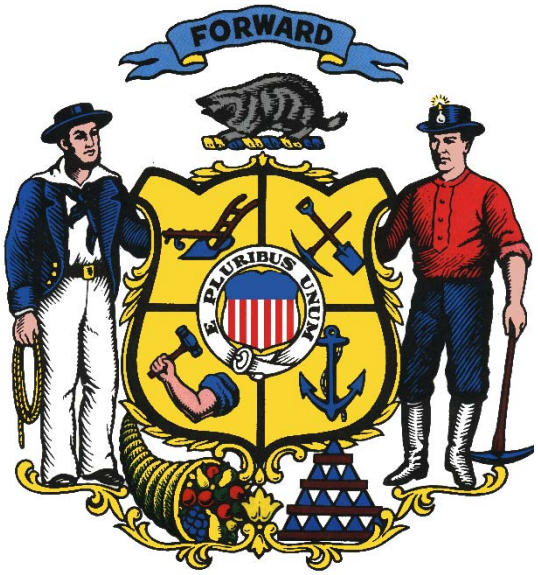
Wisconsin Legislator Briefing Book 2011-12



Prepared for
Members of the Wisconsin Legislature
by Staff of the Wisconsin Legislative Council

♦ **Serving the Wisconsin Legislature Since 1947** ♦

November 2010

Wisconsin Legislator Briefing Book

Part I

The Legislature and Laws Related to the Legislature

Administrative Rules Review

Budget Process

Interstate Legislative Organizations

Legislative Documents and Procedure

Legislative Staff Services

Open Meetings Law

Open Records Requests

Wisconsin's Legal Framework

Wisconsin Legislative Council

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Wisconsin Legislative Council

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Prepared by:
Ronald Sklansky
Senior Staff Attorney

Review of Administrative Rules

An "administrative rule" is a regulation, standard, policy statement, or order of general application promulgated by a state agency. An administrative rule has the force and effect of law.

Rules are issued by an agency:

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

Rules are published in the 18-volume Wisconsin Administrative Code. Each legislator is entitled to a set of Administrative Code volumes upon written request to the Department of Administration. Electronic access is available for the Administrative Code at http://www.legis.state.wi.us/rsb/code.htm.

The legislative rules review procedure is contained in ch. 227, Stats. This review procedure affords legislators the opportunity to affect the content of policies, having the force and effect of law, that regulate the lives of Wisconsin citizens. These procedures are summarized in Chart 1 and Chart 2 attached to this document.

Questions regarding the rules review process may be directed to:

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The authority of the Legislature to review and suspend administrative rules that are in effect has been in place since the 1965 Session. The ability to review all administrative rules before they are promulgated has existed since November 2, 1979. The process has allowed legislators to intervene in numerous rule-making proceedings for the benefit of their constituents. [An administrative agency may promulgate an emergency rule without complying with the pre-promulgation legislative review procedures described in this document. In general, an emergency rule simply takes effect upon publication in the official

state newspaper. However, once it takes effect, the rule has the force and effect of law and may be suspended under the same process that is applied to permanent rules.]

A Rule Begins With an Agency

When an agency decides to promulgate an administrative rule (that is, to either create a new rule or modify or repeal an existing rule), it must first draft the proposed rule. The **Administrative Rules Procedures Manual**, prepared by the Legislative Council and the Legislative Reference Bureau, sets forth, in detail, the format and style to be used by the agency in preparing rule drafts.

When the draft of a rule is ready, the agency must submit it to the Legislative Council for review.

Duties of the Rules Clearinghouse

The Legislative Council functions as an administrative rules clearinghouse. Upon receipt of a proposed administrative rule, the Legislative Council staff assigns the rule a Clearinghouse rule number, records the date of the submission of the rule in the Bulletin of Proceedings of the Wisconsin Legislature, and prepares two numbered rule jackets, one for the Assembly and one for the Senate.

Following receipt of a proposed rule, the Legislative Council staff reviews the proposed rule for form, style, and technical adequacy. Of particular importance to the legislative branch, the Legislative Council staff also specifically:

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

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

The period for Legislative Council review is 20 working days following receipt of the proposed rule. With the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days. (Extensions are very rarely necessary.) A written report containing the staff critique of the rule is then forwarded to the agency promulgating the rule.

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules. The new system mirrors the process already in place for legislative proposals. Interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature's Bulletin of Proceedings. The site contains the initial version of the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the related agency report to the Legislature. Electronic access is available for proposed rules submitted after 2000. Following the enactment of 2003 Wisconsin Act 145, the Internet site must also include a section devoted to rules affecting small businesses. [See http://www.legis.state.wi.us/lc/ and the executive branch website at https://health.wisconsin.gov/admrules/public/Home.]

Agency Responsibilities

After the completion of the Legislative Council review, an agency, in most instances, is required to hold a public hearing on the proposed rule. Following the hearing, or if no hearing is required, the agency is required to submit the final version of the proposed rule to the Legislature.

When the agency sends the final draft of a rule to the chief clerk of each house, the agency must include a report that contains, among other things:

- Conclusions and recommendations of the agency that demonstrate the need for the proposed rule.
- Explanations of modifications made in the proposed rule as a result of testimony received at public hearings.
- A list of persons who appeared or registered for or against the proposed rule at any public hearing held by the agency.
- A response to Legislative Council staff recommendations, contained in the Rules Clearinghouse report, indicating acceptance of the recommendations, rejection of the recommendations, and specific reasons for rejecting any recommendation.
- A final regulatory flexibility analysis, if the proposed rule will have an effect on small businesses.
- A copy of an economic impact report, if required.
- A copy of a report prepared by the Department of Administration regarding an economic impact report.
- A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.
- A summary of public comments to the proposed rule and the agency's response to the comments, including an explanation of a modification made as a result of public comments.
- Any change to the proposed rule's plain language analysis or fiscal estimate.

The other parts of the report include a plain language analysis of the proposed rule, copies of or references to related forms, and a fiscal estimate of the cost of the rule.

Referral of Rule by Presiding Officer

Within 10 working days following receipt of a proposed administrative rule, the presiding officer of each house refers the rule to one standing committee.

Committee Review Period

Generally, the committee review period extends for 30 days after referral of a proposed rule by the presiding officer. However, a committee review period may be extended. The review period may be extended for an additional 30 days if the chair, within the initial 30-day period, takes either of the following actions:

- The chair requests in writing that the agency meet with the committee to review the proposed rule; or
- The chair publishes or posts a notice that the committee will hold a meeting or hearing to review the proposed rule and immediately sends a copy of the notice to the agency.

The agency is prohibited from promulgating the proposed rule until the conclusion of the committee review period, unless both committees waive their jurisdiction over the rule prior to the end of the review period.

Authority of Reviewing Committees

If both committees fail to take any action during the review period, the agency may complete promulgation of the proposed rule.

If a committee, by majority vote of a quorum of the committee, recommends modifications in a proposed rule (and the agency, in writing, agrees to consider making modifications), the review period for both committees is extended to the later of:

- The 10th working day following receipt by the committees of the modified proposed rule; or
- The expiration of the initial or extended committee review period.

There is no limit on the number of times that modifications may be sought, prior to the conclusion of the committee review period.

An agency may unilaterally propose rule modifications during, or following, the committee review period.

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

- An absence of adequate statutory authority.
- An emergency relating to public health, safety, or welfare.
- Failure to comply with legislative intent.
- Being contrary to state law.
- A change in circumstances since the original date of passage of the earliest law upon which the rule is based.
- Being arbitrary and capricious or imposing an undue hardship.

Responsibilities of JCRAR

If either reviewing committee objects to a proposed rule, the rule must be referred to the Joint Committee for Review of Administrative Rules (JCRAR). The JCRAR must take executive action on the rule and may:

- Nonconcur in a committee objection;
- Object to the rule (that is, concur with the reviewing committee); or
- Seek rule modifications.

The review period for JCRAR is 30 days. The review period may be extended for an additional 30 days (or more, if modifications are agreed to) in the same manner as by the initial reviewing committee.

If JCRAR objects to a rule, it must introduce, within 30 days, a bill in each house of the Legislature to prevent the promulgation of the rule. If both bills are defeated, or fail to be enacted, the agency may promulgate the proposed rule that received an objection. If either bill is enacted, the agency may not promulgate the proposed rule that was objected to unless a subsequent law specifically authorizes its promulgation.

Legislative Review After Promulgation of a Rule

The statutes give JCRAR authority to suspend rules that have been promulgated and are in effect:

- If JCRAR has first received testimony on the suspension at a public hearing; and
- If the suspension is based on one or more of the reasons, listed in the authority of reviewing committees, above, that a committee may cite when objecting to a proposed rule.

If JCRAR suspends a rule, it must introduce, within 30 days, a bill in each house of the Legislature to repeal the suspended rule. If both bills are defeated or fail to be enacted in any other manner, the rule remains in effect and JCRAR may not suspend it again. If either bill is enacted, the rule is repealed and may not be promulgated again by the agency unless a subsequent law specifically authorizes such action.

CHART 1
REVIEW OF **PROPOSED** ADMINISTRATIVE RULES IN WISCONSIN

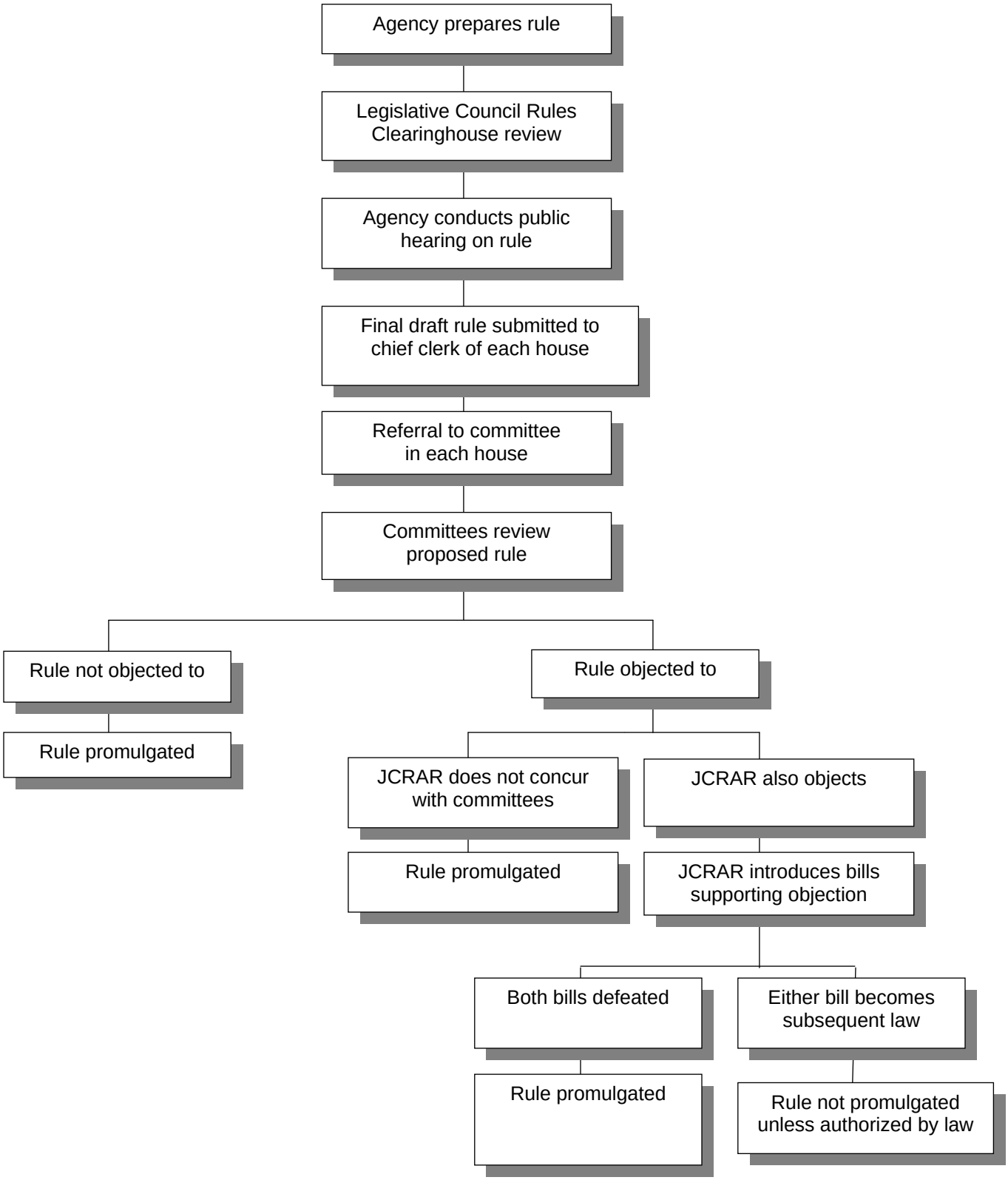
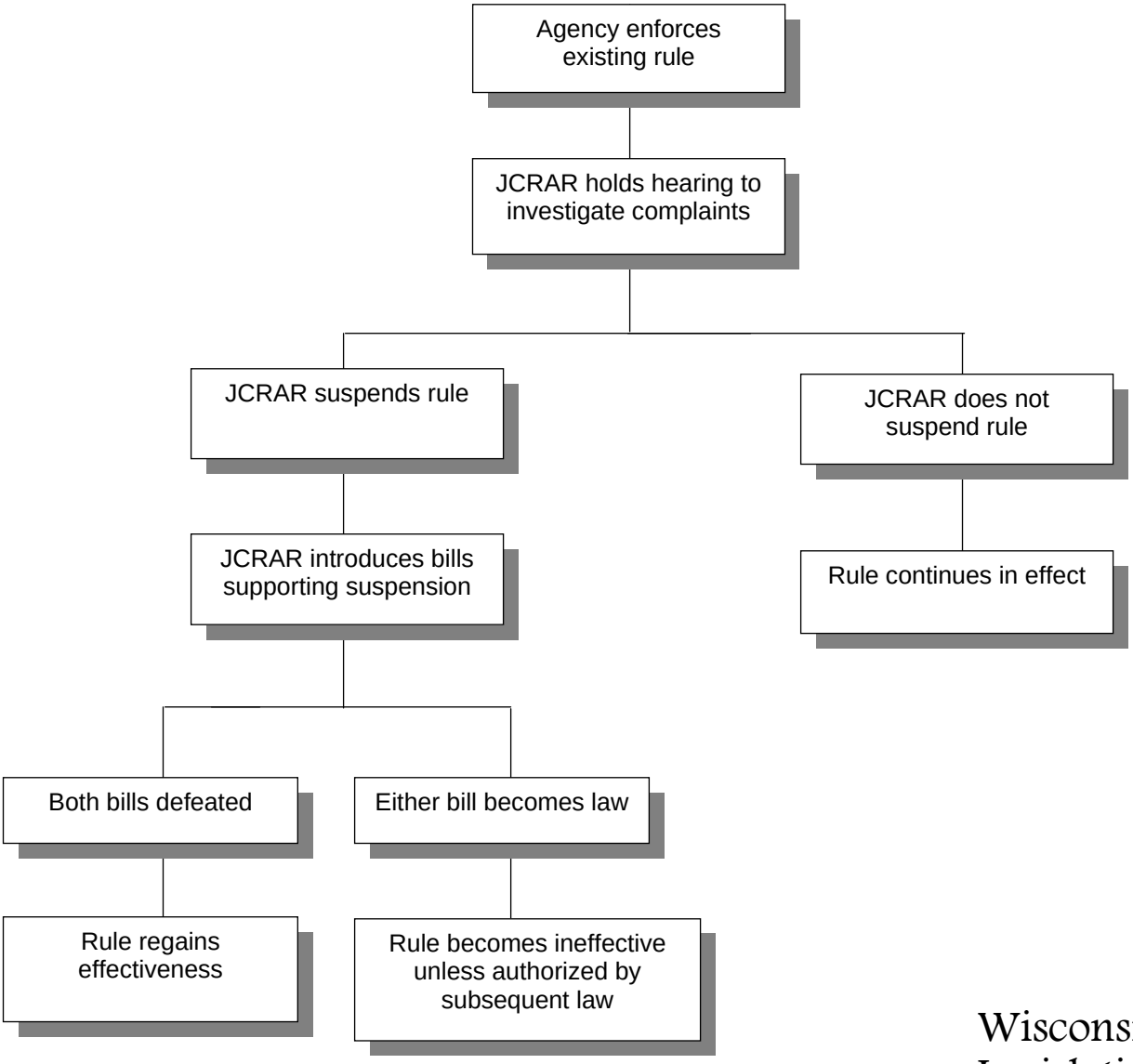


CHART 2
REVIEW OF **EXISTING** ADMINISTRATIVE RULES IN WISCONSIN



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2 **Executive Branch Preparation and Presentation of Budget Bill**

2 **Legislative Branch Consideration of Budget Bill**

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

4 **Additional Key Concepts Related to State Budget Process**

5 **Additional Resources**

Prepared by:
Scott Grosz
Staff Attorney

State Budget Process

The state's budget is termed a biennial budget because it covers a two-year period ("fiscal biennium") from July 1 of one odd-numbered year through June 30 of the next odd-numbered year (e.g., July 1, 2011 through June 30, 2013).

The state budget is the legislative document that establishes:

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

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

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

The state budget is the most significant and comprehensive bill the Legislature passes during the biennium, covering, in general terms, the major fiscal and operational aspects of all state agencies and local government entities (municipalities, schools, and others). The development and legislative work on the budget bill is intense and complex. The content of budget bills varies from session to session. The bill takes a lengthy (sometimes over a year) and often varying procedural road as it winds its way through the executive and legislative branches.

Executive Branch Preparation and Presentation of Budget Bill

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

Current law:

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

- Requires the Governor to deliver the **biennial budget message** to the Legislature on or before the last Tuesday in January of the odd-numbered year (extensions are permitted). The Governor must also provide the Legislature with a biennial state budget report, the executive budget bill, and suggestions for the best methods for raising any additional needed revenues.

Legislative Branch Consideration of Budget Bill

Joint Finance Committee Review

With the assistance of DOA, the Governor prepares budget recommendations and incorporates those recommendations into an executive budget bill. After delivery of the Governor's budget message, the budget bill must be introduced, without change, into one of the two houses of the Legislature by the Legislature's Joint Finance Committee (JFC). Upon introduction, the bill must be referred to the JFC for its review.

As part of its review process, the JFC is permitted to hold public hearings on the proposed budget with representatives of the state agencies involved (informational hearings) and hearings open to the general public. Besides the JFC hearings, other standing committees of the Legislature may also hold hearings to review provisions of the budget. These hearings, conducted at the discretion of the standing committee chairperson, are directed at informing the committee's members of those parts of the budget which may impact or affect subject matters dealt with by the committee.

After the public hearings, the JFC begins executive sessions on the recommended budget, deciding whether certain provisions in the budget should be modified or deleted and whether additional provisions are needed.

Joint Survey Committee Reports

Depending on its content, the budget bill may be referred to one or more joint survey committees, such as the **Joint Survey Committee on Retirement Systems** or the **Joint Survey Committee on Tax Exemptions**. No bill or amendment that creates or modifies a public retirement system shall be acted on by the Legislature until the Joint Survey Committee on Retirement Systems has submitted a written report on the bill or amendment. No bill which affects any existing statutes or creates any new

statute relating to the exemption of any property or person from taxation may be considered by either house of the Legislature until the Joint Survey Committee on Tax Exemptions has submitted a written report on the bill.

Party Caucuses

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

Floor Debate

After the individual caucuses have finished deliberations on the budget, the majority party budget package is introduced and scheduled for floor debate as a special order of business. The budget bill is adopted by the majority vote of that house, and then proceeds to the other house where, in general, the same pattern of budget review, amendment, and adoption is followed.

Conference Committee and Report

Since the two houses rarely pass identical versions of the budget in their first consideration of the bill, one house generally seeks a conference committee on the bill. The conference committee consists of a specified number of members from each house, as designated by their respective houses, to represent that house and meet as a bargaining committee with the goal of producing a report reconciling the differences between the houses' bills. Once the conference committee procedure is finished, a conference report is then submitted to each house and is an unamendable bill to be voted on by each house.

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

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

- The Governor may exercise the partial veto only on bills that include an appropriation. Nonappropriation parts of appropriation bills may be partially vetoed.
- The part of the bill remaining after a partial veto must constitute a complete, entire, and workable law.
- The provision resulting from a partial veto must relate to the same subject matter as the vetoed provision.
- Entire words and individual digits may be stricken; however, individual letters in words may not be stricken.
- Appropriation amounts may be stricken and a new, lower amount may be written in to replace the stricken amount.

A constitutional amendment relating to the Governor's partial veto authority became effective following ratification by the people in April 2008. The amendment provides that:

- The Governor may not create a new sentence by combining parts of two or more sentences of the enrolled bill.

Override of Partial Veto

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

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

Additional Key Concepts Related to State Budget Process

In addition to this very general description of the state budget process, key concepts relating to budgeting in this state include:

Appropriations in ch. 20, Stats.

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

Program Budget

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

Incremental Budgeting

The general budget process in Wisconsin is an incremental budget process. This means that the agency budget requests for the biennium use, as a starting point, the existing budget level (referred to as "the base budget"). Agencies develop their budgets by identifying requested changes from its current base budget level. Thus, the budget decision items in agency requests represent increments of change over the existing level of spending.

Zero-Based Budgeting

2001 Wisconsin Act 109 (the 2001-03 Budget Reform Act) established a zero-based budgeting process. Under that Act, every state agency, including the Legislature and the courts, is required to periodically (once every third biennium) submit a **base budget review report**. The report must include a description of each programmatic activity of the agency and provide for each activity an accounting, by fund source, of expenditures for the prior three fiscal years and for the last two quarters of each of the prior three fiscal years.

The law:

- Directs the Secretary of DOA to develop categories for state agencies to use in organizing the required expenditure information.

- Requires the reports to be included with agencies' budget requests and submitted to DOA and the Legislative Fiscal Bureau (LFB) by September 15 of the even-numbered year in which an agency must prepare a base budget review report.

- Requires the Secretary of DOA, beginning with agency budget requests submitted for the 2003-05 biennium, to select 1/3rd of all state agencies to submit the required base budget review information for that biennial budget.

- Requires for the 2005-07 biennium, the Secretary to select half of the remaining agencies to submit their base budget review information for that biennium and stipulate that the remaining agencies would then be required to submit base budget review information for the 2007-09 Biennial Budget.

- Requires the cycle to be repeated in succeeding biennia.

Fiscal Years

The biennial state budget incorporates two annual periods or fiscal years. Annual appropriations are effective for that fiscal year only and account for most of the appropriations in the budget. The biennial budget thus involves appropriations for both fiscal years [for example, fiscal year 2011-12 (July 1, 2011 to June 30, 2012) and fiscal year 2012-13 (July 1, 2012 to June 30, 2013)]. In this example, the fiscal years are referred to as "FY11" and "FY12," respectively.

Interim Changes in the Authorized Budget

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

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

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

- Section 13.10 review. By authorization of limited emergency changes to existing appropriations at the request of state agencies with the approval of the JFC under s. 13.10, Stats.

Non-Budget Fiscal Bills

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

Additional Resources

- The LFB maintains a detailed Information Paper on the State Budget Process. A copy of the most recent version of this publication is located at the LFB's website, http://www.legis.state.wi.us/lfb/index.html (click on Publications).

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

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Interstate Legislative Organizations

2 **National Conference of State Legislatures (NCSL)**

3 **Council of State Governments (CSG)**

4 **National Conference of Commissioners on Uniform State Laws (NCCUSL)**

6 **Education Commission of the States (ECS)**

7 **Midwest Higher Education Commission (MHEC)**

Since states face many of the same issues, Wisconsin legislators frequently ask for information about how issues have been addressed in other states. Several national legislative organizations address either the broad range of issues that confront all legislatures or focus on specific issues, or both. These organizations provide assistance to legislators and legislative staff on a variety of levels.

Much of the effort of these organizations relates to the collection and provision of information. The organizations provide issue-based summaries of state legislation and background information on these issues. The organizations provide timely and useful information to aid in state policy development.

Many of the organizations hold meetings for legislators and legislative staff. These meetings often include informative presentations by key state, federal, or private sector individuals. The meetings also provide an opportunity for legislators and staff to interact with representatives of nonlegislative governmental institutions and private sector organizations, as well as their counterparts in other states.

These organizations also promote and work toward state cooperation and consistency in legislation where uniformity is desirable. The national legislative organizations are often involved in development of state policy statements and positions on federal issues, and the conveyance of those viewpoints to the federal government. The broad-based membership of these organizations gives special weight to these viewpoints.

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Purpose

The purposes and objectives of the NCSL, as stated in its bylaws, are to: (1) advance the effectiveness, independence, and integrity of the legislatures as equal coordinate branches of government in the states and territories of the United States and the Commonwealth of Puerto Rico; (2) seek to foster interstate cooperation; (3) vigorously represent the states and their legislatures in the American federal system of government; and (4) work for the improvement of the organization, processes, and operations of the state legislatures; the knowledge and effectiveness of individual legislators and staffs; and the encouragement of the practice of high standards of personal and professional conduct by legislators and staffs.

The NCSL bylaws prohibit the organization from, at any time, directly or indirectly participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office.

Year Founded

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

Membership

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

Governance

The NCSL Executive Committee is the governing body of this conference. The executive committee and conference officers have supervision, control, and direction of the affairs of the conference, its committees, and publications; it implements the policies and supervises the disbursement of its funds. The executive committee meets at least three times a year at such time and place as the committee decides.

Financial Support

The NCSL is financed by appropriations from member legislatures, as determined by the 60-member executive committee and support from the NCSL Foundation for State Legislatures. Each state is assessed a flat-rate charge, plus an amount per thousand population.

Selected Publications

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

LegisBrief, concise two-page reports summarizing issues facing state legislatures, including analyses, successful approaches taken, multi-state data, alternative courses of action, and resources for more information.

Capitol to Capitol, a weekly one-page fax publication updating legislators and staff on events in Washington, D.C.

Selected Resource

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

Meetings

The annual meeting is held in July or August.

The 12 standing committees of NCSL meet three times a year--a meeting at the NCSL Legislative Summit (annual meeting), a Spring Forum in Washington, D.C., and a Fall Forum outside of Washington, D.C.

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

Council of State Governments (CSG)

Purpose

This nonpartisan organization of the states and U.S. territories champions excellence in state government, works with state leaders across the nation divided into four regions to put the best ideas and solutions into practice. To this end, the CSG: builds leadership skills to improve decision-making; advocates multi-state problem-solving and partnerships; interprets changing national and international conditions to prepare states for the future; and promotes the sovereignty of the states and their role in the American federal system. Founded on the premise that the states are the best sources of insight and innovation, CSG provides a network for identifying and sharing ideas with state leaders. CSG maintains an office in Washington, D.C., to monitor activities in federal government and their impact on state issues and programs.

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Year Founded

1933

Membership

All 50 states, the District of Columbia, and five U.S. territories.

Financial Support

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

WISCONSIN GOVERNING BOARD MEMBERS:
Governor
Senate President
Assembly Speaker

Selected Publications

The Book of the States, a biennial reference source containing data on state governments nationwide.

State Leadership Directories, three annual directories listing all the names, telephone numbers, and addresses of state officials across the country. The directories include: *State Elective Officials and the Legislatures*; *State Legislative Leadership, Committees and Staff*; and *State Administrative Officials Classified by Function*.

Suggested State Legislation, a collection consisting of state law drafts on subjects likely to be considered in upcoming state legislative sessions, designed as a tool to aid state legislators who may be interested in legislation on particular topics.

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

Firstline Midwest, a four-page report published 11 times a year highlighting relevant legislative proposals in the Midwest.

Stateline Midwest, a monthly newsletter featuring interviews and reports focusing on the Midwest.

State News Magazine, a magazine published 10 times a year offering updates and analysis to state programs, policies, and trends in the executive, judicial, and legislative branches of state government.

Meetings

CSG holds an annual meeting of its governing board, national committees, and task forces. Each of the four regions also hold an annual meeting of its executive committee, specialized committees, and task forces. National committees and task forces meet once a year, in addition to the annual meeting.

The Midwestern Legislative Conference meets annually in one of the 11-member states and three Canadian provinces. The meeting is held in either July or August and features nationally known speakers and panelists.

National Conference of Commissioners on Uniform State Laws (NCCUSL)

Purpose

The objectives of NCCUSL are: (1) promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable; and (2) draft uniform or model acts on subjects suitable for interstate compacts and subjects as to which uniformity would make more effective the exercise of state powers and promote interstate cooperation.

CONTACT INFORMATION:

Chicago, IL
(312) 450-6600

http://www.nccusl.org

STAFF CONTACT:
John A. Sebert,
Executive Director
john.sebert@nccusl.org

Year Founded

1892

Membership

There are more than 300 commissioners from all 50 states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico. These are usually appointed by the Governor of each state or, in some cases, by the legislature, or both. Commissioners must be members of the bar, qualified to practice law.

Wisconsin's NCCUSL representatives are selected as specified in s. 13.55, Stats. It states that there are to be eight commissioners: the Director of the Legislative Council staff or a designee (no specified term); the Chief of the Legislative Reference Bureau or a designee (no specified term); two Senators and two Representatives from the two major political parties (two-year term); and two public members appointed by the Governor (four-year term). If a Senator or Representative is unable to serve, former Senators or Representatives may serve instead as long as they are from the respective house and political party and served as a commissioner during his or her term of office.

Wisconsin's commissioners not only represent Wisconsin at NCCUSL meetings, but also comprise a separate commission, Wisconsin's own Commission on Uniform State Laws (WCUSL), created by s. 13.55, Stats. WCUSL meets at least once every two years on their own. WCUSL advises the state legislature on uniform laws and model laws and prepares uniform law legislation to be introduced into the Wisconsin legislature.

Financial Support

The major source of financial support is state appropriations. Assessments are determined on a population-based formula. In addition, NCCUSL has received grants from private foundations and public agencies.

Publications

Handbook of the National Conference of Commissioners on Uniform State Laws, an annual publication containing the proceedings of the annual meeting of the conference and basic statistical data about the various uniform and model acts and the dates when adopted.

Reference Book, an annual booklet containing a list of committees, the constitution and bylaws of the NCCUSL, and a record of adoption of uniform and model acts by states.

Guide to Uniform Acts, an on-line list of uniform acts designed to assist legislators, legislative drafting bureaus, commissioners, and others interested in state legislation in understanding acts promulgated by NCCUSL and recommended for enactment.

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

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

ULC Bulletins, a one-page document published six times a year listing upcoming meetings, new members, and brief legislative updates among the 50 states.

Meetings

An annual meeting is held, usually in July or August. Drafting committees meet at various times throughout the year.

Education Commission of the States (ECS)

CONTACT INFORMATION:

Denver, CO
(303) 299-3600

http://www.ecs.org

STAFF CONTACT:
Heidi Normandin
hnormandin@ecs.org

Purpose

ECS promotes quality education for all students. ECS conducts policy research, surveys, and studies; convenes state, regional, and national forums; maintains an information clearinghouse; provides technical assistance to states; helps states develop education policies; and fosters nationwide leadership and collaboration in education.

The commission's outreach and collaborative efforts serve two major purposes: they bring information into ECS to better understand the issues and problems facing their constituents and provide the ECS with opportunities to assist policymakers with complex education decisions.

Year Founded

1965

Membership

All 50 states, four territories, and the District of Columbia have enacted the Interstate Compact on Education and are members of the commission. Each member state or territory has seven commissioners. The seven-member Wisconsin delegation consists of the Governor, the State Superintendent of Public Instruction, a member from the Senate and Assembly, and three members appointed by the Governor.

Financial Support

ECS budget of approximately $5 million per year is provided by a mixture of state fees, state contracts, and foundation and federal grants and contracts.

Publications

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

E-Connections, published weekly providing an update on nationwide education policy issues, ESG news and meetings, and upcoming events for other education organizations.

E-Newsletters, published bimonthly:

- ***Citizenship Matters***, examining efforts to improve citizenship education in our nation's schools;
- ***Governance Notes***, examining school governance across the nation;
- ***Leadership Links***, providing links to key information on education leadership; and
- ***TQ Update***, providing information on improving teaching quality.

ECS StateNotes, compilations, summaries, or comparisons of enacted and pending state policies covering a variety of education topics.

Meetings

ECS holds an annual meeting in mid-summer. In addition, two meetings of the steering committee, which consists of one commissioner from each of the member states, are held, as well as meetings of various networks throughout the year.

Midwest Higher Education Commission (MHEC)

CONTACT INFORMATION:

Minneapolis, MN
(612) 626-8288

http://www.mhec@mhec.org

Purpose

MHEC is charged with promoting interstate cooperation and resource sharing in higher education. Its goals are to enhance productivity through reductions in administrative costs; to encourage student access, completion, and affordability; to facilitate public policy analysis and information exchange; to facilitate regional academic cooperation and services; to promote quality educational programs; and to encourage innovation in the delivery of educational services.

Year Founded

1991 -- Established as an interstate compact agency.

Membership

Each state appoints five commissioners to a 55-member governing body: the Governor or the Governor's designee, a member of each chamber of the legislature, and two at-large members, one of whom must come from post-secondary education. The member states are: Illinois, Iowa, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Financial Support

The work of the commission is financed largely through member state dues and foundation grants.

Publications

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

Newsletters, monthly e-publications providing information on MHEC programs and policy research and analysis.

Research Reports, published periodically providing information on a variety of higher education issues.

Policy Briefs, periodic reports covering legislation, policy trends, and fiscal issues among Midwestern higher education institutions.

Meetings

The commission meets twice a year, June and November, to establish goals, review programs, and approve a budget.

Wisconsin Legislative Council

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Wisconsin Legislative Council

Wisconsin Legislator Briefing Book 2011-12

2 **Legislative Proposals**

7 **Laws and Rules**

8 **Informational Documents**

Legislative Documents and Procedure

Although the principal function of the Legislature, as viewed by the public, is the enactment of laws through the bill process, there are many more documents that are part of the legislative process other than the 1,500 to 2,000 bills that are introduced in each session. Legislative documents fall into three basic categories:

- **Legislative proposals (bills or resolutions)**, which are considered by the Legislature and may be acted upon by either or both houses of the Legislature and the Governor.

- **Laws and rules**, which include the laws currently in force and administrative rules, which are promulgated by agencies, and have the force of law.

- **Informational documents**, which are prepared to provide information to the Legislature and the public about the daily activities of the Legislature, the activities of the legislative committees, and the rules and procedures by which the Legislature operates.

The process for preparing legislative documents is extremely systematic, so as to reduce, to the greatest extent practicable, errors in this process. The need for precision is most apparent with bills, in which accuracy assures that the legislation, as published, reflects the Legislature's intent at the time of passage.

The informational documents of the legislative process allow legislators, their staff, and the public, to keep track of legislation as it moves through the legislative process. The informational documents also create a record of what the Legislature has done, which is the basis for later research into the Legislature's intent.

Some documents, such as fiscal estimates, are created to provide information so that legislators can understand the consequences of the decisions that they make in connection with the passage of legislation.

Prepared by:
Margit Kelley
Staff Attorney

Legislature's Website:

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

In addition to paper copies, many of these documents are available to the public over the Internet and to members through the Legislature's in-session websites. Another electronic source of many of these documents is the Folio database, which is available to legislators, and available to the public through a "searchable info-base."

The purpose of this chapter is to provide a brief description of the documents that are either considered and acted upon by the Legislature or that are used as part of the legislative process.

Legislative Proposals

Bills: Preparation and Introduction

The Wisconsin Constitution provides, in art. IV, s. 17, that no law shall be enacted except by bill. A bill may originate in either house of the Legislature and when passed by one house, may be amended in the other house. [Wis. Const. art. IV, s. 19.] After being passed by both houses in an identical form, a bill must be presented to the Governor for approval or disapproval. Appropriations bills may be approved in whole or in part by the Governor, subject to certain limitations contained in art. V, s. 10.

Each bill must be prepared for introduction by the Legislative Reference Bureau (LRB). The LRB employs a staff of bill drafters to ensure that bills are drafted in proper form and accurately express the intent of the authors.

A bill may be introduced in either house only by a legislator, a legislative committee of that house, a joint legislative committee comprised of members of both houses, or the Joint Legislative Council or its Law Revision Committee. Most bills are introduced by legislators.

A legislator or committee may introduce a bill at the request of an individual, an organization, or a public official or agency. A "request" bill may be introduced either because the legislator or committee supports the proposal or merely as a courtesy to get the concept into the legislative arena. A "request" bill reflects on its face that it was introduced "by request of" the requester. (For example, 2007 Senate Bill 40 was "Introduced by Joint Committee on Finance, by request of Governor Jim Doyle.")

Contents of Bills

The first page of each bill reflects its date of introduction, the authors and cosponsors, and the committee to which the bill is referred upon introduction. Each bill then lists the statutory sections affected by the bill, followed by a "relating clause" stating the bill's subject. [See sample bill, below.]

Each law is required by Wis. Const. art. IV, s. 17 (1) to begin in the same style: "The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:". This is called the "enacting clause."

The LRB is required, by statute, to prepare an analysis of each bill "in plain language." The analysis is printed as part of the bill when it is introduced. On the printed bill, it appears between the bill's relating clause and the enacting clause. In addition, explanatory notes may be included in certain types of bills, joint resolutions, resolutions, substitute amendments, and amendments.

2001 – 2002 LEGISLATURE

LRB–1159/3
GMM:kmg:rs

2001 ASSEMBLY BILL 21

- Date of introduction
- Authors and cosponsors
- Committee that the bill has been referred to

January 16, 2001 – Introduced by Representatives ALBERS, SCHNEIDER, FREESE, TURNER, LADWIG, GRONEMUS, OWENS and WADE, cosponsored by Senators BRESKE, SCHULTZ and GEORGE. Referred to Committee on Government Operations.

- Relating clause

AN ACT *to amend* 1.10 (title) and 1.10 (4); and *to create* 1.10 (1m) of the statutes; **relating to:** designating "Oh Wisconsin, Land of My Dreams" as the Wisconsin state ballad.

- Plain language analysis

Analysis by the Legislative Reference Bureau

Under current law, "On Wisconsin" is the Wisconsin state song, and the Wisconsin Blue Book is required to include that information. This bill designates "Oh Wisconsin, Land of My Dreams" as the Wisconsin state ballad and requires the Wisconsin Blue Book to include that information.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

- Enacting clause

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

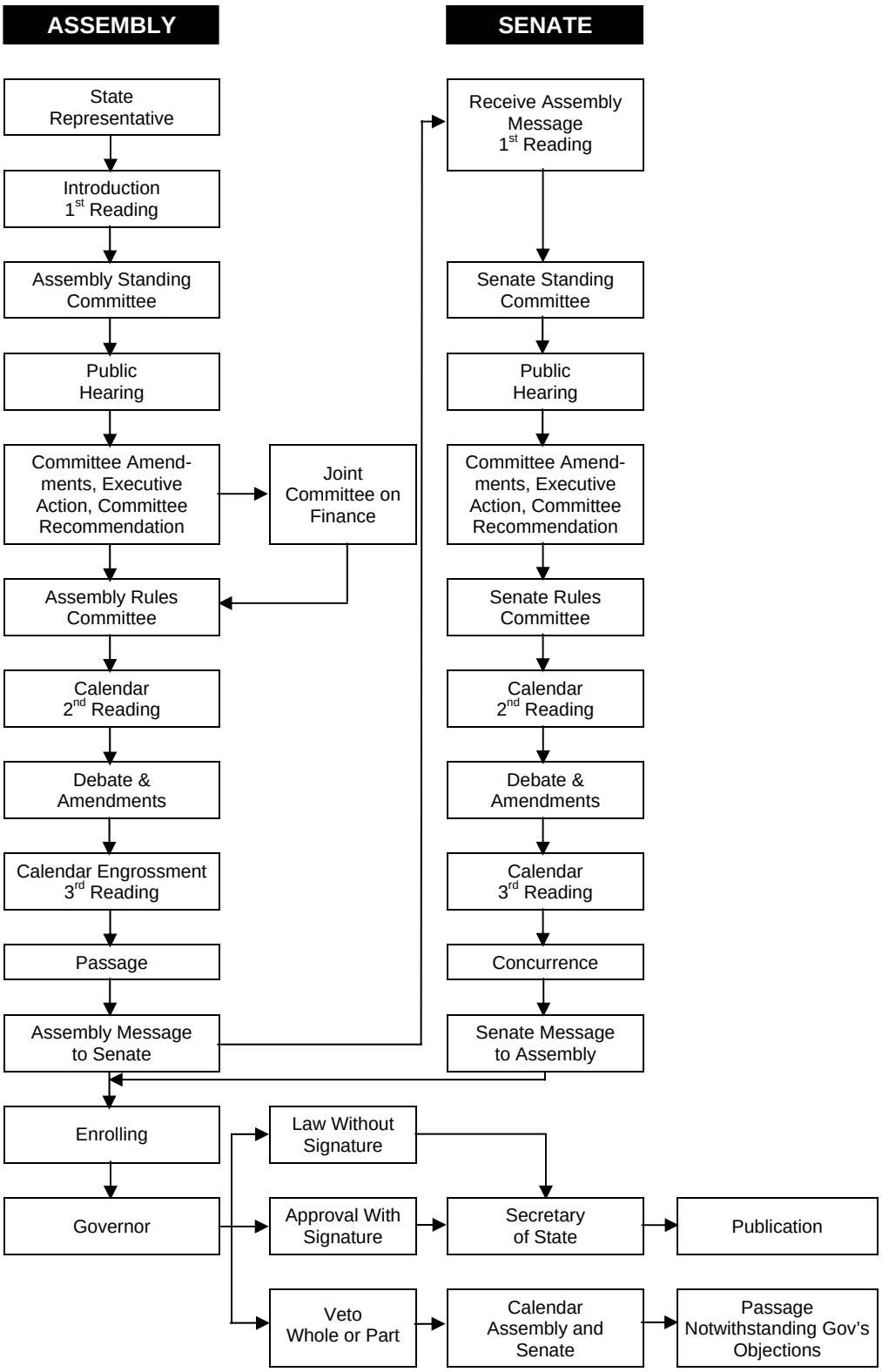
SECTION 1. 1.10 (title) of the statutes is amended to read:

1.10 (title) **State song, state ballad, state dance, and state symbols.**

A bill may create a new statute, modify an existing statute, or repeal particular existing statutes. Each session law may also contain nonstatutory provisions, usually relating to the initial applicability or effective date of a law, or directing an agency to take one-time action. Bills may affect statutes in one or more of the following ways: repeal; renumber; renumber and amend; consolidate and renumber; consolidate, renumber, and amend; amend; repeal and recreate; and create. All of these actions can also be used with respect to any portion of a statute.

How a Bill Becomes a Law

The following chart illustrates the process that a bill goes through in order to be enacted into law. Bills may begin the legislative process in either chamber. This example tracks the path for a bill originating in the Assembly.



Source: *How a Bill Becomes Law*, Wisconsin Assembly Chief Clerk.

Amendments and Substitute Amendments to Bills

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

An **amendment** (sometimes referred to as a "simple" amendment) affects only a portion of a bill. It may propose one or more changes, deletions, or additions to a bill or any of these in combination.

Amendments may also be amended. Amendments are only allowed to the second degree, i.e., an amendment to an amendment.

A **substitute amendment** is an amendment that proposes to replace the original bill. A substitute amendment is frequently used when the proposed changes to a bill are so numerous or complex that a simple amendment would be confusing. A substitute amendment may be amended by simple amendments. Upon adoption, a substitute amendment replaces the original bill.

If an amendment is adopted by a standing committee or on the floor, the Legislative Council staff prepares an **Amendment Memo**, which explains how the amendment modifies the bill. These memos can be found at the Legislative Council website, http://www.legis.state.wi.us/lc.

Amendments and substitute amendments may be offered when a bill is in either house. For example, a Senate amendment may be offered to an Assembly bill after it has passed the Assembly. If that Senate amendment is adopted, however, the bill as amended must return to the Assembly for action (concurrence or nonconcurrence) on the Senate amendment before the bill can be presented to the Governor. This is done so that the identical version of a proposal is adopted by both houses of the Legislature.

Occasionally, when the two houses are unable to agree on amendments to a bill, a conference committee will be appointed. This committee's report may be accepted or rejected, but it cannot be changed. It may include simple and substitute amendments and may recommend that either or both houses recede from their positions on other specific amendments. The houses act only on the **conference committee report**, not on any amendments contained in the report.

Fiscal Estimates

A **fiscal estimate** is required by statute for any bill that either makes an appropriation, increases or decreases an existing appropriation, affects state or local fiscal liabilities or revenues, or creates or modifies a surcharge under ch. 814, Stats. The fiscal estimate is an estimate of the cost of the bill to the state or, if appropriate, to political subdivisions of the state. It is prepared by the state agency most familiar with or affected by the proposal. It is common for two or more agencies to prepare fiscal estimates on the same bill.

A fiscal estimate must be prepared and available before the Legislature can take any action on a bill, including holding a public hearing or voting on a bill by a standing committee or a vote on the bill by the Assembly or Senate.

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

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

Joint Survey Committee Reports

The statutes require that specific information be prepared about bills relating to public retirement laws and tax exemptions. Any bill containing a proposal relating to or affecting one of these areas must be referred to the appropriate statutory committee or committees for the preparation of printed reports. These reports are required even if the retirement or tax exemption provision is only a small portion of a larger bill dealing primarily with other subjects.

Every bill that would modify existing laws or create new laws relating to the public retirement system must be referred, prior to any legislative action on it, to the **Joint Survey Committee on Retirement Systems**. The committee must review the proposal and issue a written report pertaining to three aspects of the proposal:

- The probable costs involved.
- The effect on the actuarial soundness of the retirement system.
- The desirability of the proposal as a matter of public policy.

Every bill that would modify existing laws or create new laws relating to the exemption of property or persons from any state or local taxes or special assessments must be referred, prior to any legislative action on it, to the **Joint Survey Committee on Tax Exemptions**. The committee must review the proposal and issue a written report pertaining to three aspects of the proposal:

- An opinion on the legality of the proposal.
- The fiscal effect upon the state and its subdivisions.
- The desirability of the measure as a matter of public policy.

If an executive budget or budget review bill contains provisions affecting the public retirement system or a tax exemption, the bill must be referred to the appropriate joint survey committee for a written report on those provisions.

Every bill that would create a new crime or revise a penalty for an existing crime may be referred by the standing committee chairperson to the **Joint Review Committee on Criminal Penalties**. If the bill is referred to the joint review committee, it must review the proposal and issue a written report pertaining to four aspects of the proposal:

- The costs that are likely to be incurred or saved.
- The consistency of penalties proposed in the bill with existing criminal penalties.
- Alternative language needed, if any, to conform penalties proposed in the bill to penalties in existing criminal statutes.
- Whether acts prohibited under the bill are prohibited under existing criminal statutes.

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

Resolutions and Joint Resolutions

Resolutions and joint resolutions are legislative proposals that do not enact laws and do not require the approval of the Governor. They are, nevertheless, formal legislative proposals that may achieve significant results.

A **resolution** is acted upon by only one house of the Legislature. Resolutions proposed in the Legislature are frequently intended to achieve the following:

- Modify procedural rules of the house.
- Ask for an opinion of the Attorney General on the legality of a legislative proposal.

A **joint resolution** must be adopted by the house of its origin and concurred in by the second house. Joint resolutions proposed in the Legislature typically address the following:

- Create the session schedule for each biennial session of the Legislature.
- Propose an amendment to the Wisconsin Constitution. Enactment of an amendment to the Wisconsin Constitution requires the approval of an identically worded joint resolution by both houses in two consecutive legislative sessions and the approval by the electorate in a statewide referendum.
- Ratify an amendment to the U.S. Constitution.
- Adopt joint rules regarding the conduct of business involving both houses.
- Memorialize Congress or the President to take certain actions (or refrain therefrom).
- Direct or request an agency or committee (frequently the Joint Legislative Council) to conduct a study of an issue of public concern.
- Recognize a particular event or occasion, or extend the commendations, condolences, or congratulations of the Legislature to a particular person or group.

Citations

Citations are used by the Wisconsin Legislature to extend the commendations, condolences, or congratulations of the Legislature to a particular person or to recognize a particular event or occasion.

Citations may be issued by Senate or Assembly resolution or by any member or group of members of a house, on behalf of the house. The latter types of citations may be used in place of resolutions and do not require a vote of the members of the house.

Laws and Rules

Acts

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

If the Governor approves a bill, if the Legislature overrides the Governor's veto of a bill, or if a bill is allowed to become law without the Governor's approval, the Secretary of State must publish notice of the enactment in the official state newspaper within 10 working days after its date of enactment. The official state newspaper currently is the *Wisconsin State Journal*. Unless the bill otherwise provides, the bill becomes effective the day after its publication.

After a bill is published, it is called an **Act**. The Secretary of State numbers the Acts of each legislative session chronologically in order of their approval by the Governor or their becoming law without such approval. At the end of the legislative session, all Acts are published in one or more hard-bound volumes called the **Laws of Wisconsin**. The Legislative Council staff prepares a memorandum on each Act that is signed into law. These memoranda are available at: http://www.legis.state.wi.us/lc.

Statutes

Biennially, after completion of the legislative session, the LRB must prepare the **Wisconsin statutes**. The biennial statutes incorporate those portions of the just-completed session's laws that create new statutes or modify existing statutes. The statutes also include the Wisconsin Supreme Court Rules that regulate attorneys and provide rules for judicial administration.

Enactments of the Legislature are not always printed in the statutes. Some of these enactments are listed in a table entitled "Special, Private or Local Laws," at pages 2225 to 2348 of **Wisconsin Annotations** (1970). The appendix to the most recent version of the Wisconsin statutes contains a table with the same title, which supplements that found in the Wisconsin Annotations. In addition, nonstatutory provisions, which often contain effective dates or direct an agency to take "one-time" action, are not printed in the statutes.

Administrative Rules

An **administrative rule** is an enactment of general application by an executive branch agency and has the force of law. Rules are issued to implement, interpret, or make specific the laws that are enforced or administered by the agency, or to govern agency procedures. Rules are published in the **Wisconsin Administrative Code**, which is in loose-leaf format, and is also available online at: http://www.legis.state.wi.us/rsb/code.htm.

Informational Documents

Electronic Information

Informational documents of the legislative process are available electronically for legislators and staff through a number of different resources, including:

- The legislative service agency websites, providing access to their publications and services. Each website has a rich collection of informational documents that are used in the legislative process. The following highlights some examples:
    - The **Legislative Audit Bureau** website, http://www.legis.wisconsin.gov/lab, includes audit reports from 1993 to date, audio archives of Joint Legislative Audit Committee hearings, best practice reviews, their biennial report, and information about the Fraud, Waste, and Mismanagement Hotline.
    - The **Legislative Council** website, http://www.legis.wisconsin.gov/lc, includes act and amendment memoranda, informational reports and memoranda describing various areas of the law, the Briefing Book, all study committee records and materials from 1998 to date, Law Revision Committee records, and Administrative Rules and Clearinghouse reports.

- The **Legislative Fiscal Bureau** website, http://www.legis.wisconsin.gov/lfb, includes memoranda on areas of the law affected by the biennial budget bill, budget papers that provide plain language analyses of the budget bill, informational papers describing various areas of the law, bill summaries, and revenue estimates.
- The **Legislative Reference Bureau** website, http://www.legis.wisconsin.gov/lrb, includes bill drafting records, statutes, the Administrative Code and Register, the Wisconsin Blue Book, budget briefs, budget indices to easily locate subjects within budget bills from 1999 to date, census data, informational bulletins and memoranda, and legislative briefs that give plain language analyses of select acts that transform particular areas of the law, among many other resources.
- The **Legislative Technology Services Bureau**, http://www.legis.wisconsin.gov/ltsb, provides a complete range of information technology services. This includes enterprise-level consulting in the areas of office automation, Internet access, payroll and accounting, constituent database support, and demographic and geographic analyses.

- The **Folio** database, containing current statutes, bill histories, journals, Assembly and Senate floor calendars, committee records, Clearinghouse rules, Attorney General opinions, acts, indices to proposals and acts, and archives of those materials from former sessions.

- The **Legislature's Homepage**, available at http://www.legis.wisconsin.gov, providing easy access to:
  - A quick-search field for **bill histories**. The bill history gives the relating clause and the list of authors and cosponsors of each proposal and the date on which it was introduced. The bill history also gives a chronological list of each action taken on the measure, with links to the bill text, any fiscal estimates, and any amendment memoranda.
  - The **Searchable InfoBase**, which gives a publicly accessible, searchable database of bills and amendments, statutes, acts, the Administrative Code, and other legislative documents.
  - A **notification service**, which allows tracking of legislative activities on proposals, committees, authors, and subjects. Any selected notification topics will send alerts by email.
  - The **Committee Schedule** link, which provides a calendar for all scheduled public hearings and executive sessions.
  - The Senate Session and Assembly Session links, which access the **InSession** website, give the floor agenda and links to live audiovisual coverage of the floor session.
  - The **legislative service agency** links to each service agency's homepage, for access to their publications and services, as briefly described above.

- **WisconsinEye**, a private not-for-profit enterprise that maintains audiovisual recordings of many (but not all) committee hearings and floor sessions, and campaign coverage. WisconsinEye can be found at: http://www.WisEye.org.

