) and cover the entire territory of the state.² County population ranges from 4,633 (Menominee County) to 936,892 (Milwaukee County).³ County boundaries are generally established by state statute.⁴ The Wisconsin Constitution restricts counties with an area of 900 square miles or less from being divided or made smaller without a favorable referendum on the issue by the voters of the county.⁵ A procedure for consolidating two or more adjoining counties is provided in state statutes.⁶

Under the Wisconsin Constitution, the Legislature establishes one or more systems of county government and may confer on county boards powers of a local, legislative, and administrative character.⁷ Consequently, the powers of counties are derived from state statute and what can reasonably be implied from the statutory provisions. In contrast to cities and villages, counties have no general “home rule” authority, although the Legislature has conferred “administrative” home rule authority on counties.⁸

The legislative power of counties is exercised by the county board of supervisors, generally through the enactment of ordinances and the adoption of resolutions. In most counties, the county board carries out executive functions as well. County board supervisors are elected for two-year terms in the spring nonpartisan election held in odd-numbered years (in Milwaukee County, supervisors hold four-year terms). Each county board consists of supervisors elected from individual supervisory districts drawn by the county board after each federal decennial census. Current law does not specify the number of supervisors for each county but establishes the maximum number of supervisors for four county population ranges.⁹ Milwaukee County currently has no statutorily prescribed maximum number of county board supervisors and, in Menominee County, the county board consists of the members of the town board and one supervisor from each village in the county.¹⁰

Recent legislation authorizes, in counties other than Milwaukee and Menominee, the county board, or the electors of the county by petition and referendum, to decrease the number of county board supervisors once during the period between board adoption of decennial supervisory district plans.¹¹

To assist in carrying out administrative and executive functions, counties are required to provide for either a county executive, a county administrator, or a county administrative coordinator.¹² The most powerful of these is the county executive, who is elected for a four-year term and serves as the chief executive officer of the county. The county executive has veto authority, including partial veto of appropriation measures.¹³ Ten counties have a county executive.¹⁴ (Milwaukee County must have a county executive.)

A county administrator may be appointed by the county board to coordinate county operations. Seventeen counties employ a county administrator.¹⁵ Since 1987, state

statutes require county boards in counties with no county executive or county administrator (the majority of counties) to designate an elected or appointed county official as administrative coordinator. The coordinator is responsible for coordinating all administrative and management functions of county government not vested by law elsewhere.

Each county has a sheriff who is elected for a four-year term. Additional county offices, including Treasurer and Register of Deeds, are also elective.

In their role as an administrative arm of the state, counties administer a number of state programs, e.g., health and welfare services, the court system, and state highway maintenance. In addition, county officials have significant roles in enforcing and prosecuting state criminal laws, administering and managing state elections, and maintaining certain state vital records. The local functions exercised by counties vary widely and include functions as diverse as parks and recreational facilities and county highway construction and maintenance.

Towns

Wisconsin's 1,259 towns cover those areas of the state that are not included within the corporate boundaries of cities and villages. While many towns continue to maintain their original rural character, a number of towns have become urban in character. As a result, there is a wide disparity among towns in population, industry, commerce, and level of government services. Town population varies from 36 (Town of Cedar Rapids, Rusk County) to 20,425 (Town of Grand Chute, Outagamie County).¹⁶

Under the Wisconsin Constitution, "The legislature shall establish but one system of town government, which shall be as nearly uniform as practicable . . ."¹⁷ This constitutional provision, commonly referred to as the town government uniformity requirement, means that laws affecting towns may not provide for differences in the basic organizational scheme, or system, of town government. However, state laws governing towns may provide for variations in the way the details of town government affect different towns, to the extent it is impractical for the details to be uniform. Thus, like counties, towns possess only those powers specifically delegated to them; therefore, the language of the statutes, and what can necessarily be implied from the statutes, determine the structure, method, and scope of town government.

A unique aspect of town government is the town meeting, comprised of all eligible electors of the town. The town meeting is a form of direct (rather than representative) democracy.

Towns are often referred to as "townships." Strictly speaking, a "township" is a unit of the original government survey that serves as the basis for the original description of land in Wisconsin. A township is intended to be a square, six miles by six miles, containing 36 sections, each one square mile in area. A "town" is the governmental unit; its boundaries may or may not conform to a township. Therefore, the correct reference to a town as a governmental unit is "Town of . . . [name]." See s. 60.01 (1), Stats.

The town meeting, which must meet at least annually, has specified authority over various town matters, including the town's property tax levy.¹⁸ Some town meeting powers may be delegated to the town board.

An elected town board, consisting of three or five members, handles town government matters that are not under the jurisdiction of the town meeting. (The Town of Menominee in Menominee County may have up to seven members on its town board.) Town board supervisors serve two-year terms and are elected in the spring election of odd-numbered years. Towns are authorized, but not required, to create the position of town administrator to carry out duties assigned by the town board.¹⁹ The town board chair has a number of statutory powers and duties that can be characterized as administrative or executive.²⁰

A means for town boards to expand their regulatory and land use planning authority is to obtain the authority to exercise village powers. This authority may be granted by the town meeting.²¹ Town boards that are granted the authority of a village board may exercise village powers under ch. 61, Stats. (villages), except those village powers “which conflict with statutes relating to towns and town boards.” Subject to the latter limitation, the exercise of village powers extends to various powers, including police powers for regulating the public health, safety, and welfare,²² and certain land use planning authority. A town board granted authority to exercise village powers is not required to exercise any of those powers, does not become a village, and does not acquire annexation authority or general tax incremental financing authority.

The status of towns and town boundaries may be affected by several statutory procedures. Through annexation, town territory may be transferred to a city or village.²³ Unincorporated territory (i.e., town territory) may become a new incorporated municipality (i.e., a city or village) through the process of incorporation.²⁴ A town may be consolidated with a contiguous town, village, or city.²⁵ Town boundaries may be set by stipulation in a court action or by agreement with adjoining towns, cities, or villages.²⁶ The statutes also contain procedures for division and dissolution of towns by the county board, subject to referenda, and for organization of certain towns by petition and court order.²⁷

Towns generally provide or contract for road construction and maintenance, recycling, and emergency medical and fire protection services. Some towns also offer law enforcement, solid waste collection, zoning, and other services.

Cities and Villages

Wisconsin’s 190 cities and 402 villages are sometimes referred to as “incorporated” municipalities or “municipal corporations.” This reflects to some extent their legal status and that, until 1871 and 1892, respectively, villages and cities were incorporated by special acts of the Legislature. Because of concerns with the use of special legislation to incorporate cities and villages, constitutional amendments were adopted prohibiting the Legislature from incorporating any city, village, or town by special act.²⁸ As a result, cities and villages are now incorporated according to general incorporation laws, and the basic outline of city and village government is now set forth in the statutes (sometimes referred to as “general charter” laws).²⁹

While cities and villages are often thought of as urban centers, there are wide differences in population among cities and villages and a relatively high number of cities and villages with modest populations. City population varies from 590,370 in Milwaukee to 620 in Bayfield.³⁰ The most populous village, Menomonee Falls (in Waukesha County), has a population of 33,600; the least populous village is the Village of Ingram (in Rusk County), which has a population of 78.³¹

The Wisconsin statutes divide cities into four classes, based on population: cities of 150,000 and greater population are first class cities; cities of 39,000 and greater but less than 150,000 population are second class cities; cities of 10,000 and greater but less than 39,000 population are third class cities; and cities of less than 10,000 population are fourth class cities.³² Distinctions among second, third, and fourth class cities are few. The primary distinctions among the classes of cities are between first class cities (currently, only the City of Milwaukee) and the other classes; over time, special provisions have been enacted in the statutes with the City of Milwaukee in mind, and these provisions only apply to first class cities. For example, special provisions apply to first class city police and fire departments and eminent domain procedures. Changing from one class of city to another is not automatic: in addition to having the requisite population, formal steps must be taken by the city to become a new class of city.³³ The City of Madison, for example, has sufficient population to become a first class city but has not taken the necessary

steps to become a first class city; the city, for purposes of statutes relating to cities, is a city of the second class.

Perhaps the feature that most distinguishes cities and villages from towns and counties is the home rule authority enjoyed by cities and villages.

Perhaps the feature that most distinguishes cities and villages from towns and counties is the home rule authority enjoyed by cities and villages. Under art. XI, s. 3 (1), Wis. Const., cities and villages may determine their local affairs and government, subject only to the Wisconsin Constitution and to legislative enactments of statewide concern that uniformly affect every city or village. This constitutional home rule authority is implemented by enactment of charter ordinances under s. 66.0101, Stats. Constitutional home rule authority authorizes cities and villages to act both in the absence of legislative enactments and, in some cases, even in the face of a contrary legislative enactment. Regarding the latter, if a statute addresses a subject matter entirely of a local character, the city or village may elect not to be bound by the statute by exercising its constitutional home rule authority. If a statute is of a mixed character, the basic test is whether the statute is primarily or paramountly a matter of local affairs and government or of statewide concern; if primarily a matter of statewide concern, the city or village is bound by the statute. Some argue that the courts have construed constitutional home rule authority narrowly and that its primary value lies in serving as a concept for limiting the reach of state legislation into local policymaking.