The materials and information described below are each available electronically through the Folio database or through the Legislature's homepage.

The Calendar

Each house must print a daily **Calendar** covering each day on which the house meets. The matters to be considered by the house on that day are set out and serve as an agenda for the business of the day.

If a bill has been considered by a standing committee or joint legislative committee, the report of the committee appears on the Calendar with the notation of the bill. All amendments offered to the bill prior to the printing of the Calendar also appear, following the committee report.

The rules of each house specify the order in which legislative matters are to be considered. After a Calendar for a specific day is printed, a proposal contained on it may be scheduled for a prior or subsequent day; may be removed from a Calendar and taken up immediately; or may be placed in a committee. In these instances, the Calendar is not reprinted. It is up to the individual legislator to keep his or her Calendar current.

The Floor Calendar is maintained in the Folio database and is available through the InSession website.

The Journal

The Wisconsin Constitution requires each house to keep and publish a **Journal of Proceedings**. These Journals contain a daily record of the actions of the house and are generally available to members before the next daily meeting of the house.

The daily Journal of each house is prepared under the direction of the Chief Clerk of each house. The printed Journals constitute the official record of each house.

The Journals reflect actions on bills, resolutions, and joint resolutions and on amendments and substitute amendments to these proposals. They also record roll call votes, committee assignments and reports, procedural motions, messages from the other house, and executive communications.

The Senate and Assembly Journals are maintained in the Folio database.

Weekly Schedule of Committee Activities

In order to provide the public with reasonable notice of public hearings, a **Weekly Schedule of Committee Activities** for the two houses is prepared in advance and published in the official state newspaper. The Weekly Schedule lists the time and place of the legislative committee hearings and the proposals scheduled to be heard at each hearing. Meetings of Joint Legislative Council study committees are also listed in the Schedule.

The rules of each house require that each committee chairperson, by Monday at 12:00 noon, file with the Chief Clerk of his or her respective house a list of the public hearings on proposals before his or her committee which are to be held during the following week. An “Advance Notice” may be published for a hearing to be held on a date later than the following week.

The Weekly Schedule is also maintained in the Folio database, and is available through the Legislature’s homepage.

For more information on providing the public with reasonable notice of public hearings, see the Briefing Book chapter, “Open Meetings Law.”

Bulletin of Proceedings

The **Bulletin of Proceedings** is a cumulative summary of the status of each proposal before the Legislature.

The Bulletin contains the relating clause and the list of authors and cosponsors of each proposal and the date on which it was introduced. It also gives a chronological

list of each action taken on the measure up to the date of the Bulletin's publication. All information in the Bulletin is cross-referenced to the page in the daily Journals at which the details of the Legislature's action are noted.

The Bulletin also contains a separate booklet on all administrative rules submitted to the Legislative Council Rules Clearinghouse. The booklet contains a chronological list of actions taken on a rule by legislative committees.

The Bulletin is published four times during each biennium, and is available through the LRB.

Bill histories are maintained in the Folio database and are available through the Legislature's homepage quick search field.

Committee records for attendance and votes are maintained in the Folio database. Committee materials that were distributed at public hearings are available through the Legislative Council's website, if provided by the witness.

The Blue Book

The **Wisconsin Blue Book** is a biennial publication compiled, edited, and prepared in each odd-numbered year by the LRB. The Blue Book was issued annually from 1853 to 1884. Thereafter, it has been prepared biennially. It is an encyclopedia of information regarding Wisconsin state government.

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

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

The Blue Book is available online through the Legislature's homepage, at: http://www.legis.wisconsin.gov.

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Wisconsin Legislative Council

Wisconsin Legislator Briefing Book 2011-12

2 **Legislative Service Agencies**

4 **Chamber Assistance**

5 **Legislator Office Assistance**

Legislative Staff Services

The most well-known and visible activity of the Legislature is its deliberations on legislation. Of course, the Legislature is involved in many more activities than simply the passage of legislation. Legislative committees hold public informational hearings, oversee the activities of state administrative agencies, and conduct studies. Individual legislators respond to constituent inquiries and serve as members of a wide variety of committees in state government.

All of the functions of the Legislature require some degree of support from the legislative staff employed by the Legislature.

Legislative staff can be divided into service agencies and chamber assistance. The service agencies have nonpartisan staffs and focus attention on analysis and research regarding issues of interest to the Legislature. Chamber staff work to prepare records of legislative action.

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

Prepared by:
Ronald Sklansky
Senior Staff Attorney

Legislative Service Agencies

Legislative Audit Bureau

Contact:
Janice Mueller
State Auditor
22 East Mifflin St., Suite 500
(608) 266-2818

http://www.legis.state.wi.us/lab

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

Reviews and evaluates the performance and program accomplishments of state agencies to determine whether the agencies have carried out the objectives of the Legislature and whether the programs are efficient, cost-effective, and not duplicative.

Investigates allegations of fraud, waste, or mismanagement reported to a toll-free hotline (1-877-FRAUD-17 or 1-877-372-8317), which was created by 2007 Wisconsin Act 126.

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

Any legislator may request an audit by writing to the co-chairpersons of the Joint Legislative Audit Committee.

Legislative Council

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

http://www.legis.state.wi.us/lc

Serves as staff for the substantive standing committees of the Legislature (other than the Joint Committee on Finance).

Drafts amendment memoranda that describe the changes made to a bill by amendments that are adopted by a standing committee or on the floor of either house of the Legislature.

Staffs study committees created by the Joint Legislative Council, creates research documents, and prepares implementing legislation related to such studies.

Prepares reports on all proposed administrative rules and assists standing committees in their oversight of the administrative rule-making process.

Provides staff services to the Joint Committee on Legislative Organization (JCLO) and the Joint Committee on Employment Relations (JCOER).

Responds to information and legal and policy research requests from legislators, other legislative service agencies, legislative staff, and the public.

Legislative Fiscal Bureau

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

http://www.legis.state.wi.us/lfb

Staffs the Joint Committee on Finance.

Develops information on fiscal matters for the Legislature.

Analyzes state agency budget requests and suggests alternatives to the Joint Committee on Finance and the Legislature.

Responds to requests for fiscal information from individual legislators.

Prepares, upon request, independent estimates of the fiscal effect of legislative proposals.

Prepares independent estimates of state revenues and reviews, on a continuing basis, factors influencing the state's financial affairs and activities.

Evaluates state agency programs.

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

Legislative Reference Bureau

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

Indexes, by subject and author, all legislation considered by the Legislature and publishes the *Index* volume of the Legislature's *Bulletin of Proceedings*.

Contact:
Stephen R. Miller
Chief
One East Main St., Suite 200
(608) 266-3561

http://www.legis.state.wi.us/lrb

Researches topics relating to state government and issues studies or reports.

Maintains a reference library of public documents and the Legislature's website.

Prepares and edits the *Wisconsin Blue Book*.

Publishes all acts, both at the time of enactment and as the compiled *Laws of Wisconsin*.

Responds to information requests relating to legislation and state government from legislators and staff, government agencies, the media, students, and the general public.

Edits and publishes the biennial editions of the *Wisconsin Statutes*, the *Wisconsin Administrative Register*, and the *Wisconsin Administrative Code*.

Develops and distributes Wisconsin Statutes, Administrative Code, and other sources of Wisconsin law in electronic (CD-ROM) form.

Examines the statutes and session laws to identify provisions that have defects, anachronisms, conflicts, ambiguities, and unconstitutional or obsolete provisions. Prepares technical revision and corrections bills for introduction into the Legislature.

Prepares a booklet, entitled *Wisconsin Town Law Forms*, after every biennial session.

Legislative Technology Services Bureau

Provides and coordinates information technology services and support to the legislative branch of state government.

Manages and supports the Legislature's office automation system, which provides computers and software to each legislative office and provides computer training.

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

http://www.legis.state.wi.us/ltsb

Manages and supports the specialized software used to produce legislative branch documents and publications.

Provides computer support to legislative support staff and provides computer training.

Manages legislative branch access to the Internet.

Provides technical support for legislative redistricting and Forward, a constituent tracking database application.

Chamber Assistance

Chief Clerks

Supervises the general business functions of each house, such as the processing of travel vouchers and payrolls and the purchasing of supplies.

Prepares the official *Journal* of each day's proceedings, the daily *Calendar*, the *Bulletin of Proceedings*, and the weekly *Bulletin of Hearings* for each house.

Records all legislative actions in the official record books and makes required entries on the jackets of bills, resolutions, and joint resolutions.

Contact:
Robert J. Marchant
Senate Chief Clerk
B20 Southeast, Capitol
(608) 266-2517
http://www.legis.state.wi.us/senate/scc/

Patrick Fuller
Assembly Chief Clerk
17 West Main St., Room 401
(608) 266-1501
http://www.legis.state.wi.us/assembly/acc/

Presents to the Governor for action all bills which have passed both houses.

Deposits with the Secretary of State at the close of each session of the Legislature the full record of action and disposition of all bills, resolutions, and joint resolutions.

Sergeants-At-Arms

Executes orders of the house or its presiding officer.

Supervises access of all persons to and from the house chamber.

Supervises the distribution to members of all legislative documents.

Supervises the delivery of bills, resolutions, and other communications to the chief clerk's desk, presiding officer's rostrum, or other required places.

Contact:
Ted Blazel
Senate Sergeant-at-Arms
B35 South, State Capitol
(608) 266-1801
http://www.legis.state.wi.us/senate/ssgt/

William N. Nagy
Assembly Sergeant-at-Arms
411 West, State Capitol
(608) 266-1503
http://www.legis.state.wi.us/assembly/asgt/

Maintains order and quiet in and about the chamber.

Assists committees of the house in conducting orderly public hearings.

Carries out the instructions of the presiding officer in compelling the attendance of absent members and securing the chamber during a call of the house.

Legislator Office Assistance

Administrative, Legislative, and Committee Research Assistants

Each Senator has a specific allotment for the biennium for salaries for any combination of full-time or part-time secretaries or assistants, as determined by each individual Senator. The Committee on Senate Organization determines the number of benefited staff positions allocated to each Senator. The remaining authorized positions, at least one for each Senator, are paid for out of the Senate's general operating budget, which is overseen by the chief clerk.

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

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

The responsibilities of a legislator's staff include:

Research and analyze issues pending in the Legislature.

Communicate for the legislator with other legislators, other branches of government, news media, lobbyists, and legislative service agencies.

Respond to constituent inquiries.

Prepare speeches and news releases.

Research and develop legislation and work with legislators, committee staff, and others regarding legislation referred to the committee. The committee clerk keeps the records of the committee.

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Wisconsin Legislative Council

Wisconsin Legislator Briefing Book 2011-12

1 **Purpose**

1 **Definitions**

2 **Requirements of the Law**

5 **Penalties; Enforcement**

Prepared by:
Richard Sweet
Senior Staff Attorney

Open Meetings Law

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

*Generally, the law requires that meetings of governmental bodies be conducted in **open session**, with certain exceptions, and be preceded by a **notice** of the meeting.*

Purpose

The Open Meetings Law contains a **declaration of policy**. This declaration, which was part of the original statute in 1959, makes the following statements:

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

The Open Meetings Law further states that it is to be liberally construed in order to achieve its purposes.

Definitions

The applicability of the Open Meetings Law is determined by the definitions of "governmental body," "meeting," and "open session." Although these definitions are somewhat technical, the clear effect of the definitions is to apply the Open Meetings Law broadly. The definitions of these terms are as follows:

- "**Governmental body**": A state or local agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, statute, ordinance, rule, or order; a governmental or quasi-governmental corporation (except for the Bradley Center Sports and Entertainment Corporation); a local exposition district; or a long-term care district. The term includes a formally constituted subunit of any of these bodies. The term excludes a body or subunit that is formed for or meeting for the purpose of public employee collective bargaining.

- "**Meeting**": The convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power, or duties delegated to or vested in the body. The definition creates a rebuttable presumption that if 1/2 or more of the members of a governmental body are present, the meeting is presumed to be for the purpose of exercising the powers vested in that governmental body. The definition excludes any social or chance gathering or conference that is not intended to avoid the Open Meetings Law. In addition, the definition excludes gatherings of members of a town board, town sanitary district, or drainage board, for certain inspections; different procedural requirements apply to these inspections.

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

Requirements of the Law

Open Session Required

Every meeting of a governmental body must be held in open session and all discussions held at a governmental body meeting, and all action, whether formal or informal, must be initiated, deliberated upon, and acted upon in open session, except as specifically exempted by statute.

The applicability of the Open Meetings Law to a gathering of less than 1/2 of the members of a governmental body was addressed by the Wisconsin Supreme Court in *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987). *Showers* involved an unannounced, private meeting of four members of the 11-member Milwaukee Metropolitan Sewerage Commission. The subject of the meeting was the Commission's proposed operating and capital budgets. Adoption of these budgets required a 2/3rds vote of the Commission (i.e., eight votes).

In ruling that the requirements of the Open Meetings Law applied to meetings of "negative quorums" (i.e., a sufficient number of members to block action by the governmental body), the court provided a two-part test to determine when a gathering of less than 1/2 of the members of a governmental body triggers the Open Meetings Law. Under the test, such a meeting is subject to the law if: (1) the members have convened for the purpose of engaging in governmental business, whether discussion, decision-making, or information gathering; and (2) the number of members present is sufficient to determine the governmental body's course of action on the subject under discussion.

Notice Requirements

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

*Notice must be given **at least 24 hours** before the commencement of the meeting. If there is good cause why a 24-hour notice is impossible or impractical, a shorter notice may be given; however, in no case may notice be provided less than **two hours** before the meeting.*

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

Departments and subunits of the University of Wisconsin System are exempt from the specific public notice requirements set forth above. These entities must, however, still provide notice reasonably likely to inform interested persons, as well as news media that have filed written requests for notice.

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

Exemptions From Open Session

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

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

- Deliberating concerning a case that was the subject of any judicial or quasi-judicial trial or hearing before the particular governmental body.

- Considering dismissal, demotion, licensing, or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such a person or considering the grant or denial of tenure for a university faculty member and taking formal action on any such matter. Under the law, the affected public employee, licensed person, or faculty member must receive actual notice of any evidentiary hearing preceding a final action and of any meeting at which final action may be taken. The notice must state that the person has a right to demand that the evidentiary hearing or meeting be held in open session.

- Considering employment, promotion, compensation, or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

- Considering specific probation, extended supervision, or parole applications or considering strategy for crime detection or prevention.

- Deliberating or negotiating purchasing of public properties, investing public funds, or conducting other specified public business, if competitive or bargaining reasons require a closed session.

- Deliberating by the Council on Unemployment Compensation or the Council on Worker's Compensation in a meeting at which all employer members of the Council or all employee members of the Council have been excluded.

- Deliberating the preservation of burial sites if the location of a burial site is a subject of the meeting and if discussing the location in public would be likely to result in disturbance of the burial site.

- Considering financial, medical, social, or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons, in which public discussion

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

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

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

- Considering matters related to acts by businesses under the state's "Economic Adjustment Program," in which public discussion could adversely affect the business, its employees, or its former employees.

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

Closed Session Procedure

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

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

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

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

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

- A governmental body may not consider the final ratification or approval of a public employee collective bargaining agreement at a closed meeting.

Legislative Meetings

The Open Meetings Law is applicable to the Legislature as follows:

- Senate and Assembly meetings and meetings of committees, subcommittees, and other subunits must comply with the Open Meetings Law, except that meetings called solely to schedule business before a legislative body do not have to comply with the public notice requirements of the law.

- If a provision of the Open Meetings Law conflicts with a Senate or Assembly rule or a joint rule of the Legislature, and the legislative meeting is conducted in compliance with that rule, that provision of the Open Meetings Law will not apply.

- The Open Meetings Law does not apply to any partisan caucus of the Senate or Assembly, except as provided by legislative rule.

- The Senate or Assembly Committee on Organization may vote to examine tax returns only if the tax returns are disclosed to the committee in a closed meeting.

Voting

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

Other Requirements

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

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

Any person may request advice from the Attorney General as to how the Open Meetings Law applies under any circumstances.

Penalties; Enforcement

Penalties

Any member of a governmental body knowingly attending a meeting of the body held in violation of the Open Meetings Law, or, in his or her official capacity, violating the law by some act or omission, is subject to a nonreimbursable forfeiture of not less than $25 nor more than $300 for each violation.

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

Enforcement

The Open Meetings Law is enforced by the Attorney General in the name and on behalf of the state or by the district attorney of any county where a violation may occur on the complaint of any person. Any forfeitures recovered, together with reasonable costs, are awarded to the state in actions brought by the Attorney General and to the county in actions brought by a district attorney. In addition, the Attorney General or district attorney may commence an action, separately or in conjunction with a forfeiture action, to obtain other appropriate legal or equitable relief including, but not limited to, mandamus, injunction, or declaratory judgment.

Action taken at a meeting of a governmental body held in violation of the Open Meetings Law is voidable upon a lawsuit brought by the Attorney General or the district attorney of the county where the violation occurred. However, the court may hold the action void only if it finds that, under the facts of the particular case, the public interest in enforcing the Open Meetings Law outweighs any public interest in sustaining the validity of the action taken at the meeting.

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

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Wisconsin Legislative Council

2 **Clarify, in Advance, Who Is the "Custodian" of the Office's Records**

2 **Respond Reasonably Promptly to a Request**

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Prepared by:
Ronald Sklansky
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Wisconsin Legislator Briefing Book 2011-12

Responding to Open Records Requests

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

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

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

The purpose of this document is to set forth the steps a legislator may take to deal with a request to inspect records.

A decision to deny access to a record should be made very carefully, since it most likely will be challenged--in court, in the news media, or in partisan debate.

Legislators are strongly advised, prior to responding to a request to inspect records, to seek additional advice beyond that set out in this chapter. Legislative leaders can provide pragmatic and political advice. Legislative Council staff can provide procedural advice.

Not only are decisions to deny access to records legally and politically sensitive, but the law on public records is complex and difficult to apply in specific instances. This document describes the statutes that constitute the Open Records Law. In addition to the statutes, the Wisconsin courts have interpreted and applied the Open Records Law in a number of cases. Certain constitutional

provisions also may apply to a given request for access to legislative records. The constitution, statutes, and cases constitute the legal basis for decisions to release or deny access to records.

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

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

*The **custodian** is the person who responds to a request to inspect records.*

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

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

Respond Reasonably Promptly to a Request

A response must be made "as soon as practicable and without delay."

A response to a record request must be made "as soon as practicable and without delay" under the law. In practical terms, a custodian may need some amount of time to retrieve and inspect the record before formulating a response.

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

Respond to a Request in Kind

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

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

Demand That a Request Be Reasonably Specific

There is no blanket exemption for constituent mail--in most cases, it is a "record."

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

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

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

Seeking Identity of Requester; Purpose of Request

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

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

Decide if the Requested Material Is a "Record"

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

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

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

Make a Decision on the Request

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

If a record requester appears in person, a legislator may permit the person to photocopy the record or provide the person with a copy substantially as readable as the original. Similar provisions apply to records in an audio, video, photographic, or computer format. The legislator must provide a record requester with facilities comparable to those used by employees to inspect, copy, and abstract the record during established office hours. However, the legislator is not required to purchase new equipment or provide a separate room for a record requester.

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

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

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

Denial of a Request

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

In some instances, access to records may be denied. However, any written denial must specifically cite a statutory or common law exemption or demonstrate that there is a need to restrict public access at the time that the request is made.

The exemptions to the Open Meetings Law are used as a guide for denial. The applicable exemptions in that law are:

- "Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body."
- "Considering dismissal, demotion, licensing or discipline of any public employe or person licensed by a public body or the investigation of charges against such person . . . and the taking of formal action on any such matter . . . ."
- "Considering employment, promotion, compensation or performance evaluation data of any public employe over which the governmental body has jurisdiction or exercises responsibility."

- "Deliberating or negotiating the purchasing of public properties, the investing of public funds or conducting other specific public business, whenever competitive or bargaining reasons require a closed session."

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

- "Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved."

- "Consideration of requests for confidential written advice from the government accountability board under s. 5.05 (6a), or from any county or municipal ethics board."

- "Considering any and all matters related to acts by businesses under s. 560.15 (economic adjustment program where a business is shutting down or laying off employes) which, if discussed in public, could adversely affect the business, its employes or former employes."

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

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

Partial Denial

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

Provide Copies on Request

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

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Wisconsin Legislative Council

Wisconsin Legislator Briefing Book 2011-12

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Wisconsin's Legal Framework

The Functions of Law

Laws help society function by:

- Providing a basic structure or framework for meeting the common expectations and needs of citizens regarding the transactions, relationships, and planned and unforeseen events of daily life.
- Overseeing the operations and processes of government, including the protection of citizens against the excesses or unfairness of government.
- Maintaining societal order against violence or harm to persons and property.
- Providing a means for the peaceful settlement of disputes.
- Protecting citizens against unfair or excessive private power.
- Assuring the opportunity of citizens to enjoy at least minimum economic and health standards.
- Providing general and specific ethical and moral standards for society.

Sources of Law in Wisconsin

U.S. Constitution and Federalism. The American Revolution spawned the development of an entirely new legal system based on the concepts of: (1) democratic representative government; (2) divided legal authority through separate branches of government with a system of "checks and balances" to curb abuses of power; and (3) "federalism" whereby the independence of the original colonies (states) was generally maintained but subjugated to the authority of legal institutions at the national level.

The Constitution of the United States became the cornerstone of our system of law and government. As the "supreme law of the land," the provisions of the U.S. Constitution can only be changed

by amendment proposed by 2/3rds of the members of both houses of the U.S. Congress or by a convention called on application of the legislatures of 2/3rds of the states, followed by ratification by 3/4ths of the states. The Constitution vests the U.S. Congress, the national legislative body, with primary federal lawmaking authority, subject to the veto power of the President and, as it later developed, interpretive review and review for constitutional compatibility by the federal judiciary.

Rights of the States Under the Constitution

The Constitution expressly delegates certain exclusive types of lawmaking powers to the federal government (e.g., regulation of foreign affairs and interstate commerce) and expressly prohibits the states from establishing certain types of laws (e.g., the making of treaties). However, even with constitutional restrictions, the states retain substantial rights under the Tenth Amendment to the U.S. Constitution. The states remain free to develop a large body of state law that, in retrospect, has given each state the opportunity to develop laws that have the most direct and profound impact on the day-to-day lives of its citizens.

Law at the State and Local Level

In addition to the U.S. Constitution and federal laws, the basic forms of law that have formed the foundation of government at the state and local level in Wisconsin include:

- ***The Common Law.*** When most people in the United States contemplate the meaning of "the law" in its abstract sense, they are usually thinking of the enormous body of principles, standards, and rules, both general and specific, promulgated and codified by federal, state, and local governments. However, the earliest notion of "the law" in Western civilization was not an enumeration of basic principles as adopted by a constitutional or legislative body, but a judgment in a particular court case in which a general precept was established by a judge at the moment of adjudication.

  The gradual accumulation of judicial decisions in specific cases became the early foundation of the "common law" in England and her New World colonies. Although a large body of "common law" principles established through a series of cumulative decisions by judges in specific cases takes many years to develop, English and colonial "common law" performed many of the same functions as our current legal institutions in shaping, guiding, and regulating human conduct and interaction within an established social order.

  While the importance of the common law has diminished, it continues as a source of law.

- ***The Northwest Ordinance.*** The Northwest Ordinance, signed in 1787, established provisions for governing the Northwest Territory, an area that eventually became five states, including the State of Wisconsin. Among other things, the Ordinance provided that individual rights and freedoms would be extended to settlers moving west. These rights included freedom of religion, trial by jury, elimination of cruel or unusual punishment for crimes, and the elimination of imprisonment or confiscation of property without a trial. The guarantees of religious and civil freedoms preceded the Bill of Rights by four years. The Ordinance also prohibited slavery and extended certain protections to Native Americans. The Northwest Ordinance is an important document in the United States and Wisconsin history. Not only did it provide for extension of the laws above, but also it provided a mechanism for a territory to become a state equal with the original 13 states.

- ***The Organic Law.*** In 1836, the U.S. Congress passed the Organic Law establishing the Wisconsin Territory, as of July 3, 1836. It prescribed that the existing laws of the Territory of Michigan, to which Wisconsin had belonged, were to be "extended over the said territory (Wisconsin) . . . subject, nevertheless, to be altered, modified or repealed, by the governor and legislative assembly."

- ***The Wisconsin Constitution.*** The Wisconsin Constitution continued the laws of the Territory of Wisconsin, by providing in section 2 of Article XIV: "All laws now in force in the territory of Wisconsin which are not repugnant to this constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature."

  In Wisconsin, the fundamental principles of state law and government, the rights and obligations of citizens and the relationship between the state and local governments are expressed in the Wisconsin Constitution which, similar to the U.S. Constitution, can only be amended by legislative action and subsequent ratification by referendum.

  The Wisconsin Constitution, like the U.S. Constitution, vests primary lawmaking powers with an elected legislative body, the Wisconsin Legislature, subject to the "checks and balances" of executive veto and interpretive review and review for constitutional sufficiency by the state judiciary. However, it is interesting to note that, unlike the U.S. Constitution, Wisconsin's founders expressly provided that the "common law," i.e., judicial precedent, of the territory not inconsistent with the Wisconsin Constitution "shall be and shall continue part of the law of this state until altered or suspended by the legislature."

- ***Statutory and Nonstatutory Laws.*** Statutory laws are laws with such statewide significance, that when they are passed by the Legislature and signed into law by the Governor, they are formally written into the Wisconsin statutes.

  Nonstatutory laws are enacted the same way, but because they affect a smaller number of people, they are not codified into the Wisconsin statutes. This includes both ***private laws*** (governing private persons and/or their property) and ***local laws*** (governing a particular locality).

- ***Administrative Rules.*** Administrative rules are promulgated by executive branch state agencies to interpret and implement state statutes. A state agency cannot adopt rules which exceed or are outside the scope of its statutory authorization and the content of such rules must also be consistent with state law. In addition, the Legislature plays a key role in the statutory rule review process that occurs prior to the promulgation of a rule.

- ***Ordinances.*** Ordinances are laws created by local governments (counties and municipalities). Ordinances are limited in scope by what the constitution and statutes allow local governments to regulate.

Civil Law and Criminal Law

Criminal Law and Civil Law Distinguished

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

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

- Establishes a general framework for the administration of penal justice.

At the state level, all laws and legal proceedings not involving those matters listed above are civil in nature because they involve either the private rights and remedies of citizens or the policies and internal workings of an established system of civil order or government.

Felonies Versus Misdemeanors

There are two types of criminal offenses, felonies, and misdemeanors. Generally, felonies include crimes that are considered more serious in nature and therefore carry harsher maximum penalties than misdemeanors. Wisconsin statutes define a felony as a crime punishable by confinement in prison, generally one year or more. A person convicted of a felony offense is also subject to certain civil disabilities after service of the sentence, such as ineligibility to run for and hold elective public office. All other crimes are misdemeanors, punishable only by a fine or a shorter maximum imprisonment.

Civil Offenses Punishable by Forfeiture

Some prohibitions on conduct are civil offenses rather than crimes. In these instances, violators are neither fined nor imprisoned, but only a monetary penalty known as a "forfeiture" may be imposed. These civil forfeitures, which can be authorized by state law or local ordinances adopted pursuant to state law, usually involve minor offenses such as parking violations, local dwelling code violations, minor hunting and fishing violations, and so forth.

The Legislature and Its Relationship to the Judicial and Executive Branches

Separation of Powers

Wisconsin has a tripartite form of government, meaning that it has three separate but equal branches—the legislative, executive, and judicial branch. Wisconsin's Constitution created a separation of powers, giving each branch exclusive "core powers," in which other branches may not intrude.[1] The Legislature's core power is legislative, the executive's core power executory, and the judiciary's core power judicial. The Wisconsin Supreme Court says that "beyond these core constitutional powers lie 'great borderlands of power' which are not exclusively judicial, legislative or executive. [Wisconsin's] system of government envisions the branches sharing the powers found in these great borderlands."[2] The Court describes Wisconsin's government as a system of "separateness but interdependence."[3] Powers may be shared, as long as the power is not a "core" power.[4]

Wisconsin's separation of powers structure also gives each branch the power to check and balance the other branches. For example, one of the Legislature's checks on the executive branch is the power to impeach the Governor. Another is the Legislature's power to remove Wisconsin Supreme Court judges by a 2/3rds vote as a check on the judiciary.

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[1] *Panzer v. Doyle*, 2004 WI 52, ¶50, 271 Wis. 2d 295, 331.

[2] *Id.*, ¶51, at 332.

[3] *Id.*, ¶50, at 331.

[4] *Id.*, ¶51, at 332.

The Judicial Branch

The Wisconsin judiciary is comprised of trial courts and appellate courts. Citizens must take their conflicts to trials courts. Wisconsin's trial courts are circuit courts. There are 69 circuit courts (246 judges) in the state. Wisconsin statutes allow municipalities to create their own courts to handle municipal ordinance violations. There are 252 municipal courts (254 judges). If someone is unsatisfied with the trial court's resolution, he or she may appeal to an appellate court. Wisconsin's two appellate courts are the Court of Appeals, organized into four districts (16 judges), and Supreme Court (seven justices). In some cases, circuit courts may also be considered appellate courts (i.e., appeals from municipal courts or administrative courts).

For administrative purposes, the circuit courts are divided into 10 judicial administrative districts (ranging in size from one county–Milwaukee County–to 13 counties). The judicial business of each district is supervised by a chief justice selected by the Supreme Court. The chief judge is assisted by a district court administrator, an employee of the Director of State Courts Office.

The Courts and Rules of Statutory Construction

State courts determine the appropriate limits of government by deciding conflicts resulting from how state and some federal laws are interpreted or executed. This means that courts interpret a statute by looking at its language, as well as the specific application of the statute in light of the facts and circumstances of particular cases. Although there is a strong **presumption of the constitutionality** of state statutes in most cases, a court may, in appropriate cases, find a statute unconstitutional or beyond the powers of the Legislature.

Several of the most significant commonly applied **rules of statutory construction** are discussed below. In general, these rules of construction are used by courts when a statutory provision is ambiguous (unclear because it is capable of more than one meaning or just unclear in its meaning) and the court is attempting to discern legislative intent.

- ***Plain or Literal Meaning.*** This rule provides that when a statute is capable of two or more conflicting interpretations, the courts will favor the interpretation which is most consistent with the actual language or "plain meaning" of the statute. Again, the courts have not uniformly applied the "plain meaning" rule, particularly when confronted with overriding policy considerations or when it is concluded that application of the rule would lead to ludicrous results which could not have been intended by the Legislature.
- ***Express Mention, Implied Exclusion.*** This rule embodies the concept that when a statute contains an enumeration of specific items, the Legislature intended to exclude from the scope of the statute any other item except those expressly enumerated.

  For example, when a statute defines the term "wages" as meaning "salaries, commissions, vacation pay and severance pay," application of the rule would preclude the court from interpreting the provision to include any other form of compensation not specifically enumerated, such as "overtime pay."
- ***On the Same Matter or Subject.*** This rule provides that when a court finds that all or part of a statute is ambiguous or in conflict with another statutory provision, the courts will review the entire statute as well as other related statutes, if any. By looking at all statutes dealing with the same subject matter, the courts attempt to determine legislative intent in order to resolve the ambiguity or conflict.
- ***General Versus Specific.*** This rule is often involved when a **general** statutory provision is in conflict with a **specific** statutory provision, both dealing with the same subject matter. In such cases, the courts will usually resolve the conflict

by holding that the provisions of the specific statute supersede the general statute.

- ***Later Enactment Takes Precedence.*** This rule provides that statutory language and changes in an act with the latest effective date takes precedence over an earlier enactment affecting the same statutory language. For example, if a 2001 law (Wisconsin Act 42) revises s. 346.63 (1) of the statutes and then 2001 Wisconsin Act 43 repeals that subsection, the Wisconsin Act 43 change (the repeal) takes precedence and the subsection is repealed.

- ***Strict Construction of Penal Statutes.*** This rule is often invoked by the courts in cases involving alleged ambiguities in penal statutes which carry criminal sanctions, such as a fine, imprisonment, or both. In interpreting these statutes, which have potentially serious ramifications for persons accused of crimes, the courts have fostered a policy of resolving ambiguities and conflicts in criminal statutes by narrowly construing the law to favor the defendant.

  It is important to note that in dealing with penal statutes, the term "strict construction" does not mean "literal construction" as required by the "plain meaning rule." Instead, it means that, when resolving an ambiguity, the scope of a penal statute should not be expanded beyond the clear and obvious intent of its actual language if such construction would be harmful to the defendant.

- ***Of the Same Genus or Class.*** This rule provides that when a statute contains a series of specific enumerations followed by a general inclusionary clause, the application of the inclusionary clause should be construed in light of the common characteristics of the specific enumerations. For example, if a statute refers to "automobile, truck, motorcycle or other vehicle," application of the rule would preclude the inclusion of a "bicycle" within the meaning of the clause "or other vehicle" because, unlike those vehicles specifically mentioned, a bicycle is not a motorized vehicle.

The Executive Branch

Wisconsin's executive branch is directed by six officers, created by the Wisconsin Constitution. These officers are: Governor (the chief executive), Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, and State Superintendent of Public Instruction. There are 17 state administrative departments and 12 independent agencies. There are also special committees, commissions, and councils created by statute or the Governor designed to address specific public issues. The executive branch's core powers are to execute and administer laws, programs, and policies, created by the Legislature. The departments and independent agencies may create administrative rules and regulations in order to execute them.

The Governor's Authority to Veto and Partial Veto Legislation

One of the executive branch's checks over the Legislature is the power to accept or reject legislation in the form of vetoes, discussed below.

- ***Governor's General Veto Power.*** The Governor has six days (excluding Sunday) to approve or disapprove a bill. This period begins when the clerk of the house of origin sends the bill to the Governor at the request of the Governor, at the direction of the presiding officer, or pursuant to the session schedule. If the Governor entirely disapproves the bill, the Governor returns it to the house of origin with his or her objections. The return constitutes a veto of the bill. A 2/3rds vote by each house is required to override a veto. The Governor's objections to a bill are generally written as a veto message.

- ***Governor's Partial Veto Power.*** The Governor may veto any part of an appropriation bill if what remains is a complete and workable law, except that he or she may not create new words by rejecting individual letters of words in the bill. The Governor may also not create a new sentence by combining two or more sentences of the bill. The Governor may reduce the amount of an appropriation by substituting (writing) a smaller amount. If a partial veto occurs, the part ap-

proved becomes law and the part objected to does not become law unless a 2/3rds majority in each house overrides the veto.

State and Federal Relations

Exclusive and Concurrent Powers

As noted above, our system of "federalism" means the country is governed by both a national government and various state governments. The U.S. Constitution grants specific authority and powers to the national government, and all powers not therein granted to the national government are reserved to the states.

Within this framework, the U.S. Constitution permits only the national government to exercise certain powers; for example, only the federal government may coin money. However, certain areas of law have historically been considered the **exclusive** province of the states.

There are areas of law where federal authority and state authority are clear and conflicts are easily avoided. However, in other areas, the federal government and the states exercise **concurrent powers** and certain conflicts inevitably result.

An example of a concurrently exercised power is the regulation of commerce. The U.S. Constitution grants to the federal government the power to regulate foreign and interstate commerce. However, the power of the states to enact laws for the safety, health, morals, and general welfare of their residents has traditionally been viewed as including the power to regulate matters affecting commerce.

Federal Preemption

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

When federal-state conflicts are neither obvious nor direct, the U.S. Supreme Court has developed the following guidelines for determining when a federal law will preempt a state law:

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

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Part II

Selected State Programs and Laws

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A-1 **The State and Local Governmental Role in Agriculture**

A-6 **Glossary of Terms and Abbreviations**

A-7 **Additional References**

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Chapter A

Agriculture

Nationally, Wisconsin ranks first or among the top states in the production of many agricultural commodities such as cheese, corn for silage, cranberries, snap beans for processing, hogs, potatoes, carrots, and green peas for processing. This chapter of the Briefing Book discusses some of the key state programs that provide support for agriculture, regulatory programs applicable to the agricultural industry, and other farm-related issues.

The State and Local Governmental Role in Agriculture

Government at all levels has a role in agriculture, both in support of the industry and its regulation. Federal, state, and county governments all commit public resources to agricultural programs. In addition, local units of government (cities, villages, towns, and counties) use zoning to affect decisions on where agricultural operations, both production and processing, are located or expanded, and to protect and retain current agricultural operations.

Federal agricultural programs are not discussed in this chapter. Instead, this chapter concentrates on some of the key state and local governmental programs that relate to agriculture.

Programs that support agriculture may provide information to farmers and the public on many of the difficult topics that confront farmers, assist farmers and other industry members in mediating disputes that arise in agricultural contexts, and provide support to farmers in the financial aspects of agriculture.

Information about agriculture. The University of Wisconsin (UW)-Extension has extensive resources available to farmers and others who work in the agricultural sector. (The UW-Extension website is: http://www.uwex.edu/topics/Agriculture.cfm.) Much of this information relates to methods for agricultural practices that maximize efficiency and profit. For example, the UW-Extension engages in research on feed for animals (forage research) and makes recommendations to

farmers regarding the best varieties of alfalfa to plant. Other kinds of information include information about pest management, pesticide use, sustainable agriculture, general business management, and farm safety.

Wisconsin Farm Center
1-800-942-2474

http://www.datcp.state.wi.us/mktg/agriculture/farm-center/info-outreach/index.jsp

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) is also involved in providing information and outreach services to farmers, primarily through the Wisconsin Farm Center. The staff of the Farm Center provides: (1) a variety of information to farmers through a toll-free line at 1-800-942-2474; (2) technical assistance to farmers that includes information on the introduction of new technologies on farms; and (3) answers to general legal questions related to agriculture, including various legal aspects of the business of farming (taxation, estate planning, leases, and credit-debtor law). The Farm Center publishes a legal guide for Wisconsin farmers which includes information on lending systems, the court system, securities, property law, legal services, bankruptcy, tax law, and other topics. This legal guide is available online at: http://www.legalexplorer.com/resources/database/PubPDFs/57-farm.pdf.

Marketing and promotion. DATCP provides assistance throughout the agricultural sector with product development, finding new markets, developing a product identity, and exporting products to other states and countries. Examples of DATCP assistance are:

- The DATCP Marketing Division has an International AgriBusiness Center (IABC) to help make connections between overseas buyers and Wisconsin agricultural suppliers. The IABC also looks for export opportunities for Wisconsin agricultural products, maintains information about Wisconsin producers, and engages in many other activities related to agricultural exports.

- DATCP is involved in value-added agriculture, which allows farmers to develop specialized products that are processed beyond the production of an agricultural commodity. This enables farmers to be able to capture more of the money spent by consumers on food or fiber. An example of a value-added product is ethanol that is produced using crop or plant wastes. This program also provides assistance relating to Wisconsin branded products, organic agriculture, and niche products such as specialty cheeses.

  For more information about value-added agriculture, see: http://www.datcp.state.wi.us/mktg/business/marketing/val-add/index.jsp.

- Some of Wisconsin's agricultural producers engage in collective action, with the assistance of DATCP, to market their products. This is done through the system of agricultural marketing orders. Marketing orders are typically requested by producers of a specific commodity in a petition to DATCP. The marketing order levies a "check-off," which is an assessment on all producers to generate revenue for the program. A marketing order is issued by the DATCP Secretary following a referendum in which the marketing order is approved by a majority of the producers, and thereafter is legally binding on all producers. Revenues from the check-off are used for research and development, public education, and marketing efforts. There are seven marketing boards, which range from the Wisconsin Cherry Board and the Wisconsin Ginseng Board, with annual check-off revenues of around $30,000 to $40,000, to the Milk Marketing Board, with annual revenues of $21 million to $23 million.

  For more information about marketing orders, see: http://www.datcp.state.wi.us/mktg/agriculture/crops/market-orders/index.jsp.

Conflict avoidance and resolution. DATCP has a farm mediation and arbitration program that assists in the resolution of a wide variety of farm-related disputes, such as creditor/debtor issues and government program disputes. Volunteer mediators and arbitrators are made available for this purpose. The primary purpose of mediation is to provide a less expensive way to resolve problems. For more information about DATCP's farm mediation and arbitration program, see: http://www.datcp.state.wi.us/mktg/agriculture/farm-center/farm-mediation/bridges.jsp.

There are also statutory protections for farmers against private nuisance and negligence claims. The "recreational immunity" statute provides protection for landowners against potential negligence claims made by people whom the landowner allowed to use his or her land for outdoor activities. The intent of this statute is to encourage private landowners to open their lands to use by others. This statute does not protect a landowner from having a lawsuit filed against him or her, and there are limits on how much compensation a landowner may receive in exchange for the use of his or her land without waiving this liability protection.

The "right-to-farm" statute sets limits on a farmer's exposure to nuisance lawsuits brought by nearby property owners. The statute provides that an agricultural practice is not a legal nuisance if the agricultural practice: (1) had been conducted on the farm prior to the plaintiff's commencement of use of the nearby property; and (2) does not constitute a "substantial threat to public health or safety." In other words, this statute provides some protection for farmers from nuisance lawsuits by individuals who move to an area after a farming activity is established.

DATCP also administers an agricultural producer security program intended to protect agricultural producers from financial default by those purchasing the producer's products. These programs, which affect dairy plant operators, vegetable processing plants, public warehouses, and grain dealers, provide a thorough review of the financial status of these purchasing entities and require them to provide financial assurances to protect the producers if payments are not made. The Legislature passed numerous revisions to the producer security program in the 2009-10 Legislative Session.

For more information about the producer security program, see: http://www.datcp.state.wi.us/trade/business/security/index.jsp.

Financial and other assistance. There are a number of loan programs and other forms of financial assistance or financial relief for farmers. These are a few examples:

- The 2009-10 Wisconsin Biennial Budget Act contained a set of initiatives collectively referred to as the "Working Lands Initiative" (WLI). The WLI contains a number of measures intended to protect farmland, including the following two programs:

    - *Farmland preservation tax credits.* Eligible, participating landowners may claim farmland preservation income tax credits. These credits vary from $5 to $10 per acre. This tax credit program replaced a prior farmland preservation income tax credit.

      To be eligible for this tax credit, among a number of other requirements, the land must be in an area identified in a certified county farmland preservation plan. Also, the land must be either in an area certified for farmland preservation zoning, or must be located in a designated agricultural enterprise area and under a farmland preservation agreement.

Ag Land Rezoning-Conversion Fee

If the land is in an area certified for farmland preservation zoning and the local unit of government rezones all or part of the parcel for a reason other than a comprehensive rezoning, a per-acre conversion fee must be paid which is then deposited in a state farmland preservation trust fund. The amount of this conversion fee is based on the Wisconsin Department of Revenue's Use Value Guidelines for Agricultural Land Assessment (http://www.revenue.wi.gov/report/a.html). The fee is calculated by multiplying the Grade 1 agricultural land assessment value (or highest class of tillable land) by 3. It appears that this fee will range from approximately $500 to $1,000 per acre.

- *Purchase of agricultural conservation easements (PACE).* PACE is a new program that provides up to 50% of the cost of purchasing agricultural conservation easements from willing landowners. Land for which an agricultural conservation easement has been sold cannot be developed for any purpose that would prevent its use for agriculture. The seller of the agricultural conservation easement retains ownership of the land and may continue to farm the land. Agricultural conservation easements can allow farmers to collect a significant portion of the market value of their land while continuing to farm the land. This is a new program, so it is not yet clear how the funds in this program will be allocated or prioritized.

- The Department of Commerce (DComm) has a grant program under the Dairy 2020 program to assist with the modernization and expansion of Wisconsin dairy farms. This program has provided more than $2.5 million to over 925 Wisconsin dairy producers. For more information about DComm's Dairy 2020 grant program, see: http://www.commerce.state.wi.us/bd/BD-AG-Dairy2020EPG.html. DComm also has a loan program for rural economic development. For more information about this grant program, see: http://www.commerce.state.wi.us/bd/BD-AG-Dairy2020EPG.html.

- The Wisconsin Housing and Economic Development Authority (WHEDA) also administers programs related to agriculture, including the Credit Relief Outreach Program (CROP), which provides guarantees on agricultural production loans and the Farm Asset Reinvestment Management (FARM) program, which provides loan guarantees for starting, expanding, or modernizing operations.

Use-Value Assessment

- Under use-value assessment, agricultural land is assessed at its value for use as agricultural land, rather than its market value. Market value may reflect other considerations, such as the capacity to develop the property for nonfarm uses. This program has resulted in a major reduction of the amount of property taxes paid by Wisconsin farmers. The Legislative Audit Bureau (LAB) recently conducted an audit of use-value assessment, which can be reviewed at: http://www.legis.wisconsin.gov/LAB/reports/10-usevalueassessment_ltr.pdf.

- The current statutes provide that agricultural forest land is assessed for property taxes at 50% of its fair market value. "Agricultural forest land" is defined as land that either is producing or is capable of producing commercial forest products and that meets one of several conditions.

- The Farm Center coordinates a program to provide information about stray voltage to farmers. An on-farm investigation by a technical team can be arranged that includes assistance to farmers in working with utilities and electricians to resolve power quality issues. The Farm Center can also assist with dispute resolution between farmers and utilities about power quality issues.

- An income tax credit is available for investments in dairy and livestock farm modernization. This credit was extended and expanded in the 2009-10 Legislative Session.

Regulations Relating to Agriculture

Agriculture is subject to a wide variety of regulations intended to protect public health and safety. Many of these regulations are applied to agriculture in the same manner as to any other industry, such as pesticide regulations and food safety regulations. Some of the regulatory programs, such as soil and water conservation requirements, animal waste regulations, and fertilizer and nutrient requirements, are imposed through a long-term management strategy rather than a traditional regulatory program. Some program requirements are imposed only when public funds are available to assist farmers in complying with the regulations.

Food safety. DATCP and the Department of Health Services (DHS) share responsibility for the regulation of food safety, although DATCP has the primary responsibility for ensuring the safety of agricultural product production and processing. For more information on the food safety and processing program at DATCP, see: http://www.datcp.state.wi.us/core/food/food.jsp. The LAB recently conducted an audit of the food and dairy safety program, which can be reviewed at: http://www.legis.wisconsin.gov/lab/reports/08-6Full.pdf.

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

For more information about animal movement requirements, see the following DATCP website:
http://www.datcp.state.wi.us/ah/agriculture/animals/movement/index.jsp.

Nonpoint Standards

Nonpoint source performance standards. Nonpoint source pollution, or runoff pollution, is water pollution that is diffuse in nature, having no single, well-defined point of origin. It is basically dirty water that does not come out of a pipe or point source. Wisconsin has laws regulating nonpoint source pollution from farming activities, primarily with respect to manure storage activities and runoff from farm fields and pastures.

Wisconsin statutes require the Department of Natural Resources (DNR) to establish nonpoint source performance standards (DNR promulgated a major revision of the nonpoint performance standards in 2010). DATCP is required to write rules identifying practices that farmers should use to meet those standards.

Specific performance standards include requirements related to nutrient management, erosion, tillage setbacks, phosphorus management, and manure storage and manure management. Cost sharing may be available to pay for the implementation of practices designed to meet these standards and, in some situations, it must be provided before a farmer can be compelled to comply.

For more information about the nonpoint source performance standards, see:
http://www.datcp.state.wi.us/arm/agriculture/land-water/conservation/ and
http://dnr.wi.gov/runoff/animal.htm.

Pesticides. Pesticides are subject to comprehensive regulation by DATCP in a state-run program based on federal mandates. Pesticide regulation is primarily

directed at protecting public health, including agricultural workers and nearby residents, and protecting the environment, particularly groundwater. The regulations focus on application methods and rates and disposal of pesticide containers. Licensing and certification is required for most pesticide applicators, and even farmers who apply pesticides on their own land must have a private applicator certification. In certain cases, state law exceeds federal requirements. In one of the more prominent examples, Wisconsin has gone beyond federal regulations for atrazine, an herbicide that has been found in Wisconsin's groundwater.

Fences. The statutes on fencing require the owners of adjoining property to share in the cost of constructing and maintaining a boundary fence when one or both of the properties is used for farming or grazing. If one of the property owners refuses, the fence viewers (who are appointed by, and often are, the town board members in a rural area) may direct the work to be done, and the cost may be levied on the defaulting property owner as a special charge on the property tax bill.

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

Livestock facility siting. The livestock facility siting law includes statewide standards that certain new or expanded livestock facilities must meet to protect air and water quality. The siting law also places some restrictions on local government regulation of the siting or expansion of these facilities. The purpose of this law is to establish uniform standards statewide for livestock facility siting and expansion. The Livestock Facility Siting Review Board oversees challenges to local siting decisions.

Glossary of Terms and Abbreviations

DATCP – Department of Agriculture, Trade and Consumer Protection.

DNR – Department of Natural Resources.

Nonpoint source pollution – The runoff of rainwater or melting snow from the surface of the land that eventually enters lakes or streams. This runoff washes away and can contain pollutants from both urban and rural sources that can have an adverse effect on surface water quality. By contrast, a typical point source of pollution would be a wastewater treatment plant.

Nutrient management – A method whereby farmers adopt a plan for all sources of nutrients (nitrogen and phosphorous) that are applied to the land. This includes fertilizer, legumes, and manure spreading. Nutrient management reduces the costs of fertilizer application for farmers and reduces the amount of nutrients that can be washed away from the fields during rainfall and carried into surface waters.

Use-value taxation – Wisconsin property tax law requiring land that is in agricultural use to be assessed for property tax purposes according to its economic value for purposes of agricultural production. The state policy in use-value taxation is to reduce the property tax burden on farmers and thus help a farmer to maintain the land in agricultural use, rather than to sell the property to a person who plans to use it for some other purpose.

Value-added agriculture – The processing of an agricultural commodity beyond the basic production of the commodity. Farmers in particular benefit from value-added agriculture, which increases farm profitability.

Additional References

DATCP, http://datcp.state.wi.us/.

WHEDA (financial assistance), http://www.wheda.com.

DComm (financial assistance), http://commerce.wi.gov.

DNR (agricultural runoff management), http://www.dnr.state.wi.us.

Wisconsin Land and Water Conservation Association, http://www.wlwca.org.

U.S. Department of Agriculture—Natural Resources Conservation Service, http://www.nrcs.usda.gov/.

UW-Extension, http://www.uwex.edu/topics/Agriculture.cfm.

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Chapter B

Criminal Justice, Corrections, and Juvenile Justice

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

Criminal Justice

The most dramatic recent change to criminal justice law in Wisconsin is the adoption of "truth-in-sentencing" legislation. In 1997 Wisconsin Act 283, the Legislature enacted legislation which abolished parole and instead created a truth-in-sentencing system. Under truth-in-sentencing, courts are required, for offenses occurring on or after December 31, 1999, to impose a bifurcated sentence for those offenders sentenced to prison, other than offenders sentenced to life imprisonment, that consists of a term of confinement in prison of not less than one year, followed by a term of extended supervision (ES) of not less than 25% of the length of the term of confinement. Under truth-in-sentencing, a prisoner is required to serve 100% of the sentence. Because truth-in-sentencing applies only to sentences for crimes committed on or after December 31, 1999, the correctional system will, for many years, have offenders sentenced under the old sentencing system and eligible for parole along with offenders sentenced under the new bifurcated system. Upon release from prison, offenders sentenced under the previous system will be placed on parole supervision, while offenders released under truth-in-sentencing will be placed on ES.

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Act 283 also created a Criminal Penalties Study Committee to study the classification of criminal offenses in the Criminal Code, the penalties for felonies, and issues relating to the implementation of the changes in sentencing made by the Act. Many of the recommendations of the committee were enacted in 2001 Wisconsin Act 109 and became effective on February 1, 2003.

Misdemeanors and Felonies

In Wisconsin, each criminal offense is either a misdemeanor or a felony. A crime punishable by imprisonment of one year or more is a felony. A crime punishable by imprisonment of less than one year is a misdemeanor.

Wisconsin first undertook the process of uniform crime classification more than 30 years ago. In legislation passed in 1977, and which took effect on June 1, 1978, crimes and forfeiture offenses codified in the Wisconsin Criminal Code were placed in one of several uniform penalty classes. Offenses codified elsewhere in the statutes were not affected by the law. The 1977 law created five classes of felonies, three classes of misdemeanors, and four classes of forfeitures. 1997 Wisconsin Act 283, which enacted "truth-in-sentencing," increased the penalties for all felonies by 50%, or one year, whichever is greater. The provisions of that Act apply to offenses committed on or after December 31, 1999, but before February 1, 2003. 2001 Wisconsin Act 109 modified the felony classification system so that, effective February 1, 2003, there are nine classes of felonies.

For purposes of the Criminal Code[1], the classes of misdemeanors and their penalties are as follows:

Maximum Penalties for Misdemeanors

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

The classes of felonies and their penalties are as follows:

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

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

Maximum Fines for Felonies

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

Sentencing

Bifurcated Sentences

When a court sentences a person to imprisonment in the Wisconsin state prisons for a felony, the court must impose a bifurcated sentence that consists of a term of confinement in prison, followed by a term of ES. In general, the total length of the bifurcated sentence may not exceed the maximum period of imprisonment for the felony.

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

Maximum Confinement in Prison for a Maximum Sentence

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

*Extended supervision.