Often confused with constitutional home rule is the broad statutory authority of cities and villages to exercise police powers, sometimes referred to as “statutory home rule.”³⁴ Statutory home rule is a broad grant of authority to be exercised for the public health, safety, and welfare. The exercise of statutory home rule can be preempted, either expressly or impliedly, by state legislation.

Another unique feature of city and village government is the availability of an initiative referendum, or direct legislation, procedure.³⁵ This procedure allows local citizens to directly adopt local legislation, subject to a number of limitations under court interpretation of the statute.

While the powers of cities and villages are similar, there are differences in their governmental structures. There are two general governmental structures for both cities and villages: for cities, the mayor-council and council-manager forms; for villages, the president-village board and village board-manager forms.

The vast majority of Wisconsin cities use the mayor-council form of government organization. Only 10 cities use the council-manager (or city-manager) form.³⁶ Under the mayor-council form of government, the city council, consisting of council members generally elected by districts, is the legislative branch of city government, while the mayor, elected at large, is the chief executive officer. As in many levels of government, however, these roles sometimes are not exclusive. Wisconsin cities operating under the mayor-council form generally have a “weak” mayor; that system is characterized by shared administrative responsibility spread among the mayor, elective administrative officers, boards and commissions, and independent appointed officials. A city under the mayor-council form with a stronger mayor system concentrates these responsibilities in the mayor’s office.

Most Wisconsin villages utilize the president-village board form of government. Only 10 villages operate under the village board-manager form of government.³⁷ The board of trustees, or village board, which acts as the legislative branch for the village, is generally elected at large. The village president is also elected at large. The village president is assigned certain administrative responsibilities but has no veto power and generally is not considered the chief executive officer of the village.

The manager form of government for both cities and villages is set forth in ch. 64 of the statutes. The manager form of government provides a strong executive, serving at the pleasure of the legislative body. The manager is typically professionally trained in municipal management and is responsible for policy implementation and administration, including preparation of the budget. The manager form of government usually has a relatively small legislative body.

Cities and villages typically offer a wide variety of public services and have higher per capita expenditures than counties and towns. 2009 Wisconsin Act 28 requires counties and municipalities, beginning in 2010, to maintain their 2009 level of spending on emergency services. If a county or municipality fails to comply, the Department of Revenue (DOR) may reduce that county's or municipality's shared revenue payment by an amount determined by DOR. For more information on this maintenance of effort for emergency services, go to:

<http://www.revenue.wi.gov/faqs/slf/act28faq.html#es1>.

Intergovernmental Cooperation

Recent debate on the state's role in local government funding has renewed interest in enhancing efficiency and reducing costs through local governmental cooperation. A mid-1990s report of the Joint Legislative Council concluded that the most significant impediments to intergovernmental cooperation in service delivery are: (1) lack of awareness by local government officials and the public of existing opportunities for cooperation; and (2) attitudes on the part of local officials and citizenry that do not foster cooperative efforts.³⁸

Current law offers substantial opportunity for cooperation at the local government level on a voluntary basis.

Current law offers considerable opportunity for cooperation at the local government level on a voluntary basis. In addition to the general cooperation provisions summarized below, other statutes contain authority for general purpose units of local government to cooperate in specific areas, such as police and fire protection and library services. With the increasing interest in cooperation, additional legislation, addressing the removal of specific barriers to cooperation, has been developed. For example, 2005 Wisconsin Act 40 authorizes a city or village to abolish its police department and contract with the county for the sheriff to provide law enforcement for the city or village. Uncertainties about the legality of doing this under the prior statutes prompted introduction of the proposal.

General Cooperation Authority

The general authority for intergovernmental cooperation among local units of government in the state is found in s. 66.0301, Stats. That statute authorizes municipalities (broadly defined)³⁹ to contract with other municipalities and with federally recognized American Indian tribes and bands in the state for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. The general limitation on this authority is that if parties to a cooperation contract have varying powers or duties under the law, each may act under the contract only to the extent of its lawful powers and duties. The law provides that a cooperation contract may provide a plan for administration of the function or project, including proration of expenses, deposit and disbursement of funds, submission and approval of budgets, creation of a commission, selection and removal of commissioners, and formation and letting of contracts.⁴⁰

The cooperation statute also expressly allows a commission created under a cooperation contract to finance the acquisition, development, remodeling, construction, and equipment of land, buildings, and facilities for "regional projects."⁴¹ Several means of financing these regional projects are provided.

A similar statute authorizes municipalities of this state to contract with municipalities of another state for the receipt or furnishing of services or the joint exercise of any power or duty.⁴² These agreements generally must be approved by the Attorney General.

County Provision of Services to Cities, Villages, and Towns

Another statute providing broad local intergovernmental cooperation authority is s. 59.03 (2), Stats., which authorizes counties to provide local government services to cities, villages, and towns that request the county to provide the services. This section does not contain the restriction found in s. 66.0301, described above, that each party may act only to the extent of its lawful power and duties. Thus, for example, even though county boards have no independent authority to provide fire protection, s. 59.03 (2) authorizes counties to provide such services upon the request of a city, village, or town. The broad statutory language authorizes county boards to provide local government services throughout the county; in specific cities, villages, and towns within the county; or within districts that comprise all or portions of cities, villages, and towns within the county. Powers under the section may be exercised exclusively by the county or jointly by the county and the town, city, or village. Procedures are provided for requesting and approving the furnishing of services under this statute and financing such services.

Agreements to Share Revenues

Towns, villages, and cities (municipalities) may by statute enter into agreements to share revenues from taxes and special charges with other municipalities and with federally recognized American Indian tribes or bands.⁴³ With the enactment of 2005 Wisconsin Act 98, counties are now also authorized to enter into these agreements. A municipality or county that enters into a revenue sharing agreement must be contiguous to at least one other municipality or county that enters into the agreement. Originally enacted in 1996, this provision was intended, among other things, to assist in eliminating disputes over municipal boundaries; the revenue sharing agreements may be used to permit a city or village to share in the expanded tax base of an adjacent town which is experiencing growth that is essentially an extension of growth in the city or village.

Revenue sharing agreements must satisfy each of the following:

- Provide a minimum term of 10 years.
- Describe the boundaries of the area within which the revenues are to be shared in the agreement.
- Describe the formula or other means of determining the amount of revenues to be shared under the agreement.

The law requires a public hearing to be held before a revenue sharing agreement may be entered into and also contains a procedure for the governing body of a participating municipality or county or interested electors to call for an advisory referendum.

Area Cooperation Compacts

Section 66.0317, Stats., requires each city, village, or town located in a “cooperation region” to enter into “area cooperation compacts” with at least two other municipalities or counties within that region (or, in some situations, outside the region) to perform at least two specified services (law enforcement, fire protection, emergency services, public health, solid waste collection and disposal, recycling, public transportation, public housing, animal control, libraries, recreation and culture, human services, and youth services). The cooperation compacts must be structured to provide significant tax savings. The compacts must provide a plan for collaboration, benchmarks to measure progress, and outcome-based performance measures to evaluate success.

Boundary Issues

Annexation, the process of transferring local jurisdiction of land from unincorporated areas (towns) to incorporated areas (cities and villages), is often a source of tension and conflict, particularly in some growing urban areas of the state. Periodically, legislation is introduced to strengthen or weaken the ability of a city or village to annex territory or to make it easier for certain towns to incorporate. In recent sessions, legislation has also been introduced to essentially create a class of towns that would be protected from annexation, based on population, level of services provided by the town, and other criteria. The latter proposals fall short of actually incorporating the eligible towns; instead, eligible towns would remain towns but would be designated “urban towns” or “charter towns.”

Despite the continuing interest in Wisconsin’s annexation and incorporation laws, many of the basic features of the laws have remained largely unchanged since the 1950s, reflecting in part the difficulty in achieving political consensus on these issues. However, in the 2003-04 Legislative Session, statutes were enacted addressing both incorporation and annexation (2003 Wisconsin Acts 171 and 317).

To resolve current and avoid future boundary disputes, cities, villages, and towns may determine their shared boundary lines under a cooperative plan, approved by the Department of Administration (DOA) or through a more general intergovernmental agreement.⁴⁴ Boundaries can also be the subject of settlements in certain court actions under s. 66.0225, Stats.

In addition, general procedures exist for consolidating contiguous towns, cities, or villages and for consolidating two or more adjoining counties.⁴⁵ A recently enacted procedure allows a town to consolidate with a contiguous city or village under certain circumstances.

Annexation, incorporation, boundary agreements, and consolidation are described more fully below.

Annexation

The authority and procedures for annexation of town territory by cities and villages are set forth in the statutes.⁴⁶ Usually, an annexation is designed and initiated by property owners rather than directly by the city or village itself. Often landowners wish to have their property annexed to take advantage of city or village services. Generally, a city or village can only accept or reject a landowner petition for annexation; consequently, cities and villages argue that they have less authority to control annexation than is commonly perceived.

Several annexation procedures are available. The most commonly used procedure is direct annexation by unanimous approval.⁴⁷ Under this procedure, the owner or owners of the property involved (and any other resident electors) petition for annexation. The city or village governing body may approve the annexation by adoption of an ordinance by 2/3rds vote. There is no provision for a referendum. 2009 Wisconsin Act 366 requires that direct annexation under this procedure must be of land that is contiguous to the annexing city or village.