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

The term of ES may not be less than 25% of the length of the imposed prison term. For offenses committed February 1, 2003 and after, the maximum term of ES is as follows:

- Class B: 20 years
- Class C: 15 years
- Class D: 10 years
- Classes E, F, and G: 5 years
- Class H: 3 years
- Class I: 2 years[2]

Indeterminate Sentences

Sentence Other Than to Life in Prison. Persons serving a sentence for an act committed before December 31, 1999 are serving an indeterminate sentence. Under indeterminate sentencing, the term of imprisonment is generally the maximum period of confinement in prison. A person serving an indeterminate sentence in a state prison usually has two possible ways of being released on parole[3] (after release, an offender is placed on parole supervision for the remainder of his or her sentence).[4] Parole release may or must occur as follows:

- ***Discretionary parole on parole eligibility date.*** An offender is generally eligible for parole after serving 25% of the court-imposed sentence or six months, whichever is greater. The Parole Commission determines whether the offender is released on discretionary parole.[5]

- ***Mandatory release.*** An offender, unless subject to additional time for misconduct, is required to be released after serving 2/3rds of his or her sentence. This is termed the offender's mandatory release, or MR, date.[6]

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

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

There are also the following different parole eligibility provisions for certain serious felony offenders[7] who are serving an indeterminate sentence:

- ***Discretionary parole.*** If a serious felony offender has one or more prior convictions for a serious felony, a judge may set a discretionary parole eligibility date for the offender that is later than 25% of the sentence or six months but that is not later than the MR date of 2/3rds of the sentence.[8]

- ***No automatic release on MR date.*** Certain serious felony offenders need not be automatically released when they reach their MR dates. Instead, the Parole

Commission may deny MR to such an offender in order to protect the public or because the offender refused to participate in counseling or treatment.[9]

Life Sentences. No person serving a sentence of life in prison for an act committed before December 31, 1999 is entitled to MR. Instead, a person serving a life sentence usually must serve 20 years minus time calculated under the MR formula before he or she is eligible for release on parole. Unless the person receives an extension due to violation of prison rules, he or she reaches discretionary parole eligibility after serving 13 years and four months. However, the parole eligibility date for a person serving a life sentence may have been set later than the usual parole eligibility date (e.g., 35, 75, or 100 years from the date of sentencing) or the person may have been declared ineligible for parole by the sentencing court.[10]

Positive Adjustment Time and Early Release

2009 Wisconsin Act 28 (the Biennial Budget Act) made several changes to current sentencing laws, as follows:

- Certain inmates serving a bifurcated sentence are eligible to earn positive adjustment time if they do not violate the rules and regulations of the prison or refuse or neglect to perform required or assigned duties. Depending upon the offense for which the inmate is serving his or her sentence, an inmate may earn one day of positive adjustment time for every two to 5.7 days that the inmate serves with good conduct. The time an inmate earns through positive adjustment time is added to his or her term of ES.[11]

- An inmate who is serving the confinement portion of a bifurcated sentence for a misdemeanor or a Class F to I nonviolent felony who will be eligible for ES within 12 months may be released to ES at the discretion of the Department of Corrections (DOC). If the inmate is released prior to serving his or her entire period of confinement in prison, that time is added to the inmate's term of ES.[12]

- An inmate may petition the Earned Release Commission to modify his or her sentence and release the inmate to ES if the inmate: (a) is at least 65 years of age and has served at least five years of the term of confinement in prison of a bifurcated sentence or of a life sentence imposed under s. 973.014, Stats.; (b) is at least 60 years of age and has served at least 10 years of the term of confinement in prison of a bifurcated sentence or of a life sentence imposed under s. 973.014, Stats.; or (c) has an extraordinary health condition (i.e., a condition afflicting a person, such as advanced age, infirmity, or disability of the person or a need for medical treatment or services not available within a correctional institution). If the inmate is released, the period of time not served on his or her term of confinement in prison is added to his or her term of ES.[13]

- The Challenge Incarceration Program ("boot camp") and the Earned Release Program are expanded so that certain inmates with a treatment need that is not necessarily a substance abuse problem may participate in the program.[14]

- Beginning on October 1, 2009, a court may impose a risk reduction sentence for individuals who meet certain criteria. Under this sentencing option, an inmate may be released to ES after serving 75% of his or her term of confinement in prison if the inmate completes required programming and treatment.[15]

Expungement of Criminal Court Record

Under certain circumstances, a person's criminal conviction ***may*** be removed from his or her court record through a process known as expunction. A person's criminal court record may be expunged by the sentencing court if all of the following apply:

- The person was under the age of 25 at the time of the commission of the offense.
- The offense for which the person was found guilty has a maximum penalty of six years or less (this includes Class A, B, and C misdemeanors, and Class H and I felonies).
- The sentencing court determines that the person will benefit from having his or her record expunged.
- The sentencing court determines that society will not be harmed by having the person's record expunged.
- The sentencing court orders at the sentencing hearing that the offense be expunged upon the person's successful completion of the sentence.
- The person successfully completed his or her sentence.

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

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

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

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

There is one case in which the court ***is required to*** order that the record of a person's criminal conviction be expunged. If a person committed an invasion of privacy offense and is under the age of 18 when he or she committed the offense, then the court must order at the sentencing hearing that the person's record be expunged upon the person's successful completion of his or her sentence.[16]

Corrections

Correctional Facilities

In Wisconsin, DOC is responsible for the care and treatment of adult offenders placed under state supervision by the courts. As of June 25, 2010, DOC was responsible for 22,092 incarcerated adults. As of June 25, 2010, DOC was responsible for 68,054 adults in the community.

DOC operates 36 correctional facilities, including 20 adult prisons and 16 correctional centers.

State Prisons and Correctional Centers

Persons sentenced to state prisons are received at the Dodge Correctional Institution Reception Center in Waupun. After an assessment and evaluation period of

four to six weeks, each inmate is classified according to the degree of security risk they present. If classified as maximum risk, adult male inmates are placed at Dodge, Waupun, Columbia, or Green Bay Correctional Institution. Male inmates classified as medium risk may be placed at Oshkosh, Kettle Moraine, Fox Lake, New Lisbon, Redgranite, Jackson, Prairie du Chien, Stanley, or Racine Correctional Institution. A medium risk inmate who is between the ages of 15 and 24 years may also be placed in the Racine Youthful Offender Correctional Facility. In addition, male inmates may be placed in the medium security Wisconsin Resource Center operated by the Department of Health Services (DHS). Male inmates who are classified as minimum risk are placed in the Fox Lake or Oakhill Correctional Institution, the Chippewa Valley Correctional Treatment Facility, the Sturtevant Transitional Facility, one of the 13 male minimum security correctional centers, or the Drug Abuse Correctional Center, which is located on the grounds of the Winnebago Mental Health Institute.

DOC also operates a super maximum prison, the Wisconsin Secure Program Facility, in Boscobel. Male inmates may be transferred there only after being placed in disciplinary segregation or as a consequence of a disciplinary action. The facility also houses general segregation inmates and inmates in the general population.

Adult female inmates classified as maximum or medium security risks are placed in the Taycheedah Correctional Institution. Female inmates who are classified as minimum-security risk may be placed at Taycheedah or the Milwaukee Women's Center, the Robert E. Ellsworth Correctional Center in Union Grove, the Saint Croix Center, or the John C. Burke Correctional Center in Waupun.

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

Milwaukee Secure Detention Facility. The Milwaukee Secure Detention Facility is a holding facility for probation and parole violators and accepts offenders 24 hours per day, like a county jail, in addition to housing medium security inmates.

County Facilities. As of June 2010, DOC contracts with 20 Wisconsin counties to house 521 inmates. These counties are Bayfield, Columbia, Door, Douglas, Florence, Fond du Lac, Forest, Juneau, Langlade, Manitowoc, Milwaukee, Oneida, Outagamie, Ozaukee, Racine, Sauk, Sheboygan, Vilas, Washara, and Winnebago.

Federal Prison. DOC contracts with the federal government to house approximately 30 inmates in various federal prisons.

Wisconsin Resource Center. DOC contracts with DHS to house 349 inmates with mental health needs at the Wisconsin Resource Center in Winnebago as of June 25, 2010.

Community Corrections

The Division of Community Corrections in DOC provides community supervision for offenders on probation, parole, and ES. The division also oversees the minimum security correctional centers.

As of June 25, 2010, DOC was responsible for 48,270 probationers and 19,784 parolees and persons on ES. As of July 2010, there were 1,248.50 authorized full-time equivalent (FTE) agents for probation, parole, and ES supervising adults in the Division of Community Corrections.

Prison Work and Study Assignments

Prison Labor

For work assignments in a prison, other than for Badger State Industries or correctional farms, an inmate may earn $0.12 to $0.42 per hour. Inmates who have been assigned to a school, vocational training, or other programs are paid an hourly wage of $0.15. Inmates who are unable to work may be paid an hourly wage of $0.05.

Badger State Industries and Correctional Farms

Badger State Industries operates at each of the maximum and medium security state prisons, except Dodge, and at the minimum-security Oakhill Correctional Institution and the Chippewa Valley Correctional Center. The industries engaged in include laundry, wood and metal furniture, upholstery, textiles, printing and graphics, data entry, silk-screening, metal stamping, and a distribution center. The farms operated by Badger State Correctional Farms are located at Oakhill, Waupun, Fox Lake, and Oneida. There are also computer, wheelchair, and sign blank recycling programs at Redgranite, New Lisbon, and Taycheedah, and at the Racine Youthful Offender Correctional Facility. The hourly wages for Badger State Industries in medium and maximum security institutions range from $0.20 to $1.00. In minimum security institutions, the range is $0.50 to $1.60. The hourly wages on the farms range from $0.20 to $1.60.

Private Businesses Leasing Space in Prisons

Under current law, DOC is authorized to lease space within state prisons and juvenile correctional institutions to not more than six private businesses to employ prison inmates to manufacture products or components or to provide services for sale on the open market.[17] Currently, DOC does not lease space to any private businesses.

Placement and Supervision of Sex Offenders

Sex Offender Registry

Who Must Register as a Sex Offender?

DOC is responsible for maintaining the sex offender registry.[18]

A person who is convicted of or adjudicated delinquent for a sex offense (defined by statute) must register as a sex offender. A court may also order persons who are convicted of certain offenses other than sex offenses to register as sex offenders if the court determines that the underlying conduct was sexually motivated (i.e., one of the purposes for the act was for the person's sexual arousal or gratification) and that requiring the person to register would be in the interest of public protection.

Exemption. A court may exempt a person who was under age 19 and not more than four years older than the victim at the time of the offense from sex offender registration requirements if the person was convicted or found to have committed sexual assault of a child and the violation did not involve force or violence with a victim under the age of 12 years. To grant an exemption, the court must find that it is not necessary, in the interest of public protection, to require the person to register as a sex offender.

Registry Information

The sex offender registry must contain the following information for each person registered:

- The person's name and identifying factors including any aliases used by the person.
- Information sufficient to identify the person, including date of birth, gender, race, height, weight, and hair and eye color.
- The statute for the offense that subjects the person to registration; the date of conviction; and the county or, if the state is not Wisconsin, the state in which the person was convicted.
- The date the person was placed in the community or placed on probation, the date the person entered Wisconsin, or the date on which the person was required to register as a sex offender.
- The person's address.
- The name of the agency supervising the person, if applicable, and the office or unit and the telephone number of the office or unit that is responsible for the supervision of the person.
- The name or number of every electronic mail account the person creates or maintains, every Internet user name the person uses, and the name and Internet address of every public or private Internet profile the person creates, uses, or maintains.
- The name and address of the place at which the person is or will be employed.
- The name and location of any school in which the person is or will be enrolled.
- If the person is required to register because he or she is in institutional care or on conditional release from a sexually violent person commitment under ch. 980, a notation concerning the treatment that the person has received for his or her mental disorder.
- The most recent date on which the above information was updated.

Duration of Registration Requirements

Generally, a person must comply with registration requirements for 15 years following release from supervision by the DOC or the DHS. A person who meets any one of the following conditions, however, is subject to lifetime registration requirements:

- Convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense, or for the solicitation, conspiracy, or attempt to commit a sex offense on two or more occasions.
- Convicted or found not guilty or not responsible by reason of mental disease or defect for a violation, or for the solicitation, conspiracy, or attempt to commit a violation of first- or second-degree sexual assault, first- or second-degree sexual assault of a child, or repeated sexual assault of a child.
- Found to be a sexually violent person under ch. 980, Stats., regardless of whether the person is discharged from the sexually violent person commitment.
- Ordered by a court to register as a sex offender and to comply with registration requirements during his or her lifetime.

A person required to register as a sex offender based upon a finding of commission of a sex offense in another state must comply with Wisconsin registration requirements while a resident, a student, or employed or carrying on a vocation in Wisconsin or for 10 years from the date of release from supervision for the offense, whichever is less. A person meeting one of the criteria for lifetime registration must

comply with registration requirements while a resident, a student, employed, or carrying on a vocation in Wisconsin.

Provisions are contained in the laws for updating required registry information.

Penalties

The sex offender registration law contains the following penalties:

- Intentionally failing to provide required information for the registry: a Class H felony (a fine of not more than $10,000 or imprisonment for not more than six years, or both), unless the underlying offense requiring registry is a misdemeanor and it is the first offense of failure to provide information to the registry. In that case, the penalty is a fine of not more than $10,000 or imprisonment for not more than nine months, or both.
- Intentionally establishing or changing residence unless certain conditions have been met: a Class H felony, unless the underlying offense is a misdemeanor and it is the first offense of this provision. In that case, the penalty is a fine of not more than $10,000 or imprisonment for not more than nine months, or both.
- Failure to keep registry information confidential: a fine of not more than $500 or imprisonment for not more than 30 days, or both.
- Changing name or identifying by a name other than one by which the offender is identified with DOC: a Class H felony, unless the underlying offense is a misdemeanor and it is the first offense of this provision. In that case, the penalty is a fine of not more than $10,000 or imprisonment for not more than nine months, or both.[19]

Disclosure of and Access to Registry Information

The DOC must generally keep the information in the sex offender registry confidential. Under specific circumstances, the DOC may disclose registry information.[20]

Access for Law Enforcement Agencies. When a person first registers as a sex offender, DOC must immediately make the registry information available to the police chief of any community and the sheriff of any county ("law enforcement agencies") in which the person is residing, employed, or attending school. The DOC must also make updated information immediately available to law enforcement agencies. Law enforcement agencies may also request information concerning any person registered as a sex offender.

Bulletins to Law Enforcement Agencies. If a registered sex offender has been convicted or found not guilty or not responsible by reason of mental disease or defect for any sex offense, or for the solicitation, conspiracy, or attempt to commit such a violation **on one occasion only**, the DOC or DHS (for sexually violent person commitments) **may** notify law enforcement agencies of the area in which the person will be residing, employed, or attending school if the DOC or DHS determines that notification is necessary to protect the public.

If a registered sex offender has committed **two or more sex offenses**, the DOC or DHS **must** provide information to law enforcement agencies when the person is placed in a community. Notification must be in the form of a written bulletin that contains all of the following:

- The information to which law enforcement has access, as described above.

- Notice that information concerning registered sex offenders is available on a DOC Internet site.
- Any other information that the agency determines is necessary to assist law enforcement officers or to protect the public, including a photograph of the person, other identifying information, and a description of the person's patterns of violation.

Notification of Victims. When a person initially registers as a sex offender or when the person informs DOC of a change in registry information, DOC must make a reasonable attempt to notify the victim or a member of the victim's family (i.e., the victim's spouse, domestic partner, child, parent, sibling, or legal guardian) if the victim or family member has requested such notification. A victim receiving such notice may also request any of the information given to law enforcement agencies.

Internet Access. DOC also provides Internet access to limited information concerning persons registered as sex offenders. The information provided on the Internet site may be accessed by the general public by entering the name of a registrant or a zip code. DOC must keep this information secure against unauthorized alteration.

Placement of Sex Offenders

Under current law, DOC must work to minimize, to the greatest extent possible, the residential population density of sex offenders who are on probation, parole, or ES or placed on supervised release as a sexually violent person under ch. 980, Stats.[21] In addition, a person who is paroled after serving a sentence for a sex offense may not be paroled to any county where there is a correctional institution that has a specialized sex offender treatment program, unless that county is also the person's county of residence.[22]

DOC must place each person who has been convicted of a sex offense in one of the following locations upon his or her release to parole or ES:

- The county in which the person resided on the date of the sex offense.
- The county in which the person was convicted of the sex offense.
- A sex offender treatment facility.

This provision does not preclude DOC from authorizing a person to reside in another location if DOC initially placed the person in one of the listed locations.

Some Wisconsin municipalities have also adopted ordinances restricting where a sex offender may reside within the municipality. As of August 2010, 110 municipalities had adopted such an ordinance.

GPS Tracking of Child Sex Offenders

Persons Required to be Tracked

Under current law, DOC must maintain lifetime global positioning system (GPS) tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone for all of the following:

- A person who is placed on probation or released to ES or parole for a ***level 1 child sex offense*** or who is released from prison upon completion of a sentence imposed for a ***level 1 child sex offense***.
- A person who is convicted of a ***level 2 child sex offense*** on or after January 1, 2008, and is placed on probation, released to ES or parole, or released from prison upon completion of a sentence imposed for the sex offense.
- A person found not guilty of a ***serious child sex offense*** by reason of mental disease or defect and placed on conditional release or discharged from supervision.
- A person placed on lifetime supervision for committing a ***serious child sex offense*** who is released from prison.
- A person who has been found to be a sexually violent person under ch. 980, Stats., and is placed on supervised release or discharged from supervision.
- A person for whom a law enforcement agency receives a special bulletin notification under the sex offender registry statute.
- A person for whom DOC determines that GPS tracking is appropriate.

A "level 1 child sex offense" is defined as a violation of sexual assault of a child or repeated sexual assault of the same child in which any of the following occurs:

- The actor has sexual contact or sexual intercourse with an individual who is not a relative of the actor and who has not attained 13 years of age and causes great bodily harm to the individual.
- The actor has sexual intercourse with an individual who is not a relative of the actor and who has not attained 12 years of age.

A "level 2 child sex offense" is defined as a violation of sexual assault of a child or repeated sexual assault of the same child in which any of the following occurs:

- The actor has sexual intercourse, by use or threat of force or violence, with an individual who is not a relative of the actor and who has not attained 16 years of age.
- The actor has sexual contact, by use or threat of force or violence, with an individual who has not attained 16 years of age and who is not a relative of the actor, and the actor is at least 18 years of age when the sexual contact occurs.

A "serious child sex offense" is a level 1 or level 2 child sex offense.

Supervision of Persons Subject to GPS Tracking

DOC is required to create individualized exclusion and inclusion zones for a person who is subject to GPS tracking, if necessary to protect public safety. "Exclusion zone" is defined as a zone in which a person who is GPS tracked is prohibited from entering except for purposes of traveling through to get to another destination. "Inclusion zone" is defined as a zone in which such a person is prohibited from leaving.

In creating exclusion zones, DOC must focus on areas where children congregate, with perimeters of 100 to 250 feet, and on areas where the person has been prohibited from going as a condition of probation, ES, parole, conditional release, or supervised release.

Current law requires DOC to ensure that the person's GPS tracking device, or any comparable technology used with respect to the person, immediately alerts DOC and the local law enforcement agency having jurisdiction over the exclusion or inclusion zone if: (a) the person stays in an exclusion zone that is created for him or her for any period longer than the time needed to travel through the zone to get to another destination; or (b) leaves any inclusion zone that is created for him or her.

DOC may use passive positioning tracking for a person who is subject to lifetime GPS tracking once the person completes his or her sentence, including any probation, parole, or ES. "Passive positioning system tracking" is defined as tracking using a system that monitors, identifies, and records a person's position.[23]

Juvenile Justice

1995 Wisconsin Act 77 created the Juvenile Justice Code. [ch. 938, Stats.] This chapter governs delinquent juveniles and juveniles who are in need of protection or services. Prior to 1995, these juveniles were subject to the provisions of the Children's Code. [ch. 48, Stats.]

Delinquents

A delinquent juvenile is a juvenile who is 10 years of age or older and under 17 years of age and who has violated any state or federal criminal law.[24]

Juveniles in Need of Protection or Services

A juvenile in need of protection or services is a juvenile who is uncontrollable, habitually truant from school, a school dropout, or a habitual runaway. In addition, a juvenile who is under 10 years of age who commits a delinquent act or a juvenile who is determined to be not responsible for a delinquent act by reason of mental disease or defect is a juvenile in need of protection or services.[25]

Disposition

A juvenile who is adjudicated, or found to be, delinquent is subject to a variety of consequences.[26] These consequences are called dispositions under the Juvenile Justice Code. Dispositions for a juvenile who is found delinquent include the following:

- Placement in the Serious Juvenile Offender Program if the juvenile has been found to have committed a serious felony.
- Placement in a juvenile correctional facility if the juvenile is found to be delinquent for the commission of an act which, if committed by an adult, would be punishable by a sentence of six months or more and is found to be a danger to the public and in need of restrictive custodial treatment.
- Transfer of the juvenile's legal custody to a relative, a county department of health or social services, or a licensed child welfare agency.
- Payment of restitution or a forfeiture.
- Community service.
- Alcohol or drug treatment or education.
- Restriction on driving privileges.
- Victim-offender mediation.
- Special treatment or care, including medical, psychological or psychiatric treatment, or alcohol or other drug abuse treatment.

A juvenile who is found to be in need of protection or services may be subject to any of the dispositions available to the court for a juvenile who is found to be delinquent,

except payment of a forfeiture and placement in the Serious Juvenile Offender Program or in a secured facility.[27]

When a court orders a disposition for a juvenile who is found to be delinquent or in need of protection or services, the order is called a dispositional order. A dispositional order that continues placement of the juvenile in his or her home remains in effect for one year and may be extended up to an additional year. In general, an order placing a juvenile in a secured juvenile facility may apply for up to two years or until the juvenile's 18th birthday, whichever is earlier. For a juvenile who is placed in the Serious Juvenile Offender Program, however, the dispositional order remains in effect for five years, if the juvenile committed a Class B felony, or until the juvenile reaches 25 years of age, if the juvenile committed a Class A felony.[28]

Expungement of Delinquency Adjudication Court Record

The juvenile court has discretion to order that a juvenile's delinquency adjudication record be expunged. When a juvenile who has been adjudicated delinquent turns 17 years of age, he or she may petition the juvenile court to expunge the court's record of the adjudication. The juvenile court ***may*** expunge the record if it determines all of the following:

- That the juvenile has satisfactorily complied with the conditions of his or her dispositional order.
- That the juvenile will benefit from having his or her record expunged.
- That society will not be harmed by the expungement.

Adult Court Jurisdiction

There are cases when the juvenile court is required to order expungement of a juvenile's delinquency adjudication record. The juvenile court ***is required to*** order that the court's record of the juvenile's adjudication be expunged if the juvenile was adjudicated delinquent for committing an invasion of privacy offense, it was the juvenile's first delinquency adjudication, and the court determines that the juvenile has satisfactorily complied with the conditions of his or her dispositional order.[29]

A juvenile may be under the original jurisdiction of adult court[30] or may be waived by the juvenile court to adult court.[31] If the adult court has original jurisdiction over a juvenile, the juvenile's case ***begins*** in adult court.

Original Jurisdiction

The adult court has original jurisdiction over the following juveniles:

- A juvenile who has been previously adjudicated delinquent and who is alleged to have committed battery or assault while placed in a secured correctional facility, a secure detention facility, or a secured child caring institution, or to have committed battery to a probation and parole agent or to an aftercare agent.
- A juvenile who is alleged to have attempted or committed first-degree intentional homicide or to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 10th birthday.
- A juvenile who is alleged to have committed a crime and has previously been convicted or has a case pending in adult court.

A juvenile over whom the adult court has original jurisdiction is generally subject to adult criminal procedures and the criminal penalties provided for the crime committed.

If certain conditions are met, a juvenile subject to adult court original jurisdiction may be "reverse waived" to the juvenile court.[32] The court may reverse waive the juvenile if he or she proves all of the following:

- That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
- That transferring jurisdiction to the juvenile court would not depreciate the serious nature of the offense.
- That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing a similar violation.

Glossary of Terms and Abbreviations

Crime – An offense that is punishable by imprisonment, either in a county jail or a state prison.

DOC – Department of Corrections.

Felony – A criminal offense that is punishable by imprisonment of one year or longer.

Juvenile – For purposes of prosecution for criminal and civil offenses, a person who is younger than 17 years.

Misdemeanor – A criminal offense that is punishable by imprisonment of less than one year.

Truth-in-Sentencing – Sentencing requirements that apply to offenses committed on or after December 31, 1999, under which the court must impose a bifurcated sentence consisting of a specified period of confinement in prison followed by a specified period of ES.

Waiver of Juveniles to Adult Court

A juvenile court may waive a juvenile to adult court under either of the following conditions:

- The juvenile is alleged to have committed any of the following offenses **on or after the juvenile's 14th birthday**: felony murder; second-degree reckless homicide; first- or second-degree sexual assault; taking hostages; kidnapping; armed burglary; armed robbery; a drug manufacture or delivery violation; or a violation at the request of or for the benefit of a criminal gang that would constitute a felony under the Criminal Code or the Uniform Controlled Substances Act if committed by an adult.
- The juvenile is alleged to have violated any state criminal law on or after the juvenile's 15th birthday.
- The court must base its decision whether or not to waive a juvenile to adult court on the following criteria:
  - The personality of the juvenile.
  - The prior record of the juvenile.
  - The type and seriousness of the offense.
  - The adequacy and suitability of facilities, services, and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system.
  - The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the adult court.

Funding

Counties are generally financially responsible for the costs of services under the Juvenile Justice Code. However, the state pays the costs for: juveniles who are placed in the Serious Juvenile Offender Program; juveniles who are under the

original jurisdiction of the adult court or who are waived into adult court and sentenced to prison, but placed in a juvenile correctional facility; and certain juveniles who were adjudicated delinquent for acts committed prior to July 1, 1996.

The Community Youth and Family Aids Program (Youth Aids) provides each county with an annual allocation of state and federal funds from which the county may pay for juvenile delinquency-related services, including out-of-home placements and community-based services for juveniles. Counties may supplement their expenditures on these services with funding from other sources, including community aids, other state aids to counties, county tax revenues, and grant moneys.

Additional References

Criminal Justice

- The Sex Offender Registry, which may be searched by name or zip code: http://widocoffenders.org.
- The state Department of Justice website contains information for victims of crime and information on crime prevention, background checks, and criminal investigations: http://www.doj.state.wi.us.
- The state Office of Justice Assistance website contains information on statewide strategies to address crime and crime statistics for the state: http://oja.state.wi.us.
- Information and application for seeking a pardon or executive clemency: http://www.wi-doc.com/index_adult.htm.
- The Legislative Fiscal Bureau Informational Paper, *Felony Sentencing and Probation*, is available at: http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.
- The final report of the Criminal Penalties Study Committee (August 31, 1999) which studied the implementation of truth-in-sentencing is available at: http://www.doa.state.wi.us/docs_view2.asp?docid=42.
- The Legislative Audit Bureau report, *Allocation of District Attorney Positions* (Report 07-9), is available at: http://www.legis.wisconsin.gov/lab/reports/07-9Full.pdf.
- The Legislative Audit Bureau report, *Restorative Justice* (Report 04-6), is available at: http://www.legis.wisconsin.gov/lab/reports/04-6Full.pdf.

Corrections

- The state DOC website is: http://www.wi-doc.com.
- The Legislative Fiscal Bureau Informational Paper, *Adult Corrections Program*, is available at: http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.
- The Legislative Fiscal Bureau Paper, *2009 Act 28 Sentencing Modifications* (July 29, 2009).
- The Legislative Audit Bureau report, *Inmate Mental Health Care* (Report 09-4), is available at: http://www.legis.wisconsin.gov/lab/reports/09-4Full.pdf.

Juvenile Justice

- The Joint Legislative Council's Special Committee on High-Risk Juvenile Offenders is currently meeting to make recommendations relating to the Serious Juvenile Offender Program, waiver of juveniles to adult court, original adult court jurisdiction over juvenile offenders, and placement of juveniles in juvenile correctional institutions and adult prisons. Information about and documents from the Special Committee are available at: http://www.legis.state.wi.us/lc/committees/study/2008/JUVE/index.htm.
- The Legislative Fiscal Bureau Informational Paper, *Juvenile Justice and Youth Aids Program*, is available at: http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.
- The Legislative Audit Bureau report, *17-Year Old Offenders in the Adult Criminal Justice System* (Report 08-3), is available at: http://www.legis.wisconsin.gov/lab/reports/08-3Full.pdf.

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[1] There are also misdemeanor offenses that are not in the Criminal Code, and are not classified, but that have a misdemeanor level penalty.

[2] s. 973.01, Stats.

[3] Current law also provides that an offender may be released by the Secretary of Corrections on a special action release, which is a program designed to relieve prison overcrowding. [s. 304.02, Stats.] No one has been paroled under this provision since 1991, however.

[4] s. 973.013, Stats.

[5] s. 304.06, Stats.

[6] s. 302.11, Stats.

[7] For this provision, "serious felony" is defined as certain drug offenses that are punishable by a maximum prison term of 30 years or more; first- or second-degree intentional homicide; first-degree reckless homicide; felony murder; homicide by intoxicated use of a vehicle; performing partial-birth abortion; substantial battery; substantial battery to an unborn child; mayhem; first- or second-degree sexual assault; taking hostages; kidnapping; causing death by tampering with a household product; arson; armed burglary; carjacking; armed robbery; assault by a prisoner; first- or second-degree sexual assault of a child; substantial physical abuse of a child; sexual exploitation of a child; incest; child enticement; soliciting a child for prostitution; child abduction; soliciting a child to commit a Class A or B felony; use of a child to commit a Class A felony; or solicitation, conspiracy, or attempt to commit a Class A felony.

[8] s. 973.0135, Stats.

[9] s. 302.11 (1g), Stats.

[10] s. 973.014 (1), Stats.

[11] ss. 302.113 (2) (b) and (bg) 2. and 304.06 (1) (bg) 1., Stats.

[12] s. 302.113 (9h), Stats.

[13] s. 302.1135, Stats.

[14] ss. 302.045 and 302.05, Stats.

[15] s. 973.031, Stats.

[16] s. 973.015, Stats.

[17] s. 303.01 (2) (em), Stats.

[18] s. 301.45, Stats.

[19] s. 301.47, Stats.

[20] s. 301.46, Stats.

[21] A sexually violent person commitment is a mental health commitment and such persons are supervised by DHS.

[22] s. 301.03 (19), Stats.

[23] s. 301.48, Stats.
[24] s. 938.12, Stats.
[25] s. 938.13, Stats.
[26] s. 938.34, Stats.
[27] s. 938.345, Stats.
[28] s. 938.355 (4), Stats.
[29] s. 938.355 (4m), Stats.
[30] s. 938.183, Stats.
[31] s. 938.18, Stats.
[32] s. 970.032 (2), Stats.

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Wisconsin Legislator Briefing Book 2011-12

Chapter C

Economic Development and Employment

Wisconsin's economy is driven by the state's approximately three million workers and the businesses and industries that employ them. As a result of the importance of workers and business to the state's economy, the state has numerous laws that regulate the relationship between employer and employee and a myriad of programs to assist businesses to begin, expand, and remain in Wisconsin. A full discussion is beyond the scope of this chapter. This chapter highlights some of the more significant laws and programs.

Employment

The state regulates a number of aspects of the employment relationship in Wisconsin through various laws and regulations that are administered by the state's Department of Workforce Development (DWD). Many of these laws and regulations establish minimum standards for the workplace, and others provide assistance to workers who are unemployed or who are injured on the job. This part of the chapter briefly describes some of these employment laws and regulations.

Equal Rights

The Equal Rights Division of DWD administers many of the state's laws designed to protect workers' physical and economic well-being. Generally, workers covered by these state laws may also be protected by similar federal laws and regulations. Typically, these federal laws do not preempt, or take priority over, the applicable state law. An employer subject to both the state and federal laws will be held to the stricter standard (usually that which provides the most protection or benefit to the worker) if differences exist between the state and federal law. A discussion of the relevant federal laws and regulations is beyond the scope of this chapter. However, some of the state employment laws that generate frequent inquiries are briefly summarized below.

More information about the Equal Rights Division may be found at http://dwd.wisconsin.gov/er/. The Equal Rights Division is divided into the Labor Standards Bureau and Civil Rights Bureau.

The Labor Standards Bureau administers laws such as the minimum wage, overtime pay, business (plant) closing or mass layoff, and personnel records laws. More information about the Labor Standards Bureau, including information on how to file a complaint with the bureau, may be found at http://www.dwd.state.wi.us/er/labor_standards_bureau/.

The Civil Rights Bureau administers discrimination and retaliation protection laws and Wisconsin's Family and Medical Leave Act (FMLA). More information about the Civil Rights Bureau, including information about how to file a complaint with the bureau, may be found at http://dwd.wisconsin.gov/er/discrimination_civil_rights/default.htm.

Minimum Wage. Wisconsin sets minimum wage rates that employers must comply with when paying employees. Wisconsin's minimum wage generally applies to all public and private sector employers, including nonprofit organizations, regardless of whether they are covered by the federal minimum wage law. For most employees, including minor employees, the Wisconsin minimum wage is set at $7.25 per hour. [The federal minimum wage is also $7.25 per hour.]

However, for "opportunity employees" (those employees who are not yet 20 years old and who have been in an employment status with a particular employer for 90 or fewer consecutive days from the date of their initial employment), the minimum wage is $5.90 per hour. For employees receiving tips as part of their compensation, the minimum wage is $2.33 per hour (or $2.13 per hour for tipped opportunity employees).

MINIMUM WAGE (per hour)	
Wisconsin	$7.25
Federal	$7.25

The payment of wages that are less than those minimums described above is authorized in some limited circumstances. For example, employers who receive a special license from DWD and who employ workers with disabilities, operate rehabilitation facilities, or participate in student learner programs may pay sub-minimum wages.

The state's minimum wage law is to be construed as providing a uniform living wage throughout the state. A county, city, village, or town may not enact a living wage ordinance. This prohibition, however, does not apply to local ordinances that apply to certain employees who contract with or are employed by a county, city, village, or town.

More information about minimum wage may be found in ch. 104, Stats., and ch. DWD 272, Wis. Adm. Code, and at http://www.dwd.state.wi.us/er/labor_standards_bureau/minimum_wage.htm.

Generally, employees must be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week.

Overtime Pay. In addition to the minimum wage, state law also requires the payment of overtime pay in certain situations. Generally, employees must be paid one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week. This requirement applies to most employees, but certain employees are exempt from overtime pay requirements, including certain administrative, executive, and professional employees; certain outside sales and commissioned employees; taxi drivers; employees of motor carriers who are covered by federal regulations; and salespersons, parts personnel, and mechanics employed by motor vehicle dealers.

Federal and state law differ on the exemptions that apply to some salaried administrative, executive, and professional employees. To comply with both federal and state overtime requirements regarding the above exemptions, a Wisconsin employer must meet both federal and state law for the exemption, which generally requires that an employer satisfy the more stringent criteria of each law.

More information about overtime pay may be found in ss. 103.01 to 103.03, Stats., and ch. DWD 274, Wis. Adm. Code, and at http://www.dwd.state.wi.us/er/labor_standards_bureau/hours_of_work_and_overtime.htm and http://www.dol.gov/dol/topic/wages/overtimepay.htm.

Wage Payment and Wage Claims. Generally, Wisconsin law requires employers to pay their employees at least once a month. An employee who quits or is discharged from his or her job must be paid in accordance with the employer's regularly established payroll schedule. If an employee is not paid in a timely manner, is not paid at all, or is paid an incorrect amount, the employee may file a wage claim with DWD for the unpaid wages or may bring an action in court against an employer.

Once a wage claim is filed, DWD seeks to resolve the matter between the employer and employee. For purposes of the wage claim laws, wages include the following:

- Salaries.
- Commissions.
- Overtime pay.
- Holiday pay.
- Vacation pay.
- Severance pay.
- Dismissal pay.
- Bonuses.
- Other similar advantages that the employer and employee agree to.

Typically, an employee has two years in which to file a wage claim. DWD or an employee who brings a wage claim has a lien for the amount of the wage claim or deficiency on the employer's property. This lien generally has priority over all other liens except certain environmental remediation liens and liens of banks and various other lenders. However, a wage lien will generally take precedence over the lien of a lender that originated before the wage lien took effect as to the first $3,000 of certain unpaid wages covered under the lien.

More information about wage payment and wage claims may be found in ch. 109, Stats., and at http://www.dwd.state.wi.us/er/labor_standards_bureau/wage_payment_and_collection_law.htm.

Employers are not required to provide breaks or meal periods to adult employees.

Breaks and Meal Periods. State law generally prohibits a person from being employed at any employment for periods of time that are dangerous or prejudicial to the person's life, safety, health, or welfare. Wisconsin law does **not** require employers to provide rest periods or breaks to employees.

Similarly, employers are not required to provide meal periods to adult employees, but state law **recommends** that employers provide at least 30 minutes for a meal period for each shift greater than six hours long. An employer of a minor, however, is required to provide meal periods to employees under the age of 18 if the minor works for more than six consecutive hours. Those meal periods must be at least 30 minutes in length and must be provided reasonably close to the meal times of 6:00 a.m., noon, 6:00 p.m., or midnight. Typically, employers must pay all employees for an "on-duty" meal period. An "on-duty" meal period is a period where the worker is not provided at least 30 minutes away from work or allowed to leave the employer's premises.

More information about breaks and meal periods may be found in s. 103.02, Stats., and ss. DWD 270.11 and 274.02, Wis. Adm. Code, and at http://www.dwd.state.wi.us/er/labor_standards_bureau/breaks_and_meals.htm.

Cessation of Health Care Benefits. Although not required to provide health care benefits, state law requires, with some exceptions, that businesses in Wisconsin employing 50 or more persons provide at least 60 days' advance notice to their employees, retirees, or dependents when the business decides to cease providing health care benefits. An employee, retiree, or dependent who does not receive the required notice may be able to recover the value of the benefits the person would have received had proper notice been given.

More information about the cessation of health care benefits may be found in s. 109.075, Stats., and at http://www.dwd.state.wi.us/er/labor_standards_bureau/cessation_of_heatlh_care_benefits.htm.

Wisconsin businesses with 50 or more employees in the state that are involved in a business closing or mass layoff are required to give 60 days' written notice of the closing or layoff.

Business (Plant) Closing or Mass Layoff. With certain exceptions, Wisconsin businesses with 50 or more employees in the state that are involved in a business closing or mass layoff are required to give 60 days' written notice of the closing or layoff to DWD, the business' employees, the union representing those employees, and the highest ranking official of the municipality in which the business is located. For purposes of this requirement, a "business closing" is a temporary or permanent shutdown of a business site or of one or more facilities or operating units at a business site or within a single municipality that affects at least 25 employees, not including low-hour or new employees. A "mass layoff" is a reduction of a business' workforce that is not the result of a business closing and that affects the following numbers of employees at a business site or within a single municipality, not including low-hour or new employees: (1) at least 25% of the business' workforce, or 25 employees, whichever is greater; or (2) at least 500 employees.

Under this law, if a business fails to give timely notice to an affected employee, the affected employee may recover pay and the value of any benefits that the employee would have received during a specified period but did not receive because of the business closing or mass layoff. DWD and the state Department of Justice are authorized to enforce the business closing or mass layoff law.

More information about business (plant) closing or mass layoff may be found in s. 109.07, Stats., and ch. DWD 279, Wis. Adm. Code, and at http://www.dwd.state.wi.us/er/labor_standards_bureau/business_closing_and_mass_layoffs.htm. Information about layoff assistance may be found at http://www.dwd.state.wi.us/dislocatedworker/.

Wisconsin's FMLA covers employers with 50 or more permanent employees.

Family and Medical Leave. Wisconsin is one of several states that has its own family and medical leave law in addition to the federal Family and Medical Leave Act. Wisconsin's FMLA covers employers with 50 or more permanent employees. An employee is entitled to benefits under FMLA if the employee has been employed by the same employer for the prior 52 consecutive weeks and has worked at least 1,000 hours during that period. The law requires that such employees be allowed up to the following in a 12-month period:

- Six weeks of leave for the birth or adoption of a child.
- Two weeks of leave to care for a parent, child, spouse, or domestic partner with a serious health condition.
- Two weeks of leave for the employee's own serious health condition.

More information about FMLA may be found in s. 103.10, Stats., and ch. DWD 225, Wis. Adm. Code, and at http://dwd.wisconsin.gov/er/family_and_medical_leave/default.htm. A comparison of the federal and Wisconsin family and medical leave laws may be found at http://www.dwd.state.wi.us/er/family_and_medical_leave/publication_erd_9680_P.htm.

Fair Employment. Subject to certain exceptions, Wisconsin's Fair Employment Law prohibits discrimination in employment based on the following classifications:

- Age.
- Ancestry.
- Arrest record.
- Color.
- Conviction record.
- Creed.
- Declining to attend a meeting or to participate in any communication about religious matters or political matters.
- Disability.
- Genetic testing.
- Honesty testing.
- Marital status.
- Military service.
- National origin.
- Pregnancy or childbirth.
- Race.
- Sex.
- Sexual orientation.
- Use or nonuse of lawful products off the employer's premises during nonworking hours.

Employment discrimination includes refusing to employ or terminating any individual based on the above classifications or discriminating against any individual in compensation, promotion, or terms, privileges, or conditions of employment based on any of the above classifications. If an individual is discriminated against in violation of the Fair Employment Law, he or she may be awarded reinstatement, back pay, attorney fees, costs, or, in some cases, compensatory and punitive damages.

More information about fair employment may be found in subch. II of ch. 111, Stats., and ch. DWD 218, Wis. Adm. Code, and at http://dwd.wisconsin.gov/er/discrimination_civil_rights/fair_employment_law.htm.

An employee may inspect certain of the employee's personnel documents within seven working days of making a request.

Open Personnel Records. In Wisconsin, an employer is required to allow an employee to inspect certain of the employee's personnel documents within seven working days of making a request. The employer may require that the request be in writing. In addition, an employee has the right to obtain copies of such documents.

If an employee disagrees with any information contained in his or her personnel record, the information may be removed or corrected if mutually agreed upon by the employer and employee. If an agreement is not reached, the employee may submit a written statement explaining his or her position, which the employer must attach to the disputed portion of the record. The statement must be included whenever the disputed portion of the record is released to a third party.

Generally, the right to inspect personnel records does not apply to the following:

- Records relating to the investigation of the employee for possible criminal offenses.
- Letters of reference for the employee.
- Any part of a test document, except a cumulative test score.
- Materials used for staff management planning by the employer.
- Information about a person other than the employee if disclosure would constitute an invasion of privacy.
- An employer who does not maintain personnel records.
- Certain records relevant to a pending claim between the employee and employer.

More information about open personnel records may be found in s. 103.13, Stats., and at http://www.dwd.state.wi.us/er/labor_standards_bureau/records_open_to_employees.htm.

Employers are required to make and keep certain payroll and other records for at least three years.

Required Records. Wisconsin law requires employers to make and keep certain payroll and other records for at least three years for each employee. The records must contain the following information for each employee:

- Name and address.
- Date of birth.
- Dates that employment began and ended.
- Time that work began and ended each day.
- Time that meal periods began and ended.
- Total hours worked daily and weekly.
- Rates of pay for each payroll period.
- Wages paid each payroll period.
- Amount and reason for each deduction.
- Output of employee, if not paid on a time basis.

More information about required records may be found in s. DWD 272.11, Wis. Adm. Code, and at http://www.dwd.state.wi.us/er/labor_standards_bureau/permanent_records_to_be_kept_by%20_the_employer.htm.

Vacation. Employers in Wisconsin are not required to grant vacation time to their employees. Whether vacation time is to be provided is determined entirely by written or unwritten agreements between the employer and employee. If vacation benefits have been agreed to, however, unpaid vacation benefits may be recovered as part of a wage claim.

Unemployment Insurance

The Unemployment Insurance Division of DWD administers the state's Unemployment Insurance (UI) program. Wisconsin's UI law, which was enacted in 1932, provides temporary cash benefits to eligible employees when they are out of work. Financing for the program comes from a combination of federal and state taxes paid by employers who are subject to federal and state UI laws.

Generally, the Federal Unemployment Tax Act (FUTA) imposes a tax on a portion of the wages paid for covered employment. That tax rate is 6.0% of the first $7,000 of each employee's earnings for the calendar year. The employer is then provided a credit against the FUTA tax for quarterly tax paid to state-operated UI programs. This system was set up by the federal government to encourage states to have a broad UI program. Generally, some of the FUTA money that is collected is returned to the state in order for the state to administer the UI program.

TAXABLE WAGE BASE FOR STATE UI TAX	
2009-10	$12,000
2011-12	$13,000
2013	$14,000

In addition to the FUTA tax, the state imposes its own tax to finance UI benefits paid to unemployed workers. Generally, most private, for-profit employers pay a state unemployment tax into the UI reserve fund. The tax is paid on the first $12,000 of wages paid by an employer to an employee during each calendar year, which will increase to $13,000 for 2011 and 2012 and $14,000 for 2013 and thereafter. The tax is based on an experience rating system. The rating system requires that the particular tax rate paid by an employer is based on, and varies with, the layoff experience of that employer. Employers with greater layoff experience will have higher tax rates. A private employer's rate may increase or decrease depending on changes in benefits charged to that employer, contributions credited to that employer, and the amount of that employer's taxable payroll.

Some employers, however, most notably governmental employers and nonprofit organizations, finance their UI benefits for their employees through a reimbursement system. Instead of paying the quarterly UI tax on payroll into the UI reserve fund, these employers reimburse DWD the actual amount of any benefits paid to their employees.

An employer is generally subject to UI law if any of the following apply:

1) The employer paid $1,500 or more in wages in any quarter.

2) The employer had at least one employee in at least 20 different weeks in a year.

Generally, an employer is subject to Wisconsin's UI law if it paid $1,500 or more in wages in any quarter in that year or the preceding calendar year or if it had at least one employee in at least 20 different weeks in a year or the preceding calendar year. Although the law exempts certain types of work from the UI law, the definition of employment in the UI law is, on the whole, very broad.

Typically, to qualify for UI benefits, an employee must satisfy the following:

- Have sufficient base period wages in covered employment.
- Be available for work and able to work.
- Register for work.
- Undertake a reasonable search for work.
- Make a claim for benefits.

Claims may be made with DWD through an automated touch-tone telephone service or via the Internet. The major reasons that an unemployed worker would be disqualified from receiving benefits include discharge for misconduct or voluntarily leaving employment. Both of these disqualifications depend on the facts in a particular case.

WEEKLY UI BENEFIT RATES
Max. Weekly Rate = $363
Min. Weekly Rate = $54

The amount of benefits an eligible employee may receive is based upon his or her wages. Typically, the weekly benefit will equal 4% of the wages paid to the employee in the calendar quarter in which the highest wages were paid to the employee, subject to certain statutory minimums and maximums. Beginning January 4, 2009, the minimum weekly benefit rate was $54 and the maximum rate was $363. The maximum amount a claimant may normally receive is the lesser of 26 times the weekly benefit rate or 40% of the total base period wages. However, both state and federal law contain provisions allowing for the payment of extended unemployment benefits during difficult economic times when unemployment rates exceed certain levels. These extended benefits may be paid to unemployed workers who have exhausted their initial 26 weeks of benefits. Because of unemployment conditions in recent years, the federal government has implemented several extensions of UI benefits.

Wisconsin has established an Unemployment Insurance Advisory Council (UIAC) to advise DWD and the Legislature regarding matters affecting the development and administration of the state's UI law. The UIAC is made up of five labor representatives, five management representatives, and one nonvoting chairperson. The UIAC is required to advise DWD on the administration of the UI law and to report its view on pending legislation concerning UI to the appropriate committees of the Legislature. In addition, the UIAC submits to the Legislature, generally on a biennial basis, legislation approved by the UIAC to make changes to the UI law. Recently, those recommended changes have been adopted by the Legislature with few or no amendments. The Wisconsin Legislative Council staff has prepared an Act Memo that describes the changes made by the 2009-10 Legislature in 2009 Wisconsin Act 287. The Act Memo may be found at http://www.legis.state.wi.us/lc.

More information about UI may be found in ch. 108, Stats., and chs. DWD 100 to 150, Wis. Adm. Code, and at http://dwd.wisconsin.gov/ui/ and http://www.dwd.state.wi.us/uiben/handbook/.

More information about the Unemployment Insurance Division of DWD may be found at http://dwd.wisconsin.gov/ui/division.htm. More information about the UIAC, including meeting and public hearing information, may be found at http://dwd.wisconsin.gov/uibola/uiac/.

Worker's Compensation

The Worker's Compensation Division of DWD administers the state's Worker's Compensation (WC) program. The WC law provides for a system of no-fault insurance that pays benefits to employees for accidental injuries or diseases arising from an employee's job. Generally, for workplace injuries, WC is the exclusive remedy against the employer. In other words, an injured employee is typically precluded from suing his or her employer for the injury and may only recover those benefits authorized by the WC law.

An employer is generally subject to the WC law if any of the following apply:

1) The employer usually has three or more employees.

2) The employer has fewer than three employees but a payroll of $500 or more during any calendar quarter.

An employer is required to cover his or her employees with WC insurance if the employer usually has three or more employees or if the employer has fewer than three employees but a payroll of $500 or more during any calendar quarter. In addition, farmers who employ six or more employees on any 20 days in a calendar year must have insurance within 10 days after the 20th day of employment.

The cost of WC insurance typically varies, based on job classification. Insurance rates and classifications depend on past work-related injury experience, gross payroll, and level of hazard in an occupation. The Wisconsin Compensation Rating Bureau sets the premium rate for each class with the approval of the Commissioner of Insurance. The law provides for penalties for employers who fail to obtain insurance when required to do so.

Some employers in Wisconsin, including some larger private sector and various governmental employers, are self-insured. They do not purchase WC insurance but

pay their claims using their own funds. An employer must have written approval from DWD before becoming self-insured.

Benefits payable under a WC policy include the following:

- All reasonable and necessary medical costs.
- Benefits for lost wages while recovering from an injury.
- Benefits for permanent disability if the employee does not fully recover from the injury.
- Death benefits and burial expenses up to certain limits.

Generally, for the period when the employee is out of work and recovering from his or her injury, the employee may receive 2/3rds of his or her weekly wage in WC benefits up to a certain weekly maximum. Payment is made on the basis of a six-day work week (Monday through Saturday) regardless of the number of days per week an employee actually works. A waiting period applies before a benefit may be paid. The waiting period is the first three days, excluding Sunday, after the accident in which an injury is received. If a disability from work lasts beyond the seventh day, the first three days are fully compensated. Generally, the first insurance payment is made within 14 days of the injury.

In addition to the above-described temporary benefit payments during the period of healing, if an employee has a permanent disability, the employee will receive additional compensation based upon statutory formulas in existence at the time of the injury.

Typically, an employer may not unreasonably refuse to rehire an injured employee if suitable employment is available within the employee's physical and mental limitations. If the employer has suitable employment available and unreasonably refuses to rehire the employee, the employer is liable for any lost wages up to a total of one year's wages. However, the employer is not required to hold or create a job for the employee after an injury.

As with UI, Wisconsin has implemented a Worker's Compensation Advisory Council (WCAC). The WCAC was created to advise DWD and the Legislature regarding matters affecting the administration and development of the WC law. The membership of the WCAC is made up of five voting labor representatives, five voting management representatives, three nonvoting insurance representatives, and one representative from DWD. As with the UIAC, the WCAC forwards to the Legislature, on a biennial basis, recommended changes to the WC law. Recently, these recommendations have been adopted by the Legislature with few or no amendments. The Wisconsin Legislative Council staff has prepared an Act Memo that describes the changes made by the 2009-10 Legislature in 2009 Wisconsin Act 206. The Act Memo may be found at http://www.legis.state.wi.us/lc.

More information about WC may be found in chs. 102 and 626, Stats., and chs. DWD 80 to 82, Wis. Adm. Code, and at http://dwd.wisconsin.gov/wc/.

More information about the Worker's Compensation Division of DWD may be found at http://dwd.wisconsin.gov/wc/home.htm. More information about the WCAC, including meeting information, may be found at http://dwd.wisconsin.gov/wc/councils/wcac/default.htm.

Economic Development

The state has a number of programs designed to enhance the economic vitality of the state and its various municipalities. Commonly referred to as "economic development programs," most of these programs are "administered" by the Wisconsin Department of Commerce ("Commerce"), which is statutorily designated as the state's lead economic development agency. The importance of these programs is reflected in Commerce's mission statement. Among other things, Commerce views its mission as being to foster "the growth and diversification of the economy of the state." Further, Commerce states, "the mission of the department is to drive retention and creation of quality jobs and promote safe, healthy communities. This mission is carried out through the administration of statewide business development programs, including export development assistance, minority- and women-owned business certification, entrepreneurship services, and economic development financing programs."

This section describes the major economic development programs administered by Commerce and discusses recent legislation, including legislation in response to an audit of state economic development programs by the Legislative Audit Bureau (LAB) published in August 2006.

Area Development Managers

Area Development Managers (ADM), employed by Commerce, assist business expansions, promote business retention, and help local development organizations in their respective territories. ADMs are a good first point of contact for businesses and others interested in participating in any of the economic development programs described in this section. ADMs use their knowledge of federal, state, and regional resources to provide a variety of information to expanding or relocating firms. They also mobilize resources to help struggling businesses. Local economic development professionals can turn to ADMs for assistance with long-term marketing and planning strategies.

Contact information for Commerce's ADMs, along with a map showing the regions served by each ADM, can be found at http://www.commerce.wi.gov/BD/BD-AreaDevManagers.html.

Forward Innovation Fund

Through its Forward Innovation Fund (FIF), Commerce may award grants or make loans to a variety of entities, including Wisconsin businesses, municipalities, local development corporations, cooperatives, and other organizations involved in economic development in the state.

Activities eligible for FIF grant and loan funding include:

- Start-up, expansion, or retention of minority businesses.
- Start-up, expansion, or retention of businesses in economically distressed areas.
- Innovative proposals to strengthen inner cities, communities in rural municipalities, clusters of businesses, industries, research centers or arts venues, or entrepreneurship.

Criteria to be considered when making grants or loans from the FIF include:

- Whether the proposed activities serve a public purpose.
- Whether the proposed activities will retain or increase employment in the state.
- Whether the proposed activities are likely to occur without a grant or loan.
- Whether, and the extent to which, the proposed activities will contribute to the economic growth of the state and the well-being of state residents.
- Whether the proposed activities will be located in an economically distressed area.
- Whether the proposed activities will promote the employment of minority group members.
- The economic condition of the community in which the activities are proposed to occur.

Wisconsin Development Fund

Through the Wisconsin Development Fund (WDF), Commerce may make grants and loans to business recipients, as determined by the department, as well as local governing bodies, including county, village, and town boards, city councils, regional planning commissions, and transit commissions.

Currently, the WDF provides moneys for grants to the Center for Advanced Technology and Innovation; for technology commercialization grants and loans; for grants and loans to support capital financing, worker training, entrepreneurial development, and other economic development projects; and for reimbursements under the Wisconsin Trade Project program.

2009 Wisconsin Act 2 increased the funding for the WDF in order to fund a $1,000,000 grant to the Wisconsin Regional Training Partnership/Building Industry Group Skilled Trades Employment program, as well as grants totaling $1,630,000 to various labor organizations throughout the state.

2009 Wisconsin Act 265 increased funding for the WDF by $500,000 general purpose revenue (GPR) annually.

Tax Incentives for Business Development

2009 Wisconsin Act 2 created a Business Development in Wisconsin Tax Incentives program that provides economic development tax credits to eligible persons for conducting specified types of economic development projects in the state. The Act also discontinued new activities in the development zones, enterprise development zones, agricultural development zones, airport development zones, and technology zones programs.

Under the Business Development in Wisconsin Tax Incentives program, any person may apply to Commerce for certification to claim an economic development tax credit if the person is conducting or intends to conduct at least one eligible activity. Eligible activities include projects related to job creation, capital investment, employee training, and the location or retention of corporate headquarters. Additional consideration for credits may be granted if the claimant conducts activity in an economically distressed area, conducts activities with significant employment effects, or conducts training for members of targeted groups.

The total amount of tax benefits that may be provided under the Business Development in Wisconsin Tax Incentives program is limited to the total amount of tax benefits that have been authorized, but not allocated to persons under the development zones, enterprise development zones, agricultural development zones, airport development zones, and technology zones programs on the effective date of these provisions. As of February 11, 2009, a total of $65,290,000 in authorized zone tax credits was unallocated.

2006 Audit of State Economic Development Programs

2006 Audit

In August 2006, the LAB published an audit entitled "State Economic Development Programs" (Report 06-9). The report can be found at www.legis.state.wi.us/lab. The report identified 152 economic development programs in the state administered by 247.9 full-time equivalent staff in eight different state agencies.

The LAB noted in its report that, as both the number and types of economic development programs have grown, some policymakers have raised concerns about their scope, effectiveness, and coordination. The report concludes that coordination and accountability of state economic development programs should be improved. The report states that accountability could be enhanced by improving coordination, reducing the number of programs with similar purposes, consolidating agency reporting requirements, and disclosing project costs and benefits to the public.

The report makes the following suggestions for the Legislature to consider:

- Specifying criteria for designating future development zones.
- Establishing clear and measurable goals to ensure that programs are coordinated effectively.
- Reducing the number of programs by consolidating statutory requirements and standardizing eligibility requirements for similar programs.
- Consolidating reporting requirements for state agencies.
- Enacting public disclosure requirements to improve transparency in the use of state funds for economic development.

2007 Wisconsin Act 125

In response to the recommendations of the LAB, the Legislature passed **2007 Wisconsin Act 125,** relating to consolidation of state economic development programs. The Act did all of the following:

- Eliminated certain economic development programs.
- Consolidated Commerce minority business programs into a single program.
- Consolidated certain gaming economic development programs.
- Consolidated certain employee skills training programs.
- Modified reporting requirements and created a comprehensive annual report to be filed by Commerce and seven additional state agencies.
- Required agencies to create programmatic goods and accountability measures for each economic development program.
- Required agencies to promulgate rules regarding recoupment of payments.
- Required a follow-up audit be completed by the LAB by July 1, 2012.

For more information on 2007 Wisconsin Act 125 see http://www.legis.state.wi.us/lc/publications/act/2007/act125-ab741.pdf.

2009-10 Legislative Session

In addition to the programs described above, a number of legislative acts created new programs related to economic development or made changes to existing programs, including programs modified in the previous session by 2007 Wisconsin Act 125. Selected modifications include:

2009 Wisconsin Act 2

Angel Investment and Early Stage Seed Credits

Act 2 made a number of modifications to the early stage business investment program (the angel investment tax credit and early stage seed investment tax credit). Modifications to these credits include:

- Permitting the claim of an angel investment tax credit equal to 25% of certified investments made in a taxable year, rather than 12.5% of the investment over two years.
- Eliminating the $2,000,000 limit on the amount of a claimant's investment made directly in a qualified new business venture (QNBV) that may be used as the basis for an angel investment tax credit.
- Extending the early stage seed investment credit to taxpayers of state insurance premiums tax.
- Modifying the QNBV certification criteria. Generally, under the Act, a business qualifies as a QNBV if it has the potential for increasing jobs in this state, increasing capital investment in this state, or both, and one of the following applies:
    - It is engaged in certain high-tech or clean energy industries or working with proprietary technology.
    - It is undertaking pre-commercialization activity related to proprietary technology.
- Increasing in the limits on investments that may be received by a QNBV.
- Increasing in the angel investment credits that may be claimed in future taxable years.
- Permitting the transfer of early stage seed investment credits.

2009 Wisconsin Act 11

Enterprise Zone Jobs Tax Credit

Under Act 11, Commerce may certify a business as eligible for enterprise zone tax credits if that business retains jobs in an enterprise zone and at least one of the following applies:

- The business is an original equipment manufacturer with a significant supply chain in the state.
- The business employs more than 500 full-time employees in the enterprise zone.

The Act also directs Commerce to promulgate rules relating to the administration of the enterprise zone program, including the definition of "business with a significant supply chain," and exceptions from the statutory definition of "full-time employee."

2009 Wisconsin Act 28

Enterprise Zones Capital Investment Tax Credit

Act 28 created a refundable income tax credit for significant capital expenditures in an enterprise zone. Under the Act, a taxpayer that is certified for enterprise zone tax credits may be certified by Commerce to receive additional tax credits for significant capital expenditures, in an amount not to exceed 10% of the total capital expenditure.

Jobs Tax Credit

Act 28 created a refundable income tax credit for job creation and job training. Subject to a statewide annual limit of $5,000,000 ($14,500,000 total for taxable years beginning on or after January 1, 2010, and ending June 30, 2013), Commerce may award tax credits equal to up to 10% of qualified wages, and an amount determined by rule for job training. Qualified wages in a particular county or municipality are annual wages of $20,000 to $100,000 or $30,000 to $100,000, depending on economic data in each location, as determined by Commerce. The credit may be claimed for tax years beginning after December 31, 2009, but claims may not be paid until tax years beginning after December 31, 2011. Under the Act, Commerce may certify a taxpayer as eligible for the tax credit for 10 years.

2009 Wisconsin Act 265

Angel and Early Stage Seed Investment Tax Credits

Act 265 increased the maximum amount of angel investment tax credits that may be claimed in a tax year from $5,500,000 to $6,500,000 for calendar year 2010, and from $18,000,000 to $20,000,000 for tax years beginning after December 31, 2010. (These limits are in addition to $250,000 in credits that are available for investments in nanotechnology businesses.) Act 265 also allows a claimant to claim an angel investment credit for an investment in a business that was located out of the state, if the investment was made no more than 60 days before that business relocated to Wisconsin, and the business is certified as a QNBV within 180 days after the relocation to Wisconsin.

Microloan Pilot Program

The Act created a pilot program in Commerce for awarding microloans of up to $25,000 from the WDF at nominal interest rates for the creation of new businesses. Commerce must designate one urban and one rural area of the state that are affected by high unemployment. Residents of those areas are eligible for microloans.

Manufacturing Facility Conversion Grants

Act 265 created a manufacturing facility conversion grant program beginning in fiscal year 2010-11 and increases funding for the WDF by $2,000,000 GPR beginning in 2010-11 for manufacturing facility conversion grants and for other eligible WDF grants and loans. The grants are to provide incentives to companies for converting existing manufacturing facilities to produce renewable energy or manufacturing equipment used in the production of renewable energy. Up to $2,000,000 in grants may be awarded.

Technology Transfer Grant and Loan Program

Act 265 created a technology transfer grant and loan program under which Commerce may award a grant or loan to a research institution, up to a maximum of $100,000 for each institution, to provide money for research and development activities related to the creation or retention of jobs by a business, or to improving the competitive position of a business by improving the innovativeness of the business.

Rural Outsourcing Grants

Act 265 authorized Commerce to award grants during the 2009-11 Biennium to businesses for outsourcing work to rural municipalities. The maximum total amount of rural outsourcing grants that may be awarded is $500,000. Grantees must provide equal matching funds from sources other than the state.

Office Regulatory Assistance

Act 265 renamed the "Regulatory Ombudsman Center" in Commerce as the "Office of Regulatory Assistance" and modified the duties of the renamed office pertaining to assisting businesses in the process of obtaining permits. The Act also created a new position for the office and reassigned a position from the small business ombudsman clearinghouse to the Office of Regulatory Assistance.

The Act requires the Office of Regulatory Assistance to do all of the following:

- Provide assistance with obtaining and maintaining permits, and any licenses and approvals necessary for a business to operate in this state, including doing all of the following on behalf of businesses:
  - Explaining requirements for obtaining permits.
  - Tracking the progress of applications for permits.
  - Helping businesses comply with laws and rules applicable to businesses, including providing plain language explanations of laws and rules.
- Serve as a liaison between businesses and agencies, authorities, municipalities, and local economic development organizations.

2009 Wisconsin Act 266

Authorization for Designation of Two Additional Enterprise Zones

Generally, Commerce may designate an area as an enterprise zone if specified requirements are met. Act 266 increased the number of enterprise zones that may be designated from 10 to 12.

A taxpayer who creates or retains jobs in an enterprise zone may claim certain credits against state income and franchise taxes. Commerce must consider a number of factors related to the area prior to designating the area as an enterprise zone, including indicators of the area's economic need and whether designation as an enterprise zone would promote the retention of jobs in the area.

2009 Wisconsin Act 267

Enterprise Zone Tax Credits for Purchasing Property or Services From Wisconsin Vendors

Act 267 authorized Commerce to certify a business that is located in an enterprise zone as eligible for tax credits if the business purchases tangible personal property items, property, goods, or services from Wisconsin vendors.

The amount of the tax credit available is limited to no more than 1% of the amount that the business paid in the taxable year to purchase tangible personal property, items, property, goods, or services from Wisconsin vendors. A business may not claim a tax credit under other provisions of the enterprise zone program for any expenditures for which it claims a credit under the provisions of the Act.

2009 Wisconsin Act 268

Capital Access Program

Act 268 appropriated $350,000 GPR to Commerce and directs Commerce to award grants from the appropriation to the Wisconsin Business Development Finance Corporation (WBDFC) for the purpose of funding a capital access program.

Under a capital access program, grant funding and matching funds are used to establish reserve pools to reduce the risk to lenders for loans to small- and medium-sized businesses and local nonprofit agencies. These reserve pools enable lenders to make loans to borrowers for which financing might not otherwise be available due to the borrowers' lack of adequate collateral, net worth, or credit history.

If a loan is approved for enrollment in the program, the borrower, the participating bank, and the capital access program each contribute a specified amount, referred to as a "premium," to the reserve pool account held by the bank.

Any organization or enterprise, operated for-profit or not-for-profit, may apply to be a borrower under the program, if it fulfills all of the following conditions:

- It is authorized to do business in this state.
- It does not sell alcohol beverages, as defined in s. 125.02 (1), Stats.
- It is not an executive officer, director, or principal shareholder of a participating bank, a member of the immediate family of an executive officer, director, or principal shareholder of a participating bank, or an organization or enterprise controlled by any of those individuals.

Loans under the program may be used for any business purpose in this state other than construction or purchase of residential housing or passive real estate investment.

Programs Administered Outside Commerce

Commerce is responsible for the administration of the majority of state economic development programs. However, a number of programs are administered by other state agencies, including the following:

The **Department of Agriculture, Trade and Consumer Protection (DATCP)** administers a number of programs related to economic development in the context of Wisconsin agriculture. Information on DATCP programs may be viewed at http://datcp.state.wi.us/core/marketingagriculture/marketingagriculture.jsp.

The **Wisconsin Housing and Economic Development Authority (WHEDA)** offers a number of small business, agricultural, and multi-family housing financing products. More information on WHEDA programs may be viewed at http://www.wheda.com.

Additional References

1. ***DWD*** has prepared a number of publications that provide information concerning employment law. Those publications may be found at http://dwd.wisconsin.gov/.

2. The ***U.S. Department of Labor*** has information on federal employment laws available on its website at http://www.dol.gov/.

3. ***Commerce*** has prepared a number of publications that describe economic development programs and services administered by that agency. Information may be found at http://www.commerce.state.wi.us/.

4. At the beginning of each legislative session, the ***Legislative Fiscal Bureau*** prepares Informational Papers that describe various state programs. These Informational Papers, which include descriptions of state economic development programs administered by Commerce and Wisconsin's UI program, may be found at http://www.legis.state.wi.us/lfb/index.html (click on Publications).

5. The ***Legislative Reference Bureau*** prepares publications concerning employment law. Those publications may be found at http://www.legis.wisconsin.gov/lrb/pubs/pubsub/employment.htm.

6. The ***LAB*** conducts audits of various state programs. For audits concerning employment law and economic development, see the following:

   a. *Unemployment Reserve Fund*, Report 09-1, January 2009, at http://www.legis.wisconsin.gov/lab/reports/09-1Full.pdf.

   b. *State Economic Development Programs*, Report 06-9, August 2006, at http://www.legis.wisconsin.gov/lab/reports/06-9Full.pdf.

   c. *Follow-Up on Overtime in State Agencies*, Letter Report, April 2009, at http://www.legis.wisconsin.gov/lab/reports/09-overtimefollowup_ltr.pdf.

   d. *Overtime in State Agencies*, Letter Report, June 2008, at http://www.legis.wisconsin.gov/lab/reports/08-OvertimeStateAgencies_ltr.pdf.

7. A Legislative Council staff Information Memorandum, *Navigating Federal Economic Development Resources*, may be viewed at http://www.legis.state.wi.us/lc/publications/im/IM2010_09.pdf.

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Wisconsin Legislative Council

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Wisconsin Legislator Briefing Book 2011-12

Chapter D

Education, Elementary-Secondary

The state supervises and regulates elementary and secondary education through the Department of Public Instruction (DPI), headed by the State Superintendent of Public Instruction.

DPI oversees the operation of all public elementary and secondary schools in the state. In Wisconsin, the responsibility for the education of elementary and secondary students is divided or shared between local school districts, the state, and the federal government. Funding is provided locally through the property tax, from the state through general purpose tax revenues, and from the federal government through federal taxes.

Constitutional Basis and History

Under Wisconsin Constitution, Article X, Section 3, the state Legislature is responsible for the establishment of public school districts which are to be "as nearly uniform as practicable" and "free and without charge for tuition to all children."

Wisconsin Constitution, Article X, Section 1, assigns the supervision of public instruction to a state superintendent who is elected on a nonpartisan spring ballot for a term of four years. The Superintendent of Public Instruction ("State Superintendent") is charged under the statutes with the general supervision of public instruction and is required to ascertain the condition of the public schools, stimulate interest in education, and spread as widely as possible knowledge of the means and methods which may be employed to improve the schools.

Since the adoption of the Wisconsin Constitution, the Wisconsin public education system for elementary and secondary students has grown to a comprehensive and complex array of schools, districts, and state programs.

School District Characteristics and Enrollment

Wisconsin currently has 424 public school districts and more than 2,000 school buildings governed by more than 2,800 elected school board members. All territory in the state is required to be in a school district. DPI provides direction and technical assistance for public elementary and secondary education in Wisconsin by offering a broad range of programs and professional services to local school administrators and faculty. DPI distributes state school aids and administers federal aids to supplement local tax resources, improves curriculum and school operations, ensures education for children with disabilities, offers professional guidance and counseling, and develops school and public library resources.

The state currently relies on local school districts through their elected boards to administer its elementary and secondary programs. The number of school districts in the state has remained constant over the recent history. In addition, 12 cooperative educational service agencies (CESAs) furnish support activities to the local districts on a regional basis.

In the 2009-10 school year, there were 872,436 public school students in pre-kindergarten through 12th grade programs, a slight decrease from the previous year. In addition, there were approximately 127,000 students enrolled in private schools in the state, also a decline from the previous year. The Department of Administration (DOA) has projected Wisconsin's school-age population to increase slightly between the 2000 Census and the year 2030.

Wisconsin school districts may be organized in different forms. Districts may be classified as:

- Common school districts and unified school districts. (Most school districts are common school districts. Unified school districts are generally in urban areas.)
- Kindergarten through grade 8 (K-8).
- Union high schools.
- First-class city districts (only Milwaukee).

Approximately 24% of the 2009-10 public school enrollment in Wisconsin can be classified as minority. Current public school enrollment is approximately 3.7% Asian/American/Pacific Islander, 10.4% Black, 8.4% Hispanic, and 1.5% American Indian/Alaskan Native.

Approximately 37.2% students in the 2009-10 school year were classified as economically disadvantaged.

Wisconsin public schools provided services to approximately 125,500 special education students in 2009-10, a slight decrease over the prior year. Schools also provided services to approximately 45,650 English language learners as of March 2008.

Financing

General Financing Goals

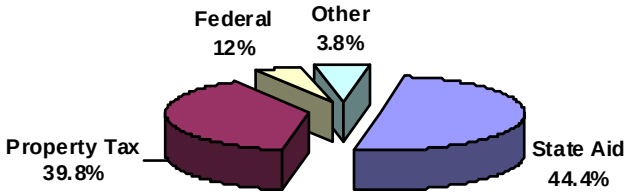
Under the applicable state statutes, the state provides financial assistance to school districts to achieve two basic policy goals: (1) reduce the reliance on the local property tax as a source of revenue for educational programs; and (2) guarantee

that a basic educational opportunity is available to all pupils regardless of the local fiscal capacity of the district in which they reside.

Methods of Support

The 424 public school districts derive their revenue through four major sources: state aid; property tax; federal aid; and other nonproperty tax revenue such as fees and interest earnings. For 2008-09, the share of each revenue source was as follows:

Public School Revenue
2008-09 School Year



The cost of elementary and secondary education is supported by the state through three different methods. First, unrestricted **general aids** are provided through a formula that distributes aid on the basis of the relative fiscal capacity of each school district as measured by the district's per pupil value of taxable property. This formula generally is known as either the "general school aid formula" or the "equalization aid formula." In addition, the Legislature has established other general school aid programs that are associated with the equalization formula.

The second source of state support is **categorical aid** that partially funds specific program costs such as special education, class size reduction, pupil transportation, and driver education. Categorical aid is either paid on a formula basis or awarded as grants.

The third source of state support is the state **school levy tax credit**. Although the school levy tax credit is considered school aid, this aid is paid to municipalities to offset the property tax rather than being paid directly to school districts.

For the 2009-11 biennium, the Legislature appropriated over $10.3 billion in general and categorical school aid. More than 99% of this amount is funded through state general purpose revenues (GPR); the other 1% is supported with segregated revenues (SEG) and program revenues (PR). School aid represented approximately 40% of the state's total general fund budget for fiscal year 2009-10. It is the largest commitment by the Legislature to any single governmental program.

Levels. 1993 Wisconsin Act 437 created a commitment to raise the state's average share of K-12 revenues to 66.7%. In 1995, state support for elementary and secondary education increased from just over $3 billion in 1995-96 to just over $4 billion in 1996-97. Previously, the state's share of partial school revenues ranged from 48.4% in 1993-94 to 52.7% in 1995-96. It is noteworthy that the 2/3rds funding commitment was calculated on a **statewide** basis; the level of state aid received by any individual district could be higher or lower than 2/3rds, depending on the district's per member shared cost and equalized value.

The Governor proposed eliminating the 2/3rds funding requirement in his 2003-05 Executive Budget and the Legislature concurred. As a result, current state aid is now provided in a sum-certain appropriation and the funding level is determined through the budget process similar to most other state appropriations. State support for K-12 education from all funds for the 2008-09 fiscal year was equal to approximately 65.76% of the total costs (estimated).

***Formula*.** The current school aid formula, upheld by the State Supreme Court as recently as July 2000, operates under the principle of equal tax rate for equal per pupil expenditures. Generally, this means that a school district's property tax rate does not depend on the property tax base of the district, but rather depends on the level of expenditures. The rate at which school costs are aided through the formula is determined by comparing a school district's per pupil tax base to the state's guaranteed tax base. **Equalization aids** are provided to make up the difference between the district's actual tax base and the state guaranteed tax base. Stated differently, there is an inverse relationship between equalization aids and property valuations; those districts with low per pupil property valuations receive a larger share of their costs through the equalization formula than districts with high per pupil property valuations. For a more complete description of the state equalization formula, see *Elementary and Secondary School Aids,* at: http://www.legis.state.wi.us/lfb.

Categorical Aids

The state also finances K-12 education through two types of **categorical aids**: (1) formula driven programs which are automatically provided to school districts based on the number of pupils meeting a specific criteria or for costs devoted to a specific function; and (2) grant programs in which districts must submit a request in order to receive the funds. Unlike equalization aid, categorical aid programs are, in most cases, distributed without regard to the relative size of a school district's property tax base. Also, school district costs that are not reimbursed through a particular categorical aid program are included as shared costs under the equalization formula. Therefore, the state shares in these unreimbursed costs but only to the extent to which a school district is supported under the equalization formula. Also, most of the programs are funded on a sum certain dollar basis which may not match expenditures. Therefore, if the appropriated amount in a particular year is insufficient to fully fund a categorical formula, aid payments are prorated.

Special Education. The major categorical program in Wisconsin is the special education program. State and federal law require that local school districts provide special education and related services to children with disabilities ages three through 20 who reside in the school district. Under state law, a child with a disability is defined as a child who, by reason of any of the following, needs special education and related services:

- Cognitive disability.
- Hearing impairment.
- Speech or language impairment.
- Visual impairment.
- Emotional disturbance.
- Orthopedic impairment.
- Autism.
- Traumatic brain injury.
- Other health impairments.

- Learning disability.

In addition, a school district may include a child with a significant developmental delay who needs special education services under DPI rules. Programs for special education are provided by school districts, either on their own or through cooperative arrangements with other districts, or with CESAs or County Children with Disabilities Education Boards (CCDEBs). The state reimburses a portion of the costs for educating and transporting pupils enrolled in special education including school age parent programs. The total appropriation for special education programs in the state for 2009-11 will be approximately $369 million for each fiscal year and is expected to cover approximately 29.9% of eligible costs.

SAGE. The state also provides categorical funding for the Student Achievement Guarantee in Education (**SAGE**) Program for grade 3. This program, created in 1995, initially awarded five-year grants to school districts with at least one school with at least 50% low-income pupils in the previous school year. School districts were eligible on a phase-in basis to enter into a five-year achievement guarantee contract with DPI on behalf of that school under certain circumstances.

Under SAGE, each school must do the following:

1. Reduce each kindergarten to grade three class size to 18 pupils or to 30 pupils if two classroom teachers' classes are combined.
2. Keep the school open every day for extended hours and collaborate with community organizations to make educational and recreational opportunities as well as community and social services available in the school to all district residents.
3. Provide a rigorous academic curriculum and design to improve academic achievement.
4. Create staff development and accountability programs that provide training for staff.
5. Encourage collaboration and require professional development plans and performance evaluations.

SAGE provided approximately $109 million in state aid to elementary schools in the program in 2009-10.

Under the provisions of 2009 Wisconsin Act 28 (the Biennial Budget Bill), each school district will receive $2,250 annually for each student enrolled in the SAGE Program.

Other. Additional categorical aids are provided for activities such as school libraries, pupil transportation, bilingual/bicultural education, Head Start supplements, alcohol and other drug abuse (AODA) programs, alternative education, and at-risk programs.

Federal Funding and Programs

The federal government provides funds to help support numerous educational programs in the state. For 2008-09, federal funds provided approximately 12.1% of the funds expended on public elementary and secondary schools in the state. The two major programs of the federal government are those under the Elementary and Secondary Education Act (ESEA), which was reauthorized in 2002, and the special education program, Individuals with Disabilities Education Act (IDEA).

ESEA in its revised form is also referred to as the "No Child Left Behind Act." This federal legislation includes testing and accountability measures and standards that states, school districts, and individual schools are required to meet. A complete

description of these requirements can be found on the federal Department of Education's website at http://www.ed.gov/. Information on the extensive federal requirements for special education is also available on the site.

Additional federal funding has been provided to Wisconsin under the federal American Recovery and Reinvestment Act (ARRA) of 2009. ARRA included an appropriation of $53.6 billion for the State Fiscal Stabilization Fund Program. The purpose of the program is to help stabilize state and local government budgets to minimize or avoid reductions in education and other essential public services. For more information, see http://www2.ed.gov/policy/gen/leg/recovery/factsheet/stabilization-fund.html. Wisconsin school districts will receive $236,722,000 in stabilization fund revenue in school fiscal year 2009-10. The revenue will replace a portion of the school district's general equalization aid eligibility.

Spending Restrictions

Under current law, there is a limit on the annual amount of revenue per pupil that each district can raise through the combination of general school aids (defined as equalization, integration, and special adjustment aids), computer aid, and property taxes. This limit is commonly referred to as the "revenue cap." The maximum allowable increase per pupil is $200 for 2009-10 and 2010-11. [http://www.legis.state.wi.us/lfb.]

District Governance and Program Requirements

School districts are governed by elected school boards. For common or union high school districts, school boards must be composed of the following number of members:

1. A common school district operating elementary grades or a union high school district must have three school board members, except that if the school district has the same boundaries as a town or has a population of 500 or more, it may have five school board members.
2. A common school district operating elementary and high school grades may have three, five, seven, or nine school board members.
3. A common or union high school district may not have more than 11 school board members if a plan of apportionment is established according to the statutes.
4. Unified school districts may have five, seven, or nine members and may also change the members according to apportionment.

The statutes provide for a means to change the number of school board members or plan of apportionment for school board members. The elections are held at the nonpartisan spring election for a term of three years.

The statutes prescribe requirements for the annual meeting of school districts as well as for special meetings called for consideration of a specific topic. The statutes also lay out the powers of the annual meetings and special meetings in a common or union high school district and requirements for meetings and reports of school boards.

The statutes assign the management of the school district to the school board as well as the power to supervise and tax for the maintenance of school and school district programs. School boards are generally authorized to adopt all policies reasonable to promote the cause of education, including the establishing, providing,

and improving of school district programs, functions, and activities for the benefit of pupils. Included in these general powers is the authority to make school government rules, to suspend and expel students, to enter into agreements with other governmental units, and to generally administer the school district. The statutes also spell out the duties of the school district president, treasurer, and clerk.

Education Goals

Wisconsin statutes contain broad educational goals and expectations for the public schools. The statutes provide that public education is a fundamental responsibility of this state. These goals cover broad areas under academic skills and knowledge, vocational skills, and citizenship. [See s. 118.01, Stats.] The statutes also set forth the school district standards that each school board must meet. These standards create requirements relating to: (1) teacher certification; (2) professional staff development; (3) remedial reading services; (4) kindergarten programming; (5) school schedules; (6) emergency nursing services; (7) provision of adequate instructional materials; (8) safe and healthful facilities; (9) required curriculum plans in specific subjects and regular instruction in specified grades; (10) access to an education for employment program; (11) children at-risk plans; (12) distribution of performance disclosure reports; (13) compliance with high school graduation standards; (14) evaluation of school personnel; (15) standardized testing and examinations; and (16) gifted and talented program provisions. As a supplement to these standards, Governor Thompson issued an executive order (Executive Order No. 326) setting out more specific academic standards which schools must meet. These can be found at the following website: http://www.dpi.state.wi.us/standards.

Graduation Standards

A school board may not grant a high school diploma to any pupil unless the pupil has earned the following:

- In the high school grades, at least four credits of English, including written and oral communication, grammar and usage of the English language, and literature; three credits of social studies, including state and local government; two credits of mathematics; two credits of science; and 1.5 credits of physical education.
- In grades 7 to 12, at least 0.5 credit of health education.

In addition, the State Superintendent is directed to encourage school boards to require an additional 8.5 credits selected from any combination of vocational education, foreign language, fine arts, and other courses.

Testing and Assessment

Wisconsin supports an extensive assessment program for pupils enrolled in public schools. These assessment programs are in addition to those assessments carried out in individual schools and classes for the purposes of gaining academic credit.

Wisconsin is acknowledged as one of the leaders in the nation in student achievement whether it be in college prepatory scores, such as the SAT or ACT, or statewide knowledge and concepts examinations at grades 4, 8, and 10. Wisconsin has had a long history of statewide assessments designed to measure pupil achievement in specific areas.

One way that students demonstrate their progress toward achieving the academic standards in language arts, mathematics, science, and social studies is through participation in the Wisconsin Student Assessment System (WSAS). At present, the

WSAS includes both regular assessments taken by nearly all students and alternate assessments taken by certain students with limited English proficiency or disabilities.

Wisconsin Student Assessment System

Performance for All Students – By Grade Span

Percent Scoring Proficient or Advanced

Mathematics	**2005-06**	**2006-07**	**2007-08**	**2008-09**	**2009-10**
Elementary	72.4	75.4	75.5	78.6	78.4
Middle	73.7	76.6	76.0	77.7	79.0
High School	71.6	70.6	69.4	69.3	69.8
Reading					
Elementary	82.0	82.3	81.8	80.5	80.3
Middle	83.9	84.5	84.8	84.6	84.9
High School	75.0	74.9	74.6	74.9	76.3

***Source*:** DPI, http://www.dpi.wi.gov/eis/pdf/dpinr2010_43.pdf.

Beginning in the 2005-06 school year, the federal No Child Left Behind Act requires all states to test all students in reading and mathematics in grades 3 through 8 and once in high school (grade 10). Student performance on these assessments is reported in proficiency categories and used to determine the adequate yearly progress of students at the school, district, and state levels.

The No Child Left Behind Act requires the state to develop additional tests and testing protocols in order to continue to qualify for federal funds.

Low-Performance Schools

2009 Wisconsin Act 215 created provisions to address low-performance schools.

Under Act 215, if the State Superintendent determines that a ***school district*** has been in need of improvement for four consecutive school years, the ***school board*** must do all of the following: (1) employ a standard, consistent, research-based curriculum; (2) use pupil academic performance data to differentiate instruction to meet individual needs; (3) implement a system of academic and behavioral supports and early intervention for pupils; and (4) provide additional learning time to address the academic needs of pupils who are struggling academically.

The Act provides that if the State Superintendent determines that a particular ***public school*** was in the lowest performing 5% of all public schools in the state in the previous school year and is located in the ***school district*** that has been in need of improvement for four consecutive years, the ***school board*** must do all of the following in the ***school***: (1) use rigorous and equitable performance evaluation systems for teachers and principals; (2) adopt a policy establishing criteria for evaluating whether the distribution of teachers and principals within the affected schools relative to the distribution of teachers and principals throughout the school district, based on their qualifications and effectiveness, is equitable; (3) establish teacher and principal improvement programs; and (4) adopt placement criteria for principals that include performance evaluations and measures of pupil academic achievement.

Under the Act, if the State Superintendent determines that a ***school district*** has been in need of improvement for four consecutive years, the State Superintendent may direct the ***school board*** to implement activities for low-performing school

districts, above; a new or modified instructional design; professional development; or changes in administrative and personnel structure in the school district after consulting with the school board, school superintendent, and collective bargaining units in the school district. In addition, the school board may be directed to adopt accountability measures to monitor the school district's finances or to monitor other interventions directed by the State Superintendent.

If the State Superintendent determines that a ***public school*** is located in the school district that has been in need of improvement for four consecutive years, and if the school has been in need of improvement for five consecutive school years or was among the lowest performing 5% of all public schools in the state in the previous school year, the State Superintendent may, after consulting with the school board, the school district superintendent, and the collective bargaining units, direct the ***school board*** to do one or more of the following in the school: (1) implement a new or modified instructional design; and (2) create a school improvement council to make recommendations to the State Superintendent regarding improving the school.

If the State Superintendent issues a directive to a school board, he or she must notify each legislator whose district includes any portion of the school district and must provide a system of support and improvement, including technical assistance, to the board. If a school district receives a directive from the State Superintendent as provided under the Act, the school board must seek input from school district staff, parents, and community leaders on implementing the directive.

Provisions Applicable to Milwaukee

Act 215 also amended the applicable sections of ch. 119, Stats., to specify the provisions that apply to the Milwaukee Public Schools (MPS), as follows:

1. The Act provides that by July 1, 2011, the MPS school board must evaluate all school buildings in the school district operating under ch. 119, Stats., according to the criteria adopted by MPS and must develop a master plan governing the use, repair, renovation, and demolition of buildings in the school district.

2. The Act requires MPS to annually prepare a budget for each ***school*** in the school district operating under ch. 119, Stats.

3. The Act authorizes MPS to collaborate with nonprofit organizations and government agencies to provide pupils with comprehensive social services and educational support, which may include a program that offers comprehensive services that address the needs of children and youth from before the time they are born through postsecondary education.

4. Under the Act, MPS is required to provide alternative methods of attaining a high school diploma for those pupils who are unlikely to graduate in a traditional manner, including a program allowing a pupil or former pupil to retake a course in which he or she was not originally successful.

5. The Act provides that if MPS determines that state or federal aid is available for the purpose, the board must participate in an educational research consortium, similar to the Consortium on Chicago's School Research and the Boston Plan for Excellence, to provide research and policy recommendations for the DPI, MPS, and the Legislature.

6. Under the Act, MPS is required to conduct a survey of parents of pupils enrolled in the school district operating under ch. 119, Stats., and use the results of the survey to develop or modify parent involvement in school improvement plans, which may include school-based community resource centers, regularly scheduled public meetings, or parent education classes.

7. If MPS determines that state or federal aid is available, any school in the school district that enrolls pupils in kindergarten to grade 5 is eligible to apply to the board

for funding to participate in a pilot program designed to develop innovative instructional programs in science, technology, engineering, and mathematics; support pupils who are typically under-represented in those subjects; and increase the academic achievement of pupils in those subjects.

Teaching and Teacher Bargaining

Salaries

Wisconsin public school districts currently employ over 61,000 teachers, more than 15,000 school aides, and over 1,700 principals in the schools.

Salaries for teachers are set at the school district level. The current average salary of a teacher is approximately $52,600. The beginning salary of a teacher is approximately $32,000 per year. Wisconsin's teacher salaries currently rank 22nd in the United States.

Licensing

DPI licenses teachers in this state who are also subject to hiring decisions at the local district level. New teachers, in order to be licensed, must know and demonstrate specific competencies in specific areas. Further, public and private colleges that maintain approved teacher preparation programs must meet certain standards in order to maintain their approval. These standards are contained in administrative rules under ch. PI 34.

Bargaining

The Wisconsin Legislature adopted the nation's first state law regulating collective bargaining between local units of government and their employees, including school districts and teachers in 1959. The law specifically authorizes municipal employees to form and join labor organizations; however, the law did not provide any framework by which collective bargaining disputes that might arise could be resolved. In 1961, the Legislature adopted procedures that specifically prohibited strikes by municipal employees and established a procedure for resolving collective bargaining impasses. This initial program evolved into the current mediation-arbitration or "interest arbitration law."

In 1993, the Legislature made a number of important modifications to the interest arbitration law. These changes applied only to collective bargaining agreements involving municipal professional employees who were school teachers and were originally to sunset on July 1. During that period, the Legislature authorized any school district employer to **avoid interest arbitration** altogether on economic issues if the employer made a "**qualified economic offer**" (QEO) to its representative professional teaching employees. In 1995, the Legislature eliminated the sunset and made permanent the QEO provisions applicable to teachers. A "QEO" was defined generally as one which:

- Maintains both existing employee fringe benefits package and the employer's percentage contributions to fringe benefits.
- Maintains an employee salary schedule structure.
- Provides an annual increase in salary and fringe benefits equal to 3.8%. This calculation must be made in compliance with rules of the Wisconsin Employment Relations Commission.

2009 Wisconsin Act 28 (the Biennial Budget Act) repealed the QEO provisions applicable to teachers. Under this change, teachers will be able to collectively bargain under the same terms as other represented public employees.

School-to-Work Programs

The school-to-work transition initiative in Wisconsin is characterized by programs and curricular changes that are intended to better prepare secondary school pupils to enter the workforce, whether immediately following high school graduation or after some type of postsecondary education. Generally, state programs are aimed at encouraging students to plan for a career more thoroughly and at an earlier age; acquainting students with alternatives to a baccalaureate degree, such as an associate degree program or apprenticeships; and forging partnerships between K-12 schools and technical colleges, universities, and businesses in order to provide distinct pathways from school to the workforce.

Wisconsin's school-to-work system includes: youth apprenticeship partnerships; career counseling centers; technical preparation programs (Tech-Prep); youth options; at-risk youth programs in Milwaukee; work-based learning programs for low-income youth; youth employment programs for Southeast Wisconsin; and cooperative education programs. Additional information on these programs can be found at: http://www.dwd.state.wi.us/.

Milwaukee Parental Choice Program

The Milwaukee Parental Choice Program (MPCP) was established in 1989. Under this landmark program, state funds are used to pay for the cost of children from low-income families to attend, at no charge, private schools located in the City of Milwaukee. Pupils began attending private schools under this program in 1990-91.

Initially, only nonsectarian (nonreligious) private schools could participate under the program. However, in 1995, the program was expanded to include sectarian schools. Participation in the program has grown progressively from an initial seven private schools and 300 students to 111 private schools serving more than 20,220 students in 2009-10. No more than 22,500 full-time equivalent (FTE) students may attend private schools under the MPCP.

Under present law, the State Superintendent is required to pay the parent or guardian of a pupil enrolled in the private school under the MPCP a formula amount. The checks are sent to the private school but the parent or guardian is required to restrictively endorse the checks for the use of the private school. For the 2009-10 school year, per pupil amounts paid are $6,442 per student per school year. In 2009-10, the total state payments for the program were approximately $130.2 million.

2009 Wisconsin Act 28 (the Biennial Budget Act) made a number of changes in the MPCP. Among those changes were:

- Creating an auditor position in DPI that is funded by fees paid by schools intending to participate in the MPCP. The money will be used by DPI to evaluate the financial information submitted to DPI by MPCP schools.
- Requiring MPCP schools to administer the Wisconsin Knowledge and Concepts Examination (WKCE) in 4th, 8th, and 10th grades, although a pupil must be excused upon request of the parent. Also, MPCP schools must administer all tests that are required for students under the No Child Left Behind Act. The scores on these examinations must be submitted to the School Choice Demonstration Project, University of Arkansas, a nonpartisan education research center.

- Requiring MPCP schools to adopt written policies specifying criteria for promoting a pupil from 4th to 5th grade and 8th to 9th grade and for granting a high school diploma.
- Requiring each MPCP school to adopt academic standards in mathematics, science, reading and writing, geography, and history.
- Requiring schools that are participating in the MPCP for the first time that are not accredited to obtain preaccreditation from the Institute for the Transformation of Learning at Marquette University.
- Requiring all teachers and administrators in an MPCP school to have a bachelor's degree beginning in the 2010-11 school year. Teachers employed by an MPCP school on July 1, 2010 who do not have a bachelor's degree, may apply to DPI for a waiver, although waivers are not effective after July 1, 2015. Also, any teacher's aide employed by an MPCP school must have a high school degree or its equivalent beginning in the 2010-11 school year.
- Applying the current hours of instruction requirements of public schools to MPCP schools beginning in the 2010-11 school year.
- Requiring each MPCP school to provide to each pupil, or the parent or guardian of each minor pupil, who applies to attend the MPCP school, specified information about the school and policies of the school. The school must provide the information and policies to DPI by August 1 of each year along with specified data regarding pupils of the school.
- Requiring MPCP schools to maintain progress records for each pupil while the pupil is attending the school and for at least five years after the pupil ceases attending the school beginning in the 2010-11 school year. There are also specific requirements created for transferring records if a school closes or if a pupil transfers to another school.
- Establishing a priority order for accepting new pupils if total program participation has reached the enrollment limit and later decreases.
- Requiring MPCP schools to annually schedule two meetings at which members of the governing body will be present and which pupils and parents and guardians applying to the school may attend and communicate with the governing body beginning in the 2010-11 school year.

Open Enrollment

Wisconsin has an open enrollment program that allows parents to apply for their children to attend school districts other than the one in which they reside if certain conditions are met.

The program has specific deadlines that must be met regarding applications so that applications can be considered in an orderly fashion. The next open enrollment application period is **February 1-19, 2010** for the **2010-11 school year**. For the **2011-12 school year**, the application period will be **February 7-25, 2011**. Additional information on the program can be found on the DPI website at: http://www.dpi.wi.gov/sms/psctoc.html.

School Attendance

Any person having under his or her control a child who is between the ages of 6 and 18 years and who has not graduated from high school must cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter, or semester of the school year in which the child becomes 18 years of age. In addition, any person having under his or her control a child who is ***enrolled*** in five-year old kindergarten must cause the child to attend school regularly.

The school board must establish a written policy specifying the reasons for which pupils may be permitted to be absent from school. However, parents may excuse their child's absence in writing before the absence. A child may not be excused for more than 10 days in a school year under this provision.

The board may excuse children who are temporarily not in proper physical or mental condition to attend school but can be expected to return to school upon termination or abatement of the illness or condition. An excuse must be in writing and must state the time period for which it is valid, not to exceed 30 days.

A family wishing to home school their child(ren) must register each year with DPI. On or before each October 15, each administrator of a home-based private educational program must submit, on forms provided by DPI, a statement of the enrollment on the third Friday of September in the elementary and secondary grades under his or her jurisdiction to DPI.

Integration Aid

Wisconsin provides aid aimed at encouraging school integration in the state. This program was initially enacted as Chapter 220 in 1975. The stated purpose of the chapter is to "facilitate the transfer of students between schools and school districts to promote cultural and racial integration and education where students and their parents desire such transfer and where schools and school districts determine such transfers serve educational interests." One of the primary goals of the law was to achieve racial balance on a voluntary basis and at no cost to local taxpayers. The program provides state funds, in the form of unrestricted aids, as an incentive to school districts to desegregate their schools. In the beginning, state funding for integration aid was provided through a separate appropriation. However, in 1979, this appropriation was deleted and instead funding for the program was made through the general equalization aids appropriation. During its 25-year history, integration aid payments have grown from $8 million in 1976-77 to over $81 million in 2009-10. This is the third largest form of state school aid after equalization aid and special education aid. Over the years, this program has been known by a variety of names. Statutorily, it is referred to as the special transfer aid program. It has also been called the racial balance transfer program. However, it is most commonly referred to as "Chapter 220" after the 1975 session law. A total of 2,752 FTE students participated in the interdistrict transfer portion of the program in 2009-10.

Integration aid under this program is calculated through two different formulas depending on whether a pupil is transferred within a school district (intradistrict) or from one school district to another (interdistrict). Thus, money is transferred within the City of Milwaukee and it is also used to support transfers between Milwaukee and the outlying suburbs. Intradistrict transfer of payments is also made to other urban areas of the state including Beloit, Madison, Racine, and Wausau.

The Milwaukee Neighborhood Schools Initiative, included in 1999 Wisconsin Act 9, created incentives to increase use of neighborhood schools in Milwaukee, reduced transportation burdens, and aimed to revitalize, over the long term, Milwaukee neighborhoods and MPS. Bonding has been provided to construct new schools and renovate existing schools in Milwaukee under plans approved by the MPS Board and the Joint Finance Committee of the Legislature.

Charter Schools

The movement for charter schools in the nation emerged in the 1980s as a strategy for educational reform. Minnesota initiated the first charter school law in 1991 and California followed suit in 1992. In 1993, Wisconsin was one of six states to pass charter school legislation. By the end of 2000, 36 states and the District of Columbia had enacted some type of charter school legislation. In 1993, when the Legislature created the charter school program, it permitted no more than 20 charter schools to be established statewide with no more than two schools per district. School boards needed the approval of the State Superintendent to establish these schools and the schools were required to show significant progress towards operating by the beginning of the following year. In 1995, the original legislation was amended by repealing the restrictions regarding the number of additional programs and removing several restrictions within the initial legislation.

Under current law, an unlimited number of charter schools may be formed in the state by two different methods. First, a school board on its own initiative may contract with a person to operate a school as a charter school. Although this authority allows the board to convert all of the schools in the district to charter schools, there still must be provided alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to a charter school. Under the second method, a school board may authorize the establishment of a charter school upon the receipt and approval of a written petition requesting the board to do so. In addition to the ability of school districts to create charter schools, the Legislature in 1997 authorized the City of Milwaukee, the University of Wisconsin-Milwaukee, the University of Wisconsin-Parkside, and the Milwaukee Area Technical College to create charter schools. These are commonly referred to as “2r” charter schools, as they are authorized under s. 118.40 (2r) of the statutes.

The statutes provide that in awarding charter school contracts, school boards are required to give preference to charter schools that serve children at-risk. The school district is also required to notify DPI of its intention to create a charter school and include a description of this school in the notice. However, DPI does not have the authority to approve or deny charter school requests.

The charter school law specifies that, unless a statutory exception applies, the school board of a school district in which the charter school is located must determine whether or not the charter school is an “instrumentality” of the district. If the board determines that the charter school is an instrumentality, then the board must employ all personnel for the charter school. If the board determines that a charter school is **not** an instrumentality, then the board may not employ any personnel for the charter school. Schools established by the City of Milwaukee, the University of Wisconsin-Milwaukee, the University of Wisconsin-Parkside, or the Milwaukee Area Technical College, under s. 118.40 (2r), Stats., are not covered by this provision; they are not eligible to be classified as an “instrumentality” of a district--with the exception of a school operated by a for-profit entity with which the City of Milwaukee contracts. Such an entity is an instrumentality of MPS. The second exception to this provision provides that a private school located in the MPS district that is converted to a charter school (other than a charter school described in the prior

sentence) is not an instrumentality of MPS; therefore, the MPS school board may not employ any personnel for such a charter school.

The law sets out certain restrictions regarding the operation of a charter school. For example, a charter school may not be a converted private sectarian school and may not charge tuition.

A charter school by statute must be nonsectarian in its programs, admissions policies, employment practices, and all other operations. Further, charter schools are prohibited from discriminating in admission or denying participation in any program or activity on the basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability.

Generally, a charter school is not subject to the provisions of chs. 115 through 121 of the statutes, which are the provisions that govern elementary and secondary education, except for certain specified requirements. When a charter school is established through the petition process, the school board is required to contract with the person named in the petition to operate the school. If a charter school is established under the initiative of the school board, the board may contract with a person to operate the school. The contract may be for any term not exceeding five years and can be renewed for one or more terms not exceeding five school years. The contract and the petition must include a number of provisions and may include other provisions agreed to by the parties. These are set out in the statutes as are the grounds for charter revocations and funding of charter schools.

During the 2009-10 school year, 206 charter schools were operating in the state and served 36,100 students.

Public Library Services

Public library services in Wisconsin are primarily provided by local units of government such as municipalities and counties, although the state plays a major role in ensuring coordination and resource sharing among libraries. DPI, through its Division for Libraries, Technology and Community Learning, is responsible for statewide library development, resource sharing, and administering state aid to public library systems, which are organizations that coordinate library development and resource sharing among libraries in a specific geographic region.

Most library services are provided by municipal libraries, which are governed by local library boards and receive funding from municipal governments. Local services may also be provided through contracts between municipal libraries and other library organizations. Where there are no municipal libraries, county governments provide library services or contract for such services.

The statutory duties of the Division for Libraries, Technology and Community Learning are to: (1) provide continuing education programs for librarians; (2) provide assistance to libraries in personnel recruiting; (3) provide professional and technical services; (4) prepare statistical reports on statewide library service; (5) designate a librarian to coordinate the activities of state depository libraries; (6) establish library standards; (7) certify public librarians; (8) approve the establishment of library systems; (9) provide reference and loan services to supplement those of other types of libraries in the state; (10) implement programs and policies as directed by the State Superintendent; (11) distribute state library aids; and (12) assist the Council on Library and Network Development in the preparation of reports.

The Division must also operate the State Reference and Loan Library, located in Madison, which acts as a clearinghouse for interlibrary loan requests forwarded from other libraries, locating the requested materials in libraries throughout Wisconsin or in other states.

The statutory duties of the State Superintendent related to libraries are to: (1) assist development of school library services; (2) ensure public libraries serve all state citizens; (3) promote resource sharing among libraries and related agencies; (4) coordinate library services for institutional residents, the physically and mentally handicapped, the socio-economically disadvantaged, and racial and ethnic minorities; (5) act as an agent of receipt for federal library grants; (6) contract for the provision of library services to the blind and physically handicapped and other specialized library materials; and (7) maintain a statewide library holdings database. See Legislative Fiscal Bureau (LFB) Informational Papers at: http://www.legis.state.wi.us/lfb.

Additional References

1. At the beginning of each legislative session, the ***LFB*** prepares Informational Papers that describe various state programs. These Informational Papers may be found at: http://www.legis.state.wi.us/lfb/index.html (click on Publications).
2. The ***Legislative Audit Bureau*** has prepared the following reports recently that relate to elementary and secondary education:
   - *Milwaukee Parental Choice Program* (letter report, August 2010).
   - *Virtual Charter Schools* (report 10-3).
   - *Truancy Reduction Update* (best practices review, September 2008).
3. ***DPI*** has prepared numerous publications relating to the programs it operates and the information it collects. These may be found on the DPI website at: http://www.dpi.state.wi.us.
4. The federal ***Department of Education*** maintains a website that has information on all federal education programs, including "No Child Left Behind." The website is: http://www.ed.gov.

Glossary of Terms and Abbreviations

CESAs - Cooperative educational service agencies. Twelve CESAs provide support activities to local school districts on a regional basis.

Chapter 115 - Term used to refer to state special education law, derived from the 1973 session law and also statutory citation.

Chapter 220 - An integration aid program (named after the 1975 session law) that provides incentives to school districts to voluntarily improve racial balance within and between school districts.

DPI - Department of Public Instruction.

IDEA - Individuals with Disabilities Education Act. The term used to refer to the federal law relating to special education.

QEO - Qualified economic offer. An offer to represented teachers by a school board which, if it meets certain requirements, precludes teachers from taking economical aspects of negotiations to mediation-arbitration.

SAGE - Student Achievement Guarantee in Education. A categorical aid program focused on reduced class sizes at the kindergarten to third grade level.

5. Numerous state and national associations maintain websites relating to educational issues. State sites include the Wisconsin Association of School Boards (http://www.wasb.org) and Wisconsin Education Association Council (http://www.weac.org). National sites include the National Conference of State Legislatures (NCSL) (http://www.ncsl.org/) and the Education Commission of the States (http://www.ecs.org). NCSL publications that are not available on the NCSL website are usually available at no charge to legislators and staff. To order copies, contact the NCSL Publication Department at (303) 364-7812.

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Wisconsin Legislative Council

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Chapter E

Education, Post-Secondary

There are three nonprofit higher educational sectors in Wisconsin: the public University of Wisconsin System (UW System), the public Wisconsin Technical College System (WTCS), and 20 private colleges and universities. In addition, there are over 100 proprietary, or for-profit, post-secondary, schools in the state.