Other general annexation procedures include direct annexation by less than all the electors and property owners in the territory;⁴⁸ annexation by referendum;⁴⁹ and annexation initiated by a city or village with court-ordered referendum.⁵⁰ These procedures are used infrequently and either allow or require a referendum of the electors of the territory to be annexed. Another annexation procedure allows the annexation of land owned by a city or village but located in a town if the land is

nearby, but not necessarily contiguous to, the city or village.⁵¹ Finally, special provisions relate to the creation and annexation of “town islands.”⁵²

Recently established⁵³ limits on annexation are:

- A city or village may not annex town territory unless: (a) the municipality agrees to pay the town, for five years, an amount equal to the property taxes levied by the town on that territory in the year in which the annexation is final; or (b) the city or village and town enter into a specified boundary agreement.
- A city or village may not annex town territory if none of the city's or village's territory is in the same county as the territory to be annexed unless the town board and county board in which the territory is located each adopt a resolution approving the annexation. (Annexation of territory owned by the city or village also requires the city or village and the town to enter into a boundary agreement.)

In counties with a population of 50,000 or more, annexations initiated by electors and property owners require an advisory review by the state. The review is conducted by the municipal boundary review section of DOA. While the review is advisory, it must be considered by the annexing city or village before an annexation ordinance may be passed.

DOA's advisory review consists of a determination as to whether the proposed annexation is in the public interest, based on:

- Whether governmental services, including zoning, for the territory could clearly be better supplied by the town or by some other village or city whose boundaries are contiguous to the territory proposed for annexation.
- The shape of the proposed annexation and the homogeneity of the territory with the annexing municipality and any other contiguous city or village.⁵⁴

More generally, DOA's review is “in consideration of the objectives recognized by the Legislature--to prevent haphazard, unrealistic and competitive expansion of municipalities which disregards the overall public interest.”⁵⁵

Incorporation

Municipal incorporation, the general procedure for creating a village or city from town territory, is set forth in ss. 66.0201 to 66.0215, Stats. Once incorporated, territory may no longer be annexed. 2003 Wisconsin Act 171 includes provisions for determining the order of precedence when both an annexation proceeding and an incorporation proceeding affecting the same territory have been initiated.

The incorporation procedure is initiated by a petition of a specified number of persons who are both electors and property owners in the territory to be incorporated. One aspect of the incorporation procedure involves determination by a circuit court whether specified population, density, and area requirements are met. The requirements vary, depending on the proximity of the area proposed for incorporation to a metropolitan village or city and whether incorporation as a village or a city is sought. If the required standards are not met, the court dismisses the incorporation petition; if the standards are met and the incorporation petition is sufficient, the court refers the petition to the Incorporation Review Board (“Review Board”).

The Review Board, created by 2003 Wisconsin Act 171, consists of five members: the Secretary of DOA (or designee); two members appointed by the Wisconsin Towns Association; and one member each appointed by the League of Wisconsin

Municipalities and the Wisconsin Alliance of Cities. With the exception of the DOA Secretary, all board members serve in an advisory capacity.

In determining whether to approve an incorporation, the Review Board looks at certain characteristics of the territory: specified standards of homogeneity and compactness must be met and the territory must have a well-developed community center (if the petition is for an isolated city or village); for proposed isolated cities or villages, the territory beyond the core area of density must meet certain housing or assessed value criteria; for proposed metropolitan cities or villages, the territory must have the potential for residential or other land use development on a substantial scale within the next three years. In addition, the proposed incorporation must be determined by the Review Board to be in the public interest after considering specified factors relating to tax revenues, level of services, impact on the remainder of the town, and impact on the metropolitan community.

If an incorporation petition is approved, a court-ordered referendum is held in the territory to be incorporated. A favorable referendum vote is necessary for the incorporation to take place.

Meeting statutory incorporation standards has proved difficult in many proposed incorporations. Common reasons for failing to meet the standards include lack of a community identity and negative effects on neighboring communities. Because it is difficult in many cases to meet the general incorporation standards, the Legislature on occasion has enacted special incorporation procedures to allow incorporation of specific territory when affected nearby communities agree to the incorporation.⁵⁶

Boundary Agreements

In 1992, a procedure was enacted that authorizes any combination of cities, villages, or towns to determine their shared boundary lines under a cooperative plan, approved by DOA.⁵⁷ The cooperative plan must include, among other things, a description of its consistency with the parties' comprehensive plans, a schedule and description of boundary changes and freezes, and provision for delivery of municipal services to the territory covered by the plan. Local procedure for adopting a cooperative plan consists of an authorizing resolution, a public hearing, adoption of the final version of the plan (an extraordinary vote may be required), an optional advisory referendum, and submittal of the plan to DOA for approval. The duration of a plan is 10 years, or longer if agreed to by the parties and approved by DOA.