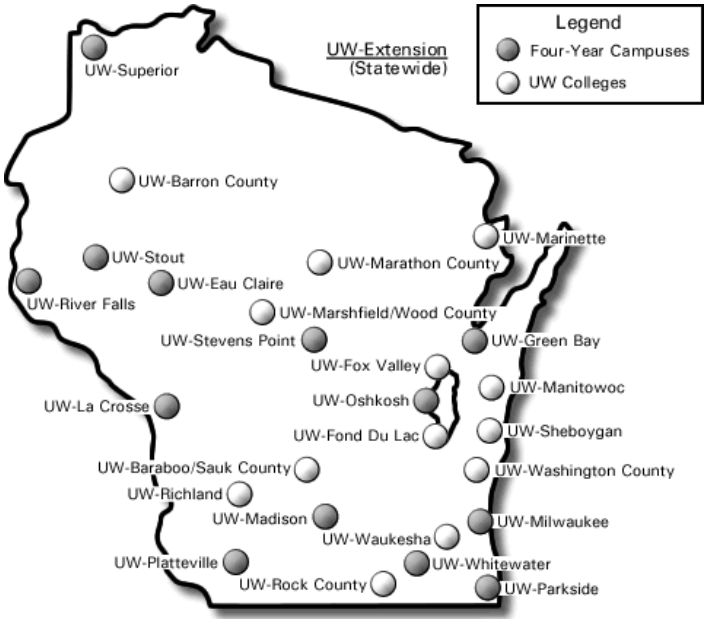
UW System

The UW System consists of 13 degree-granting universities, 13 two-year colleges, and the statewide University of Wisconsin (UW)-Extension programs. The overall mission of the system, as set forth in s. 36.01 of the statutes, includes the development of human resources and the discovery and dissemination of knowledge through teaching, research, public service, and the provision of extended education beyond the boundaries of the campus.

The guiding philosophy of the UW System is the "Wisconsin Idea," which is most often associated with University President Charles Van Hise and Robert La Follette. The Wisconsin Idea is the concept that "the boundaries of the University are the boundaries of the state." In practice, this means making the resources of the UW available to people all across the state, not just those who are currently enrolled as students. The Wisconsin Idea began as an effort to use the knowledge of the UW faculty to assist the state Legislature in shaping government policies, but it soon expanded to helping teachers, farmers, and people of all ages and levels of education.

Campuses

The UW System has 13 four-year campuses and 13 two-year campuses, as shown on the map below.



UW System Four-Year Campuses: Headcount Enrollment (Fall 2009)

- UW-Madison: 41,654
- UW-Milwaukee: 30,418
- UW-Eau Claire: 11,216
- UW-Green Bay: 6,638
- UW-La Crosse: 10,009
- UW-Oshkosh: 13,192
- UW-Parkside: 5,303
- UW-Platteville: 7,803
- UW-River Falls: 6,728
- UW-Stevens Point: 9,209
- UW-Stout: 9,017
- UW-Superior: 2,794
- UW-Whitewater: 11,139

UW-Madison and UW-Milwaukee are doctoral campuses that offer bachelor's, master's, doctoral, and advanced professional degrees and conduct organized programs of research.

The other four-year campuses listed are known as "comprehensive campuses," which offer associate, bachelor's, and selected nondoctoral graduate programs. Their mission is to emphasize teaching excellence; provide a base of liberal studies as a foundation for its degrees; offer programs of preprofessional curricular offerings; engage in outreach and continuing education for citizens in each service region; and engage in scholarly activity integral to, and supportive of, instructional programs and teaching excellence.

UW System Two-Year Campuses: "UW Colleges"

- UW-Barron County
- UW-Marinette County
- UW-Marathon County
- UW-Marshfield/Wood County
- UW-Fox Valley
- UW-Manitowoc County
- UW-Fond du Lac
- UW-Sheboygan County
- UW-Baraboo/Sauk County
- UW-Washington County
- UW-Waukesha County
- UW-Rock County
- UW-Richland

The mission of the UW System two-year campuses, known as the "UW Colleges," is to offer general education associate degrees; to serve primarily as freshman-sophomore liberal arts transfer institutions; to place major emphasis on teaching excellence and support the development, testing, and use of effective teaching methods; and to cooperate with other UW institutions, technical colleges, private colleges, and public schools to maximize educational opportunity and resources for the citizens in the campus service area.

The total enrollment of all UW Colleges campuses in Fall of 2009 was 13,789.

UW-Extension

The UW-Extension is the outreach arm of the UW System, and has offices in every county. Its mission is to provide, jointly with the UW institutions and the Wisconsin counties, a program to apply university research, knowledge, and resources to meet the educational needs of Wisconsin residents, wherever they live and work. This mission includes the programs of the three UW-Extension divisions: Cooperative Extension, Continuing Education Extension, and Broadcasting and Media Innovations, and a separate unit, Business and Manufacturing Extension.

Cooperative Extension faculty, based in the 72 county Extension offices and on six UW campuses, respond to the needs of farmers, businesses, communities, families, and youth. **Outreach and E-Learning Extension** faculty, based on the 26 UW campuses, offer continuing education and credit and noncredit outreach. The **Broadcasting and Media Innovations** division provides educational, informational, and cultural programming for people throughout Wisconsin via 27 Wisconsin Public Radio Stations and six Wisconsin Public Television Stations, in partnership with the state Educational Communications Board. The **Business and Manufacturing Extension** unit focuses on technical, managerial, and general business education and support to Wisconsin businesses, including the Small Business Development Centers at 13 UW campuses.

Each year more than one million Wisconsin residents participate in Extension programs, through various delivery methods, including workshops, one-on-one counseling, interactive networks, and correspondence study.

UW-Extension

http://www.uwex.edu/

For more information about UW-Extension, including course catalogs and information on how to contact Extension agents throughout the state, consult the Extension's website at: http://www.uwex.edu/.

Governance of the UW System

Board of Regents

The statutes vest primary responsibility for governance of the UW System in the **Board of Regents**, which consists of 18 members: 15 are appointed by the Governor and confirmed by the Senate for seven-year staggered terms; two are students who serve two-year terms, also appointed by the Governor; and two are *ex officio* members: the State Superintendent of Public Instruction and the president (or a designee) of the WTCS.

The Board of Regents is directed by law to enact policies and promulgate rules for governing the system, to plan for the future needs of the state for university education, to ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers, and to promote the widest degree of institutional autonomy within the system. Some of the specific powers of the board include:

- Appointing the president of the UW System.
- Appointing the chancellors and vice chancellors of the 13 universities, the 13 UW colleges, and the UW-Extension.
- Determining the educational programs to be offered.
- Determining admission policies.
- Granting degrees.

The president and chancellors of the UW System are charged with implementation of regent policies and administration of the institutions. Under statutory "shared governance," the faculty of each institution, subject to the responsibilities of the board, the president, and the chancellor, have responsibility for the immediate governance of the institution and actively participate in institutional policy development. The faculty has primary responsibility for academic and educational activities and faculty personnel matters. Academic staff have similar responsibilities regarding policies and procedures concerning academic staff members. Likewise, the students of each institution have primary responsibility for the formulation and review of policies concerning student life, services, and interests.

Admission

UW System admission policies are developed by the individual campuses, taking into account their mission and resources and guidance from the Board of Regents. In order to qualify for admission to a UW System institution as a freshman, an applicant must be a graduate of a recognized high school or complete the requirements for a high school equivalency certificate or diploma. All UW System institutions require a minimum of 17 high school credits in specified subjects.

Class rank is the primary determinant for admission to UW institutions. According to Regent policy, the UW System will admit all immediate Wisconsin high school graduates who ranked in the top quartile of their class, somewhere in the system. Most UW campuses establish automatic admission based on class rank or a combination of class rank and ACT/SAT scores if the applicant has satisfied the other basic requirements and has applied before a specified date. Additional applicants may be admitted upon further scrutiny as space permits. In addition, an applicant may seek consideration for special admission on the basis of minority group status,

UW System Application

http://apply.wisconsin.edu

physical or learning disability, veteran status, age group, or economic or educational disadvantage.

Online application to all UW System institutions may be found at: http://apply.wisconsin.edu.

Under Wisconsin's **Youth Options** program, public high school juniors and seniors who meet certain requirements may take post-secondary courses at a UW System or other post-secondary institution and receive high school and college credit. Subject to a limit on the maximum number of credits, the school board must pay for the course if it determines the course qualifies for high school credit and is not comparable to a course already offered in the school district. A student interested in participating should talk with staff at his or her high school and the post-secondary institution. For more information consult: http://dpi.wi.gov/youthoption/.

Tuition Rates

Tuition and segregated fee rates for UW System institutions for the 2010-11 academic year are set forth in the table below. The term "segregated fees" describes charges in addition to instructional fees assessed to all students for services, programs, and facilities that support the primary mission of the university.

UW System 2010-11 Tuition and Fee Schedule for Full Academic Year

	Annual Tuition and Fees		*Annual Tuition and Fees*
UW-Madison			
Resident		***Nonresident***	
Undergraduate	$8,983	Undergraduate	$24,233
Graduate	$10,937	Graduate	$25,104
Law School	$18,045	Law School	$37,582
Medical School	$24,017	Medical School	$34,754
Veterinary School	$18,135	Veterinary School	$25,819
UW-Milwaukee			
Resident		***Nonresident***	
Undergraduate	$8,151	Undergraduate	$17,880
Graduate	$10,447	Graduate	$23,734
UW Comprehensive Universities			
Resident		***Nonresident***	
Undergraduate	$6,479-7,910	Undergraduate	$12,676-14,933
Graduate	$7,906-9,156	Graduate	$15,953-18,085
UW-Colleges			
Resident	$4,544-4,755	***Nonresident***	$11,544-11,739

Source: UW Board of Regents.

UW System resident tuition and fees are substantially lower than resident tuition and fees at most other public universities of similar size and mission. In particular, undergraduate tuition at UW-Madison, the system's flagship campus, is second lowest among Big Ten institutions.

Nonresident Tuition

The assessment of resident versus nonresident tuition is based on s. 36.27 (2), Stats., and ch. UWS 20, Wis. Adm. Code. Nonresidents must pay the nonresident rate with the exception of Minnesota residents under the Minnesota-Wisconsin reciprocity agreement and residents of Menominee County, Michigan, enrolled in the UW Center-Marinette County. There are also reciprocal agreements for residents of Iron County, Wisconsin, enrolled at Gogebic Community College in Ironwood, Michi-

gan, and residents of Marinette County, Wisconsin, enrolled at Bay de Noc Community College in Escanaba, Michigan.

Generally, to be considered a resident for tuition purposes, an adult student must have been a resident of Wisconsin for the 12 months prior to the beginning of the semester or session for which the student registers. For a minor student, the same requirement applies to his or her parent or parents. In determining residency, the intent of the person to establish and maintain a permanent home in Wisconsin is determinative.

There are several exceptions to this requirement, including special provisions for migrant workers and their children, members of the Armed Forces stationed in Wisconsin and their families, persons who relocated to Wisconsin for employment purposes, and persons who are citizens of countries other than the United States, among others.

The chancellor of each institution is required to develop procedures for residency determinations and provide for appeals from classifications of nonresidency. The appeals process must include the right to a hearing. Residency decisions are subject to judicial review.

Reciprocity With Minnesota

The Minnesota-Wisconsin reciprocity agreement allows residents of the two states to attend public post-secondary institutions in the adjacent state without having to pay nonresident tuition. Participating students pay a reciprocal fee that cannot exceed the higher of two states' resident tuition rates. The agreement is negotiated and administered jointly by the Higher Educational Aids Board (HEAB) and the Minnesota Higher Educational Services Office. Wisconsin law specifies that the agreement is subject to the approval of the Joint Committee on Finance. While the current agreement does not contain a specific expiration date, it may be modified at any time upon mutual agreement of both states.

Transfer of Credits Between UW System Campuses

The UW System Undergraduate Transfer Policy (ACIS-6.0, Revised) sets general transfer policy for all UW System campuses and may be found at: http://www.uwsa.edu/acss/acis/ACIS_6.0rev.pdf. Two guiding principles of the transfer policy are: (1) academic policies should apply to transfer students in the same way they apply to students who are continuing at the same UW campus; and (2) a course that fulfills a general education requirement or an ethnic studies requirement at one UW campus should count as general education or ethnic studies at the transfer campus.

UW Colleges Guaranteed Transfer Program

UW System transfer policy provides for "UW Colleges Guaranteed Transfer," under which students are guaranteed admission to the transfer institution if they: (1) begin college at a UW Colleges campus; (2) submit a "Declaration of Intent to Participate" at any time prior to completing 30 credits at the UW Colleges campus; (3) earn the necessary credits (at the UW Colleges campus) for junior status at the UW campus they wish to attend; (4) have a 2.0 grade point average (GPA) (2.60 for UW-Madison); and (5) meet the same criteria for admission to specific majors or programs as continuing students. Additional requirements apply for guaranteed transfer to UW-Madison.

In addition, students who transfer with a UW associate degree are considered to have satisfied university, college, or school general education requirements at their transfer campus.

Most institutions require all students to complete a specific number of credits in residence at that institution in order to obtain a degree. Transfer students are responsible for fulfilling any such residency requirements.

Upon being admitted to an institution, transfer students receive a credit evaluation showing how transferred courses equate to courses at their new campus. They also receive information showing how their courses apply toward a particular program and degree requirements. Students have the right to appeal credit evaluations.

The Transfer Information System (TIS) is a UW System website that provides potential transfer students with current course equivalencies and other important transfer information. The address is at: http://www.uwsa.edu/tis.

Distance Education and Adult Learners

Distance Education Clearinghouse

http://www.uwex.edu/disted/

The UW System provides a wide variety of courses via distance education, which is instructional delivery that does not require the student to be physically present in the same location as the instructor. Historically, distance education meant correspondence study. Today, audio, video, and computer technologies are more common delivery modes.

The Distance Education Clearinghouse is a comprehensive and widely recognized website maintained by the UW-Extension that contains distance education information from Wisconsin, national, and international sources. It is located at: http://uwex.edu/disted/.

UW System Policy (ACIS-5.4, Revised) provides that UW System institutions are "encouraged to develop innovative programs to serve adult learners unable to attend on-campus during the week." The policy defines a "program" as a series of courses linked together that lead to a certificate or a degree. The UW System maintains a website devoted to providing information to assist adult learners returning to college or enrolling for the first time at: http://uwhelp.wisconsin.edu/students/adults.aspx. The site contains a complete listing of courses designed to be accessible by adult learners.

Auditing by Senior Citizens

UW System Regent Policy 90-9 provides that Wisconsin residents age 60 or older and disabled Wisconsin residents receiving disability benefits may audit classes without charge; residents under the age of 60 must pay 30% of the normal per credit academic fee to audit a class. Nonresidents are charged 50% of the normal per credit academic fee.

WTCS

Overview

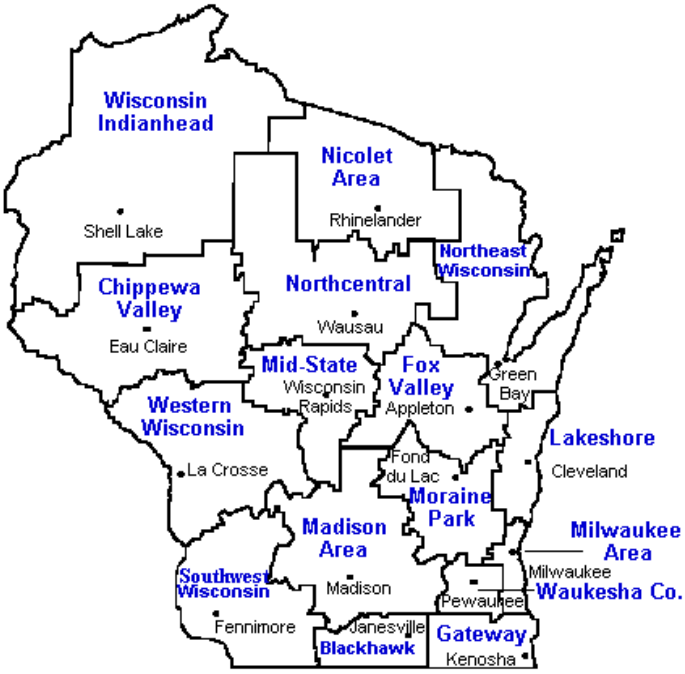
In 1911, Wisconsin became the first state to establish a system of state aid and support for industrial education. The current WTCS consists of 16 technical college districts which encompass every area of the state, with 48 main and satellite campuses that serve approximately 460,000 people annually.

State law establishes the principal purpose of the WTCS as providing occupational education and training and retraining programs and customized training and technical assistance to business and industry in order to foster economic development and

the expansion of employment opportunities. Additional purposes of the WTCS are to provide educational opportunities for high school age students; provide a collegiate transfer program; provide community services and avocational or self-enrichment activities; provide basic skills education; and provide education and services to minorities, women, and handicapped or disadvantaged individuals to enable them to participate in the workforce.

Some of the instructional divisions in which courses are offered in the WTCS include agriculture, business, television, graphics, home economics, industrial services, and health, technical, and general education.

Wisconsin Technical College Districts and Main Campuses



Source: WTCS.

Governance and Administration

The **WTCS Board** is the coordinating agency for the technical college system. It consists of 13 members: an employer representative; an employee representative; a farmer representative; the State Superintendent of Public Instruction or a designee; the Secretary of the Department of Workforce Development or a designee; the president of the UW Board of Regents or a designee from among the Board of Regents; six public members; and one technical college student.

The board establishes statewide policies and standards for the educational programs and services provided by the 16 technical college districts that cover the state. The board supervises district operations through reporting and audit requirements and consultation, coordination, and support services. It sets standards for building new schools and adding to current facilities. It also provides assistance to districts in meeting the needs of target groups, including services for the disadvantaged, the disabled, women, dislocated workers, the incarcerated, and minorities.

Each technical college district is headed by a **district board** of nine members, which includes two employers and two employees who are representative of the various businesses and industries in the district; a school district administrator; an elected

state or local official; and three additional members. The district board members are appointed by district appointment committees, which consist of county board chairs in 13 districts and school board presidents in the other three districts.

The district boards are responsible for the direct operation of their respective schools and programs. They are empowered to levy property taxes and develop an annual budget, provide for facilities and equipment, hire a district director, staff, and teachers, determine programs to be offered, with board approval, admit students, and provide financial aid, guidance, and job placement services.

Educational Programs

The WTCS offers several types of educational programs and degrees.

An **associate degree** is a two-year program, which combines technical skills with general education, such as math, communications, and social sciences.

One- and two-year technical diploma programs focus on hands-on learning of occupational skills and can take as little as one or two years to complete, depending on the particular program.

Short-term (less than one year) diploma programs focus on one particular occupation and can take less than a year to complete.

Certificates are designed to provide students with streamlined education to enhance their jobs skills.

The **liberal arts** program provides the first two years of a four-year baccalaureate college education. Credits readily transfer to four-year institutions. The Liberal Arts program is available only at Milwaukee Area Technical College, Madison Area Technical College (also called Madison College), and Nicolet Area Technical College.

Apprentice-related instruction is a combination of on-the-job training and classroom-related instruction in which workers learn the practical and theoretical aspects of a highly skilled occupation from two to five years. There are hundreds of apprenticeship programs available in construction, service, and industrial occupations.

Advanced technical certificates are used in response to employers' needs for highly skilled employees, offered as a small block of credits (9-12), with at least six of these credits having advanced content beyond the associate degree.

Adult secondary education consists of high school level instruction for adults (grades 9-12). Students are typically working toward a high school credential such as the national General Educational Development (GED) test or the Wisconsin High School Equivalency Diploma (HSED). Technical colleges may also offer specific high school level courses to individuals who may need a few credits to complete their high school diploma.

Family literacy programs are designed to help parents become better learners while promoting their children's learning at home and achievement at school.

English as a second language programs train people whose native or dominant language is not English to read, write, and communicate in English.

Customized labor training is offered in partnership with employers. The training is delivered in various formats including:

- On-site training at the company or business during regular hours or various shifts.
- Training which uses the distance learning network and provides two-way audio and visual communication.
- Training through interactive computer/video or on the Internet.

The WTCS also offers part-time programs that are comprised of vocational-adult, basic skills education, and district and community services, which include avocational or hobby courses and activities offered with community groups.

Admission and Tuition

State law provides that, in general, every person who meets certain age requirements and who is a resident of Wisconsin is eligible to attend a technical college. Nonresidents may attend if the district board of attendance approves the enrollment. A district board may give priority in admitting students to residents of the district.

WTCS Website

http://www.witechcolleges.org/

The 2010-11 tuition costs are the same for each of the 16 technical colleges. For Wisconsin residents, degree, diploma, and certificate programs cost $106.00 per credit; collegiate transfer programs are $142.20 per credit. For out-of-state residents, degree, diploma, and certificate programs are $161.00 per credit; liberal arts transfer programs are $213.30 per credit.

Transfer of WTCS Credits to UW System

Students attending the WTCS Collegiate Transfer program at Madison, Milwaukee, or Nicolet Area Technical College may generally transfer up to 72 credits to any UW campus. For students taking occupational courses, a maximum of 15 credits from approved general education courses in social science, behavioral science, and communications plus a total of two courses in math or natural science may transfer. Also, UW and WTCS campuses have over 400 transfer agreements that permit WTCS students enrolled in specific associate degree programs to transfer additional occupational credit.

More information about the WTCS can be found on its website located at: http://www.witechcolleges.org/.

Private Colleges and Universities

Locations and Overview

Wisconsin has 20 private, nonprofit, accredited degree-granting colleges and universities. As shown on the map below, the institutions and their locations are as follows: Alverno College, Cardinal Stritch University, Milwaukee Institute of Art & Design, Milwaukee School of Engineering, Mount Mary College, Wisconsin Lutheran College and Marquette University in Milwaukee; Beloit College, Beloit; Carroll College, Waukesha; Carthage College, Kenosha; Concordia University Wisconsin, Mequon; Edgewood College, Madison; Lakeland College, Sheboygan; Lawrence University, Appleton; Marian University, Fond du Lac; Northland College, Ashland; Ripon College, Ripon; St. Norbert College, De Pere; Silver Lake College, Manitowoc; and Viterbo University, La Crosse.

Source: Wisconsin Association of Independent Colleges and Universities (WAICU).

Each institution has a distinct mission and emphasis such as engineering, art and design, elementary and secondary education, health care, international education, or environmental liberal arts. Many of the institutions are religiously affiliated but accept students regardless of creed. A comparative review of private institutions, as well as links to the websites of each institution, can be found at: http://wisconsinmentor.org/Select_a_School/Comparative_View.aspx.

Private colleges and universities receive no direct funding from the state. They are governed by private boards of trustees. All private colleges and universities in Wisconsin are accredited by the North Central Association of Colleges and Schools.

Enrollment and Costs

The 20 private colleges and universities of Wisconsin awarded 26% of the bachelor's degrees in the state, including 29% of engineering, 30% of computer science, and 33% of business degrees. They produced 51% of all the state's new graduates with four-year nursing degrees.

The average price for tuition and fees at a Wisconsin private college or university during the 2007-08 academic year was $22,033, and the average freshman financial aid package was $16,797, leaving average net tuition costs of $5,236. (Additional costs for room and board are roughly comparable in the public and private sectors.) Grants comprised 70% of the average private aid package. More than 90% of the full-time undergraduates at private colleges in Wisconsin receive financial aid, the majority of which is provided by the institutions themselves. In 2008-09, the Wisconsin Tuition Grant Program provided $26.1 million in means-tested financial aid for low-income Wisconsin students who attend private colleges, with an average grant of approximately $2,500.

WAICU

Private colleges and universities in Wisconsin have organized themselves into the WAICU. WAICU is recognized in state statutes as the official representative of Wisconsin's private colleges and universities (e.g., ss. 14.57, 15.67 (1) (b), and 560.27 (2) (a), Stats.). The president of WAICU or his or her designee, with the president of the UW System and the state director of the WTCS, is a member of the executive committee of the PK-16 Leadership Council, the Educational Communications Board, the Wisconsin Technology Council, the College Savings Board (EdVest), the Wisconsin International Trade Council, and Forward Wisconsin, Inc.

Admission

Each private institution sets its own admission policies. The admission policies for private colleges and universities tend to be somewhat more individualized than admission policies of the UW System. Generally, admissions are determined by a committee which considers a potential student's family situation, a written essay, a portfolio of the student's high school work, volunteer and job experience, and possibly notes on an interview with the student.

WisconsinMentor is an on-line resource maintained by the WAICU to help students and their families select a private college or university and apply for admission. It contains information and admissions applications for all independent degree-granting colleges and universities within Wisconsin. The site is located at: http://www.wisconsinmentor.org/.

Tribal Colleges

There are two tribal colleges in Wisconsin—The College of Menominee Nation, located in Keshena, http://www.menominee.edu/, and the Lac Courtes Oreilles Ojibwa Community College in Hayward, http://www.lco.edu/. Each college is operated as a nonprofit institution by the respective tribe, and both offer two-year associate degrees and less-than-two-year certificates, in a variety of fields. The colleges have an open enrollment policy (nontribal members may enroll). Both tribal colleges are accredited by the North Central Association of Colleges and Schools, Commission on Institutions of Higher Education.

In 2008-09, the total enrollment at the College of Menominee Nation was 512, 81% of whom are Native American. The programs with the largest enrollments were education, business, natural resources, public administration, and social services.

The total enrollment at the Lac Courte Oreilles Ojibwa Community College averages approximately 550 students per year. The most popular areas of study at the college were area, ethnic, cultural, and gender studies, health professions and related clinical sciences, business, and education.

Proprietary Schools

Overview; Training Offered

A proprietary school is generally any entity, including an individual, business, or institution, which charges for post-secondary education or training and which is for-profit.

There are about 120 proprietary schools in Wisconsin which train people in a great variety of occupations ranging from taxidermist and auto mechanic to systems engineer and massage therapist. The majority of the schools are for-profit businesses owned by an individual or by a corporation. The schools vary greatly in size but most provide small classes and individualized instruction.

Some proprietary schools issue certificates of completion; others issue associate's or bachelor's degrees. Credits earned from proprietary schools generally do not transfer to degree-granting schools.

Regulation

The Educational Approval Board (EAB) regulates for-profit post-secondary schools (except cosmetology) and in-state nonprofit post-secondary institutions incorporated after January 1992. Most private post-secondary schools serving Wisconsin students, whether they are located within or outside the state, are required to obtain the EAB's approval prior to advertising or providing training. Training which leads to employment or ongoing education is approved. The following types of training are exempt from EAB oversight: religious or strictly sectarian training; professional development; training provided for a business with limited access to nonemployees; and employers training their own employees.

The State of Wisconsin does not accredit schools. Accreditation is an optional nongovernmental, voluntary peer review process. A school can choose to go through a self-study and then request an accrediting agency to send a team of experts to visit the school. If the team finds that the school is meeting the standards of the accrediting agency, the accrediting agency awards the label "accredited."

A listing of all schools which have been approved by the EAB is available on the EAB's website at: http://eab.state.wi.us/. The site also contains information about submitting complaints about a school and what to do if a proprietary school closes. Some proprietary schools in Wisconsin are eligible to participate in the federal financial aid programs. Schools should be contacted directly to determine whether financial aid is available.

Financing the Costs of Higher Education*

HEAB is responsible for the management and oversight of the state's student financial aid system for Wisconsin residents attending institutions of higher education. HEAB administers programs of student financial aid, including grant and loan programs, and the Minnesota-Wisconsin tuition reciprocity agreement.

Academic Excellence Scholarships

Academic Excellence Scholarships are awarded to Wisconsin high school seniors who have the highest grade point average in each public and private high school throughout Wisconsin. To resolve cases where there are ties among students' GPAs, a high school should have a written policy stating the tie-breakers to be used, and the order in which they will be used. Typical tie-breakers are ACT scores, or the number of honors courses students have taken.

The number of scholarships each high school is eligible for is based on total student enrollment. Schools with 80 through 499 students enrolled in grades 9-12 are allocated one scholarship, schools with 500 through 999 students in grades 9-12 are allocated two scholarships, and so on.

In order to receive a scholarship, a student must be enrolled on a full-time basis by September 30 of the academic year following the academic year in which he or she was designated as a scholar, at a participating UW System, WTCS school, or independent college or university in the state. The value of the scholarship is $2,250 per year, to be applied towards tuition. Half of the scholarship is funded by the state, while the other half is matched by the institution.

Grants

The **Lawton Undergraduate Minority Retention Grant** is administered by the UW System. It is available to American citizens or permanent residents eligible for financial aid and who demonstrate financial need. Students must be Wisconsin or Minnesota residents holding tuition reciprocity and be members of a statutorily underrepresented group (African American, Hispanic, American Indian/Alaskan Native, or Southeast Asian students of Vietnamese, Cambodian, Laotian, or Hmong descent) who entered the United States after December 31, 1975. The maximum grant award is $2,500 per year.

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*This section discusses only state-funded financial aid programs. Other financial aid may be available from the federal government, individual higher educational institutions, or private organizations.

For more information about financial aid available to post-secondary students in Wisconsin, consult HEAB's website located at: http://heab.state.wi.us/.

The **Talent Incentive Program (TIP) Grant** program provides grants of $250 to $1,800 to the most financially needy and educationally disadvantaged resident students attending colleges and universities in the state. First-time freshmen students are nominated for the TIP Grant by the school financial aid offices or by counselors of the Wisconsin Educational Opportunities program. To continue to receive the TIP Grant, students must be enrolled for consecutive terms and continue to show financial need. Eligibility cannot exceed 10 semesters.

The **Wisconsin Higher Education Grant** program provides grants to undergraduate residents enrolled at least half-time in degree or certificate programs at UW System, WTCS, and tribal institutions. Awards are based on financial need and range from $250 to $3,000 per year. Eligibility cannot exceed 10 semesters.

The **Wisconsin Tuition Grant** program provides grants to undergraduate residents enrolled at least half-time in degree or certificate programs at nonprofit, independent colleges or universities in Wisconsin. Awards are based on financial need and amounts are partially calculated based on the portion of tuition in excess of UW-Madison tuition. Eligibility cannot exceed 10 semesters.

The **Hearing and Visually Handicapped Student Grant** program provides funding for residents enrolled at least half-time at an in-state or eligible out-of-state public or independent institution, who show financial need, and have a severe or profound hearing or visual impairment. Students are eligible to receive from $250 to $1,800 per year for up to 10 semesters.

The **Indian Student Assistance Grant** program provides grants of $250 to $1,100 to residents who are at least 25% Native American and are enrolled in degree or certificate programs at UW System, WTCS, independent colleges and universities, or proprietary institutions in Wisconsin. Awards are based on financial need with a limit of 10 semesters of eligibility.

The **Minority Undergraduate Retention Grant** program provides grants from $250 to $2,500 to resident minority undergraduates, excluding first-year students, enrolled at least half-time in independent, WTCS, or tribal institutions. “Minority student” includes a student who is an African American; American Indian; Hispanic; or Southeast Asian from Laos, Cambodia, or Vietnam. Awards are based on financial need and eligibility is limited to eight semesters or 12 quarters.

The **Wisconsin Covenant Scholars Grant** was established in 2006 with the intent to inspire young people to plan early for a successful high-school career that will ultimately lead to higher education. Wisconsin eighth graders are invited to sign the Wisconsin Covenant Pledge, a promise that they will:

- Earn a high-school diploma.
- Maintain at least a “B” average in high school.
- Complete the classes they need to prepare them for higher education.
- Demonstrate good citizenship and participate in their community.
- Apply for state and federal financial aid in a timely manner.
- Take the necessary steps to gain admission to a UW System institution, a Wisconsin Technical College, and/or a Wisconsin private college or university.

In return for meeting these goals and keeping the pledge, students who are Wisconsin residents may receive a grant if they are enrolled at least half-time and registered as a freshman, sophomore, junior, or senior in a public or private, non-profit, accredited institution of higher education, or in a tribally controlled college, in Wisconsin.

Eligible students may receive grants for up to 10 semesters of undergraduate education provided they meet acceptable academic standards as prescribed by their higher education institution.

Wisconsin Covenant grants are based on financial need. For 2010, Wisconsin Covenant Scholars grants ranged from $250 to $1,500, depending on the average family income of the applicant. Additional foundation grants were awarded to certain applicants with average family incomes of less than $25,000.

Loans

The **Minority Teacher Loan** program provides loans to resident minority undergraduate juniors or seniors who are enrolled full-time in programs leading to teacher licensure at an independent or UW System institution. Loans range from $250 to $2,500 per year, with an overall maximum of $5,000. A minority student is either an African American; American Indian; Hispanic; or Southeast Asian from Laos, Cambodia, or Vietnam. The recipient must agree to teach in a Wisconsin school district with at least 29% minority enrollment or a district participating in the interdistrict pupil transfer (Chapter 220) program. For each year of such teaching, 25% of the loan is forgiven. If the student does not teach in an eligible district, the loan must be repaid at an interest rate of 5%.

The **Nursing Student Loan** program provides loans to residents who are enrolled at an eligible in-state institution that prepares them to be licensed as either registered nurses (RNs) or licensed practical nurses (LPNs) or to work as a nurse educator. The maximum annual award is $3,000 with an overall maximum of $15,000. For each of the first two years the recipient works as a nurse or nurse educator, 25% of the loan is forgiven. The balance remaining after forgiveness must be repaid at an interest rate not to exceed 5%. If the recipient does not work as a nurse or a nurse educator, the loan must be repaid at an interest rate not to exceed 5%.

The **Teacher Education Loan** program provides loans to residents enrolled in the teacher education programs at the Milwaukee Teacher Education Center. The loan amount ranges from $250 to $3,500 per year. A recipient must agree to teach in the Milwaukee Public Schools. For each year of teaching, 50% of the loan is forgiven. If the student does not teach in the eligible district, the loan must be repaid at an interest rate of 5%.

The **Teacher of the Visually Impaired Loan** program provides loans to residents enrolled in a program that prepares them to be licensed as teachers of the visually impaired or as orientation and mobility instructors. The maximum award per year is $10,000 with an overall maximum of $40,000. A recipient must agree to work as a licensed teacher or an orientation or mobility instructor in Wisconsin. For each of the first two years the student teaches and meets the eligibility criteria, 25% of the loan is forgiven. For the third year, 50% is forgiven. If the student does not teach and meet the eligibility criteria, the loan must be repaid at an interest rate of 5%.

The **Wisconsin Health Professions Loan Assistance** program provides loan repayment assistance to health and dental professionals who agree to work in rural and underserved communities. Generally, physicians and dentists are eligible for up to $50,000 in repayment assistance. Other health and dental professionals (physician assistants, nurse practitioners, certified nurse midwives, and dental hygienists) are eligible for up to $25,000 in repayment assistance. Following 2009 Wisconsin

Act 190, a physician who agrees to work in a qualifying rural area is eligible for up to $100,000 in repayment assistance. Under the program, repayment assistance is payable over three years of qualifying service, with 40% of the repayment award provided in each of the first two years and 20% of the repayment award provided in the third year.

The EdVest Program

The EdVest program is administered by the Office of the State Treasurer and managed by Wells Fargo Funds Management, LLC. EdVest is designed to encourage parents and others to save money for a child's future post-secondary education expenses.

EdVest Program

http://www.wellsfargoadvantagefunds.com/wfweb/wf/ev/index.jsp

Under EdVest, any person may open an account on behalf of a designated beneficiary. Contributions are placed in a trust fund established by the State of Wisconsin and are directed into special investment portfolios designed and managed specifically for the program. Earnings in an account grow federal and state tax-free in Wisconsin, as well as potentially tax-free in other states, until the time the beneficiary is ready to go to college. The funds are then available to be used to pay for qualified higher education expenses at any eligible school—including two- and four-year colleges, technical, vocational, and graduate schools.

Qualified withdrawals from EdVest are federal and potentially state tax-free. Wisconsin residents owe no state income tax on qualified withdrawals. Contributions of up to $3,000 per dependent, grandchild, great-grandchild, niece, or nephew, per tax year, are deductible from Wisconsin taxable income.

For more information, consult the EdVest website at: http://www.wellsfargoadvantagefunds.com/wfweb/wf/ev/index.jsp.

Higher Education Tax Deduction

A Wisconsin taxpayer may deduct from his or her taxable income allowable higher education expenses of up to $3,000 per student per year for tuition expenses incurred by the taxpayer or a taxpayer's dependent. Allowable expenses include tuition paid to any university, college, technical college, or a school approved by the EAB that is located in Wisconsin. The deduction also applies to tuition paid by a Wisconsin resident to attend a Minnesota school under the Minnesota-Wisconsin reciprocity program. The maximum amount of the deduction phases out as income increases and is eliminated when income exceeds $60,000 for single taxpayers and $100,000 for married taxpayers filing joint returns.

EdVest Tax Deduction

A qualified taxpayer may deduct from his or her taxable income up to $3,000 per year per beneficiary for amounts paid into an account in the EdVest program if the account beneficiary is the taxpayer, or taxpayer's dependent child, the claimant's grandchild, great-grandchild, niece, or nephew.

Student Loan Interest Deduction

An individual may deduct from his or her taxable income up to $2,500 for interest paid on student loans during the first 60 months in which interest payments are required. The deduction is phased out for single filers with taxable income between $40,000 and $55,000 and for joint filers with taxable income between $60,000 and $75,000.

GI Bill

For information regarding tuition benefits under the GI Bill, please refer to Chapter T, *Veterans and Military Affairs*.

Additional References

1. At the beginning of each legislative session, the ***Legislative Fiscal Bureau*** prepares Informational Papers that describe various state programs. Among the Informational Papers prepared for the 2009-10 Legislative Session are the following titles: *Wisconsin Technical College System* (Paper #35); *University of Wisconsin System Overview* (Paper #36); *University of Wisconsin Tuition* (Paper #37); and *Student Financial Aid* (Paper #38). These papers may be found online at: http://www.legis.state.wi.us/lfb/informationalpapers/info.html.

2. The Legislative Audit Bureau (LAB) published several audits and letter reports pertaining to post-secondary education in recent years. These reports are described below:

   a. **Medical College of Wisconsin** (letter report, September 2007), http://www.legis.wisconsin.gov/lab/reports/07-MCoWLtrRpt.pdf.

   LAB completed a limited-scope review for fiscal year (FY) 2004-05 and FY 2005-06, related to the medical education contract between the state and the Medical College. LAB found the Medical College was in compliance with statutory requirements related to state tuition aid and requirements related to state funds provided for a family practice residency program.

   b. **Marquette School of Dental Education Contract** (letter report, August 2007), http://www.legis.wisconsin.gov/lab/reports/07_DentalEducationContract_ltr.pdf.

   In administering both a dental education contract that provides state tuition aid for Wisconsin residents and a grant to provide dental services to low-income individuals at clinics throughout Wisconsin, LAB found that Marquette University complied with contract and statutory requirements in FY 2004-05 and FY 2005-06.

   c. **Technical Colleges Personnel Policies and Practices** (report 07-2), http://www.legis.wisconsin.gov/lab/reports/07-2Full.pdf.

   The 16 technical college districts are local units of government that establish their own personnel policies. LAB found that, in March 2006, they employed 7,181 full- and part-time faculty and 5,664 support staff and administrators. Most district costs are for personnel. Full-time faculty earned an average of $74,598 in FY 2004-05, in part because of compensation for work exceeding a full-time workload of 32 to 40 hours per week. Policies regarding leave use vary by district.

   d. **UW System Personnel Policies and Practices** (report 06-12), http://www.legis.wisconsin.gov/lab/reports/06-12Full.pdf.

   LAB conducted this evaluation at the request of the Legislature and the president of the UW System. In 2005, UW System's unclassified staff—and particularly faculty—reported using considerably less sick leave than other UW System employees. At retirement, they also converted more accumulated sick leave to fund their health insurance premiums. Policy changes intended to limit

the job protections offered to "at will" employees require continued scrutiny, and more complete reporting is needed on staff with the position title of consultant.

e. **UW System Staffing** (report 04-10), http://www.legis.wisconsin.gov/lab/reports/04-10Full.pdf.

In March 2004, 1/4 of UW System's 31,971.8 full-time equivalent employees had administrative duties. Reductions in GPR-funded positions have nearly been offset by growth in program revenue-funded positions, and staff pay increases have generally been larger than in other state agencies. LAB included recommendations for UW System to streamline its position reporting and provide specific proposals to reduce administrative expenditures and increase operating efficiencies.

3. Additional information about the ***UW System*** may be found on its website at: http://www.uwsa.edu. A map with links to the individual website of each UW System campus may be found at: http://www.wisconsin.edu/campuses/.

4. Additional information about the ***WTCS*** may be found on its website at: http://www.witechcolleges.com/.

5. Additional information about private colleges and universities in Wisconsin may be found on the ***WisconsinMentor*** website at: http://www.wisconsinmentor.org/. Links to every private college and university in Wisconsin may be found at: http://wisconsinmentor.org/Select_a_School/Comparative_View.aspx.

6. Additional information about proprietary schools in Wisconsin can be found on the ***EAB's*** website at: http://eab.state.wi.us/. A directory of all approved for-profit schools in Wisconsin may be found at: http://eab.state.wi.us/resources/schoolsprograms.asp.

7. Additional information about financial aid programs may be found on the ***HEAB*** website at: http://heab.state.wi.us/.

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UF-1 **Major Features of Environmental Protection Programs**

F-2 **Major Features of State Environmental Programs**

F-15 **Glossary of Terms and Abbreviations**

F-15 **Additional References**

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Chapter F

Environmental Protection

Though elements of Wisconsin's environmental protection programs and laws existed prior to Earth Day in April 1970, that event and subsequent publicity caused environmental protection to become a generally recognized function of the state and federal government. There is no single description of what constitutes an environmental protection program. These programs generally are designed to protect or improve the quality of the environment, that is, air, land, and water resources, in order to reduce or eliminate harmful effects on human health, plants, other animals, or property. Since there is some ambiguity in this classification, the reader should also consult chapters in this book on natural resources and agriculture for information on other programs that could be classified as "environmental protection" in those other issue areas.

This chapter is divided into two main parts. The **first part** identifies some of the major features of environmental protection programs in Wisconsin. The **second part** briefly describes a number of major state environmental programs.

Major Features of Environmental Protection Programs

Wisconsin's environmental protection programs have developed incrementally over the last 30 or so years in response to specific problems or issues. In some cases, such as the Groundwater Protection Law, initiative for the program arose at the state level. In other cases, such as the water pollution discharge elimination system (WPDES), the state program was a response to federal mandates.

This incremental program development is a major reason for the wide variation in the design and implementation of the state's environmental protection programs. These variations include the following:

- The focus of the programs vary, some dealing with a particular medium, i.e., air, water, or land; some with a particular industry, e.g., the metallic or nonmetallic mining industry; and some with particular materials, e.g., ozone forming refrigerants.
- The programs vary in the methods used to achieve the objectives, including the use of regulations, education, technical assistance, planning, or financial assistance, or a combination of these measures.
- The division of responsibility for design and implementation of the programs varies by program. In some cases, a state agency is responsible for the entire administration of the entire program. In other programs, local governments implement the programs based on state standards and using state technical and financial assistance.
- A number of agencies, in addition to the Department of Natural Resources (DNR), are responsible for administering Wisconsin's environmental protection programs. These agencies include the Departments of Agriculture, Trade and Consumer Protection (DATCP), Health Services (DHS), and Commerce, and the Public Service Commission (PSC).
- In situations where there is a national environmental program created by federal law, the federal program usually does the following:

    1. Creates minimum national standards with which the state program must comply.
    2. Delegates planning and program administration responsibilities to the states while retaining oversight over the state programs and the ability to enforce the federal standards.
    3. Provides significant financial support of the state agency programs.

One issue that may be addressed by the state Legislature in implementing a federal environmental program with minimum standards is whether or not any state regulatory standards established under the state counterpart to the federal program may be more stringent than the federal standards.

Examples of major federal laws include the Clean Water Act (CWA), the Clean Air Act (CAA), the Resource Conservation and Recovery Act, and the Safe Drinking Water Act.

Major Features of State Environmental Programs

Air

Clean Air Act Permits

Much of the state's air pollution program is designed to implement the federal CAA. The U.S. Environmental Protection Agency (EPA) has established national ambient air quality standards for six principal pollutants: carbon monoxide (CO), nitrogen dioxide (NO_2), ozone (O_3), particulate matter, sulfur dioxide (SO_2), and lead. For a particular air pollutant, the EPA identifies regions within each state where the standard is not met based upon ambient air quality monitoring data collected by the state. These areas are called "nonattainment areas." (See the glossary at the end of this chapter for the formal definition of a nonattainment area.) The remainder of the state is identified as an "attainment area" for that pollutant.

Under the CAA, nonattainment designation results in the state being required to prepare a “state implementation plan” or SIP that demonstrates how the state will attain and maintain this standard.

Ozone

In April 2004, EPA designated the following counties in Wisconsin as nonattainment areas for the eight-hour ozone standard: “basic” nonattainment areas–Door, Kewaunee, and Manitowoc; and “moderate” nonattainment areas–Sheboygan, Washington, Ozaukee, Waukesha, Milwaukee, Racine, and Kenosha. Subsequently, in May 2008, EPA redesignated Kewaunee County to attainment of the 1997 eight-hour ozone standard.

DNR submitted its ozone plan to EPA in September 2009 along with a request to redesignate all of the remaining nonattainment areas to attainment of the 1997 eight-hour ozone standard. On April 27, 2010, EPA redesignated Door and Manitowoc Counties to attainment. However, EPA has not acted on the redesignation request for the moderate nonattainment areas nor have they acted on the attainment plan. EPA has indicated that there may be deficiencies in several of the state’s rules to control volatile organic compound emissions from certain industrial sources. These deficiencies are delaying EPA action on the redesignation request and the attainment plan.

In March 2008, the EPA promulgated a new, more restrictive, eight-hour ozone standard. EPA was asked to reconsider the standard, which they are doing. On January 6, 2010, EPA proposed a range for the new standard that is even more restrictive than the 2008 standard. According to their schedule, EPA will finalize the new standard on August 31, 2010, finalize nonattainment designations in August 2011, and require attainment plans by December 2013. Attainment dates may be as early as 2014, but the attainment dates will vary based on the severity of the ozone problem.

Fine-Particles

In September 2006, the EPA tightened its national ambient air quality standard for fine-particles measured over 24 hours, while retaining its 1997 annual fine-particle standard. These actions trigger the process in the CAA for the designation of nonattainment areas. In December 2009, EPA designated a three-county area in Wisconsin—Milwaukee, Racine, and Waukesha Counties as a nonattainment area for the 2006 24-hour, fine-particle standard. Attainment plans are due to EPA in December 2012.

Visibility Protection

In 1999, the EPA issued a regulation under the CAA to improve the visibility in 156 national parks and wilderness areas. Part of this regulation requires states, including Wisconsin, to impose the requirement of “best available retrofit technology” (BART) on large existing sources of SO_2, nitrogen oxide ($NO_{x)}$, and particulate matter in the state. DNR staff have identified eight large power plants and as many as five large industrial facilities that are subject to this requirement under EPA's criteria. Additionally, the state must prepare a plan to demonstrate how emission reductions in Wisconsin will contribute to “reasonable progress” toward the national visibility goals.

DNR is presently engaged in data collection, technical evaluation, and modeling as the basis for control strategies to bring Wisconsin's ozone nonattainment areas into

attainment and to control regional haze. These plans will incorporate planning and control strategies based on a combination of the following four levels of effort:

- Nationwide programs, such as EPA's NO_x emission limits for nonroad diesel engines and NO_x reasonably available control technology requirements for major stationary sources;
- Large regional programs, such as EPA's Clean Air Interstate Rule (CAIR) which established NO_x and SO_2 emission limits for power plants in 28 eastern states;
- Regional agreements; and, if needed,
- State plans and controls, including the mercury-multipollutant rule described above.

The DNR was required to submit its regional haze plan, including final BART requirements and a "reasonable progress" plan to EPA by December 2007. According to DNR staff, the department will likely submit its regional haze plan to EPA by December 2010.

Clean Air Interstate Rule

The CAA prohibits emissions in one state from significantly contributing to nonattainment or interfering with maintenance of an air quality standard in a downwind state. In March 2005, EPA finalized the CAIR to limit such impacts on ozone or fine-particle nonattainment areas in the Eastern United States. The rule regulated SO_2 and NO_x emissions from power plants in 28 states (including Wisconsin) and the District of Columbia.

However, a December 2008 court ruling remanded the CAIR to EPA and directed EPA to develop a replacement rule. In July 2010, EPA proposed a replacement rule, referred to as the Transport Rule. The proposed Transport Rule again targets power plants in the Eastern United States and includes three additional states not originally included in CAIR. EPA expects to finalize the Transport Rule in June 2011.

Sulfur Dioxide

In June 2010, EPA revised the SO_2 ambient air quality standard to make it more protective of public health. The new standard is based on one-hour average SO_2 concentrations. Based on the most recent SO_2 monitoring data, the monitor in Rhinelander is measuring violations of the new standard. However, EPA will not finalize SO_2 nonattainment area designations until June 2012.

Unlike ozone and fine-particles, SO_2 problems usually result from local sources, which is the case in Rhinelander. DNR will work with the local sources in Rhinelander to develop a control program that will bring the area into attainment.

Nitrogen Dioxide

In January 2010, EPA revised a new NO_2 ambient air quality standard. All of the current NO_2 monitoring in the state indicates that we are attaining the new standard. However, EPA is requiring NO_2 monitoring next to major roadways in the state. After enough near-roadway NO_2 monitoring data are compiled, EPA will designate NO_2 nonattainment areas.

State statutes direct DNR to establish state ambient air quality standards, new source performance standards for stationary sources, emission standards for hazardous air pollutants, and other types of emission limitations. In general, these standards and limitations must be similar to and not more restrictive than the corresponding federal standard or guidance specified by the EPA. Acting under its state authority, the DNR has gone beyond federal standards by promulgating state limitations for certain hazardous air pollutants not regulated by the EPA as hazardous air pollutants.

2003 Wisconsin Act 118 prohibits the DNR from submitting a control measure or strategy as part of a SIP unless the DNR has promulgated the measure or strategy as a rule. In addition, this Act requires the DNR to submit a report to the environment committees in the Legislature that describes the proposed SIP and contains all the supporting documents that the DNR intends to submit with the plan. This report must be submitted to the committees at least 60 days before the DNR submits the plan to EPA. If a chairperson of the committee receiving the report submits written comments on the report to the DNR within 30 days after receiving the report, the Secretary of DNR must respond to the chairperson within 15 days of receipt of the comments.

In 2004, the DNR established requirements to reduce mercury emissions from major electric utilities by 40% by January 1, 2010, and by 80% by January 1, 2015, beneath their baseline amounts. These requirements also set procedures for calculating annual mercury emissions from other large stationary sources and direct new or modified stationary sources of mercury emissions to install “best available control technology” for these emissions.

Following expiration of the Legislature’s review period, the DNR subsequently revised its mercury rule in late 2008. The revisions have been referred to as the mercury-multipollutant rule. Among other features, the revisions require large electric generating units to achieve a 90% mercury reduction or the specified limit on mercury emissions. Owners and operators of these units have an option of meeting these requirements by January 1, 2015, or six years later, if the owner or operator achieves specified reductions of NO_x and SO_2 emissions by January 1, 2015.

The CAA also requires states to implement an air pollution permit program for large stationary sources. Wisconsin statutes apply the Wisconsin air pollution permit program to smaller sources of air pollutants. As a result of an internal review process and directives in 2003 Wisconsin Act 118 and 2005 Wisconsin Act 28, the DNR has streamlined its air pollution permit program, especially for smaller sources or sources with low actual or potential emissions. The Act also directs the Department of Administration (DOA) to prepare a report that identifies major regulatory barriers to the growth of the manufacturing sector in Wisconsin.

Water

Clean Water Act Permits

The state has established a number of regulatory, technical assistance, and financial assistance programs to address different types of water pollution. Many of these programs can be distinguished by whether they address “point sources” or “nonpoint sources” of water pollution. Point sources are discrete and discernible; nonpoint sources are diffuse.

State statutes direct the DNR to promulgate effluent limitations, standards of performance for new sources, toxic substances effluent standards or prohibitions, and pretreatment standards for all classes of **point sources** for which the EPA has

established such standards. In general, these state standards and associated requirements, such as for monitoring, must comply with and not exceed EPA's requirements under the CWA. Effluent limitations based on water quality standards required under CWA and set by the department may be more stringent.

Under CWA, no person may discharge pollutants into navigable waters of the United States unless the discharge is done under a permit. The DNR administers the state version of this permit program, WPDES permits, in accord with applicable federal requirements. These permits apply not only to discharges from industrial facilities and public wastewater treatment facilities but also to discharges from large animal feeding operations.

The state **Clean Water Fund Program** provides financial assistance, primarily in the form of loans, to municipalities for planning, designing, and constructing municipal wastewater treatment and other water pollution abatement facilities. The program is funded by both state and federal initiatives.

Working under their respective authorities, DNR and DATCP have established a number of programs to address polluted runoff from **nonpoint sources** of water pollution. These programs address a number of types of polluted runoff from urban and rural land use activities including storm water management, construction site erosion control, and agricultural "best management practices." The programs include a combination of performance standards and prohibitions, technical assistance, permitting, and cost-sharing grants.

In addition to the above programs, the state has established programs that relate to the siting, design, construction, operation, and servicing of **private on-site wastewater treatment systems (POWTS)**, such as septic tanks and holding tanks. Administrative rules promulgated by Commerce, known as Comm 83 based on the chapter in the administrative code containing the rules, set statewide standards for the design, construction, maintenance, and management of POWTS. These standards are generally implemented and enforced by counties.

Commerce also administers the Private Sewage System Replacement or Rehabilitation Grant Program, also referred to as the Wisconsin Fund. This program provides financial assistance to eligible home and small business owners for part of the cost of repairing or replacing their failing POWTS. Most counties assist on a voluntary basis in implementing this program.

The DNR has established standards for servicing POWTS and related facilities such as portable restrooms, and the use and disposal of wastewaters from these systems. After being pumped by a licensed operator, septage must either be discharged into a municipal sewage system (also known as a Publicly Owned Treatment Work or POTW), or into another facility for treatment or storage under a WPDES permit, or applied to approved agricultural lands.

Drinking Water

The DNR administers a number of programs to ensure the safety and reliability of public and private water supplies, including those identified below. These programs are designed to conform with the federal Safe Drinking Water Act.

Plan approvals. Before a new community water system may be built or an existing community water system improved or extended, the plans and specifications for these activities must be approved by the DNR. The DNR also approves wellhead protection plans for new wells serving municipal water systems. These plans are

designed to prevent contaminants from entering the area of land around a public water supply well from which the well receives recharge waters.

Capacity development. Before a new community water system may be placed in service, it must receive a capacity certification from the DNR. As noted in DNR publications, "capacity development is the process of water systems getting and maintaining adequate funding, management, infrastructure, and operations so they can provide safe drinking water consistently and cost-effectively." This program focuses on assisting owners and operators of small water systems who are less likely to have this capacity.

Safe drinking loan program. The DNR and DOA jointly administer this program which provides loans to general purpose local governments and special purpose districts for projects to plan, design, construct, or modify public water systems. Since this program is capitalized with federal funds, one of the conditions for a loan is that the project must "facilitate compliance" with national primary drinking water standards.

Water system standards, monitoring, and operation. The DNR has established drinking water standards and related monitoring and reporting requirements for public water systems, as well as minimum operating and maintenance requirements for community water systems.

Operator certification. DNR regulations specify an examining program for the certification of operators of different types of public water systems.

Well construction and pump installation. The DNR has established standards for construction of private wells and the installation of pumps in these wells.

Underground injection wells. This program is intended to protect groundwater used as a source of drinking water from contamination from injection wells. Current DNR regulations prohibit the construction of most types of injection wells.

In addition to the above regulatory and associated technical assistance programs, the DNR also administers the state's **Well Compensation Program**. This program provides financial assistance to replace, reconstruct, or treat contaminated residential or livestock water supplies.

Groundwater Management

Groundwater Quality

The "Groundwater Protection Standards" law sets up a comprehensive system for identifying undesirable groundwater contaminants; establishing concentration standards for contaminants which may be present in groundwater; and providing for a control mechanism. The system has the following principal steps:

Identification of substances. Each regulatory agency of the state, defined as the DATCP, Commerce, DNR, and Department of Transportation, and any other state agency that regulates activities, facilities, or practices related to substances that have been detected in or have a reasonable probability of entering groundwater, is required to submit to the DNR a list of substances that either have been detected in, or have a reasonable probability of entering, the groundwater of the state and are related to activities within the agency's authority to regulate. The DNR places each substance reported to it into one of three categories based on whether the substance has been detected in groundwater and the severity of the threat posed by the substance for purposes of determining the priority in which standards will be established.

Setting standards. The DNR divides the substances submitted to it into those that are of public health concern and those that are only a concern to the general public welfare. Substances of public health concern are submitted to the DHS for its recommendation as to appropriate enforcement standards. Once the DHS formulates its recommendations, the DNR promulgates enforcement standards for the particular substance.

An "enforcement standard" is a numerical expression of the concentration of the substance in groundwater. The law requires that existing "federal numbers" (such as a federal drinking water standard) be used as enforcement standards, unless a federal number does not exist for a particular substance or unless specified conditions allowing the establishment of an enforcement standard other than the federal number are met.

The DNR must also promulgate a "preventive action limit" for a substance for which an enforcement standard is established. The preventive action limit is a concentration of the substance which is either 10%, 20%, or 50% of the enforcement standard for the substance, with the 10% level required for carcinogenic substances.

Application of standards. Enforcement standards define when a violation has occurred. When a substance is detected in groundwater in concentrations equal to or greater than its enforcement standard, the facility, activity, or practice which is the source of the substance is subject to immediate enforcement action.

The preventive action limit for a substance functions as a "warning" to assess the need for regulatory responses when a substance is detected in groundwater. When a preventive action limit is attained or exceeded, some regulatory response may be necessary. At a minimum, the regulatory agency governing the facility, activity, or practice causing the substance to enter groundwater is required to evaluate the situation and take appropriate action.

Each regulatory agency must promulgate rules that set forth the range of responses it may take when a preventive action limit or enforcement standard is attained or exceeded. Further, the law generally requires prohibition of an activity or practice when an enforcement standard is violated.

Groundwater Quantity

A major revision of the state law regulating high capacity wells was enacted as 2003 Wisconsin Act 310. A "high capacity well" is a well that, together with all other wells on the same property, has a capacity of more than 100,000 gallons per day.

Act 310 sets standards and conditions for approval of high capacity wells by the DNR and other requirements for the management of the use of groundwater. Part of the new regulatory system for new high capacity wells created by the Act requires the DNR to review the environmental impact of certain designated wells and, in general, ensure through conditions imposed upon their approval that these wells will not cause a significant environmental impact. These designated wells include a high capacity well that meets any of the following conditions:

- Is proposed in a "groundwater protection area." (The Act defines these areas to be an area within 1,200 feet of an outstanding or exceptional resource water or any class I, II, or III trout stream as designated by the DNR, but excluding trout streams that consist of a farm drainage ditch with no prior stream history.)
- May have a significant environmental impact on a large spring.
- Where more than 95% of the amount of water withdrawn will be diverted from the basin or consumed.

Great Lakes Compact Law

The endorsement of the Great Lakes-St. Lawrence River Basin Water Resources pact (the "compact") by the governors of the eight Great Lakes states in December 2005 led to an extensive review and consideration of the compact by the Wisconsin Legislature. This consideration included a Joint Legislative Council study committee on the compact and culminated in the enactment of 2007 Wisconsin Act 227.

Act 227 does the following:

- Contains Wisconsin's ratification of the compact.
- Implements the compact in Wisconsin when the compact takes effect.
- Establishes other state water use programs.

In Wisconsin, approximately the eastern 1/4 of the state is in the Lake Michigan part of the Great Lakes basin, and a smaller area in the northern part of the state is in the Lake Superior basin. The remainder of Wisconsin is in the Upper Mississippi River basin, and is not subject to regulation by the compact.

The compact took effect when it was ratified by Wisconsin and by the other seven Great Lakes states through legislation, and consented to by Congress. Congress passed the compact on September 23, 2008 and President Bush signed it on October 3, 2008 as P.L. 110-342. The compact establishes the legal framework for: (1) prohibiting or, in a few cases, authorizing and regulating new or increased diversions of water to places outside of the Great Lakes basin; and (2) for regulating large withdrawals and consumptive uses of water within the basin. Throughout the Act, "water" includes groundwater and surface water.

For purposes of the compact, the "Great Lakes basin" is the surface water and groundwater of the basins of each of the Great Lakes and the St. Lawrence River basin upstream from Trois-Rivières, Quebec.

Any person who takes water from the basin (i.e., "withdraws" the water) for use within the basin that exceeds the specified amounts or diverts any amount of basin water to any place outside of the basin or between basins of the Great Lakes must, under the compact, register with the state and provide information to the state about the withdrawal or diversion.

With a few exceptions, new or increased diversions of water from the basin are prohibited under the compact. A "diversion" is when water is removed from the Great Lakes basin. Most proposals for diversions are likely to be from communities seeking a public water supply consisting of water from the Great Lakes basin. In particular, the compact authorizes the following three exceptions to its general ban on new or increased diversions:

- Diversions to areas outside the basin that are within communities that are partly outside of (i.e., straddle) the boundary of the basin.
- Transfers of water within the basin, but from the watershed of one Great Lake into another, referred to as an "intrabasin transfer."
- Diversions to communities that are outside the basin, but that are entirely within a county that straddles the basin limits.

The Great Lakes-St. Lawrence River Basin Water Resources Council (the "council"), created by the compact, consists of the governors of the eight Great Lakes states or

their alternatives. Under the compact, the council's review and approval authority relates primarily to reviewing exceptions to the prohibition on diversions of water from within the basin to places outside the basin. The compact contains a standard of review for the council and the states to use in making these decisions (called the "exception standard"), which the council may modify to make more or less restrictive. The compact provides that council approval is required for the last of the three exceptions above and for large intrabasin transfers, and requires approval by the council without a dissenting vote.

Act 227 also establishes a statewide water conservation and efficiency program and a new statewide requirement for public water supply systems to prepare water supply plans.

Legislative Council Information Memoranda IM-2008-03 to 2008-08 are a series of memoranda summarizing Act 227. These documents are available at the Legislative Council's publications page at http://www.legis.state.wi.us/lc.

Land

Mining

Metallic Mining

Metallic mining can include a number of activities, such as the initial exploration or drilling for minerals; prospecting, which involves larger scale testing and analysis of a mineral deposit; mining of the deposit; mining waste disposal; and reclamation. As noted by DNR staff, most of the DNR's regulation of metallic mining can be divided into three major stages: the permit review process and environmental impacts analysis, operations (construction, mining, and reclamation activities), and post-reclamation. Given the invariably controversial nature of proposals for new metallic mines, the permit review and approval process for a new mine receives considerable public scrutiny.

The mining permit review and approval process contains a number of steps. Before collecting any data supporting mining permit application, the mining company must file a notice of intent with the DNR. This must be followed by a "scope of study," which details the environmental studies that the company proposes to conduct as part of the permitting process.

Once the necessary data has been collected and applications prepared, the company must submit to the DNR its mining permit application, an environmental impact report on the mine, a feasibility report for any waste facilities associated with the mine, and applications for other applicable environmental permits. The mining permit application must include the following:

- A mining plan.
- A reclamation plan.
- A monitoring and quality assurance plan.
- A risk assessment of possible accidents and health and environmental hazards that could be associated with the operation of the mine and a plan to respond to these hazards.
- Demonstration of compliance with the state's mining moratorium law.
- An irrevocable trust agreement proposal to ensure funds are available for a variety of activities such as the cleanup of unanticipated spills and replacement of drinking water supplies damaged by the mine's operation.

Upon receipt of these items and determining that they are complete, the DNR prepares a draft environmental impact statement on the mine and, after opportunity for public comment and review, the final environmental impact statement on the mine. State statutes then direct the DNR to conduct a "master hearing" on the entire mining proposal including the mining permit application, the final environmental impact statement, any feasibility reports, and all other permit applications for permits issued by the DNR. Following the hearing, a decision is made on the application and associated permits by either the secretary of the DNR or, at the secretary's discretion, the hearing examiner assigned to conduct the master hearing.

Nonmetallic Mine Reclamation

Nonmetallic mine reclamation regulations apply to a variety of nonmetallic mining operations in the state, including producers of aggregate for construction, and sand, gravel, and crushed stone for road building and maintenance. Under this program, the DNR has established statewide uniform reclamation standards. The standards are administered through reclamation permit programs administered by local governments. All counties are required by statute to adopt a nonmetallic mining reclamation ordinance that complies with DNR's standards. Cities, towns, and villages may enact and administer an ordinance within their jurisdiction at any time. The DNR has published a model ordinance for use or adoption by counties and interested municipalities.

A reclamation permit includes a requirement for a mine reclamation plan. As noted in DNR publications, "The purpose of the reclamation plan is to achieve acceptable final site reclamation to an approved post-mining land use in compliance with the uniform reclamation standards. The reclamation standards address environmental protection measures including top soil salvage and storage, surface and groundwater protection, and contemporaneous reclamation to minimize the acreage exposed to wind and water erosion." A mine operator must also provide acceptable financial assurance to ensure completion of the reclamation plan.

Recycling of Solid Waste

Wisconsin's recycling law, created by 1989 Wisconsin Act 335, induces local units of government to implement mandatory recycling programs by banning the landfilling or incineration of solid waste that contains any of 10 recyclable materials, but excepting waste from the bans if it originated in a community that has an "effective recycling program," as determined by state standards. These materials are aluminum cans, bi-metal steel and aluminum cans, corrugated cardboard, glass bottles and jars, magazines, newspapers, office paper, plastic food and beverage containers numbered one and two, and steel or tin cans. In addition, state law bans the landfilling of lead acid batteries, major appliances, used motor oil, and yard waste.

Effective recycling programs may be implemented by any of several local units of government; the units that choose to take on this responsibility are referred to as "responsible units." In addition to implementing a recycling program to manage the collection and recycling of the above materials generated by its residents, each responsible unit must establish and enforce local ordinances to ensure that its residents, businesses, government agencies, and other organizations within the unit recycle. The state provides financial assistance to responsible units with effective recycling programs in the form of cost-based recycling grants.

Other elements of the state's recycling program include the provision of statewide technical assistance and education programs, the requirement that newspapers use newsprint with the specified content of recycled fiber, and a waste reduction and recycling demonstration grant program administered by the DNR.

Electronic Waste Recycling and Disposal

2009 Wisconsin Act 50 assigns manufacturers of specified household and school electronic devices sold in the state the responsibility for recycling those devices either directly or through collectors and recyclers registered under the electronic waste recycling program created by the Act. These "covered electronic devices" include television and computer monitors with a tube or screen at least seven inches at its longest diagonal measurement, computers, and printers. The amount of covered electronic devices that a manufacturer is responsible for recycling is based upon the manufacturer's sales of those devices in the state. A manufacturer may count towards its recycling obligation the recycling of a broader group of electronic devices identified as "eligible electronic devices."

Manufacturer's recycling responsibilities are enforced through restrictions on the sale of its covered electronic devices in the state and the assessment of shortfall fees when a manufacturer recycles less than its target amount.

If a manufacturer recycles more than its target amount, the manufacturer may earn recycling credits which the manufacturer can use to meet future recycling obligations or sell to another manufacturer for that manufacturer to meet its recycling obligations.

DNR administers the manufacturer, collector, and recycler registration programs and ensures compliance with the electronic waste recycling program. Local units of government may, but are not required to, register as a collector or recycler, or both.

Act 50 also establishes bans on the landfilling and incineration of eligible electronic devices. Landfill and incinerator operators are, in general, required to make a reasonable effort to manually separate, and arrange to recycle, televisions and computer monitors that are readily observable in the solid waste that is delivered to the facility for disposal or burning.

Remedial Action

The remedial action or cleanup program for contaminated sites is a response to the state's hazardous substances spill law. This law requires any person who possesses or controls a hazardous substance or causes the discharge of hazardous substance, in general, to notify the DNR immediately of any discharge to the environment. The law also establishes that such a discharger must take the actions necessary to restore the environment to the extent practical and minimize the harmful effects from the discharge to the air, land, or waters of the state.

In practice, the assignment of this cleanup responsibility can be difficult or impossible to do due to a variety of factors, including multiple parties contributing to the discharge, change in ownership of the site, and poor or nonexistent recordkeeping of the discharge or discharges. These factors can be further complicated by significant lapses in time between when the discharge occurred and the site investigation and cleanup commences.

The DNR has established extensive standards and procedures to guide the cleanup of different types of contaminated sites from environmental investigation to cleanup to case closure. The standards are based upon groundwater and site-specific soil standards that include under appropriate conditions the use of natural attenuation, or natural processes, to break down the contamination over time. Cleanups can be conducted under either state law or the federal "Superfund" law.

In addition to the regulations and technical assistance provided by the DNR, there are a number of state and federal programs that provide financial assistance for the cleanup and redevelopment of contaminated or “brownfield” sites. Examples of such programs are the DNR's Brownfield Site Assessment Grant Program, "Ready For Reuse" Grant and Loan Program, and the Green Space Public Facilities Grant Program. Additional encouragement of cleanups is provided through various legal mechanisms, such as providing liability waivers for third parties who did not cause the discharge of a hazardous substance at a site but assume responsibility for cleaning up and developing the site.

Some of the state remedial action programs are targeted at specific types of contamination. Examples of these programs include the Agricultural Chemical Cleanup Program administered by the DATCP, the Dry Cleaner Environmental Response Program administered by the DNR, and the Petroleum Environmental Cleanup Fund Award (PECFA) Program administered by the Department of Commerce. All three of these programs provide for the reimbursement of cleanup costs covered by the program.

Septage and Municipal Sewage Sludge

Under current law, a city, village, town, or county may not prohibit or regulate the land disposal of septage if the disposal complies with the statutes and DNR administrative rules. The statute further provides that a city, village, town, or county may not prohibit the land application of sewage sludge if the application complies with DNR rules and may only regulate the application if the regulation is identical to DNR regulations.

The septage disposal fees charged by a municipal sewage system must be reasonable and be based on specified actual costs related to the disposal of septage. The statute creates a three-stage process for a licensed disposer to obtain a review of a disputed septage disposal fee. All counties are responsible for adoption and enforcment of the Department of Commerce-administered maintenance program for new private sewage systems. The statute modifies the Clean Water Fund Program to provide 0% interest rate loans for any portion of a treatment work project that relates to facilities for receiving and storing and capacity for treating septage.

Solid and Hazardous Waste Facilities

There are two major components to the process of siting a solid waste disposal facility or a hazardous waste facility in Wisconsin. These components are obtaining DNR site approval and the negotiation and, possibly, arbitration between the applicant for a proposed facility and a local committee representing the area affected by the facility.

The major elements of the DNR site approval process are filing of an initial site report (applicable only to solid waste landfills), approval of the feasibility report, environmental review, determination of the need for the facility, approval of the plan of operation, and issuance of an operating license. Besides applying technical standards to the design and operation of the proposed facility, these components also require the applicant to establish proof of financial responsibility for the closure and, as appropriate, long-term care of the facility after it ceases to receive wastes.

The negotiation-arbitration component is a process which provides a forum for affected municipalities and nearby residents to express their concerns and to negotiate with a developer over various aspects of the proposed facility. Negotiation may address any subject except: (1) any proposal to make the applicant's responsibili-

ties under the approved feasibility report or plan of operation less stringent; or (2) the need for the facility. Arbitration subjects are limited by statute to a list of eight topics, including the applicability of certain local zoning ordinances, operational concerns such as noise, dust, and odors, and compensation to any person for substantial economic impacts which are a direct result of the facility.

The DNR also licenses solid waste treatment and storage facilities and transportation services. In addition, the DNR has established a program that encourages the beneficial use of industrial byproducts.

The state's solid and hazardous waste regulatory programs operate as federally authorized programs under the federal Resource Conservation and Recovery Act.

Regulatory Flexibility – Green Tier

2003 Wisconsin Act 276, commonly referred to as the Green Tier Act, created two new programs in the DNR, the "Environmental Results Program" and the "Environmental Improvement Program." Businesses, local governments, and other similar entities that are subject to one or more environmental regulations administered by the DNR may participate in either of these programs on a voluntary basis. 2009 Wisconsin Act 30 changed the name of the Environmental Results Program to the Green Tier Program and changed the name of the Environmental Improvement Program to the Environmental Compliance Audit Program. Act 30 also removed the sunset dates for both programs.

The **Environmental Compliance Audit Program** is intended to encourage participants to assess their compliance with current environmental regulations through the use of an environmental compliance audit. If an audit identifies a violation of environmental requirements, then the regulated entity must correct the violation within 90 days of submitting its report to the DNR or according to a compliance schedule approved by the DNR secretary. In exchange for conducting the audit and agreeing to correct any violations identified in the audit, the regulated entity receives limited civil immunity.

The **Green Tier Program** is intended to encourage participants to commit to environmental management practices that result in a performance that exceeds the current regulatory requirements. This program builds upon the Environmental Cooperation Program, a pilot environmental performance program which was enacted as part of the 1997-99 Biennial Budget Act.

The Green Tier Program offers two tiers of participation. Eligibility to participate in either tier is based upon the applicant's enforcement record, environmental performance, and environmental management system. This system is an "organized set of procedures to evaluate environmental performance and to achieve measurable or noticeable improvements in that environmental performance through planning and changes in operations."

In addition, the DNR may issue an environmental results charter to an association of entities to assist the entities who are participating in the program to achieve superior environmental performance. As noted by DNR staff, these entities may be organized around any common basis to achieve superior performance, including land areas, watersheds, political subdivisions, business sectors, supply chains, and emission categories.

Through participation in the Green Tier Program, a participant may receive limited civil immunity, customized regulatory flexibility, streamlined contact with the DNR, publicity, and the right to use the program's logo.

Additional References

The following state and federal agency websites provide information on the environmental protection programs administered by the agency:

- ***DNR:*** http://www.dnr.state.wi.us/.
- ***DATCP:*** http://datcp.state.wi.us/index.jsp.
- ***Commerce:*** http://www.commerce.state.wi.us/.
- ***DHS:*** http://www.dhs.wisconsin.gov/eh/Water/index.htm.
- ***U.S. EPA:*** http://www.epa.gov/.
- ***U.S. Department of Agriculture (USDA):*** http://www.usda.gov/.
- ***U.S. Department of Interior (USDI):*** http://www.doi.gov.

Glossary of Terms and Abbreviations

Brownfields – Abandoned or underused property with real or perceived contamination, where the contamination issue often serves as a stumbling block to cleanup and redevelopment.

Design management zone – This zone is a concept used in the state's groundwater protection program. State regulatory agencies that regulate substances which either have or may enter groundwater specify this zone. In general, the zone establishes the distance from a facility, activity, or practice which is the source of the substance, and which is within the property boundaries of the premises where the facility, activity, or practice is located or undertaken, where compliance with groundwater standards must be attained and maintained.

Groundwater management area – The state's new high capacity well law, 2003 Wisconsin Act 310, directs the DNR to identify groundwater management areas in the portions of Brown and Waukesha Counties and surrounding areas where there has been significant groundwater withdrawal. Strategies for managing groundwater in these areas are to be developed by an advisory committee created by this Act. (Act 310 is discussed in the current issue on groundwater management subsection of this chapter.)

Groundwater protection area – A groundwater protection area is any area within 1,200 feet of an outstanding or exceptional resource water or any class I, II, or III trout stream as designated by the DNR, but excluding trout streams that consist of a farm drainage ditch with no prior stream history. New high capacity wells proposed to be located within a groundwater protection area receive additional environmental review by the DNR under the state's new high capacity well law, 2003 Wisconsin Act 310. (This Act is discussed in the groundwater management subsection of this chapter.)

Nonattainment area – A nonattainment area is an area identified under the federal CAA: (1) where the concentration in the ambient air of an air contaminant exceeds a national ambient air quality standard (NAAQS) for the contaminant; or (2) that contributes to ambient air quality in a nearby area that does not meet a NAAQS.

Preventive Action Limit (PAL) – A PAL is a type of state groundwater protection standard that represents a lower concentration for a substance than the enforcement standard for the substance. PALs are used by state regulatory agencies in establishing design requirements that are intended to prevent groundwater contamination from facilities, activities, and practices under their jurisdiction.

State Implementation Plan (SIP) – These plans are required by the federal CAA. They set forth in detail the regulations and related programs that a state will use to meet its responsibilities under this Act; they are reviewed and approved by the EPA.

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Chapter G

Ethics, Lobbying, Elections, and Campaign Finance

G-2 **Part 1: The GAB**

G-5 **Part 2: Ethics Code**

G-13 **Part 3: Lobbying Law**

G-19 **Part 4: Election and Campaign Finance Law**

The Government Accountability Board (GAB) administers and enforces the ethics, lobbying, elections, and campaign finance laws.[1] The board is discussed in Part 1 of this chapter. Parts 2 and 3 discuss ethics code and lobbying law requirements, particularly as they relate to legislators (page G-5 and G-13, respectively). Part 4 is a more general summary of election and campaign finance laws (page G-19).

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G-3 **Administrative Duties of the GAB**

G-3 **Enforcement Duties of the GAB**

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Wisconsin Legislator Briefing Book 2011-12

Part 1: The GAB

The GAB is responsible for administering the state ethics, lobbying, elections, and campaign finance laws and has enforcement responsibilities as well.[2]

The GAB consists of six members, each of whom must formerly have served as an elected judge of a court of record in Wisconsin. Members serve six-year terms, with the exception of the initial members, who serve staggered terms.[3]

State law imposes several limitations on GAB members, including holding another state or local public office, engaging in specified partisan political activities, becoming a candidate for state or local elective office, making political contributions, and being a lobbyist or an employee of a person who employs a lobbyist. Limitations on political activities and certain contributions apply both during, and for the 12-month period preceding, a member's term.

Names of prospective nominees to the GAB are submitted to the Governor by the Government Accountability Candidate Committee (Candidate Committee). The Candidate Committee consists of one court of appeals judge from each of the court of appeals districts, chosen by lot by the Chief Justice of the Wisconsin Supreme Court.

The Candidate Committee is required to meet when a vacancy occurs in the membership of the GAB that requires that nominations be submitted to the Governor. The number of nominations the Candidate Committee is required to submit per vacancy is specified by statute. Members of the GAB are nominated by the Governor from names submitted by the Candidate Committee, and with the advice and consent of 2/3rds of the members of the Senate present and voting, appointed. No person may be nominated by the Candidate Committee unless the person receives unanimous approval of the committee.

Any action by the GAB requires the affirmative vote of at least four members. GAB members are eligible for a per diem equal to the amount paid circuit court reserve judges and for reimbursement of actual and necessary expenses.

As of the publication date of this chapter, members of the GAB are Judge Gordon Myse, Chair; Judge Thomas Barland, Vice Chair; Judge Michael Brennan; Judge Thomas Cane; Judge David Deininger; and Judge Gerald Nichol. The GAB's website is: http://gab.wi.gov/.

Administrative Duties of the GAB

There are two divisions in the GAB, each of which is under the direction and supervision of an administrator appointed by the GAB: the Ethics and Accountability Division and the Elections Division.[4] The former has responsibility for administering campaign finance, lobbying, and ethics laws.[5] The latter is responsible for the administration of election laws.[6] In addition, the GAB is required to employ, outside the classified service, legal counsel to perform legal and administrative functions for the board.[7] The current director and general counsel for the GAB is Kevin Kennedy.

Enforcement Duties of the GAB

The GAB is required to investigate possible violations of laws it administers. If the GAB believes there is a reasonable suspicion that a violation has occurred, it may authorize a formal investigation, subject to specified conditions and procedures. (The GAB, by rule, may prescribe categories of civil offenses that may be settled without formal investigation.)

If the GAB finds probable cause that a violation has occurred, it may prosecute, by its legal counsel or a special prosecutor, alleged civil violations of those laws. Alternatively, it may refer prosecution of alleged civil violations to the appropriate district attorney (which is the same prosecutor authorized to prosecute criminal violations).

The prosecution of alleged criminal violations investigated by the GAB may be brought only as follows:

- If the board finds there is probable cause to believe that a violation of laws it administers has occurred or is occurring, the board may refer the matter to the district attorney for the county in which the alleged violator resides.
- If the board discovers evidence of a potential violation of law that is not administered by the board arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, campaign finance, ethics, or lobbying regulation, the board may refer the matter to the district attorney for the county in which the alleged violator resides.
- If the district attorney to whom the potential violation is referred informs the GAB that he or she declines to prosecute or fails to commence a prosecution within 60 days of the board's referral, the board may refer the matter to the district attorney for a contiguous prosecutorial unit. If there is more than one such prosecutorial unit, the chair of the GAB must determine the district attorney to whom the matter is referred by publicly drawing lots at a meeting of the board. If the second district attorney declines or fails to prosecute, the GAB may refer the matter to the Attorney General.
- Special provisions regarding who prosecutes apply if the defendant is a district attorney, judge, the Attorney General, or a candidate for those offices.

In general, a Wisconsin resident must be criminally or civilly prosecuted in the county of residence for violations of laws relating to the official functions of the subject of an investigation of the GAB, or to any matter involving elections, cam-

paign finance, lobbying regulation, or ethics. However, a defendant may move to change the place of trial to the county where the offense was committed. If that occurs, the judge who orders the change in the place of trial presides at the trial and a jury is chosen from the county where the trial will be held. In addition, a change in place of trial does not affect who has responsibility to prosecute.

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G-6 **Public Disclosure of Financial Interests**

G-6 **Conduct Prohibited Under the Ethics Code**

G-8 **Conflicts of Interests Under the Code**

G-9 **Questions to Ask Concerning the Possible Application of the Code**

G-10 **GAB Guidelines Addressing Application of Ethics Code to Specific Situations**

G-11 **Who Can Answer Questions Concerning the Possible Application of the Code**

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G-11 **Civil Penalties for Violation of the Code**

G-12 **Criminal Penalties for Violation of the Code**

G-12 **Advisory Opinions**

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Part 2: Ethics Code

Wisconsin legislators are subject to the Ethics Code. The Code contains financial disclosure requirements, standards of conduct, enforcement procedures, and penalties for its violation.[8]

The GAB administers and enforces the Ethics Code.[9] The standards of conduct under the Code are, for the most part, stated in the form of general principles, rather than as specific, detailed regulations. Consequently, to predict the possible application of the Ethics Code in a specific situation requires consideration of all relevant facts.

The comments regarding the Ethics Code contained in this part should be viewed only as a general description of, and guide to, the statutory provisions. The pertinent statutes and administrative rules, GAB opinion summaries, GAB guides, and the board itself (through the Ethics and Accountability Division and its staff), should be consulted when questions arise. The GAB website is recommended as an initial source of information. For example, the website contains forms, instructions, and a listing of frequently asked questions about completing the required Statement of Economic Interests and includes guidelines interpreting some of the Ethics Code's standards of conduct. Many of these guidelines are specifically referenced in this part.

Please note that Part 3 of this chapter describes the key provisions of the lobbying law that relate to legislators. Similar conduct is addressed by both the Ethics Code and the lobbying law. (The GAB's website is also recommended as a source for information regarding the lobbying laws.)

Further note that Parts 2 and 3 of this chapter neither identify nor discuss laws outside the Ethics Code and lobbying law which also may apply to the conduct of a legislator. These other restrictions are found primarily in the election laws (see Part 4) and those Criminal Code provisions applicable to public officers and employees.

Public Disclosure of Financial Interests

What Must Be Disclosed?

The Ethics Code requires legislators to disclose annually the following information regarding financial interests relating to themselves and, in most cases, their immediate family (for additional information, refer to GAB Guidelines GAB-401 and GAB-402):

- Management and financial relationships with certain organizations, such as being a director, officer, or trustee, holding a 10% or greater ownership interest, or being an authorized representative or agent.
- Securities held having a value of $5,000 or more, categorized by whether the approximate value is less or greater than $50,000. [For information on accounting for an interest in a trust, refer to GAB Guideline GAB-422.]
- Names of creditors to whom $5,000 or more is owed, categorized by whether the amount owed is less or greater than $50,000.
- The identity of and interest in real property holdings in Wisconsin, other than a principal residence.
- The identity of direct, and certain indirect, sources of income of $1,000 or more (for additional information, refer to GAB Guideline GAB-421).
- Names of donors (nonrelatives) of gifts having a value over $50.
- Lodging, transportation, money, or other items, having a value over $50, which are received from one source for a published work, presentation of a talk, or participation in a meeting. (See, also, the discussion of transportation and lodging in the following section of this part.)

How Are Disclosures Made?

Financial interests that must be disclosed under the Ethics Code are set forth in a form called "Statement of Economic Interests." The GAB provides pre-printed forms and instructions to incumbent legislators annually for updates and provides on its website or by mail blank forms and instructions for potential candidates, well in advance of the filing deadlines.

A Statement of Economic Interests is retained by the board until the passage of three years after a person ceases to be a state public official; the board then destroys all of its copies of the filer's statements. The statement is open for public inspection at the GAB offices while on file. The GAB must notify the person who filed the statement of the full name and address of any person who inspects his or her statement.

When Must the Statement Be Filed?

A candidate for the Legislature must file the Statement of Economic Interests within three days after the deadline for filing nomination papers. Subsequent filings must be updated annually. The GAB furnishes appropriate forms, on a timely basis, to assist legislators in complying with filing deadlines.

Conduct Prohibited Under the Ethics Code

Summarized below are the general categories of conduct prohibited under the Ethics Code. The Ethics Code also separately addresses "conflicts of interests," discussed in the following section of this part (for additional information, refer to GAB Guideline GAB-1201).

Use of Office for Private Benefit

A legislator is prohibited from using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator, the legislator's immediate family, or organizations with which the legislator is associated.

"Anything of value" is defined under the Ethics Code as "any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment," but does **not** include: compensation and expenses paid by the state; honorariums and expenses otherwise allowed under the Code; political contributions that are reported under campaign finance law; or hospitality extended for a purpose unrelated to state business by a person other than an organization.[10] While "anything of 'substantial' value" is not defined under the Code, the former Ethics Board has indicated that the term should be contrasted with the idea of "nominal," or "token" value to determine whether, under a specific factual setting, anything of substantial value is involved.

Improper Influence or Reward for Official Actions

A legislator is prohibited from soliciting or receiving anything of value if it could reasonably be expected to influence or reward official actions.

Taking Official Action in Exchange for Political Contributions or Anything Else of Value ("Pay-to-Play")

A legislator or candidate for legislative office is prohibited from taking official action in exchange for political contributions or anything else of value for the benefit of a candidate, political party, or any person making certain candidate-related communications.

More specifically, no legislator may, directly or by means of an agent, give or offer or promise to give, or withhold or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action on any proposed or pending matter, in consideration of, or upon condition that, any other person make or refrain from making a political contribution or provide or refrain from providing any service or any other thing of value, to or for the benefit of a candidate, political party, other registrant, or any person making certain candidate-related communications, as defined.

Use of Confidential Information for Private Gain

A legislator is prohibited from using confidential information, obtained by reason of or in the course of legislative activities, for the private gain of the legislator, the legislator's immediate family, or any other person.

Use of Office for Unlawful Benefits, Advantages, or Privileges

A legislator is prohibited from using the position of legislator to influence or gain unlawful benefits, advantages, or privileges for the legislator or others.

Entering Into State Contracts or Leases

A legislator is prohibited from entering into a contract or lease involving payments of more than $3,000 within a 12-month period, which are made in whole or in part from state funds, unless written disclosure of the contract or lease is made to the GAB

and to the state department that is responsible for the contract or lease. This provision applies to state contracts or leases that may be entered into by the legislator, the legislator's immediate family, or any organization in which the legislator or any member of the legislator's immediate family has a 10% or greater interest.

Representation of Persons Before State Agencies

A legislator is prohibited from representing persons before state agencies in an unofficial capacity and for compensation, except under the following circumstances (for additional information, refer to GAB Guideline GAB-1236):

- In contested cases (as defined in ch. 227, Stats., Administrative Procedure) that involve a party, other than the state, with interests adverse to the interests of the party represented by the legislator;
- At an open hearing at which a record is maintained;
- In a manner that involves only ministerial actions by the agency; or
- In a matter before the Department of Revenue or Tax Appeals Commission that involves representation of a client in connection with a tax matter.

The prohibition regarding a legislator's representation of persons before state agencies is of particular relevance to legislators who are lawyers and to other legislators whose occupation may involve representation of clients (e.g., accountants).

Acceptance or Retention of Transportation, Lodging, Meals, Food, or Beverage

A legislator is prohibited from accepting or retaining any transportation, lodging, meals, food, or beverage, except as expressly permitted under the Code.

Conflicts of Interests Under the Code

In addition to the prohibited conduct summarized in the previous section of this part, the Ethics Code contains prohibitions on conflicts of interests (for additional information, refer to GAB Guideline GAB-1232). Under the Code, except in accordance with the GAB's advice, a legislator may not:

- Take any official action substantially affecting a matter in which the legislator, the legislator's immediate family, or an organization with which the legislator is associated, has a substantial financial interest.
- Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the legislator, the legislator's immediate family, or an organization with which the legislator is associated.

It is important to note that the Code expressly provides that these prohibitions on conflicts of interests do not prohibit a legislator from:

- Taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses.
- Taking official action on any proposal to modify state law or the state Administrative Code (e.g., voting).

Despite the plain statutory language stating that the conflict of interests prohibitions do not prohibit taking official action on any proposal to modify state law or administrative rules, the GAB takes the position that the Ethics Code may nonetheless prevent a legislator from taking official action, including voting, under certain circumstances.

In support of its position, the board cites the prohibition against using the office of legislator to obtain financial gain or anything of substantial value for the private benefit of the legislator, the legislator's immediate family, or certain organizations with which the legislator or the legislator's immediate family is associated. (See the previous section of this part.) The latter prohibition appears independently of the conflict of interests prohibitions. Under the board's interpretation, the prohibition against using the office of legislator to obtain financial gain or anything of substantial value may prohibit a legislator from taking official action on a state law or administrative rule unless:

- The legislator's action affects a whole class of similarly situated interests and the legislator's interest is insignificant when compared to all affected interests in the class; and
- The effect of the legislator's actions on the legislator's private interests is neither significantly greater nor less than upon other members of the class.

Assembly and Senate rules require legislators to vote when present unless excused for “special cause.” [Assembly Rule 77; Senate Rule 73 (1).] When in doubt on the propriety of a vote or other official action, consultation with the GAB and legislative leadership is suggested. The board's advice on potential conflicts of interests can be obtained by seeking an advisory opinion of the board, as described in the final section of this part.

Questions to Ask Concerning the Possible Application of the Code

The Ethics Code's prohibitions may be difficult to apply on a case-by-case basis. One way legislators can ensure compliance is to be sensitive to those situations that might invoke the application of the Code.

The questions listed below should be kept in mind in evaluating the application of the Ethics Code to a specific action. An affirmative answer to any one of these questions should prompt further inquiry regarding the possible application of the Code.

- Am I, my immediate family, or an organization with which I am associated receiving anything of value for private benefit because I hold the office of legislator?
- Am I using the influence of my position as legislator to solicit something for the private benefit of me, my family, or an organization with which I am associated?
- Am I taking official action in exchange for political contributions or anything else of value for the benefit of a candidate, political party, or any person making certain candidate-related communication?
- Am I, my immediate family, or an organization with which I am associated receiving from a nonrelative anything of value for which we have not paid?
- Will an official action on my part possibly result in private benefit to me, my immediate family, or an organization with which I am associated?

- Will the use of my staff or state facilities benefit me in my private capacity?
- Am I using the state's time, resources, or facilities in my campaign for elective office?

GAB Guidelines Addressing Application of Ethics Code to Specific Situations

Because the Ethics Code's prohibitions are generally stated as general principles, rather than detailed rules, the application of the Code to specific situations is often difficult to determine. GAB guidelines address situations that legislators may frequently encounter and are helpful in assessing the possible application of the Code (and, in some cases, related statutes). GAB guidelines that may be of particular interest to legislators include:

1. **OFFICIALS' RECEIPT OF FOOD, DRINK, FAVORS, SERVICES, ETC. (GAB-1211)**.
2. **TICKETS AND ACCESS TO SKYBOXES AND OTHER PREMIUM AREAS (GAB-1220)**.
3. **ATTENDING CONFERENCES, SEMINARS, AND RECEPTIONS WHEN NOT A SPEAKER (GAB-1222)**.
4. **EXPENSES AND COMPENSATION FOR TALKS (GAB-1223)**.
5. **SOLICITATION OF ITEMS OR SERVICES (GAB-1231)**.
6. **NEPOTISM (GAB-1233)**.
7. **TELEPHONE CALLS (GAB-1234).**
8. **DISPOSITION AND REPORTING OF GIFTS (GAB-1235).**
9. **LAME DUCK TRAVEL (GAB-1239).**
10. **LETTERS OF REFERENCE (GAB-1244).**
11. **PUBLIC SERVICE ANNOUNCEMENTS (GAB-1245).**
12. **SCHEDULING NONGOVERNMENTAL EVENTS ON GOVERNMENT CALENDAR (GAB-1247).**
13. **LEGISLATIVE EMPLOYEES' CAMPAIGN ACTIVITIES (GAB-1252).**
14. **OFFICIAL'S SEEKING PRIVATE EMPLOYMENT (GAB-1270).**
15. **LEGAL DEFENSE FUNDS (GAB-1281)**.

See the final section of this part regarding advisory opinions from the GAB.

Who Can Answer Questions Concerning the Possible Application of the Code

If questions concerning the possible application of the Ethics Code relate to an event for which there is a sponsor, the sponsor should be asked whether the event, and participation by legislators, has been cleared with the GAB. If there is no sponsor or if the sponsor has not cleared the event with the GAB, the GAB itself should be consulted directly. (See the final section of this part regarding advisory opinions from the GAB.)

Relationship of the Ethics Code to the Lobbying Law

If receipt and retention of expense reimbursement for the presentation of a talk or participation in a meeting related to state government issues is permitted under the Ethics Code, it is also permitted under the lobbying law, regardless of whether it is reimbursed by a lobbyist or an employer of a lobbyist. However, receipt of any other thing of value, including an honorarium, from a lobbyist or the lobbyist's employer, is generally a violation of the lobbying law. In general terms, the lobbying law is concerned with who is involved (i.e., a lobbyist or a lobbyist's employer), while the Ethics Code is concerned with what is done and with the underlying purpose or result of particular conduct.

If a lobbyist or employer of a lobbyist is involved in an action or activity, both the lobbying law and Ethics Code should be consulted. If a lobbyist or employer of a lobbyist is not involved, the lobbying law need not be consulted. (See Part 3 of this chapter on the lobbying law.)

Civil Penalties for Violation of the Code

A violation of the Ethics Code that is not an intentional violation is subject to a forfeiture of not more than $500 for each violation of the disclosure requirements and the provisions relating to reporting and acceptance of honorariums, fees, and expenses; or not more than $5,000 for each violation of other provisions of the Code relating to prohibited conduct, including the pay-to-play prohibition.

Also, if the court determines that the violator has realized economic gain as a result of the violation, the court may order the person to forfeit the amount gained as a result of the violation.

A civil forfeiture imposed by a court for violations of the pay-to-play prohibitions may also include an amount equal to the amount or value of any political contribution, service, or any other thing of value wrongfully obtained or, if nothing of value is obtained (because, for example, a campaign contribution was withheld as a result of the violation), an amount equal to the maximum contribution authorized for the office held or sought.

Criminal Penalties for Violation of the Code

In addition to the civil forfeitures described in the previous section, the Ethics Code contains criminal penalties. Any person who intentionally violates the Ethics Code may be fined not less than $100 nor more than $5,000 or imprisoned not more than one year in the county jail, or both.

Violations of the pay-to-play prohibition are subject to a different penalty. An intentional violation is punishable as a Class I felony ($10,000 maximum fine; three years, six months maximum imprisonment; or both).

A criminal penalty under the Code does not limit the power of either house of the Legislature to discipline its own members or to impeach a public official.

Any legislator may request from the GAB written advice regarding the propriety of any matter to which he or she is or may become a party.

Advisory Opinions

An important function of the GAB is to give advisory opinions. Any legislator may request from the GAB written advice regarding the propriety under the Ethics Code of any matter to which he or she is or may become a party. The GAB may issue a formal advisory opinion or may authorize its legal counsel to issue an informal advisory opinion on behalf of the board. A person who disagrees with an advisory opinion may have a public or private hearing before the GAB for reconsideration of the opinion.

No person acting in good faith upon an advisory opinion is subject to civil or criminal prosecution for so acting.

All requests for advisory opinions are confidential (unless confidentiality is waived). No member or employee of the GAB may make public the identity of the person requesting an advisory opinion on the application of the Ethics Code or of persons mentioned in the opinion.

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Wisconsin Legislative Council

G-13 **Administration and Enforcement of the Lobbying Law**

G-13 **Purpose of the Lobbying Law**

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G-17 **Legislator Advice to Constituents**

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Wisconsin Legislator Briefing Book 2011-12

Part 3: Lobbying Law

Wisconsin legislators are directly and indirectly affected by the lobbying law which is set forth in ss. 13.61 to 13.75, Stats.

Legislators are directly affected by the prohibited practices section of the law, which prohibits a legislator from soliciting or accepting anything of pecuniary value from a lobbyist or the person employing the lobbyist (the principal).[11]

Legislators are indirectly affected by the regulatory features of the law (registration, licensing, and reporting) because constituents may or may not be subject to these requirements if they attempt to influence the legislative process. Legislators need to understand the regulatory aspects of the law in order to answer questions from their constituents regarding whether their lobbying activities are covered by the law.

Administration and Enforcement of the Lobbying Law

The GAB is responsible for administering the state lobbying laws.[12]

Purpose of the Lobbying Law

The lobbying law is designed to maintain the integrity of state government decision-making by regulating the activities of persons who are hired to influence legislative and executive actions. The lobbying law also promotes open and responsible government by requiring public disclosure of the identity, expenditures, and activities of those persons.[13]

Definition of Lobbying

"Lobbying" is attempting to influence the legislative or administrative decisions of state government by oral or written communication with any elective state official, agency official, or legislative employee. Lobbying includes the time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs.[14]

Persons Subject to the Lobbying Law

The persons directly subject to the regulatory requirements of the lobbying law are "lobbyists" and "principals."

A "lobbyist" is defined as a person who either: (1) is employed by a principal; or (2) contracts for or receives payment, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal. If an individual's duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least five days within a six-month reporting period.[15] (The reporting periods are January 1 to June 30 and July 1 to December 31.)

A "principal" is any person, association, corporation, limited liability company, or partnership that employs a lobbyist. The individual officers, employees, members, shareholders, or partners of an association, corporation, limited liability company, or partnership that employs a lobbyist are not considered to be principals.[16]

The law requires all lobbyists to be licensed by the GAB. Principals must be registered and must file semi-annual lobbying expense reports with the GAB.

Employees of state agencies who engage in lobbying also are subject to the lobbying law, and special restrictions and reporting requirements apply to them. Elective state officials, local officials, tribal officials, and employees of the Legislature are not subject to the licensing or reporting requirements of the lobbying law when acting in an official capacity.

Conduct Prohibited Under the Lobbying Law

The "prohibited practices" provisions of the lobbying law generally prohibit lobbyists and principals from giving anything of value to legislators and prohibit legislators from soliciting or accepting anything of value from lobbyists or principals. These provisions are described below according to the three categories of persons to whom they apply: legislators; private lobbyists and principals; and state agency lobbyists. There are certain exceptions to these prohibitions, which are set forth in a separate section.

It should be noted that any individual may request an advisory opinion from the GAB regarding the propriety under the lobbying law of any matter to which the person is or may become a party. The GAB may issue a formal advisory opinion or may authorize its legal counsel to issue an informal advisory opinion on behalf of the board. A person who disagrees with an advisory opinion may have a public or private hearing before the GAB for reconsideration of the opinion. No person acting in good faith upon an advisory opinion is subject to civil or criminal prosecution for so acting, if the material facts are as stated in the opinion request.

All requests for advisory opinions are confidential (unless confidentiality is waived). No member or employee of the GAB may make public the identity of the person requesting the advisory opinion on the application of the lobbying law or of persons mentioned in the opinion.

Actions of Legislators Prohibited or Restricted Under the Lobbying Law

Under the lobbying law, a legislator may not solicit or accept anything of pecuniary value from a lobbyist or a principal, except as provided in the exceptions to the general prohibitions, as described below. Violation of this prohibition is punishable by a civil forfeiture not to exceed $1,000.

To protect himself or herself from violating this prohibition, a legislator should ask any person who offers something of value whether or not the person is listed as a lobbyist or principal in the registry maintained by the GAB.

This information can also be obtained from the GAB website located at http://www.gab.wi.gov.

Actions of Private Lobbyists and Principals Prohibited or Restricted Under the Lobbying Law

The lobbying law imposes numerous restrictions on lobbyists and principals. In particular, it prohibits lobbyists and principals from furnishing any of the items listed below to legislators or to other elective state officials, agency officials, legislative employees, or candidates for elective state office:

- Lodging.
- Transportation.
- Food, meals, beverages, or money.
- Any other thing of pecuniary value.

Actions of State Agency Lobbyists Prohibited or Restricted Under the Lobbying Law

Each state agency must file a semi-annual statement with the GAB identifying agency officers and employees whose regular duties include lobbying. These officers or employees are prohibited from using state funds to provide lodging, transportation, food, meals, beverages, money, or any other thing of pecuniary value to any legislator or other elective state official, legislative employee, or candidate for elective state office.

This restriction on agencies does not prohibit an agency officer or employee from doing any of the following:

- Authorizing salaries and other payments authorized by law.
- Authorizing property or services of the agency to be provided for official purposes or other purposes authorized by law.
- Providing information at the request of a member or employee of the Legislature, or a legislative committee.

Exceptions to the General Prohibition

Several exceptions apply to the prohibition against a lobbyist or principal giving, and a legislator accepting, anything of pecuniary value.

A principal may give and a legislator may accept anything of pecuniary value which is also made available to the general public.

A lobbyist or principal may give and a candidate for legislative office may accept campaign contributions, provided the contributions comply with the requirements of ch. 11, Stats., and the time limitations of the lobbying law. Under the lobbying law, campaign contributions may be given to and received by a candidate for legislative office, in the year of the election, between June 1 and the day of the general election, but only if the Legislature has concluded its final floorperiod and is not in special or extraordinary session. These restrictions also apply to campaign contributions made to the personal campaign committee of a candidate for legislative office.

A legislator may receive reimbursement or payment of actual and reasonable expenses from a lobbyist or principal for a published work or for the presentation of a talk or participation in a meeting, under certain circumstances authorized under the Ethics Code. (See, generally, Part 2 of this chapter on the Ethics Code.)

A legislator may accept food, meals, beverages, or entertainment provided by the Governor when acting in an official capacity.

A legislator may accept anything of pecuniary value furnished by a principal or lobbyist who is a relative of the legislator or lives in the same household as the legislator.

A principal that is a local governmental unit may give certain things of pecuniary value to a legislator who also serves as an elected official of the local governmental unit in an amount not exceeding the amount given to other similarly situated elected officials of the local governmental unit.

A lobbyist or principal may provide educational or informational material to legislators.

Under certain circumstances, a principal may provide compensation or employee benefits to an employee who is a candidate for elective state office but who does not hold an elective state office.

A lobbyist may provide uncompensated personal services to a legislator's campaign for reelection. Although this exception is not set forth in the statutes, a 1993 decision of the U.S. District Court for the Western District of Wisconsin held that the Free Speech Clause of the First Amendment to the U.S. Constitution guarantees lobbyists the right to provide uncompensated personal services on behalf of candidates for elective office [*Barker v. Wisconsin Ethics Board*, 841 F. Supp. 255 (W.D. Wis. 1993)].

Bribery

Bribery is a criminal activity that is not directly dealt with under the lobbying law. However, the solicitation or acceptance by a legislator of something of pecuniary value from a lobbyist or principal may amount to a violation of the bribery statute in

s. 946.10, Stats., if it is done with the understanding that the legislator will officially act in a certain manner or will do or omit to do any act in violation of a lawful duty.

The crime of bribery is a felony. If a legislator is found guilty of this crime, his or her office becomes vacant and he or she is subject to a fine not to exceed $10,000 or imprisonment not to exceed six years, or both.

Legislator Advice to Constituents

Legislators are frequently asked by constituents whether their activities subject them to the regulatory requirements of the lobbying law. When asked, a legislator may wish to explain that the purpose of the lobbying law is not to hinder citizens' rights to express freely their opinions on legislation or other policy decisions of their government.

Constituents can be told that the only persons who are subject to licensing and regulation as lobbyists are those who are paid to lobby. Further, a legislator may wish to inform the constituent that the law does not apply to or interfere with the right of any person to engage in lobbying in either of the following manners:

- Solely on his or her own behalf.
- By communicating solely with the legislator who represents the Senate or Assembly district in which the person resides, whether or not the communication is made on behalf of the person or on behalf of another person.

Thus, for example, a sole proprietor of a business, who engages in lobbying solely on his or her own behalf, may compensate himself or herself for these lobbying activities without being subject to regulation under the law. Also, a person who is compensated for lobbying on behalf of another is exempt from coverage by the law, if his or her lobbying communications are restricted solely to the legislators who represent the Senate and Assembly districts in which the person resides.

If a constituent is unsure whether or not his or her lobbying activities or employment status make him or her subject to regulation as a lobbyist, a legislator should advise the constituent to contact the GAB.

As the state agency responsible for the administration of the lobbying law, the GAB is in a position to give specific authoritative advice to the constituent on whether or not he or she is subject to regulation. As discussed above, any individual may request an advisory opinion from the GAB with respect to his or her authority or responsibility under the lobbying law.

The GAB also can inform the constituent of the numerous exceptions to regulation. By taking advantage of these exceptions, a constituent can limit the regulatory impact of the law on his or her particular lobbying activities.

Please note that Part 2 of this chapter describes the key provisions of the Ethics Code which relate to legislators. Similar conduct is addressed by both the lobbying law and the Ethics Code.

Further note that this part and Part 2 neither identify nor discuss laws outside the Ethics Code and lobbying law which also may apply to the conduct of a legislator. These other restrictions are found primarily in the election laws and those Criminal Code provisions applicable to public officers and employees.