DOA must approve a cooperative plan if the plan meets statutorily specified criteria concerning: the plan's consistency with applicable laws; the plan's provision for municipal services; the compatibility of any affected boundary with the characteristics of the surrounding community; the shape of any affected boundary; and the consistency of the plan with each participating municipality's comprehensive plan. Once a plan is approved, provisions in the plan to maintain existing boundaries, any boundary changes in the plan and the schedule for those changes, and the service delivery plan and schedule are binding on the parties to the plan and have the force and effect of a contract. 2007 Wisconsin Act 43 streamlined the requirements for, and reduced the procedural time line for, these boundary agreements in order to facilitate the use of the procedure. In addition, Act 43 creates a mediated agreement procedure under the boundary-agreement-by cooperative-plan statute that provides means for one municipality to bring an adjacent municipality "to the table" in connection with a common boundary and related issues.

2007 Wisconsin Act 43 also created a specific procedure for common municipal boundaries to be determined by intergovernmental agreement under s. 66.0301, Stats. No state approval is necessary. The maximum term of an agreement is 10 years. It is anticipated that the latter agreements will be used, for example, by municipalities who wish to make minor changes in their common boundaries or by

municipalities who wish to enter into an initial, shorter-term agreement before developing a cooperative plan under s. 66.0307, Stats.

Finally, s. 66.0225, Stats., authorizes the common boundary line between municipalities that is the subject of annexation litigation to be determined by stipulation, if approved by the court. The use of this statute was limited by Act 43 in order to discourage use of the procedure for boundary agreements that are more appropriately developed under the previously described provisions authorizing boundary agreements.

Consolidation

A statutory procedure allows a town, village, or city to consolidate with a contiguous town, village, or city.⁵⁸ The consolidation procedure begins when the governing body of each affected unit of government passes, by 2/3rds vote of all the members of the governing body, an ordinance fixing the terms of the consolidation. After adoption, the ordinances are submitted first to circuit court for a determination of whether the ordinances comply with statutory formalities and then to DOA for a determination of whether the proposed consolidation is in the public interest. (Note that consolidation of contiguous towns is not subject to court or DOA review.) DOA determination is based on standards that otherwise apply to incorporations. If DOA determines that the consolidation is in the public interest, the consolidation ordinances must be ratified by the electors of both units of government in a referendum held in each unit.

A relatively new, alternative statutory procedure authorizes consolidation of all or part of a town with a contiguous city or village.⁵⁹ The new procedure requires passage of an ordinance by a 2/3rds vote by each consolidating municipality and ratification by the electors at a referendum. There is no requirement that the consolidation be submitted to circuit court or DOA, but several requirements must be met as a condition of consolidating, including:

- Adoption of identical resolutions describing the level of specified services that will be available to the consolidated city or village;
- Execution of separate boundary agreements by the city or village with each city, village, and town that borders the proposed consolidated city or village; and
- Agreement by the consolidating town and city or village to adopt a comprehensive plan for the consolidated city or village.

The statutory procedure for consolidating counties authorizes the county boards of two or more adjoining counties to enter into a joint consolidation agreement, containing specified provisions.⁶⁰ The question of consolidating under the consolidation agreement is submitted to the electors at a referendum. If a majority of the votes cast in each county favors the consolidation, the consolidation takes place; otherwise the consolidation fails. Note, also, that the procedure allows electors on their own to initiate the consolidation process in the absence of such action by the county board.

Comprehensive Planning

The 1999-2001 Biennial Budget Act (1999 Wisconsin Act 9) contained provisions relating to comprehensive planning at the local level. Because the legislation potentially affects every general purpose unit of local government in the state, it has generated widespread interest.

The comprehensive planning law requires a comprehensive plan that is adopted by a county or municipality to include nine specified elements: issues and opportunities; housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; intergovernmental cooperation; land use; and implementation. The required content of each element of a comprehensive plan is delineated in general terms in the statutes.⁶¹ The DOA has prepared guides for implementing most of the required elements. The guides can be found on the DOA website, <http://doa.wi.gov/>. Additional information on preparing comprehensive plans can be found on the websites for the Department of Commerce (<http://commerce.wi.gov/>); the Department of Natural Resources (<http://www.dnr.state.wi.us/>); the Department of Transportation (<http://www.dot.wisconsin.gov/>); and the State Historical Society (<http://www.wisconsinhistory.org/>).

In general, by January 1, 2010, any program or action of a local governmental unit that affects official mapping, subdivision regulation, or zoning must be consistent with that governmental unit's comprehensive plan.