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G-19 Elections

G-24 Campaign Finance

G-28 Additional References

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Part 4: Election and Campaign Finance Law

State election and campaign finance laws are administered and enforced by the GAB.[17] Specifically, the Elections Division of GAB administers election laws, and the Ethics and Accountability Division of GAB administers campaign finance laws.[18]

Federal law contains various election and campaign finance laws. Candidates for national office, such as candidates for the U.S. Congress, must comply with federal campaign finance laws. State campaign finance laws apply to candidates, except candidates for national office, who may receive votes at an election in the state.[19] In addition, the federal Help America Vote Act (HAVA) of 2002 requires states to comply with certain requirements regarding the administration of elections. Although federal laws may be discussed in this part, a full discussion of federal campaign finance law and HAVA is beyond the scope of this part.

Elections

State election laws govern various issues related to elections. This part highlights some of the more significant state election laws regarding candidates, referenda, voters, voting, post-election activities, and recall.

Candidates

To qualify as a candidate, an individual must file nomination papers. In some cases, a caucus procedure may be used to nominate candidates for town or village office, instead of nomination papers. The number of signatures that is required on nomination papers is determined by the office that the candidate is campaigning to fill. For example, the number of signatures required for the office of State Senator is not less than 400 but not more than 800, and for the office of State Representative, not less than 200 but not more than 400. The signatures must be of electors who reside in the district or jurisdiction that the candidate, if elected, will represent.[20]

For spring elections, nomination papers may be circulated beginning on December 1 preceding the election and generally must be filed by 5 p.m. on the first Tuesday in January before the election (or the following day if that Tuesday is a holiday).[21] For fall elections, nomination papers may be circulated beginning on June 1 preceding the

election and generally must be filed by 5 p.m. on the second Tuesday of July before the September primary.[22]

A candidate must file a declaration of candidacy with the nomination papers. If the candidate has not filed a registration statement, as required under the campaign finance law, the candidate must file a registration statement with the nomination papers. If the candidate is a candidate for state office or municipal judge, the candidate must also file a statement of economic interests with the GAB by 4:30 p.m. on the third day after nomination papers are due.[23]

Referenda

Generally, all proposed constitutional amendments and other questions or measures to be included on the election ballot must be filed with the official who prepares the ballots for an election no later than 42 days before the election.[24]

Voters

Voter Qualifications and Disqualifications. To be eligible to vote, an individual must be a U.S. citizen at least 18 years old and must reside in an election district or ward for 10 days prior to the election in which the individual will vote.[25] An individual is disqualified from voting if the individual was convicted of a felony, treason, or bribery or was adjudicated incompetent.[26] The voting right of an individual who is disqualified from voting by reason of a felony, treason, or bribery conviction is restored through pardon or completion of the term of imprisonment or probation.[27]

Qualifications for Voting:

- *U.S. citizen.*
- *18 years of age or older.*
- *Reside in election district or ward for 10 days prior to election.*

Voter Registration. An individual generally must register before voting in an election.[28] However, the registration requirement does not apply to the following individuals[29]:

- New Wisconsin residents who will vote only in the presidential election.
- Former Wisconsin residents who will vote only in the presidential election.
- Military electors.

An individual may register in person or by mail prior to Election Day or at the polling place on Election Day.

An individual may register to vote in person or by mail prior to Election Day or at the polling place on Election Day.

Registration in Person. Registration in person closes at 5 p.m. on the third Wednesday prior to the election. An individual may register in person at the municipal clerk's office, county clerk's office, office of the board of election commissioners, or other designated registration locations.[30]

However, an individual may register in person after the close of registration until the day before an election at the municipal clerk's office.[31] If an individual registers after the close of registration and is not a military or overseas elector, the individual must provide proof of residence. Table 1 lists the documents that are considered proof of residence if they contain a current and complete name and residential address.[32]

Table 1: Proof of Residence
• Current and valid Wisconsin driver's license.
• Current and valid Wisconsin ID card.
• Any other official ID license or card issued by a Wisconsin governmental unit or body.
• ID license or card issued by an employer in the normal course of business, excluding a business card, that contains a photo of the elector.
• Real estate tax bill or receipt for the current or previous year.
• Residential lease (except for electors registering by mail).
• University, college, or technical college identification or fee card that includes a photo of the elector.
• Utility bill for the period beginning not earlier than 90 days prior to the date of registration.
• Bank statement.
• Paycheck.
• Check or other document issued by a governmental unit.

If an individual does not have proof of residence, the information in the registration form must be corroborated by another elector; the corroborator must provide proof of residence.[33]

Registration by Mail. Registrations by mail must be delivered to the municipal clerk's office or postmarked on or before the third Wednesday prior to the election.[34] An individual may obtain a registration form from the municipal clerk or at http://gab.wi.gov/elections-voting/voters/registration-voting.

If an individual registers by mail, has not voted in an election in Wisconsin, and is not a military or overseas elector, the individual must provide proof of residence when voting in person or a copy of a document that demonstrates proof of residence when voting by absentee ballot.[35]

Registration at Polling Place on Election Day. An individual may register to vote at the polling place on Election Day. The individual must fill out a registration form and provide proof of residence. If the individual does not have proof of residence, the information in the registration form must be corroborated by another elector; the corroborator must provide proof of residence. An election inspector must sign the form, indicating that the registration form has been accepted. If the registration is accepted, the individual must be permitted to vote.[36]

Additional information about Election Day voter registration may be found at http://gab.wi.gov/elections-voting/voters/registration-voting.

Voting

Any qualified elector who is registered to vote may vote by absentee ballot.

Absentee Voting. Any qualified elector who is registered to vote may vote by absentee ballot.[37] A registered elector may obtain an absentee ballot by applying, in writing, through several methods, including by mail, in person at the municipal clerk's office, and by e-mail or fax. If an elector applies for an absentee ballot by mail, the application must be received by 5 p.m. on the fifth day prior to the election. If an elector applies in person, the application must be made by 5 p.m. on the day prior to the election.[38]

The clerk must initial the absentee ballot and place it in an unsealed envelope. The envelope contains a certification to be signed by the elector. The clerk must then mail or deliver the ballot to the elector.[39]

The elector must complete the certification on the envelope of the absentee ballot before an adult witness who is a U.S. citizen and must mark the ballot. The elector must then fold the ballot and insert it into the envelope, along with proof of residence, if required. The envelope is sealed and mailed or delivered to the clerk. The ballot must be received by the clerk by 8 p.m. on Election Day.[40]

At the polling place on Election Day, the election inspectors announce the name of an absent elector. The inspectors verify that the certification was properly executed; the elector is a qualified elector of the election district or ward; and the elector has not voted in the election. On the poll list, the inspectors note that the elector voted by absentee ballot. Then, the inspectors open the ballot and verify that the ballot has been endorsed by the clerk and that proof of residence is enclosed, if required. Finally, the inspectors insert the ballot into the ballot box and enter the elector's name or voting number after the elector's name on the poll list.[41]

Many of the absentee voting procedures for military and overseas electors and for residents of nursing and retirement homes and certain community-based residential facilities differ from the procedure described above.[42]

It should be noted that the federal Military and Overseas Voter Empowerment (MOVE) Act, signed by President Obama on October 28, 2009, requires that states establish certain requirements for absentee voting by military and overseas voters in federal elections. Because of the timing of Wisconsin's September primary date, the state requested an undue hardship waiver for the November 2010 election of the provision in the MOVE Act that requires that states transmit absentee ballots to military and overseas voters no later than 45 days before an election. The request was denied by the U.S. Department of Defense, and the GAB and U.S. Department of Justice reached a resolution regarding the enforcement of the MOVE Act for the November 2010 election. More information about the MOVE Act may be found in Legislative Council Information Memorandum 2010-16, *Military and Overseas Voter Empowerment (MOVE) Act*, at http://www.legis.state.wi.us/lc/publications/im/IM_2010_16.pdf.

Polling places are open from 7 a.m. to 8 p.m. on Election Day.

Voting on Election Day. An elector must vote at the polling place for the elector's residence.[43] Polling places are open from 7 a.m. to 8 p.m. on Election Day. Any elector waiting to vote when the polls close must be permitted to vote.[44]

Each election ward has two poll lists containing information about electors. An elector provides his or her full name and address, and the election officials verify that the name and address are the same as that on the poll list. An elector may not vote if he or she does not provide his or her name and address, unless the elector has a confidential listing. The officials then enter a serial number for the elector next to the elector's name in the poll list and provide the elector with a slip listing the serial number.[45] The elector will then receive a ballot.

If the poll list indicates that an elector is required to provide proof of residence, the officials must require that the elector provide proof of residence. The officials must verify the name and address on the document and record the type of document in the poll list.[46] If the poll list indicates that an elector is not eligible to vote because of a felony, treason, or bribery conviction, the officials must notify the elector of the elector's ineligibility. If the elector insists that he or she is eligible to vote, the officials must allow the elector to vote and then challenge the ballot.[47]

A voting booth may be occupied by only one voter at a time, except if accompanied by a minor child or ward or an individual who is providing assistance to the voter. If a voter spoils or incorrectly marks a ballot, the voter may receive another ballot. However, a voter may not receive more than three ballots because of spoiled or

incorrectly marked previous ballots. A voter must be given a reasonable amount of time to vote.[48]

Election Days. The **spring primary** is held on the third Tuesday in February to nominate nonpartisan candidates for the spring election and express preferences for presidential candidates.[49] The **spring election** is held on the first Tuesday in April to elect judicial, municipal, and educational officers, nonpartisan county officers, and sewerage commissioners.[50]

The **fall primary** is held on the second Tuesday in September to nominate candidates for the fall election and determine which candidates may receive funding from the Wisconsin Election Campaign Fund.[51] The **fall election** is held on the Tuesday after the first Monday in November in even-numbered years to elect presidential electors, U.S. Senators and Representatives, State Senators and Representatives, state officers (except judicial officers and State Superintendent), county officers (except county supervisors and executives), and district attorneys.[52]

Post-Election Activities

Canvass. A canvass is conducted after an election to certify the official results. After an election, the board of canvassers meets and conducts the canvass process, which includes tallying the votes for each office. The board completes its report and certifies the results.[53]

Additional information about canvassing procedures may be found at http://gab.wi.gov/sites/default/files/publication/65/ea_post_election_pdf_21818.pdf.

Recount. The recount procedure is the exclusive remedy to test the results of an election against an alleged defect, irregularity, or mistake.[54] A candidate voted for at an election or an elector who voted on a referendum question may petition for a recount.[55]

A recount petition must be filed by 5 p.m. on the third business day after the last meeting of the board of canvassers. The petition must state the following[56]:

- The petitioner was a candidate or voted on a referendum question at the election.
- The petitioner believes that fraud or mistakes have occurred in the counting and return of votes or that another irregularity, illegality, or defect has occurred.

After the petition is filed and any required fee is paid, the board of canvassers conducts the recount.[57] The recount determination may be appealed to the circuit court.[58]

Additional information about recount procedures may be found at http://gab.wi.gov/sites/default/files/publication/65/ea_recounts_pdf_15301.pdf.

Recall

An incumbent elective official of a state, county, congressional, legislative, judicial, city, village, town, town sanitary district, prosecutorial unit, or school district office may be subject to the recall process if qualified electors petition for the recall of that official. Qualified electors must file a petition signed by a certain number of electors demanding the recall of the official.[59] For city, village, town, town sanitary district, or school district officials, a statement of the reason for recall that is related to the official's responsibilities must be included in the recall petition.[60]

State, County, Congressional, Legislative, Judicial, and Prosecutorial Unit Offices. The filing official must determine whether the petition is sufficient and record that in the certificate attached to the petition. If the petition is sufficient, the official must call for a recall election. The official subject to recall is a candidate at

the recall election without nomination unless he or she resigns within 10 days after the date that the petition is filed. Other candidates for the recall election are nominated by filing nomination papers and declarations of candidacy. A recall primary is held if more than two candidates compete for the office.[61]

City, Village, Town, Town Sanitary District, and School District Offices. The clerk or board of election commissioners must determine whether the petition is sufficient and record that in the certificate attached to the petition. If the petition is sufficient, the petition and certificate are transmitted to the governing body. The governing body must then call for a recall election. The official subject to recall is a candidate at the recall election without nomination unless he or she resigns within 10 days following the date of the certificate. Other candidates for the recall election are nominated by filing nomination papers and declarations of candidacy. A recall primary is held if more than two candidates compete for the office.[62]

An official is not subject to recall during the first year of the official's term of office.

No recall petition may be offered for filing during the first year of an official's term of office.[63] In addition, no additional recall petitions may be filed against an official during the official's term of office after one recall petition and election has occurred.[64]

Campaign Finance

State campaign finance laws govern various issues, including contributions, expenditures, registration and reporting, and public funding. This section briefly highlights some of the more significant state campaign finance laws.

Registration and Reporting Requirements

Every candidate and certain individuals, committees, and groups must file a registration statement.[65] A registrant must report all contributions, disbursements, and obligations, and each report must include certain information, including the name and address of each individual who has made a contribution of more than $20.[66] [The full list of required information may be found in s. 11.06 (1), Stats.]

Contribution Limits

State law limits the amount of contributions that an individual or committee may contribute to a candidate for state or local office. The contribution limits apply cumulatively to the candidate's campaign for the primary and general election. A candidate is not bound by the contribution limits for personal contributions that the candidate makes to his or her campaign. Table 2 lists the limits, by office, that an individual or committee, other than a legislative campaign committee or political party committee, may contribute to candidates for state office.[67]

State law limits the amount of contributions that an individual or committee may contribute to a candidate for state or local office.

Table 2: Contribution Limits

	Individual	Committee
Governor	$10,000	$43,128
Lieutenant Governor	$10,000	$12,939
Attorney General	$10,000	$21,560
Secretary of State	$10,000	$ 8,625
State Treasurer	$10,000	$ 8,625
State Superintendent	$10,000	$ 8,625
Supreme Court Justice	$ 1,000	$ 1,000
Court of Appeals Judge (District I)	$ 3,000	$ 3,000
Court of Appeals Judge (Districts II, III, & IV)	$ 2,500	$ 2,500
Circuit Court Judge (Milwaukee, Dane, & Waukesha Counties)	$ 3,000	$ 3,000
Circuit Court Judge (Other Counties)	$ 1,000	$ 1,000
District Attorney (Milwaukee, Dane, & Waukesha Counties)	$ 3,000	$ 3,000
District Attorney (Other Counties)	$ 1,000	$ 1,000
State Senator	$ 1,000	$ 1,000
State Representative	$ 500	$ 500

Additional information about contribution limits for candidates for state or local office may be found at http://gab.wi.gov/campaign-finance/limits-deadlines.

Expenditure Limits

State law contains expenditure limits for candidates for state or local office.[68] The U.S. Supreme Court held that expenditure limits violate the First Amendment in *Buckley v. Valeo*, 424 U.S. 1 (1976). Consequently, a state generally may not restrict the amount of funds that a candidate spends in a campaign by requiring that candidates comply with expenditure limits. However, the expenditure limits in state law exist for purposes of the Wisconsin Election Campaign Fund. A candidate for state office who receives a grant from the Wisconsin Election Campaign Fund must comply with the expenditure limits.[69] In addition, a candidate may voluntarily choose to comply with the expenditure limits.[70]

Wisconsin Election Campaign Fund

Candidates for some state offices may receive grants from the Wisconsin Election Campaign Fund.

Candidates for the following offices may be eligible to receive public funding from the Wisconsin Election Campaign Fund[71]:

- Governor
- Lieutenant Governor
- Attorney General
- Secretary of State
- State Treasurer
- State Superintendent
- State Senator
- State Representative

If a candidate wants to receive a grant from the Wisconsin Election Campaign Fund, the candidate generally must file an application with the GAB by the deadline for filing nomination papers. The application must include a sworn statement that the candidate has complied and will continue to comply with the contribution and expenditure limits.[72] Table 3 lists the expenditure limits, by office, for the Wisconsin Election Campaign Fund.[73]

Table 3: Expenditure Limits

Governor	$1,078,200
Lieutenant Governor	$ 323,475
Attorney General	$ 539,000
Secretary of State	$ 215,625
State Treasurer	$ 215,625
State Superintendent	$ 215,625
State Senator	$ 34,500
State Representative	$ 17,250

The GAB must promptly notify the candidate, in writing, of the approval or disapproval of the application. The GAB must approve the application if all of the following criteria are satisfied[74]:

- The application was submitted by the deadline.
- The candidate is certified to appear on the election ballot.
- The candidate has an opponent who will appear on the election ballot.

- The candidate's financial reports demonstrate that the candidate has complied with contribution and expenditure limits.
- The candidate received the mandatory number of individual contributions of $100 or less. [A candidate for State Senator or State Representative must receive 10% of the office's expenditure limit in individual contributions of $100 or less. A candidate for Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, or State Superintendent must receive 5% of the office's expenditure limit in individual contributions of $100 or less.] Table 4 lists the total amount of individual contributions of $100 or less that a candidate must receive.

Table 4: Total Amount of Individual Contributions of $100 or Less

Governor	$ 53,910
Lieutenant Governor	$ 16,174
Attorney General	$ 26,950
Secretary of State	$ 10,781
State Treasurer	$ 10,781
State Superintendent	$ 10,781
State Senator	$ 3,450
State Representative	$ 1,725

Grants are distributed based on office and maximum amounts.[75] Grants may only be used for services from a communications medium; printing, advertising, or graphic arts services; postage; and office supplies.[76]

Additional information about the Wisconsin Election Campaign Fund may be found at http://gab.wi.gov/sites/default/files/publication/63/wecf_manual_pdf_20668.pdf.

Democracy Trust Fund

2009 Wisconsin Act 89 created the Democracy Trust Fund from which candidates for Supreme Court Justice may receive public financing derived from general purpose revenues and from an expanded income tax check-off. An eligible candidate is a candidate for Supreme Court Justice who has an opponent who has qualified to have his or her name certified for placement on the ballot at the spring primary or election. An eligible candidate:

1. May not accept private contributions other than seed money contributions and qualifying contributions.
2. May not accept more than $25 in cash from any contributor or accept cash from all sources in a total amount greater than .1% of the public financing benefit or $500, whichever is greater.
3. May not make any disbursement derived from personal funds after the close of the public financing qualifying period.

Public financing is provided to an eligible candidate in the amount of $100,000 for a primary election campaign and in the amount of $300,000 for a general election campaign. These amounts are subject to a biennial cost of living adjustment.

If an eligible candidate is opposed in a primary or election by a candidate who does not apply for, is ineligible for, or fails to qualify for public financing, and the opponent makes disbursements in a total amount that exceeds by more than 5% the amount of the public financing benefit for an eligible candidate at the same primary or election, the eligible candidate receives additional funding equal to the excess

disbursements, but not more than, in the aggregate, three times the amount of the public financing benefit.

In addition, if the aggregate independent disbursements made or obligated to be made by a person against an eligible candidate or for the opponents of that candidate exceed 120% of the public financing benefit for that office during the primary election campaign period or the election campaign period, the eligible candidate receives an additional benefit amount. This amount is equal to the disbursements made or obligated to be made by a person, but not to exceed an amount equal to three times the public financing benefit payable to a candidate for the applicable office at the primary or other election for which the benefit is received.

A candidate not participating in the Democracy Trust Fund may accept private contributions without limitation. However, no person may make a contribution to that candidate exceeding a total of $1,000 during any campaign.

Constitutional Issues

Campaign finance laws have frequently been challenged as unconstitutional. The primary challenge to campaign finance laws asserts the right to free speech in the First Amendment to the U.S. Constitution. The landmark decisions in campaign finance law are *Buckley* and *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003). More recently, *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007), and *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), have been added to the history of campaign finance case law.

In *Buckley*, the U.S. Supreme Court held that contribution limits and reporting and disclosure requirements are constitutional and that expenditure limits and limits on the use of personal funds by a candidate in the Federal Election Campaign Act (FECA) of 1971 violate the First Amendment. The Court also developed a "magic words" test, which indicated that communications using "vote for," vote against," "elect," "reject," or similar words, may be regulated.

In *McConnell*, the Court upheld the regulation of "issue ads" in the Bipartisan Campaign Reform Act (BCRA) of 2002, even though the communications did not use the "magic words" from *Buckley*. Later, in *Wisconsin Right to Life*, the Court's principal decision held BCRA's "issue ads" provision unconstitutional as applied to specific ads but did not explicitly overturn the *McConnell* decision.

In *Citizens United*, the Court held that government may not prohibit corporations from using their general treasury funds to make independent expenditures, overturning *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and, in part, *McConnell*. However, the Court held that government may impose disclosure and disclaimer requirements on corporate political speech.

Additional information about *Wisconsin Right to Life* may be found at http://www.legis.state.wi.us/lc/publications/im/IM07_04_jk.pdf. Additional information about *Citizens United* may be found at http://www.legis.state.wi.us/lc/publications/im/IM_2010_02.pdf.

Express and Issue Advocacy

In general, communications that are made for "political purposes" are subject to regulation under ch. 11, Stats.[77]

An act is for "political purposes" when the act is done to influence the election of any individual to state or local office or to influence a particular vote at a referendum. Acts that are for "political purposes" include: (1) making a communication that expressly advocates the election, defeat, retention, or recall of a clearly identified candidate or a particular vote at a referendum; and (2) attempting to influence an

endorsement or nomination to be made at a political party convention regarding a campaign for state or local office.[78]

Further, the Wisconsin Administrative Code provides that a communication is for "political purposes," and thus subject to regulation under ch. 11, Stats., if one of the following applies[79]:

1. The communication contains terms such as "vote for," "elect," "support," "cast your ballot for," "Smith for Assembly," "vote against," "defeat," or "reject," or their functional equivalents; references a clearly identified candidate; and unambiguously relates to that candidate's campaign.
2. The communication is suspectible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. A communication is susceptible of no other reasonable interpretation if the communication:
   a. Is made during the period beginning on the 30th day preceding a primary election and ending on the date of that election, or is made during the period beginning on the 60th day preceding a general or spring election and ending on the date of that election;
   b. Includes a reference to or depiction of a clearly identified candidate; and
   c. Refers to the personal character, qualities, or fitness of the candidate; supports or condemns the candidate's stance or position on issues; or supports or condemns the candidate's public record.

At the time of the publication of this chapter, actions challenging the constitutionality of the language in item 2., above, are pending in the Wisconsin Supreme Court, the U.S. District Court for the Western District of Wisconsin, and the U.S. District Court for the Eastern District of Wisconsin. The Wisconsin Supreme Court temporarily enjoined the enforcement of the language in item 2., above, pending further order of the court.

Additional References

1. The ***GAB*** has various manuals and forms available at http://gab.wi.gov/publications/manuals and http://gab.wi.gov/forms.
2. The ***U.S. Federal Election Commission*** has information on federal campaign finance laws available at www.fec.gov.
3. The ***Legislative Fiscal Bureau*** prepares Informational Papers that describe various state programs, which may be found at http://www.legis.state.wi.us/lfb/index.html (click on Publications).
4. The ***Legislative Reference Bureau*** prepares publications concerning election law. Those publications may be found at http://www.legis.wisconsin.gov/lrb/pubs/pubsub/elections.htm.
5. The ***Legislative Audit Bureau*** prepares audits of various state programs. For examples, see *Compliance with Election Laws*, Report 07-16, November 2007, at www.legis.wi.gov/lab/reports/07-16full.pdf and *Voter Registration*, Report 05-12, September 2005, at www.legis.wisconsin.gov/lab/reports/05-12Full.pdf.
6. The ***National Conference of State Legislatures*** has information about election and campaign finance laws in other states available at www.ncsl.org/programs/legismgt/elect/elect.htm.

[1] s. 5.05, Stats.
[2] *Id.*
[3] s. 15.60, Stats.
[4] s. 15.603, Stats.
[5] s. 5.05 (2s), Stats.
[6] s. 5.05 (2w), Stats.
[7] s. 5.05 (1m), Stats.
[8] subch. III of ch. 19, Stats.
[9] s. 5.05, Stats.
[10] s. 19.42 (1), Stats.
[11] s. 13.625, Stats.
[12] s. 5.05, Stats.
[13] s. 13.61, Stats.
[14] s. 13.62 (10), Stats.
[15] s. 13.62 (11), Stats.
[16] s. 13.62 (12), Stats.
[17] s. 5.05, Stats.
[18] s. 5.05 (2s) and (2w), Stats.
[19] s. 11.01 (1), Stats.
[20] ss. 8.10 and 8.15, Stats.
[21] s. 8.10 (2) (a), Stats.
[22] s. 8.15 (1), Stats.
[23] ss. 8.10 (5) and 8.15 (4) (b), Stats.
[24] s. 8.37, Stats.
[25] s. 6.02 (1), Stats.
[26] s. 6.03, Stats.
[27] *Id.*; see, also, s. 304.078 (3), Stats.
[28] s. 6.27, Stats.
[29] ss. 6.15, 6.18, 6.22, and 6.27, Stats.
[30] s. 6.28 (1), Stats.
[31] s. 6.29 (2) (a), Stats.
[32] s. 6.34 (2) and (3), Stats.
[33] s. 6.29 (2) (a), Stats.
[34] s. 6.28 (1), Stats.
[35] s. 6.34 (2), Stats.
[36] s. 6.55, Stats.
[37] s. 6.20, Stats.
[38] s. 6.86 (1), Stats.
[39] s. 6.87 (1) to (3), Stats.
[40] s. 6.87 (4) and (6), Stats.
[41] s. 6.88 (3) (a), Stats.
[42] ss. 6.86, 6.865, and 6.875, Stats.
[43] s. 6.77 (1), Stats.
[44] s. 6.78, Stats.
[45] s. 6.79 (1m) to (3), Stats.
[46] s. 6.79 (2) (d) and (4), Stats.
[47] s. 6.79 (2) (dm), Stats.
[48] s. 6.80, Stats.
[49] s. 5.02 (22), Stats.
[50] s. 5.02 (21), Stats.
[51] s. 5.02 (18), Stats.
[52] s. 5.02 (5), Stats.
[53] s. 7.51, Stats.
[54] s. 9.01 (11), Stats.
[55] s. 9.01 (1), Stats.
[56] *Id*.
[57] *Id*.
[58] s. 9.01 (6), Stats.
[59] s. 9.10 (1), Stats., and art. XIII, s. 12, Wis. Const.
[60] s. 9.10 (2) (b), Stats.
[61] s. 9.10 (3), Stats., and art. XIII, s. 12, Wis. Const.

[62] s. 9.10 (4), Stats.
[63] s. 9.10 (2) (s), Stats.
[64] s. 9.10 (6), Stats.
[65] s. 11.05, Stats.
[66] s. 11.06 (1), Stats.
[67] s. 11.26, Stats.
[68] s. 11.31 (1), Stats.
[69] s. 11.31 (2), Stats.
[70] s. 11.31 (2m), Stats.
[71] s. 11.50 (1), Stats.
[72] s. 11.50 (2) (a), Stats.
[73] s. 11.31 (1), Stats.
[74] s. 11.50 (2) (b) and (f), Stats.
[75] s. 11.50 (3), (4), and (9), Stats.
[76] s. 11.50 (7), Stats.
[77] ss. 11.05 and 11.06, Stats.
[78] s. 11.01 (16), Stats.
[79] s. GAB 1.28, Wis. Adm. Code.

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Chapter H

Family Law

Family law encompasses such topics as marriage; domestic partnerships; marital property; divorce; child support and child custody; visitation of children by third parties; paternity; and adoption.

Generally, family law issues in Wisconsin are handled at the county level. For example, marriage licenses are issued at the county clerk's office. Family law actions, such as divorce and paternity actions, are filed with county circuit courts.

In the 2009-10 Legislative Session, the following major issues were addressed by the Legislature:

- 2009 Wisconsin Act 28 created provisions for the establishment of domestic partnerships and related rights and benefits.
- 2009 Wisconsin Act 79 made changes to the Children's Code and the Juvenile Justice Code (chs. 48 and 938, Stats.), to bring them into compliance with several federal acts, including the Fostering Connections to Success and Increasing Adoptions Act of 2008.
- 2009 Wisconsin Act 94 incorporated the Indian Child Welfare Act's jurisdictional provisions and minimum standards for Indian child custody proceedings into the Children's Code and Juvenile Justice Code for a child or juvenile in need of protection or services (CHIPS or JIPS), termination of parental rights, and adoption.
- 2009 Wisconsin Act 187 requires legal custody and physical placement studies to be submitted to both the court and the parties and to be offered in accordance with the rules of evidence.

- 2009 Wisconsin Act 321 updated the Uniform Interstate Family Support Act (UIFSA, ch. 769, Stats.). The Uniform Act regulates jurisdiction of Wisconsin courts in actions to establish or enforce spousal or child support obligations, to modify child support obligations, or to determine paternity, when parties reside in different states or when orders have been issued in different states.

- 2009 Wisconsin Act 339 incorporated the Interstate Compact for the Placement of Children into the Children's Code and Juvenile Justice Code. The Act will become effective when 35 states enact the compact. It appears that, as of May 24, 2010, 10 other states have also enacted the compact.

Marriage

In Wisconsin, marriage is a civil contract. Marriage creates the legal status of husband and wife.

There is no "common law" marriage in Wisconsin. Common law marriage is a status recognized in some states where a couple living together in a marital-like relationship for an established period of time are treated as legally married.

Wisconsin Constitution

The Wisconsin Constitution, Article XIII, Section 13, states: "Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state."

A person must be at least 18 years of age to marry in Wisconsin. If a person is age 16 or 17, the person may marry with the written consent of his or her parent, guardian, or custodian.

In Wisconsin, persons who cannot marry are: persons who are nearer of kin than second cousins (unless sterile); persons who are already married to someone else; persons who are incapable of assenting to marriage due to a "want of understanding"; and persons who have been divorced less than six months.

One party must have resided within his or her current county of residence for 30 days in order to apply for a marriage license. A license will be issued five or more days after application. At the county clerk's discretion, and upon receiving an additional fee, the waiting period may be waived. Once the person has obtained a license from the county clerk's office, the person may marry in any county in the state within 30 days of its issuance. If both parties are nonresidents of the state, a marriage license may be obtained in the county where the marriage ceremony will be performed.

County clerks collect a fee for each marriage license granted. The couple must complete an application, provide their Social Security numbers, provide their birth certificates, provide documentary proof of identity and residence, and swear to and affirm the application before the county clerk.

The statutes provide a procedure for family members, the district attorney, or circuit court commissioner to object to the marriage. The person may file a petition with the clerk of probate court setting forth his or her belief that the application is false or insufficient, or that the applicants are not legally allowed to marry. If the court determines the objections are valid, it must issue an order for the marriage applicants to show cause, at a hearing, why the objections are not valid. This could ultimately result in a court order that a marriage license not be issued.

The marriage ceremony must involve the mutual declarations of the two parties that they take each other as husband and wife. The declarations must be made before an authorized officiating person, and at least two competent adult witnesses. Authorized officiants are ordained clergy members, judges, circuit court commissioners, and municipal judges. In certain recognized religious ceremonies, the two parties themselves may mutually declare the marriage without an officiant.

Generally, a marriage contracted in another state that satisfies the legal requirements of that state will be recognized if the married couple moves to the State of Wisconsin, unless the marriage violates the strong public policy of another state that had the most significant relationship to the spouses at the time of the marriage. However, marriages that are entered into outside of this state in order to circumvent the laws of Wisconsin are void, and are subject to misdemeanor charges with a penalty of up to nine months in jail and up to a $10,000 fine, or both.

Same-sex marriages are not recognized in Wisconsin, though some domestic partnerships are, for limited purposes.

Domestic Partnerships

The biennial budget for the 2009-10 Session, 2009 Wisconsin Act 28, included provisions for the establishment of domestic partnerships and related rights and benefits under Wisconsin law. Domestic partners have certain benefits, such as inheritance rights and medical access, but do not have the legal rights of marriage, such as the mutual obligation for support, the comprehensive marital property system, and child custody and placement rights and obligations.

Some benefits conferred by filing a declaration of domestic partnership include: inheritance from a domestic partner who dies without a will; award of home and vehicles titled in a deceased partner's name; workplace death benefits; standing to sue for wrongful death; coverage by the state Family Medical Leave Act to take up to two weeks off per year to care for a domestic partner with a serious medical condition; and visitation and access rights at hospitals and residential care facilities.

Some areas of the law not affected by the domestic partnership provisions include: marital property laws; legal custody and physical placement of children; child support; spousal support; property division upon dissolution; discrimination in education, housing, employment, credit, and insurance; advance directives relating to health care ("living will"); adoption; and social services.

Same-sex couples that share a common residence may apply for a declaration of domestic partnership with the county clerk where they have resided for at least 30 days prior to the application. Five days after the application is made, the county clerk will issue the declaration to the couple. The couple can then sign the declaration before a notary, and submit it to the Register of Deeds for filing with the Wisconsin Vital Records Office.

Partners who wish to terminate their Wisconsin domestic partnership must file a notice of termination in the same county clerk's office that issued the declaration of domestic partnership, even if no longer residing in that county. Both parties may sign and submit the notice. If only one party signs the notice, that partner must complete an affidavit stating that he or she either served the other party with a summons or that an official public notice was published in the area where the partner was last known to be living. The county clerk will then issue an original certificate of termination of domestic partnership.

For purposes of the Wisconsin Retirement System and state employee benefits, both same-sex and opposite-sex couples may file an affidavit of domestic partnership with the Department of Employee Trust Funds (ETF) to enroll the partner in state benefit programs.

All benefit programs that are administered by ETF are available to a qualifying partner of a state employee.

Children of a qualifying domestic partner can be covered by the state employee's health insurance if the family coverage option is selected.

Benefits are available to a qualifying domestic partner of a retired state employee.

Marital Property

Classification of Property

On January 1, 1986, Wisconsin's separate property system defining the property rights of married persons was replaced by the marital property law. The law governs spousal property interests during marriage, for example: as it relates to creditors and at death. It does not govern property rights at dissolution of marriage by divorce, annulment, or legal separation.

The principal feature of the marital property system is that each spouse, by law, has an equal ownership interest in property acquired by either or both spouses during marriage. Under the previous separate property system, property acquired during marriage generally belonged to the spouse who acquired the property.

Under the marital property law, all property owned by spouses is presumed to be marital property, in which each spouse has a present, undivided one-half interest.

Under the marital property law, all property owned by spouses is presumed to be marital property. Each spouse has a present, undivided one-half interest in all property. Marital property includes income earned by a spouse, or income attributable to property of a spouse that accrues during marriage; property acquired in exchange for, or with, the proceeds of marital property; substantial appreciation of marital property attributable to the substantial effort of either spouse; and any property not classified as something other than marital property.

Individual property generally includes property owned by a spouse before marriage; property obtained by gift or inheritance during the marriage; property acquired in exchange for, or with, the proceeds of individual property; appreciation of individual property; income from third party trusts; property designated as individual property by a marital property agreement; income from nonmarital property designated as individual by a "unilateral statement"; and certain portions of personal injury awards.

Special classification rules apply to homestead property, certain retirement, pension and deferred compensation plans, and life insurance policies.

Spouses have the right to manage and control marital property held in the names of both spouses in the conjunctive (e.g., John *and* Mary) only by acting together with respect to the property. Otherwise, a spouse acting alone may manage and control his or her individual property and certain marital property. Special management and control rules apply to certain property, such as business property and making gifts of marital property.

The marital property law seeks to ensure that each spouse has access to the extension of credit. In evaluating a spouse's creditworthiness, the marital property law requires a creditor to consider all marital property available to satisfy the obligation. If credit is extended, a creditor must give written notice of the extension to the nonapplicant spouse when the extension of credit results in an obligation of marital

property. The type of obligation determines when marital property may be used to satisfy the obligation. For example, obligations incurred prior to the marriage are generally satisfied from the obligating spouse's individual property. Obligations incurred by a spouse during the marriage are presumed to be in the interest of the marriage and the family and may be satisfied from all marital property, as well as the individual property of the incurring spouse.

Marital Property Agreement

Spouses, as well as persons intending to marry, may enter into marital property agreements regarding the classification of marital or individual property and the rights to control the property. Such agreements are commonly known as pre-nups, though Wisconsin allows them to be executed during marriage. Any agreement must be in writing and signed by both parties. An agreement may not abrogate certain obligations, such as child support.

A creditor must be furnished a copy of a marital property agreement prior to the granting of credit in order for any reclassification of property to be effective against the creditor.

The statutes include both marital property and individual property classification agreement forms, sometimes referred to as "opt-in" and "opt-out" agreements, that parties may use. These forms are found in ss. 766.588 and 766.589, Stats. An agreement may be amended or revoked only by a subsequent marital property agreement.

A spouse may dispose of his or her share of marital property by will. The surviving spouse retains his or her one-half share in the property, and the share is not subject to probate. "Deferred marital property" rules apply to property acquired during the marriage, but prior to 1986, that would have been marital property had the marital property law applied when the property was acquired.

Taxation

Married persons in Wisconsin may file joint or separate tax returns. On joint returns, all income, deductions, and credits for both spouses are combined on the same return. If separate returns are filed, each spouse must report half of the total, combined, marital property income, deductions, and credits, except as provided by a marital property agreement or unilateral statement, or by the innocent spouse rule. The Internal Revenue Service's (IRS's) innocent spouse rule relieves a spouse from tax liability if the innocent spouse did not know or have reason to know that the other spouse omitted an income item or erroneously claimed a tax credit or deduction on a joint return, and it would be inequitable to impose liability on the innocent spouse.

The married person's tax credit is available to couples filing joint returns but not separate returns.

The basis, which is the adjusted original cost of property that is used to determine the amount of gain or loss for capital gains tax purposes, for inherited marital property differs from that given to property held in joint tenancy or tenancy in common. Both spouses' share of marital property receives a new basis upon the death of the first spouse to die, adjusted to the date-of-death value of the marital property. This is known as a double step-up in basis, for community property states such as Wisconsin.

For income tax purposes, spouses may prospectively reclassify income by agreement or unilateral statement. In order to affect state tax liability, the agreement or statement must be filed with the Department of Revenue (DOR) before the income is earned.

In order to resolve questions that might arise regarding access of a spouse to another spouse's tax return if single returns are filed, Wisconsin tax law permits the spouse or former spouse to examine tax returns or claims of the other spouse if DOR issued an assessment or notice of claim to the spouse or former spouse, or if the spouse or former spouse is subject to a collection for a delinquency. Also, DOR may disclose whether an extension for filing a return or claim was filed.

Divorce, Property Division, and Maintenance

Divorce; Separation

In Wisconsin, the same procedures apply in actions for divorce, legal separation, or annulment. For this discussion, the term "divorce" will generally be used. A judgment of legal separtion differs only in allowing the parties to maintain the legal status of marriage (sometimes used to continue family coverage for health insurance) while separating the family and financial obligations. Legal separation is distinct from physical separation, which anyone can do at any time without affecting their legal marital status.

In order to initiate a divorce action, one of the spouses must have been a Wisconsin resident for at least six months prior to the filing of the petition for divorce. In addition, at least one of the parties to the divorce must have been a resident of the county in which the petition is filed for at least 30 days prior to the filing of the petition. County clerks collect a fee when a party commences an action affecting the family.

Wisconsin is a "no fault" divorce state, which means the court must find simply that the marriage is "irretrievably broken." This is shown by both parties stating in the divorce petition that the marriage is irretrievably broken; by the parties voluntarily living apart continuously for 12 months or more immediately prior to filing the divorce petition; or if only one party has stated that the marriage is irretrievable broken, by the court determining that there is no reasonable prospect of reconciliation.

Wisconsin requires a waiting period before a judgment of divorce or legal separation may be granted. When the parties have filed a joint petition for divorce, 120 days must elapse from the filing date before the action may be brought to trial. When one party has filed the petition, the 120-day waiting period begins when the other party is served with the petition.

Pendency of Divorce Action

A court or circuit court commissioner may make just and reasonable temporary orders during the pendency of a divorce action concerning the following: legal custody and periods of physical placement of a minor child; prohibiting removal of a child from the court's jurisdiction; requiring payment for child support and spousal maintenance; requiring payment of debts and prohibiting disposal of assets; requiring counseling for either one or both parties; allowing a party to move with a child after notice of objection has been filed; and other issues.

Reconciliation may be attempted, if the parties so stipulate in writing, during the pendency of a divorce action. The suspension of proceedings to effect reconciliation may be for a period of time not to exceed 90 days. Suspension does not affect the parties' rights in the divorce action. During the suspension period, the parties may resume living together as husband and wife and their acts: (1) do not constitute an admission that the marriage is not irretrievably broken; and (2) do not negate that the parties have voluntarily lived apart continuously for 12 months or more immediately before the commencement of the action. If the parties are not reconciled, the action shall proceed as though no reconciliation period was attempted.

During the pendency of a divorce action, parties are required to disclose information about: (1) assets owned by them individually or jointly; (2) debts and liabilities; and (3) income. There are penalties for disclosures that are not complete. Information disclosed is confidential and sealed by the court.

The statutes contain various requirements for the parties to attend counseling or educational programs. Most of the programs focus on educating parents about the affect of divorce or parental separation on children and how to lessen the detrimental effects. There are specific provisions relating to child custody mediation where it appears that legal custody or physical placement is contested (discussed below).

The primary issues decided in a judgment of divorce are: property division; child support and spousal maintenance; legal custody rights with reference to a child; and periods of physical placement with a child (sometimes including visitation rights of third parties).

Parties may stipulate to any of these issues in settlement of a divorce action, subject to court approval and subject to certain conditions. For example, child support may be stipulated to in a manner that is consistent with the statutory requirements for its determination. Likewise, a stipulation cannot leave one party in need of assistance from the state.

Property Division

Generally, all property acquired during the marriage, owned by either or both spouses, is subject to division upon divorce. This includes assets such as pension plans, retirement accounts, vehicles, and real estate. Property acquired by gift or inheritance by one of the parties is generally not subject to division.

The court must presume that the divisible property is to be divided equally between the parties upon divorce, but the application of certain statutory factors may alter this presumption. This includes factors such as the length of the marriage; property brought to the marriage by each party; and the tax consequences to each party.

Debts incurred during the marriage can be collected from either of the parties regardless of how responsibility for the debts was divided between the parties in their judgment of divorce. The divorce judgment assigning a debt is not binding on third-party creditors. To avoid possible problems with the collection of debts after a divorce, parties may take actions such as consolidating debts assigned to a spouse and having that spouse refinance those obligations in his or her name only.

Maintenance

As part of the divorce judgment, a court may order maintenance payments (formerly known as alimony) to either party for a limited or indefinite period of time after considering several designated statutory factors. Some of these factors include the length of the marriage; the age and physical and emotional health of the parties; the division of property made in connection with the divorce; the educational level of each party at the time of the marriage and at the time of the divorce; the earning capacity of the party seeking maintenance, including the party's educational and employment background, length of absence from the job market, and child-rearing responsibilities during the marriage; and the contribution of one party to the education, training, and earning power of the other party.

There is no statutory presumption of an equal division of earnings in awarding maintenance, but the courts have stated that a reasonable starting point for a maintenance evaluation of a long-term marriage is that the dependent spouse may be entitled to one-half of the total combined earnings of both parties.

Maintenance payments pursuant to a judgment of divorce are taxable income to the recipient and are a tax deduction to the payer. The IRS considers payments made

to third parties for the benefit of a former spouse to be maintenance. The IRS will disallow deductions for any portion of spousal support that is intended for child support.

Child Custody and Physical Placement

Legal Custody

In actions affecting the family, "**legal custody**" means the right and responsibility to make major decisions concerning a child. Major decisions include decisions regarding consent to marry, consent to enter military service, consent to obtain a driver's license, authorization for nonemergency health care, and choice of school and religion. The court, in its order for custody, may delineate specific decisions to be made by each party.

Other key definitions related to child custody are:

- **Joint legal custody** means both parties share legal custody and neither party's legal custody rights are superior (except as to specified decisions set forth by the court or the parties in the final judgment).
- **Sole legal custody** means one party has full legal custody of a child.
- **Physical placement** means a party has the right to have a child physically placed with the party. During that placement, the party has the right and responsibility to make routine daily decisions regarding the child's care, as long as those decisions are consistent with major decisions made by a person having legal custody.

In actions affecting the family when the legal custody or physical placement of a child is contested, or if there is reason for special concern regarding the welfare of the child, the court appoints a guardian ad litem (GAL) for the child. A GAL's responsibility is to represent the best interests of the child in the action regarding paternity, custody, physical placement, and support. A GAL must be a licensed attorney in the State of Wisconsin, who meets the GAL special training requirements.

Mediation services may play a significant role in actions affecting the family involving child custody issues. Mediation services must be made available in every county. "Mediation" is defined as a cooperative process involving the parties and a mediator, the purpose of which is to aid the parties, by application of communication and dispute resolution skills, in defining and resolving their own disagreements, with the interests of the child as the paramount consideration.

With exceptions for undue hardship or endangerment to one of the parties, an initial session of mediation is required in any action affecting the family where it appears that legal custody or physical placement is contested. The parties may contract with a mediator at their own expense or may use the family court counseling service mediators. If an agreement is reached, it must be reviewed by the parties' attorneys and the GAL and be approved by the court. If no agreement is reached, the matter must be referred for a legal custody or physical placement study and the issues are resolved through court procedures.

In awarding legal custody and physical placement, the court must consider numerous statutory factors. Some of these include the child's wishes; the child's relationship with the parents; the child's age; the family's history of custodial roles and any reasonable lifestyle changes that are proposed; the child's adjustment to

home and school; and the need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.

There is a presumption that joint legal custody is in the best interest of the child. The court may award sole legal custody if it finds it is in the child's best interest and the parties agree to it. If the parties fail to agree to sole legal custody, the court may award it if the court finds that one party is not capable of performing parental duties or does not wish to be active in raising the child; that conditions exist that substantially interfere with the exercise of joint legal custody; or that the parties will not be able to cooperate in future decision-making.

If there is evidence of child or spousal abuse, the presumption for joint legal custody does not apply, and there is a rebuttable presumption that joint legal custody is detrimental to the child and contrary to the best interest of the child.

The "spousal abuse" presumption for sole legal custody may be rebutted only by a preponderance of evidence that the abusive party has completed treatment for batterers provided through a certified treatment program or treatment provider and is not abusing alcohol or any other drug; and it is in the best interest of the child that the abusive party be given joint or sole legal custody based on the statutory factors that the court must consider in awarding custody and physical placement.

If the court finds that both parties have engaged in a pattern or serious incident of spousal abuse, for purposes of the presumption, the court must attempt to determine which party was the primary physical aggressor, considering factors such as any prior acts of abuse, relative severity of injuries, acts of self-defense, and any patterns of coercive and abusive behavior between the parties. If one, but not both, of the parties was convicted of a crime that was an act of domestic abuse with respect to the other party, the court must find the party who was convicted to be the primary physical aggressor. If the court determines that neither party was the primary physical aggressor, the presumption against a party's custody rights does not apply.

A child is entitled to periods of physical placement with both parents unless the court finds that placement with a parent would endanger the child's physical, mental, or emotional health. The court must set a placement schedule that: (1) allows the child to have regularly occurring, meaningful periods of physical placement with each parent; and (2) maximizes the amount of time the child may spend with each parent.

Wisconsin courts have held that maximizing time with both parents is not synonymous with a presumption for equal physical placement. In determining physical placement, a court must consider the same statutory factors that apply to legal custody determinations.

A court may not deny a parent physical placement based on the parent's failure to pay child support or maintenance payments.

Modification of Custody and Physical Placement Orders

A court may not modify an initial legal custody or physical placement order for two years unless the current custodial conditions are physically or emotionally harmful to the best interest of the child. The purpose of this is to provide a period of finality and stability while the child is adjusting to the new family situation.

After the two-year period, the court may modify the legal custody order if it finds both that: (1) it is in the best interest of the child; and (2) a substantial change of circumstances has occurred that warrants modification. If the parties have substantially equal periods of placement, the court may modify an order for physical placement if

it is in the best interest of the child and if circumstances make it impractical for the parties to continue having substantially equal placement.

Under the so-called "use-it-or-lose-it" provision, a court may modify a party's rights to physical placement for failure to exercise physical placement. Also, a court may deny a parent's physical placement rights at any time if it finds that the placement rights endanger the child's physical, mental, or emotional health.

If a court grants physical placement rights to both parents and a parent intends to move outside of Wisconsin, move within Wisconsin to a distance that is 150 miles or more from the other parent, or remove the child from Wisconsin for more than 90 days, that parent must give at least 60 days written notice, by certified mail, to the other parent.

The statutes set forth a procedure for the nonmoving party to object to the move or removal of the child. The objection must be made within 15 days of receipt of the notice. The court will then refer the parents for mediation or other family court services and may appoint a GAL.

To guide the process, the statutes give standards for when a move may be allowed, which generally favor continuing the child's physical placement with the parent with whom the child resides for the greater period of time. If physical placement is substantially equal, the court must consider whether circumstances make it impractical to continue equal placement, whether modification is in the best interest of the child, whether the proposed action is reasonable, any disruption to the nature and extent of the child's relationship with the other parent, and the availability of other arrangements to foster and continue that relationship.

Enforcement

Methods for enforcing rights to legal custody and physical placement include contempt of court sanctions under ch. 785, Stats.; and criminal sanctions relating to interference with the custody of a child under s. 948.31, Stats. Remedies under s. 767.471, Stats., require a court to grant periods of physical placement to replace those denied or interfered with by the parent and order the uncooperative parent to pay costs and attorney fees for maintaining the enforcement action.

Wisconsin courts may also enforce or modify custody and placement orders from other states or other countries under the procedures set forth by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA, ch. 822, Stats.), and the Hague Convention on the Civil Aspects of International Child Abduction.

Third Party Visitation

Wisconsin statutes provide for the visitation of children by certain nonparents, including grandparents, in several situations.

Actions Affecting the Family. First, in the context of an existing action affecting the family, grandparents, great-grandparents, stepparents, or other persons who have maintained a relationship similar to a parent-child relationship with the child may request and be granted reasonable visitation rights if the parents have notice of the hearing and the court determines that the visitation is in the best interest of the child.

Grandparents of Nonmarital Child. Second, grandparents of a nonmarital child may petition for, and be granted, visitation rights to a nonmarital child in an independent action for visitation or in an underlying action affecting the family if: (1) the parents have not subsequently intermarried; (2) the paternity of the child has been

determined if the grandparents seeking visitation are the paternal grandparents; (3) the child has not been adopted; (4) the grandparents have maintained a relationship with the child (or have tried but have been prevented from doing so by a parent); (5) the grandparents will not act in a manner contrary to the parenting decisions of the parent; and (6) the visitation is in the best interest of the child.

Third Parties With Parent-Like Relationship. Third, Wisconsin courts recognize that certain third parties seeking visitation rights with a minor child absent an underlying action affecting the family may be granted visitation rights if the third party proves four specific elements to demonstrate a parent-like relationship with the child. These elements are: (1) the biological or adoptive parent consented to, and fostered, the petitioner's parent-like relationship with the child; (2) the petitioner and child lived together in the same household; (3) the petitioner assumed parental obligations, including contributing to the child's support, without expectation of financial compensation; and (4) the petitioner has been in a parental role long enough to have established a bonded, dependent parent-like relationship. If there is no underlying action affecting the family, the petitioner must show that there was a significant triggering event, such as substantial interference with the parent-like relationship.

After Adoption. The fourth situation applies in two cases: (1) when a parent has remarried and the stepparent adopts the child; or (2) when both parents have terminated their parental rights to the child and the child is adopted. In these cases, even though the parent-child relationship may have been legally extinguished with one or both birth parents, other relatives (listed in the statutes) who have maintained a parent-child relationship with the child who has been adopted may request and be granted visitation rights in certain situations. The visitation must be in the best interest of the child, the relative must not undermine the parents' relationship with the child, and the relative must not act contrary to parenting decisions of the parents.

Death of One or Both of a Minor Child's Parents. In the final situation, grandparents and stepparents of a child may request and be granted visitation with a child if one or both parents of a child are deceased and the child is in the custody of the surviving parent or any other person. For the rights to be granted, the visitation must be in the best interest of the child. The petition may be filed in an underlying guardianship action, or as an independent action.

Child Support

As part of a divorce judgment, paternity judgment, or cases where a child's parents may live apart, the court is required to order either or both parents to pay child support for their minor children or for any child under 19 years old who is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. In cases of teenage parents, both sets of grandparents also have a child support obligation. The court must determine the amount of child support to be paid using child support standards promulgated by the Department of Children and Families (DCF), unless the court finds that to do so would be unfair to the child or any of the parties.

Percentage of Income Standard

Chapter DCF 150, Wis. Adm. Code, establishes the child support standards that are to be applied to a person's income to determine the appropriate level of child support. Child support amounts are based on a percentage of the parent's gross income. The percentage standards are as follows:

- 17% for one child.

- 25% for two children.
- 29% for three children.
- 31% for four children.
- 34% for five or more children.

Although the child support amount is calculated based on the percentage standard, current law provides that the child support order must be expressed as a fixed sum. The order may be expressed as a percentage only in limited circumstances.

When both parents have court-ordered periods of physical placement of a child for at least 25% of the year (92 overnights) the percentage standard is calculated for both parents and offset under a given formula.

The percentage standard is applied to the obligated parent's gross monthly income. The gross income includes all salary and wages before taxes and other deductions are taken out, any imputed income based on earning capacity, income from assets, workers' compensation, unemployment income, and Social Security disability. Income does not include public welfare assistance.

The court is also permitted to set child support based on a payer's ability to earn, or "imputed income," beyond actual earnings. The court may consider factors such as past earnings; current physical and mental health; history of child care responsibilities of the parent with primary placement; the parent's education, training, and recent work experience; and local job openings.