Prior law required that commencing January 1, 2010, any "action" of a local governmental unit consisting of official mapping, subdivision regulation, enactment or amendment of zoning ordinances, or zoning of shorelands or wetlands must be consistent with that governmental unit's comprehensive plan.⁶² ("Local governmental unit" means counties, towns, cities, villages, and regional planning commissions.) 2009 Wisconsin Act 372 clarifies that beginning on January 1, 2010, if a local governmental unit enacts or amends an official mapping ordinance, local subdivision ordinance, or shoreland or wetland zoning ordinance, the ordinance must be consistent with that local governmental unit's comprehensive plan. Act 372 also delays the start of the consistency requirement under two limited circumstances:

- If a local governmental unit has applied for but has not received a comprehensive planning grant from DOA, the consistency requirement is delayed until January 1, 2012. These local governmental units must also adopt a resolution stating that they will adopt a comprehensive plan by January 1, 2012.
- DOA has the discretionary authority to grant local governmental units that have received a comprehensive planning grant from DOA a time extension to adopt a comprehensive plan. The consistency requirement will not apply until the expiration of the extension granted by DOA.

The law provides for public participation in the development of a comprehensive plan and requires the plan to be adopted by ordinance.⁶³ The requirement to adopt a comprehensive plan by ordinance has been a source of confusion. 2009 Wisconsin Act 372 specifically provides that a comprehensive plan is a guide to the physical, social, and economic development of a local governmental unit and that the enactment of a comprehensive plan by ordinance does not make the comprehensive plan by itself a regulation. This language is intended to clarify that adopting a comprehensive plan is only one step in the process and is not a self-implementing document; a comprehensive plan is implemented through other decisions made by the community following the guidance provided in the plan.

To assist local governmental units in developing comprehensive plans, the law provides for state funded comprehensive planning grants.⁶⁴ The grant program is administered by DOA through the Division of Intergovernmental Relations. Grant applications are ranked competitively, based on statutory criteria that give preference to planning efforts that:

- Address intergovernmental issues.
- Address specified local, comprehensive planning goals.

- Identify “smart growth areas” (areas that will enable the development and redevelopment of lands with existing infrastructure and municipal, state, and utility services, where practicable, or that will encourage efficient development patterns that are both contiguous to existing development and at densities that have relatively low municipal, state governmental, and utility costs).
- Include development of implementing ordinances.
- Will be completed within 30 months.
- Provide opportunities for public participation throughout the planning process.

The grant program requires local matching funding and gives priority to cooperative planning efforts.

The comprehensive planning legislation also requires cities and villages with a population of at least 12,500 to adopt traditional neighborhood development ordinances similar to a model ordinance that has been developed by the University of Wisconsin (UW)-Extension.⁶⁵

State Mandates

A recurring issue raised by local government is the burden imposed by “state mandates,” particularly “unfunded” state mandates. It is difficult to determine with precision what is or is not a “state mandate,” but the term generally refers to a state-imposed requirement or restriction on local government. The issue of “unfunded” state mandates appears to be most often raised by counties, partly because of their role as administrative arms of the state. For example, counties fund a substantial portion of human services and justice services programs, which many argue should be state responsibilities.

Legislative efforts have been directed at reducing, eliminating, or funding specific mandates or at addressing mandates with a more general approach. The latter include repeated proposals over the years to establish a formal legislative review mechanism for dealing with legislative proposals that may impose a mandate on local government. These proposals have generally been unsuccessful, although legislative proposals affecting general local government fiscal liability require the preparation of fiscal estimates, generally by the state agency that administers the program.⁶⁶ In addition, the Legislature has specifically targeted certain grants to local governments as providing mandate relief: see, for example, county mandate relief payments under s. 79.058, Stats., and various grants to counties relating to the costs of operating circuit courts.

Section 66.0143, Stats., which provides a procedure for local governments to receive a waiver from a state mandate, was created in 2001. Under the provision, a city, village, town, or county (municipality) may file a waiver request with DOR and must state its reason for requesting the waiver. “State mandate” is defined as a state law that requires a municipality to engage in an activity or provide a service or to increase the level of its activities or services.

Waivers may be granted under the statute from any state mandate except one related to health or safety. A request for a waiver is handled by the state agency responsible for administering the state mandate; if there is no such agency, DOR handles the request. If granted, a waiver is effective for four years. The responsible agency may renew the waiver for an additional four years.

Additional References

DOA's Division of Intergovernmental Relations,
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UW-Extension Local Government Center, <http://www.lgc.uwex.edu/>.

League of Wisconsin Municipalities, <http://www.lwm-info.org>.

Wisconsin Legislative Fiscal Bureau Informational Papers,
<http://www.legis.state.wi.us/lfb/index.html> (click on Publications).

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¹ As of January 1, 2006; *2007-2008 Wisconsin Blue Book*, p. 740.

² *Id.*, p. 743.

³ *Id.*

⁴ s. 2.01, Stats.

⁵ Wisconsin Constitution, Article XIII, Section 7.

⁶ s. 59.08, Stats.

⁷ Wisconsin Constitution, Article IV, Sections 22 and 23.

⁸ ss. 59.03 (1), 59.04, and 59.51 (1), Stats.

⁹ s. 59.10 (3) (a), Stats.

¹⁰ s. 59.10 (2) (a) and (5), Stats.

¹¹ s. 59.10 (3) (cm), Stats. (2005 Wisconsin Act 100).

¹² ss. 59.17 to 59.19, Stats.

¹³ s. 59.17 (6), Stats., and Wis. Const. art. IV, s. 23a.

¹⁴ *2007-2008 Wisconsin Blue Book*, p. 748.

¹⁵ *Id.*

¹⁶ *2007-2008 Wisconsin Blue Book*, pp. 771 and 773.

¹⁷ Wisconsin Constitution, Article IV, Section 23.

¹⁸ s. 60.10, Stats.

¹⁹ s. 60.37 (3), Stats.

²⁰ s. 60.24, Stats.

²¹ s. 60.10 (2) (c), Stats.

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- ²² s. 61.34 (1), Stats.
 - ²³ ss. 66.0217 to 66.0223, Stats.
 - ²⁴ ss. 66.0201 to 66.0215, Stats.
 - ²⁵ ss. 66.0229 and 66.0230, Stats.
 - ²⁶ ss. 66.0225, 66.0301, and 66.0307, Stats.
 - ²⁷ ss. 60.03 and 60.05, Stats.
 - ²⁸ Wisconsin Constitution, Article IV, Section 31.
 - ²⁹ Chapters 61 (villages) and 62 (cities), Stats.
 - ³⁰ *2007-2008 Wisconsin Blue Book*, p. 749.
 - ³¹ *2007-2008 Wisconsin Blue Book*, pp. 755 and 756.
 - ³² s. 62.05 (1), Stats.
 - ³³ s. 62.05 (2), Stats.
 - ³⁴ ss. 61.34 and 62.11 (5), Stats.
 - ³⁵ s. 9.20, Stats.
 - ³⁶ *2007-2008 Wisconsin Blue Book*, p. 255.
 - ³⁷ *Id.*
 - ³⁸ *Legislation on Shared Governmental Services*, Wisconsin Legislative Council Report No. 95-12, p. 9 (February 13, 1996).
 - ³⁹ s. 66.0301 (1) (a), Stats.
 - ⁴⁰ s. 66.0303 (3), Stats.
 - ⁴¹ s. 66.0301 (4), Stats.
 - ⁴² s. 66.0303, Stats.
 - ⁴³ s. 66.0305, Stats.
 - ⁴⁴ ss. 66.0307 and 66.0301 (6), Stats., respectively.
 - ⁴⁵ ss. 59.08 and 66.0229, Stats.
 - ⁴⁶ ss. 66.0217 to 66.0223, Stats.
 - ⁴⁷ s. 66.0217 (2), Stats.; 2003 Wisconsin Act 317 prohibits a town from bringing an action on any grounds to contest the validity of a direct annexation by unanimous approval.
 - ⁴⁸ s. 66.0217 (3) (a), Stats.
 - ⁴⁹ s. 66.0217 (3) (b), Stats.
 - ⁵⁰ s. 66.0219, Stats.
 - ⁵¹ s. 66.0223, Stats.
 - ⁵² s. 66.0221, Stats.
 - ⁵³ 2003 Wisconsin Act 317.
 - ⁵⁴ s. 66.0217 (6) (c), Stats.
 - ⁵⁵ *Incorporation of the Town of Pewaukee*, 186 Wis. 2d 515, 525, 521 N.W.2d 453, 456 (Ct. App. 1994).
 - ⁵⁶ See, for example, s. 66.011, 1987-88 Stats., under which Pleasant Prairie was incorporated.
 - ⁵⁷ s. 66.0307, Stats.
 - ⁵⁸ s. 66.0229, Stats.
 - ⁵⁹ s. 60.0230, Stats.; 2003 Wisconsin Act 93.
 - ⁶⁰ s. 59.08, Stats.
 - ⁶¹ s. 66.1001 (1), Stats.
 - ⁶² s. 66.1001 (3), Stats.

⁶³ s. 66.1001 (4), Stats.

⁶⁴ ss. 16.965 and 16.9651, Stats.; and ch. Adm 48, Wis. Adm. Code.

⁶⁵ s. 66.1027, Stats.

⁶⁶ s. 13.093 (2) (a), Stats.

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