Special rules govern the application of the percentage standards to the following different types of payers:

- A serial family payer, which is a payer with an existing child support obligation who incurs an additional child support obligation in a subsequent family.
- A split-custody payer, which is a payer who has physical placement of at least one but not all the children.
- Low-income payers, with an income below 150% of the federal poverty level. The court may use given reduced percentage rates if the payer's income is below 150% of the federal poverty level. If a payer's monthly income is below 75% of the federal poverty level, the court may set an order at an amount appropriate for the payer's total economic circumstances.
- High-income payers earning more than $84,000 per year. The court may use given reduced percentage rates for the portion of gross income in excess of $84,000. A further reduced percentage rate applies to income in excess of $150,000.

A court may set child support without using the percentage standards only in limited circumstances. Upon request of a party to the action, the court may deviate from the percentage standard if the court finds that the use of the percentage standard is unfair to the child or to any of the parties. Any deviation must include consideration of an extensive list of factors set forth in the statutes.

A court that issues a child support order must also assign responsibility for payment of the child's health care expenses. In assigning responsibility, the court must consider specified factors, including existing and available health insurance, the

extent of coverage, and the cost of health insurance coverage for the child. The court may require a parent to initiate or continue health care insurance coverage for a child.

Child support is paid to DCF or its designee. Child support payments are then paid out by direct deposit or added to a Visa debit card. In most cases, child support is automatically withheld from the income of an obligated payer by the payer's employer. This is known as income assignment. An alternative method of collecting child support when income assignment has been ineffective is identifying a bank deposit account from which the child support can periodically be transferred to DCF's designee.

Modification of Child Support Orders

A child support order may be modified only when there has been a substantial change in circumstances of the parties or the children since the entry of the order. A substantial change in circumstances is presumed from commencement of participation in Wisconsin Works (W-2) by either parent; expiration of 33 months after the date of entry of the last child support order; or failure of the payer to furnish a timely annual financial disclosure.

Additional factors the court may consider include a change in the payer's income or earning capacity, change in the child's needs, or any other condition the court determines is relevant in a particular case.

Enforcement

There are several tools available for enforcement of support orders. Civil and administrative mechanisms include mandatory employer reporting of newly hired employees to DCF; tax refund intercepts; accrual of interest on past due child support amounts; work search requirements; contempt of court proceedings, with penalties of fines, imprisonment, or both, under ch. 785, Stats.; suspension of driver's licenses; data sharing between DCF and state financial institutions; liens on property of delinquent payers and administrative seizure of assets; suspension of recreational licenses and professional licenses and credentials; assignment of income; a DCF "most wanted" campaign to publicize information about delinquent payers; and other tools. State and federal criminal penalties may also apply.

Wisconsin courts may also enforce or modify child support orders from other states under the procedures set forth by UIFSA, ch. 769, Stats.

The local county child support offices prosecute enforcement actions on behalf of parents receiving child support, when the recipients have applied for the services. The fee for services is $25 for each year that $500 or more is received in support. The application form can be found at:
http://www.dcf.wisconsin.gov/bcs/services_case.htm.

Paternity

In Wisconsin, legal fatherhood can be established three different ways, if the child is not marital:

1. ***Voluntary Paternity Acknowledgment.*** If both the mother and the man are sure that the man is the father, the easiest way to establish fatherhood is with the Voluntary Paternity Acknowledgment form. The father and the mother may sign a Voluntary Paternity Acknowledgment form after their baby is born.

2. ***Court Ruling.*** If a man is named as the possible father and does not agree - OR - if a man states he is the father of a child and the mother does not agree, a

court will make a ruling about paternity. Both the man and the mother will be notified of the hearing and both should attend.

3. ***Acknowledgment of Marital Child (Legitimation).*** If the mother and the father get married after their child is born, the parents may sign an Acknowledgment of Marital Child form to establish paternity.

Several persons are eligible to commence a paternity action under Wisconsin law. Eligible persons include the child; the child's mother; the male presumed to be the child's father; the alleged father; and the state. The purpose of the paternity action is to determine who is the biological father of a child born in cases where the parents are not married at the time of the child's birth.

A child born to married parents is presumed, under law, to be the natural child of the husband and wife.

A paternity action is commenced by filing a summons, notice, and petition for paternity with the clerk of court for the county in which the child or the alleged father resides.

An action to establish paternity must be commenced within 19 years of the child's birth. **Note:** Liability for past child support payments is limited to the period after filing unless the action was delayed by threats or promises.

The petition, summons, and other documents must be served on the alleged father within 90 days of filing with the clerk of court. The time may be extended only for good cause. All parties to a paternity action may be represented by an attorney. A GAL is appointed for a minor parent and for the child in some circumstances. The alleged father has a right to counsel, and will have an attorney appointed if the alleged father is indigent and cannot afford one.

The court proceeding generally has three stages: the first appearance, the pretrial, and the trial. Paternity can be acknowledged at any of these stages. The alleged father is permitted to enter one of the following three pleas relating to the paternity: admit paternity, deny paternity, or admit paternity subject to confirming tests.

At the first appearance, the court must inform the parties that a judgment of paternity grants parental and inheritance rights and establishes child support obligations; that the alleged father is entitled to an attorney, at public expense if he is indigent; that any party may request genetic tests if testing is in the best interest of the child; and that the alleged father has several defenses available to him to deny paternity, including that he was sterile or impotent at the time of conception, that he did not have intercourse with the mother during the preconceptive period, or that another male did have intercourse with the mother during that period. The first appearance can be held anytime after 30 days of service of the petition on the respondent.

At the pretrial hearing, the court has an opportunity to make an evaluation of the probability of determining the existence or nonexistence of paternity at trial. At this point, witnesses and other evidence may be presented. The court may, at the conclusion of the evidence, dismiss the action, or make a recommendation to the parties regarding settlement of the paternity action. The pretrial hearing is closed to persons other than those necessary to the action.

If no settlement is reached at the pretrial stage, a paternity trial is held. Like the pretrial hearing, the trial is closed to persons other than those necessary to the action. The paternity trial is in two parts: (1) the first part is to make the determination of paternity, as shown by a clear and satisfactory preponderance of the

evidence; and (2) the second part is to make a determination of support, legal custody, periods of physical placement, and any related issues.

Genetic Testing

Genetic tests are one form of evidence used to determine the existence of paternity. If the results of genetic testing show that the alleged father is not excluded as a possible father of the child and that the statistical probability of the alleged father's parentage is 99% or higher, the alleged father is presumed to be the father of the child.

Other evidence that may be submitted includes evidence of sexual intercourse between the mother and alleged father during the possible time of conception; evidence of a relationship between the mother and alleged father at any time; an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy; and any other evidence relevant to the issue of paternity.

Judgment

Once the trial is completed, the court enters a judgment of paternity. The judgment contains an adjudication of the child's paternity, order requiring either or both parents to pay child support, order for the legal custody and physical placement with the child, order for which parent will have the right to claim the tax exemption for the child, and orders relating to the payment of birth expenses, and all related costs and fees of the action, including GAL fees and genetic testing fees.

Adoption

The process for adopting a child usually involves four steps: (1) termination of parental rights; (2) petition to adopt and order for investigation; (3) agency investigation (often referred to as the home study); and (4) the hearing on the adoption. State law requires that all hearings concerning termination of parental rights and adoption must be closed to the public.

Agency adoptions involve the placement of a child with adoptive parents by a public agency, or by a private agency licensed or regulated by the state. Public agencies generally place children who have become wards of the state for reasons such as orphanage, abandonment, or abuse. Private agencies are sometimes run by charities or social service organizations.

An independent adoption refers to situations where the biological and adoptive parents find each other, often through friends or acquaintances. In Wisconsin, these families must still work with an agency for the home study and birth parent counseling services.

A parent who has custody of a child may place the child for adoption in the home of a relative. This is most familiar in cases of stepparent or grandparent adoptions, but could also include adoption by a brother, sister, first cousin, uncle, or aunt.

There is no statutory "open adoption" in Wisconsin. If adoptive parents have made promises of continued contact with the birth parents after the termination of parental rights, those promises are not enforceable. Adoptive parents can change their mind at any point and birth parents would have no recourse.

It is lawful for the proposed adoptive parents to pay certain, limited expenses of the birth parent that relate to the adoption. These may include medical and hospital expenses, maternity clothes (not to exceed $300), legal expenses, living expenses if necessary to protect the mother or child's health and welfare (not to exceed $5,000), and a gift to the mother (not to exceed $100).

A biological parent may sign a consent to terminate parental rights after the birth of a child, and may revoke the consent at any point up until the judge signs the order terminating parental rights. When the termination order is entered by the court, it is final, and there is no waiting period allowing the biological parent to change his or her mind. A biological parent may appeal the order within 30 days, only on the basis of legal error.

In every adoption, the agency caseworker must determine whether the federal Indian Child Welfare Act of 1978 applies. The Act applies if the child is either a member of an Indian tribe or eligible for membership, and is the biological child of a member of an Indian tribe. Each tribe sets its own standards of eligibility for membership. Unless it is a voluntary proceeding, the tribe must be notified and given an opportunity to assert the statutory placement preference priority in favor of the child's extended family and tribe.

Additional References

DCF, http://dcf.wisconsin.gov/bcs.

IM 2006-02, *2005 Wisconsin Act 443: Reorganization and Revision of Ch. 767, Actions Affecting the Family*, Wisconsin Legislative Council (June 21, 2006), http://www.legis.state.wi.us/lc.

LCA 04-1, *Child Support Law in Wisconsin*, Wisconsin Legislative Council (January 22, 2004), http://www.legis.state.wi.us/lc.

SB 04-1, *Adoption and Termination of Parental Rights Law* (August 17, 2004), http://www.legis.state.wi.us/lc.

LCA 02-1, *Child Custody and Physical Placement in Wisconsin*, Wisconsin Legislative Council (June 21, 2002), http://www.legis.state.wi.us/lc.

IM 2010-06, *Visitation by Grandparents and Other Third Parties*, Wisconsin Legislative Council (June 30, 2010), http://www.legis.state.wi.us/lc.

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Wisconsin Legislator Briefing Book 2011-12

I-2 **Regulation of Financial Institutions**

I-4 **Regulation of Securities Transactions**

I-4 **Regulation of Consumer Credit Transactions**

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I-6 **Glossary of Terms and Abbreviations**

I-6 **Additional References**

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Chapter I

Financial Institutions and General Insurance

The state regulates certain financial institutions through the:

- **Department of Financial Institutions** (DFI); and
- **Office of Credit Unions**.

General insurance matters are under the jurisdiction of the:

- **Office of the Commissioner of Insurance** (OCI).

DFI oversees state-chartered banks and savings institutions (savings and loan associations and savings banks) through its Division of Banking. Similarly, the Office of Credit Unions oversees the operation of state-chartered credit unions. The office is an independent policy-making unit that is attached for administrative purposes to DFI. Regulation of financial institutions is designed to maintain their sound and safe operation.

OCI supervises insurance industry practices in the state. The agency's primary focus is to ensure sound and fair financial practices by insurers doing business in Wisconsin.

Regulation of Financial Institutions

Banks

State Regulation. At the beginning of Wisconsin's statehood, banking corporations were not permitted to exist under Wisconsin law. The Wisconsin Constitution of 1848 prohibited the Legislature from enacting general or special banking legislation, unless a majority of voters at a general election approved of banks. The Constitution provided that, if such a question were submitted to the electors and received approval, the Legislature was then authorized to pass a general or special banking law. Any banking law subsequently adopted by the Legislature was not effective until it also was approved by a majority of voters at a general election. The electorate approved legislative action to authorize banking activities in November 1851, and the first general banking law was approved in the general election of November 1852. The constitutional provisions regarding electorate approval of banking laws were repealed in 1902.

State-chartered banks have been regulated by numerous entities over the years including a Bank Comptroller, the State Treasurer, the Bank Examiner, the Commissioner of Banking, and the Banking Commission. The current regulator, the result of a governmental reorganization contained in 1995 Wisconsin Act 27, is the Division of Banking in DFI. DFI charters state banks, and the division regulates and supervises state-chartered banks in Wisconsin, including regularly examining state banks in order to ensure their sound and safe operation.

The division also has under its jurisdiction entities that are not considered financial institutions, such as mortgage bankers, mortgage brokers, loan originators, loan solicitors, collection agencies, community currency exchanges, sales finance companies, and payday lenders. The division oversees the market practices of these entities.

Federal Regulation. In contrast to the state structure, the modern system of federal bank regulation began with the National Currency Act of 1863 and the National Bank Act of 1864. The federal statutes enacted at that time authorized the creation of national banks for the purposes of the issuance of national currency, rather than the use of individual state bank notes, and financing the Union effort in the Civil War. The officer in charge of this system was the Comptroller of the Currency who headed a separate bureau in the Department of Treasury. The Office of the Comptroller continues to exist. The Bureau of the Comptroller remains in the Department of Treasury, and the Comptroller performs his or her duties under the direction of the Secretary of the Treasury. The Federal Reserve Board and the Federal Deposit Insurance Corporation also have jurisdictional oversight of some aspects of nationally chartered banks. State banks are also affected by federal statutes relating to, and regulations of, the Federal Deposit Insurance Corporation and the Federal Reserve Board, if a state bank is a member of the Federal Reserve System.

Savings Institutions

The first statutory recognition of organizations resembling contemporary savings institutions appears to have arisen in Ch. 331, Laws of 1876. The law provided in part that at any time when five or more persons desired to form a "mutual savings fund, loan or building association," they were required to file a certificate of organization in the office of the clerk of the circuit court of the county in which they intended to carry on the business of the new corporation. Aside from enacting a law regarding the organization of the business, the state was not otherwise involved in the regulation of a "mutual savings fund, loan or building association."

In the 1895 Session of the Wisconsin Legislature, the regulation of building and loan associations was integrated with bank regulation under the Bank Examiner. However, in Ch. 411, Laws of 1947, the Savings and Loan Association Department was

created to regulate the business and was placed under the management and control of the newly created position of Commissioner of Savings and Loan Associations. During the 1991 Session of the Legislature, the Office of the Commissioner assumed jurisdiction over savings banks. In the consolidation undertaken by 1995 Wisconsin Act 27, the office ultimately became the Division of Savings Institutions in DFI. The Division of Savings Institutions was repealed by 2003 Wisconsin Act 33 and its duties were transferred to the Division of Banking in DFI.

DFI, through the Division of Banking, issues certificates of incorporation to savings institutions and supervises savings institutions through an examination process. (State savings institutions also are affected by the regulatory actions of the Federal Deposit Insurance Corporation and the Federal Office of Thrift Supervision. The Office of Thrift Supervision is a part of the Federal Department of the Treasury.)

As in the case of federally chartered banks, federally chartered savings institutions are affected by the actions of certain federal regulators: the Federal Deposit Insurance Corporation and the Office of Thrift Supervision.

Universal Banks

Chapter 222, Stats., authorizes the formation of universal banks. A state bank, state savings bank, or state savings and loan association may apply to become a universal bank. If it is certified as a universal bank, the financial institution retains its original status as a state bank, state savings bank, or state savings and loan association and is subject to all of the regulations of that original institution, except to the extent the requirements are inconsistent with those of a universal bank.

To qualify as a universal bank, the financial institution must meet six requirements: (1) it must have been in existence and continuous operation for at least three years; (2) it must be "well-capitalized," as defined by federal law; (3) it must not exhibit moderately severe or unsatisfactory financial, managerial, operational, or compliance weakness; (4) it must not have been subject to any enforcement action within the 12 months preceding the application; (5) its most recent evaluation under the Federal Community Reinvestment Act must have rated the financial institution as "outstanding" or "satisfactory"; and (6) the most recent report evaluating the financial institution's compliance with certain federal laws relating to customer privacy must indicate that it is in substantial compliance.

A universal bank may engage in any activity that is authorized for any savings bank, savings and loan association, or state bank. In addition, a universal bank may exercise all of the powers that a national bank, federally chartered savings and loan association, or federally chartered savings bank may exercise. The Division of Banking must approve the first exercise of this federal power. Once the division approves the exercise of that power for one universal bank, any universal bank may exercise that power. A universal bank may also exercise all powers necessary or convenient to affect the purposes for which the universal bank is organized or to further the business in which the bank is lawfully engaged.

Credit unions are not authorized to become universal banks.

Credit Unions

In 1912, President William Howard Taft, in a promotion of the credit union movement, asked that all states adopt a credit union statute. Subsequent to this request, the Wisconsin Legislature enacted Ch. 733, Laws of 1913, creating the state's first credit union legislation. Under the law, a "cooperative credit union association" was authorized to receive the savings of its members and lend accumulated funds to members at reasonable rates. The membership of a credit union was limited to those individuals who had a defined common bond, such as individuals working for the same employer. Unlike banks and savings institutions, credit unions do not pay federal or state income taxes. The regulator of the early credit unions was the

Commissioner of Banking who, among other powers, had the authority to ensure the soundness of a credit union and to take possession of an unsound credit union.

The first major structural change in the regulation of credit unions occurred with the enactment of Ch. 411, Laws of 1947. This law required the Commissioner of Banks to employ a supervisor of credit unions. The supervisor was responsible for the supervision and examination of credit unions, under the direction and control of the Commissioner.

The creation of separate regulatory structures for banks, savings and loan associations, and credit unions became complete with the enactment of Ch. 193, Laws of 1971. This legislation created an Office of the Commissioner of Credit Unions, under the direction and supervision of the Commissioner of Credit Unions. Previous responsibilities of the Commissioner of Banking were transferred to the new Commissioner of Credit Unions. 1995 Wisconsin Act 27 created the Office of Credit Unions and attached it for administrative purposes to DFI. The Office of Credit Unions charters credit unions and examines credit union records and assets. (Accounts in state-chartered credit unions are insured through the National Credit Union Administration.)

Federal credit unions are chartered and regulated by the National Credit Union Administration.

Regulation of Securities Transactions

Wisconsin statutes require the registration of certain securities before they may be sold in the state. The statutes also require that broker-dealers, agents, investment advisors, and investment advisor representatives be licensed by the state. The regulation of these activities is managed by the Division of Securities in DFI. The laws are designed to protect the public against securities fraud. (The Federal Securities and Exchange Commission regulates security activities nationally.)

Regulation of Consumer Credit Transactions

The Office of Consumer Affairs in the Office of the Secretary of DFI acts as the administrator of the Wisconsin Consumer Act. In general, the act regulates certain credit transactions, trade practices, types of insurance practices, and debt collection practices that are entered into between consumers and financial institutions or merchants. Generally, a consumer is an individual who is involved in a transaction involving no more than $25,000 when the individual seeks or acquires certain real or personal property, services, money, or credit for personal, family, or household purposes.

General Insurance Regulation

Office of the Commissioner of Insurance

OCI was established through legislation enacted in 1870. OCI is vested with broad powers to ensure that the insurance industry meets the insurance needs of Wisconsin citizens. The major functions of OCI include:

- Reviewing insurance policies proposed for sale in Wisconsin to determine if they meet the requirements of Wisconsin laws.
- Conducting financial examinations of domestic and foreign insurers to assure compliance with Wisconsin laws.

- Monitoring the financial status of licensed companies and applicant companies.
- Issuing licenses to companies, agents, brokers, and others.
- Examining and analyzing rates filed by insurance companies to determine if they are excessive, inadequate, or unfairly discriminatory.
- Investigating and processing consumer complaints.
- Investigating and pursuing administrative actions against agents and insurers who violate Wisconsin insurance laws.
- Operating a state life insurance fund, a property fund for the property owned by local units of government, and a patients and families compensation fund insuring health care providers for medical malpractice.

Statutory Provisions

Chapters 631 and 632, Stats., set out standards for regulating the terms of insurance contracts. These statutes establish explicit standards within which contract terms can be developed for different lines of insurance.

Chapter 632, Stats., also specifically regulates disability insurance, formerly known as "accident and health" insurance. This is insurance covering claims involving hospital care or medical and surgical expenses, loss of income due to accident or disease, and long-term care. The statutes set forth basic standards for these insurance policies and the Commissioner may set further specific standards through administrative rules. For further information on health insurance, see the Briefing Book chapter titled "Health Care and Health Insurance."

Life insurance policies, accidental death and dismemberment, and annuities also are regulated under ch. 632, Stats. The statutory provisions regarding these issues focus on requiring sellers of insurance to fully inform prospective purchasers as to the coverage and benefits necessary to provide adequate protection for the purchasers' needs.

Property and casualty insurance primarily is regulated under chs. 625 and 626, Stats. This form of insurance includes coverage relating to fire, credit, title, burglary, robbery, theft, glass breakage, worker's compensation, automobile liability, and physical damage.

Finally, provisions in ch. 619, Stats., authorize the Commissioner to establish, by rule, mandatory risk-sharing plans for automobile, worker's compensation, property, basic medical malpractice, and health care liability insurance, if a demonstrated need for these plans exists. Five such risk-sharing plans have been established in Wisconsin.

Segregated Funds

Wisconsin operates the Local Government Property Insurance Fund under ch. 605, Stats., and the State Life Insurance Fund under ch. 607, Stats. Each fund is administered by the Commissioner. The State Treasurer has sole custody of all the assets of the funds. The purpose of the **Local Government Property Insurance Fund** is to make reasonably priced property insurance available for tax-supported local government property, such as government buildings, schools, libraries, and motor vehicles. The fund provides policy and claim service to the policyholders.

The **State Life Insurance Fund** offers a maximum of $10,000 of life insurance to state residents. The fund is required to distribute net profits annually among the policyholders. Wisconsin is the only state offering a life insurance program to its residents.

The **Injured Patients and Families Compensation Fund**, under ch. 655, Stats., was created in 1975 to provide excess medical malpractice insurance for Wisconsin health care providers. The fund is governed by a Board of Governors and is staffed by OCI. Administrative costs, operating costs, and claim payments are funded through assessments on participating health care providers. From July 1, 1975, through December 31, 2009, 5,657 claims had been filed in which the fund was named. During this period, the fund's total number of paid claims was 665, totaling $772,337,268. Of the total number of claims in which the fund has been named, 4,800 claims have been closed with no indemnity payment.

In July 2010, the Wisconsin Supreme Court held that transfers of $200,000,000 from the Injured Patients and Families Compensation Fund to the Medical Assistance Trust Fund were unconstitutional and must be repaid by the Department of Administration, along with interest and lost earnings. See *Wisconsin Medical Society, Inc. v. Morgan*, 2010 WI 94.

Additional References

1. At the beginning of each legislative session, the ***Legislative Fiscal Bureau*** prepares Informational Papers that describe various state programs. These Informational Papers, which include descriptions of consumer protection programs, may be found at http://www.legis.state.wi.us/lfb/index.html (click on Publications).

2. ***OCI*** has prepared a number of publications describing the functions of the agency, including a Consumer's Guide to Auto Insurance, a Shopper's Guide to Cancer Insurance, a Guide to Long-Term Care, and the Wisconsin Insurance Report. These and other publications may be found at http://www.oci.wi.gov/pubs.htm.

3. ***DFI*** has prepared consumer information at http://www.wdfi.org/consumer_information/. Letters interpreting statutes and rules regarding banks, savings institutions, and credit unions can be accessed on the DFI's general site at http://www.wdfi.org. Finally, detailed information about the Wisconsin's Consumer Act can be found at http://www.wdfi.org/wca.

Glossary of Terms and Abbreviations

Comptroller of the Currency – Federal agency that issues charters to and regulates national banks.

DFI – State Department of Financial Institutions. The agency that, through the Division of Banking, the Division of Savings Institutions, and the Office of Credit Unions, charters and regulates state banks, savings institutions, and credit unions.

Finance Charge – The sum of all charges payable by a customer as an incident to, or as a condition of, the extension of credit.

National Credit Union Administration – Federal agency that charters and regulates federal credit unions and provides insurance of deposits to both federal- and state-chartered credit unions.

OCI – State Office of the Commissioner of Insurance.

Office of Credit Unions – State agency attached to the DFI for administrative purposes that charters and regulates state-chartered credit unions.

Office of Thrift Supervision – Federal agency that charters and regulates federal savings institutions.

Wisconsin Consumer Act – Wisconsin statutory provisions regulating credit, trade practices, the sale of insurance, and debt collection practices in certain transactions entered into between consumers and financial institutions or merchants. These transactions must involve no more than $25,000 and be entered into for personal, family, or household purposes.

4. The ***Department of Transportation*** has prepared information on when and how proof of insurance is required at http://www.dot.wisconsin.gov/drivers/drivers/apply/doc/proof-of-ins.htm#financial.

5. The ***Legislative Audit Bureau*** has recently prepared the following audits relating to state insurance programs:

   a. Injured Patients and Family Compensation Fund (Report 10-4, which can be found at http://www.legis.wisconsin.gov/lab/reports/10-4Full.pdf).

   b. State Life Insurance Fund (Report 09-14, which can be found at http://www.legis.wisconsin.gov/lab/reports/09-14Full.pdf).

   c. Local Government Property Insurance Fund (Report 09-6, which can be found at http://www.legis.wisconsin.gov/lab/reports/09-6Full.pdf).

6. In the 2009-10 Legislative Session, the Legislature created new requirements for payday lenders. A summary of 2009 Wisconsin Act 405 may be found at http://www.legis.state.wi.us/2009/data/lc_act/act405-sb530.pdf.

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Wisconsin Legislator Briefing Book 2011-12

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J-4 **Federal Health Care Reform**

J-5 **Health Insurance Regulation**

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J-13 **Glossary of Terms and Abbreviations**

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Chapter J

Health Care and Health Insurance

The state's involvement in health care and health insurance issues is primarily through four agencies:

- The **Department of Health Services** (DHS), whose involvement comes through its six divisions: (1) the Division of Public Health; (2) the Division of Health Care Access and Accountability; (3) the Division of Mental Health and Substance Abuse Services; (4) the Division of Quality Assurance; (5) the Division of Long Term Care; and (6) the Division of Enterprise Services. An organization chart for DHS is available at http://dhs.wisconsin.gov/organization/435_DHS/CoverPage.pdf.
- The **Department of Regulation and Licensing** (DRL), through various examining boards and affiliated credentialing boards, regulates health care professionals.
- The **Office of the Commissioner of Insurance** (OCI) is responsible for regulation of group and individual health insurance plans.
- The **Department of Employee Trust Funds** (DETF) provides health insurance coverage for state employees and administers a health insurance pool for local governmental units that choose to participate in it.

Issues that were discussed in the 2009-10 Legislative Session and that are likely to be considered in the 2011-12 Legislative Session include reimbursement for health care providers under state programs; credentialing and the scope of practice of various health care professionals; access to health care coverage by uninsured persons and cost containment in those state programs that provide access; general health care cost increases; transparency of health care cost and quality data; and implementation of federal health reform.

Major Coverage Programs

Described below are four major programs with state government involvement that provide health care coverage to eligible persons. With the exception of the Health Insurance Risk-Sharing Plan (HIRSP), the programs are administered by DHS, with claims processing done by private contractors. HIRSP is administered by the HIRSP Authority. Medicaid, BadgerCare Plus, and SeniorCare all have income eligibility criteria, while Medicaid also has asset eligibility requirements. HIRSP has no such requirements, but is primarily for persons who have difficulty obtaining health insurance in the market because of a health condition.

In addition to the programs described in this chapter, DHS also administers programs that provide assistance to persons with certain chronic diseases (chronic renal disease, cystic fibrosis, and hemophilia) and acquired immunodeficiency syndrome (AIDS).

Detailed information about Medicare is included in a federal publication, Medicare & You, which is available at: http://www.medicare.gov.

Also, the federal **Medicare** program is a major source of payment for health care for elderly and disabled persons. Medicare Part A covers inpatient hospital care and Medicare Part B covers physicians' services and other health care services. Medicare Part C (also called Medicare + Choice or Medicare Advantage) involves provision of Medicare services through private sector health plans.

The Medicare Part D outpatient prescription drug benefit began in January 2006. Generally, persons who are eligible for both Medicare and Medicaid (dual eligibles) receive prescription drug coverage under Medicare Part D. However, states are required to pay the federal government a portion (90% in 2006, phased down to 75% in 2015 and later years) of what they save by not having Medicaid pay for prescription drug coverage for these dual eligibles (referred to as the "clawback" provision).

Medicaid (Medical Assistance)

Medicaid is a program that generally provides health care services to persons who are elderly, blind, or disabled.

Important Information About Your Enrollment and Benefits: http://dhs.wisconsin.gov/em/impubs/pubs/p-00079.pdf.

While Medicaid has income and asset eligibility requirements, it does provide spousal impoverishment protections when one spouse enters a nursing home and the other spouse remains outside of the nursing home. In that situation, the law allows the spouse outside the nursing home to retain greater assets and income than would otherwise be allowed in order for the spouse in the nursing home to be eligible for Medicaid. Medicaid laws also limit divestment of property in order to bring the applicant's assets below the level allowed for Medicaid eligibility.

Medicaid covers a wide array of health care services. Unlike the federal Medicare program, Medicaid is a major payer for long-term care services, including nursing home services. Included in the services covered are physician services, hospitals, rural health clinics, medical supplies and equipment, transportation to receive services, and a wide variety of other health care services.

Medicaid is funded jointly by the federal government and the State of Wisconsin. In general, services are reimbursed approximately 58% by the federal government and 42% by the state government.

BadgerCare Plus

BadgerCare Plus is a program that expanded on the former BadgerCare program and that provides an array of health care services for children, parents, and childless adults. Generally, children and their parents and caretaker relatives with family income at or below 200% of the federal poverty level are eligible for the Standard Plan, which covers the same services as Medicaid covers. Persons who are eligible for the Benchmark Plan include children and their parents and caretaker relatives with family income between 200% and 300% of the family poverty level. Children with family income over 300% of the federal poverty level may purchase coverage in the Benchmark Plan at the full cost of coverage. The Benchmark Plan covers a set of health care services specified in the statutes, which are different than those covered by Medicaid.

BadgerCare Plus information: 1-800-362-3002; http://dhs.wisconsin.gov/badgercareplus/.

The program also includes the Core Plan, which provides services to childless adults who are under age 65 and who have family income at or below 200% of the federal poverty level. In addition, it includes the Basic Plan, which was created in the 2009-10 Legislative Session, and provides services to persons who are eligible for and on the waiting list for the Core Plan.

BadgerCare Plus participants are required to pay a premium that is based on family income.

BadgerCare Plus is funded by federal funds available under Medicaid and under the State Children's Health Insurance Program (SCHIP), state general purpose revenue (GPR) funds, and premiums paid by some participants.

SeniorCare

SeniorCare information: 1-800-657-2038; http://dhs.wisconsin.gov/seniorCare/index.htm.

SeniorCare is a program that provides prescription drug coverage to eligible elderly persons. To be eligible, a person must be a state resident who is at least 65 years of age, not receive Medicaid benefits, have an annual household income at or below 240% of the federal poverty level, and pay a $30 annual enrollment fee. The term "household income" is defined by DHS by rule. Federal poverty levels are calculated annually and the income eligibility limits for SeniorCare may be found at the DHS website at http://www.dhs.wisconsin.gov/seniorCare/factsheets/phc10078.htm.

To qualify for coverage under SeniorCare, a participant must meet an $850 annual deductible for prescription drugs ($500 for persons with a household income between 160% and 200% of the federal poverty level). After meeting the deductible, the participant is charged a copayment for drug purchases at the rate of $5 for a generic drug and $15 for a brand name drug. The deductible does not apply to persons with annual incomes of less than 160% of the federal poverty level. In addition, drug coverage is available under SeniorCare for persons whose household income exceeds 240% of the federal poverty level if they spend greater than the amount by which their income exceeds 240% of the federal poverty level on prescription drugs.

SeniorCare is funded by state GPR, federal Medicaid dollars, and enrollment fees.

HIRSP

HIRSP: http://www.hirsp.org.

HIRSP is a program that provides health care coverage to eligible persons who have difficulty obtaining health insurance in the market because of a health condition. There are no income or asset eligibility requirements under HIRSP. However, in order to be eligible, a person must: (1) be eligible for Medicare because of a disability; (2) have tested positive for human immunodeficiency virus (HIV); or (3) within nine months prior to applying for HIRSP, have received a notice of cancellation of coverage or a notice of rejection from an insurer; a notice of reduction or limitation of coverage that substantially reduces coverage when compared with coverage available to persons considered to be a standard risk; a notice of increase in premiums exceeding the premium then in effect for the insured person by 50% or more, unless the increase applies to substantially all of the insurer's policies; or a notice of pre-

mium for a policy not yet in effect from two or more insurers that exceeds the premium applicable to a person considered to be a standard risk by 50% or more. The notices must be based wholly or partially on medical underwriting considerations. In addition, certain persons who have lost employer-sponsored group health insurance may qualify for HIRSP, without having to satisfy any exclusion period for preexisting conditions.

HIRSP is funded by insurer assessments, health care provider discounts, and premiums paid by participants.

Federal Health Care Reform

On March 23, 2010, President Obama signed comprehensive health reform, the Patient Protection and Affordable Care Act (P.L. 111-148), into law. The Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), which made several significant changes to P.L. 111-148, was signed by the President on March 30, 2010.

Some major features of the legislation are as follows:

- **Individual coverage requirement and subsidies.** Requires most individuals to have health insurance beginning in 2014. Penalties, phased in over several years, will be assessed against those who do not have qualifying coverage. Penalties will not be assessed against persons below certain income levels, those for whom premiums for the lowest-cost plan exceeds 8% of an individual's income, and certain others. Provides cost-sharing subsidies and premium credits to individuals based on income level and cost of coverage.

- **Employer requirements and tax credits.** Requires employers with 50 or more employees to provide health insurance to employees beginning in 2014, and will impose assessments for noncompliance. Offers tax credits to small businesses (i.e., fewer than 50 employees) to make employee coverage more affordable.

- **Health exchanges.** Provides funding to states to establish state-based American Health Benefit Exchanges and Small Business Health Options Program Exchanges, administered by a governmental agency or nonprofit agency. Individuals and small businesses may purchase qualifying coverage through the exchanges. If a state fails to set up an exchange by January 1, 2014, the federal Department of Health and Human Services (DHHS) will establish and operate an exchange in the state, either directly or through an agreement with a nonprofit entity.

- **Private insurance.** Establishes new requirements for private insurance companies, including requiring dependent coverage for children up to age 26 for all individual and group policies, prohibiting pre-existing condition exclusions for children, prohibiting lifetime caps on coverage and requiring new private plans to cover preventive services with no copayments or deductibles. Requires insurance plans to spend 80% or 85% of premium dollars on medical services. Insurers that do not meet these thresholds must provide rebates to policyholders.

- **Medicaid expansion; Medicare.** Provides Medicaid coverage to all individuals under age 65 with incomes up to 133% of the federal poverty level. Increases certain Medicaid payments to primary care providers, adjusts payments to states, and makes numerous other changes to Medicaid and Medicare.

- **Prevention and wellness.** Requires development of a national strategy to improve the nation's health and creates a Prevention and Public Health Fund. Expands coverage requirements for prevention services under private and government programs. Requires chain restaurants to disclose nutritional content of foods.

- **Health care workforce.** Creates various programs to improve the health care workforce quality and increase supply, including training programs, scholarships, loans, grants, and loan repayment programs.

Changes to Wisconsin law will be required by the new federal law, and the Legislature may wish to pursue other changes which may make the state eligible for additional benefits.

The two state agencies primarily responsible for implementing health care reform in Wisconsin are DHS and OCI. Governor Doyle established the Office of Health Care Reform by Executive Order on April 7, 2010. The office is led by the Secretary of DHS and the Commissioner of Insurance, and was directed to maintain a website to provide information about health care reform, the phases of implementation, and how changes may benefit them. The website is located at:: www.healthcarereform.wisconsin.gov.

The Joint Legislative Council appointed a Special Committee on Health Care Reform Implementation on May 20, 2010 and directed it to study and make recommendations on what changes should be made to Wisconsin's statutes and administrative rules in response to recently enacted federal health care reform legislation. The committee is directed to study all aspects of the federal legislation that affect Wisconsin including insurance market reforms, coverage for uninsured persons, preventive care, taxation, quality improvement, and health workforce issues. The membership and work of the committee can be viewed at: http://www.legis.state.wi.us/lc/committees/study/2010/REFORM/index.html.

The National Conference of State Legislatures (NCSL) has prepared numerous fact sheets and informational publications containing information about the state's role in the implementation of the federal health care legislation, including the *State Legislators' Check List for Health Reform Implementation-FY 2010*. These publications are available at: http://www.ncsl.org/default.aspx?tabid=17639#ncsl_info.

The Kaiser Family Foundation website is widely cited as an excellent resource for information on the federal health care legislation: http://www.kff.org/healthreform/8061.cfm.

The U.S. DHHS maintains a website for consumers which provides resources for selecting health care coverage, with information on both private and public options. The site also offers information about the implementation of the federal legislation. The site is: www.healthfinder.gov.

Health Insurance Regulation

OCI Oversight

Health insurance is regulated by OCI, both with respect to financial stability and consumer protection. Types of health insurance regulated by OCI include plans in which an insured person may select from any health care providers to provide covered services (generally referred to as an "indemnity plan") or plans in which an insured person is limited to or is given an incentive for obtaining covered services from health care providers selected by the plan (generally referred to as a "defined network plan" or "managed care plan"). Types of defined network plans include

health maintenance organizations (HMOs) and preferred provider plans (PPPs; also referred to as "preferred provider organizations" or "PPOs").

Insurance mandates. Included in the insurance laws are various types of mandates that must be met by insurance plans. These health insurance mandates generally fall into the following categories: (1) requiring coverage of a particular type of health care provider (e.g., a chiropractor or an optometrist); (2) requiring coverage for the treatment of a particular disease or condition (e.g., temporomandibular disorders or breast reconstruction); (3) requiring coverage of a particular type of health care treatment, service, or equipment (e.g., mammograms or lead poisoning screening); and (4) requiring coverage for particular persons because of their relation to the insured person (e.g., newborn infants or adopted children).

ERISA preemption. Because of federal preemption, OCI does not regulate self-insured employee benefit plans. The federal Employee Retirement Income Security Act (ERISA) provides that it supersedes all state laws that relate to employee benefit plans. Therefore, the state's insurance laws, including health insurance mandates, do not apply to such plans. However, ERISA's preemption does not apply to governmental self-insured plans, such as municipal or school district self-insured plans, and the state's insurance laws may be applied to those plans.

General Patients' Rights

In 1998, the Legislature enacted a law that created a range of consumer rights for persons insured under defined network plans. The law sets forth duties of health plans and patients' rights in the following areas: (1) access standards; (2) continuity of care; (3) provider disclosures; (4) quality assurance; (5) use of a physician as a medical director; (6) data systems and confidentiality; and (7) OCI oversight. Included in the statutes are requirements that defined network plans include a sufficient number, and types, of providers to meet anticipated needs; requirements regarding referrals to specialists, including referrals to obtain obstetric or gynecologic benefits; continuity of care after a provider is no longer included as a selected provider in a defined network plan; prohibitions on penalizing participating providers who discuss all treatment options with insured persons (generally called "gag clauses"); and a requirement for developing a process for selecting participating providers and reevaluating them. The rights and duties relating to defined network plans are generally set forth in ch. 609, Stats., and subch. III of ch. Ins 9, Wis. Adm. Code.

In addition to the above provisions that apply to defined network plans, the statutes also provide protections for insured persons relating to coverage of emergency care and experimental treatment. Those provisions apply to all health benefit plans, not just to defined network plans. The statute relating to emergency care requires that if a health care plan provides coverage of any emergency medical services, it must provide coverage of emergency medical services that are provided in a hospital emergency facility and that are needed to evaluate or stabilize an emergency medical condition. The term "emergency medical condition" is defined in the statutes using a "prudent layperson" definition.

The statutes also require a health care plan that limits coverage of experimental treatment to define the limitation and disclose the limits in any policy. The disclosure must state who is authorized to make a determination on the limitation and the criteria the plan uses to determine whether a treatment, procedure, drug, or device is experimental. Time deadlines for making a determination and the right of appeal are also included in the statute.

Continuation Rights

Both federal law and Wisconsin law provide for the ability of a person who would otherwise terminate coverage under a group plan to continue to be covered under the group plan for a specified period of time. In addition, Wisconsin law provides for conversion from group plan coverage to individual policy coverage. The federal law is often referred to as "COBRA," since it was created by the Consolidated Omnibus Budget Reconciliation Act of 1985.

Both federal law and Wisconsin law provide for the ability of a person who would otherwise terminate coverage under a group plan to continue to be covered under the group plan for a specified period of time.

Under the federal COBRA law, employees who terminate employment for any reason other than gross misconduct, persons whose hours are reduced, and dependents of those persons, may continue group coverage for up to 18 months. Dependents may continue coverage for up to 36 months if they lose coverage because of death of the employee, divorce from the employee, the dependent has reached the maximum age under the policy, or the employee becomes eligible for Medicare. Disabled employees may continue coverage for up to 29 months.

Under the Wisconsin law, continuation rights are available for: (1) the former spouse of a group member who otherwise would terminate coverage because of divorce or annulment; (2) a group member who would otherwise terminate eligibility for coverage except in cases of discharge due to misconduct; and (3) the spouse or dependent of a group member if the group member dies while covered by the group policy and the spouse or dependent was also covered. Generally, the person electing continuation coverage in the group plan may continue such coverage for 18 months. Wisconsin law also permits a terminated insured to choose conversion coverage, without having to show evidence of insurability, under individual coverage that is reasonably similar to the coverage under the group policy.

Persons electing continuation coverage under Wisconsin law may be required to pay the full premium for such coverage. Under federal law, they may be required to pay up to 102% of the premium.

Wisconsin law on continuation rights covers groups of all sizes, whereas federal law covers only groups of 20 or more employees. However, federal law is more expansive in that it covers persons under self-insured employee benefit plans, whereas Wisconsin law may not cover these plans because of ERISA preemption.

Grievances and Independent Review

Grievances. Wisconsin statutes require that all health benefit plans, as defined in the law, must establish and use an internal grievance procedure. The procedure must include the opportunity for an insured person to submit a written grievance in any form; establishment of a grievance panel for investigation of each grievance; prompt investigation of grievances; notification to each grievant of the disposition of the grievance and any corrective action taken; and retention of records for at least three years. The grievance panel must include at least one person authorized to take corrective action on the grievance and at least one insured person other than the person filing the grievance.

Independent review. The statutes also require health benefit plans to establish an independent review procedure under which an insured person may request and obtain an independent review of an adverse determination or an experimental treatment determination by a health benefit plan. An adverse determination is a reduction or denial of payment for treatment based on the treatment not meeting the plan's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness. An experimental treatment determination is a determination by a plan to deny payment for treatment based on the treatment being experimental under the terms of the plan. Independent review is available only if the

cost or expected cost of the treatment will exceed $250, adjusted for inflation ($292 in 2010; updated information is available at http://oci.wi.gov/iro/adjamt.htm).

Whenever an adverse determination or an experimental treatment determination is made, the insurer must provide notice to the insured person of the right to obtain an independent review, including a current listing of independent review organizations (IROs) that are certified. The insured person selects the IRO to conduct the review. The insured person must pay a $25 fee to the IRO, but the fee is refunded if he or she prevails in whole or in part. Also, the insurer must pay a fee to an IRO for each independent review in which it is involved. The statutes provide a timetable for independent reviews, certification requirements for IROs, conflict of interest standards, qualifications of clinical peer reviewers, and immunity provisions.

The statutes require that the decision of an IRO regarding an adverse determination must be consistent with the terms of the health benefit plan. An IRO decision regarding an experimental treatment determination is limited to a determination of whether the proposed treatment is experimental, based on medically and scientifically accepted evidence.

In June 2002, the U.S. Supreme Court upheld state independent review statutes over a challenge based on ERISA grounds.[1]

Portability

Health insurers may provide a limited period of time after enrollment during which a person's preexisting condition is not covered by the plan. Under Wisconsin law, a group health benefit plan may not exclude a preexisting condition for more than 12 months (or 18 months for a person who enrolls in the plan after his or her first opportunity to enroll).

"Portability" refers to the ability of a person to change health insurance plans and have the new insurer reduce the period for excluding a preexisting condition by the amount of time that the person was covered under a previous plan (referred to as "creditable coverage"). For example, if a person has seven months of coverage under a health benefit plan and then changes plans, the new plan may exclude coverage for the preexisting condition for only five months. However, previous creditable coverage is not included if it is followed by a period of at least 63 days during which the person was not covered under any creditable coverage.

Mental Health Parity

In the 2009-10 Legislative Session, the Wisconsin Legislature enacted legislation requiring parity in insurance coverage of nervous and mental disorders, alcoholism, and other drug abuse problems. 2009 Wisconsin Act 218 specifies that a group health benefit plan, a governmental self-insured plan, and an individual plan that provides coverage for those conditions, must provide that various treatment limitations (e.g., exclusions and limitations, deductibles, copayments) may be no more restrictive for those conditions than the most common or frequent type of treatment limitations applied to substantially all other coverage under the plan. Certain exceptions are provided for employers with fewer than 10 employees and plans that elect to be exempt and that show that their costs have increased by more than a specified amount.

The state statute is very similar to a 2008 federal law on parity--the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Act of 2008.

Additional details about both the federal and state laws on this topic are available in a Wisconsin Legislative Council memorandum describing 2009 Wisconsin Act 218 (http://www.legis.state.wi.us/lc; click on Publications and then on Act Memos).

Health Facilities and Residential Programs

Licensing

The state licenses and certifies a number of health facilities and caregiving residential programs. Residential programs that provide services to minors and that are licensed by the Department of Children and Families (DCF) include foster homes, treatment foster homes, group homes, and residential care centers for children and youth. The statutes also allow a foster home or treatment foster home to be licensed by a county human services or social services department or by a licensed child welfare agency.

Information about facilities regulated by DHS is available at: http://dhs.wisconsin.gov/rl_DSL/index.htm.

In addition, DHS licenses adult family homes, community-based residential facilities (CBRFs), and residential care apartment complexes (RCACs) for adults, as well as hospitals and nursing homes. CBRFs are facilities that serve five or more adults who do not require care above intermediate level nursing care and who receive no more than three hours of nursing care per week. RCACs (also sometimes referred to as assisted living facilities) are places where five or more adults reside and that consist of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, an individual bathroom, sleeping and living areas, and that provide to residents not more than 28 hours per week of services that are supportive, personal, and nursing services.

Zoning

The statutes provide that, under specified circumstances, certain residential caregiving programs, including CBRFs for adults and group homes and residential care centers for children, may locate in areas that are locally zoned for residences of families. These programs, which are referred to generally as community living arrangements in the statutes, may locate in specified residential areas depending on their capacity. In addition, the statutes provide that no community living arrangement may be established within 2,500 feet, or a lesser distance established by ordinance, of any other community living arrangement. However, a federal district court in Wisconsin has held that the distance requirement in the law is preempted by the federal Fair Housing Amendments Act and the federal Americans with Disabilities Act.[2] Additional information about these statutes is provided in a Wisconsin Legislative Council publication, *Establishment of Group Homes and Similar Facilities in Residential Neighborhoods* (http://www.legis.state.wi.us/lc; click on Publications by subject and the Information Memorandum is under Human Services and Aging).

Also, information about these facilities and programs is included in Chapter L (Human Services and Aging) of the Wisconsin Legislator Briefing Book.

Health Professionals

Licensing and Certification

Examining boards and affiliated credentialing boards in DRL license and certify a number of health care professionals, including nurses, chiropractors, dentists and dental hygienists, physicians, physician assistants, respiratory care practitioners, podiatrists, dieticians, athletic trainers, occupational therapists and occupational therapy assistants, optometrists, pharmacists, acupuncturists, psychologists, social workers, marriage and family therapists, professional counselors, hearing instrument specialists, speech-language pathologists, and audiologists. DHS licenses emergency personnel, including first responders and various categories of emergency medical technicians (EMTs).

An examining board is a part-time body that: sets standards of professional competence and conduct for the profession under its supervision; prepares, conducts, and grades examinations; grants licenses; and examines complaints. An affiliated credentialing board generally has the same authority as an examining board, but is

attached to an examining board and must submit its proposed rules to the examining board to which it is attached for comment.

In addition to providing for a basic credential, such as a license or certificate, the statutes also allow certain health care providers who satisfy additional requirements to engage in a higher level of practice than that provided under the basic credential. For example, a nurse who satisfies additional requirements established by the Board of Nursing is authorized to issue prescription orders; such a nurse is referred to as an advanced practice nurse prescriber.

Caregiver Background Checks

Under Wisconsin law, certain entities regulated by DHS or DCF or county departments of human services or social services are required to conduct a background check on employees with direct client contact at the time of employment and every four years after that. The background check involves a criminal history search from records maintained by the Department of Justice, information maintained by DHS concerning abuse, and other specified information. The entities covered by the law include nursing homes, CBRFs, hospitals, home health agencies, child welfare agencies, and group homes. In addition to applying to these entities, the law also applies to regulatory agencies, such as DHS, DCF, and county departments with respect to licenses and certificates for those entities.

Under the caregiver background law, the regulated entities may not hire or contract with a caregiver if the person has engaged in certain misconduct or been convicted of a "serious crime," as defined by statute. The statutory definition of that term includes a number of serious crimes and includes additional crimes that are considered serious if the entity is one that serves children. However, the law provides a process by which a person who has engaged in certain misconduct or been convicted of a serious crime may demonstrate that he or she has been rehabilitated.

More information about the caregiver background check law is available at http://www.dhs.wisconsin.gov/caregiver/index.htm.

Public and Preventive Health

Description of Public Health System

At the state level, the public health system is primarily administered by DHS, through its Division of Public Health. At the local level, public health services are rendered by local public health departments and tribal health centers.

At the state level, the public health system is primarily administered by DHS, through its Division of Public Health. The division is further divided into bureaus: (1) the Bureau of Communicable Disease and Emergency Response (communicable diseases, sexually transmitted disease programs, AIDS programs, immunization, public health preparedness, and emergency medical services); (2) the Bureau of Community Health Promotion (nutrition and physical activity, family health, and chronic disease prevention and cancer control); and (3) the Bureau of Environmental and Occupational Health (food safety, health hazard evaluation, radiation protection, and asbestos and lead). The division also includes an Office of Health Informatics (eHealth initiative, population health, vital records, and health care information).

At the local level, public health services are rendered by local public health departments and tribal health centers. In most counties, the local health department is a county agency. However, in a handful of counties, local health departments may be any of the following: (1) a joint city-county health department; (2) a municipal or multiple municipal health department; or (3) a combination of a county health department and municipal health departments. A number of local health departments have also been granted agent status by DHS for the purposes of performing environmental health activities such as issuing permits to and making investigations of hotels, restaurants, campgrounds, swimming pools, and similar types of entities. In addition, several American Indian tribes operate tribal health centers.

Tobacco Control

A recurring issue for the Legislature has been the issue of tobacco control, including access by minors to tobacco products and regulation of smoking in public places. In the 2009-10 Legislative Session, the Wisconsin Legislature enacted a statewide ban on smoking in specified places, including taverns, restaurants, retail establishments, and lodging establishments, as well as other enclosed places that are places of employment or public places. The smoking ban took effect on July 5, 2010. Certain exceptions are provided in the law, including private residences, and retail tobacco stores or tobacco bars, as defined in the statute, that were "grandfathered-in" as of June 3, 2009.

Additional details about the statewide smoking ban are available in a Wisconsin Legislative Council publication, *Smoking Ban* (http://www.legis.state.wi.us/lc; click on Publications by subject and the Information Memorandum is under Health).

Medical Malpractice

Wisconsin law requires specified health care providers (including physicians, nurse anesthetists, and hospitals) to carry insurance or self-insure for liability up to statutorily specified levels. The level is $1,000,000 per occurrence and $3,000,000 for all claims in a year. The law also requires those health care providers to pay annual assessments into the Injured Patients and Families Compensation Fund (formerly called the Patients Compensation Fund), which then provides coverage for medical malpractice claims in excess of those amounts.

Advance Directives

A living will and a power of attorney for health care are documents that are referred to generally as advance directives. They are designed to specify the advance wishes of a competent person with regard to health care to be rendered when the person is no longer capable of making health care decisions. A living will is a directive to physicians not to use life-sustaining procedures or feeding tubes when the person is in a terminal condition or persistent vegetative state. A power of attorney for health care is a document that authorizes another individual, known as a "health care agent," to make health care decisions for the person when the person is incapacitated. While use of a living will is limited to persons who are in a terminal condition or persistent vegetative state, a power of attorney for health care may be used at any time that the person is incapacitated, regardless of whether or not the person is in a terminal condition. Therefore, the power of attorney for health care is not limited to end-of-life decision-making.

Forms for living wills and powers of attorney for health care (or a power of attorney for finance and property) may be obtained by sending a self-addressed, stamped, business-sized envelope to DHS, at the following address: Living Will/Power of Attorney, Division of Public Health, P.O. Box 2659, Madison, WI 53701-2659.

The living will, power of attorney for health care, power of attorney for finance and property, and authorization for final disposition are also available from the DHS website at http://dhs.wisconsin.gov/forms/advdirectives/ADFormsPOA.htm.

Additional References

1. At the beginning of each legislative session, the ***Legislative Fiscal Bureau*** prepares Informational Papers that describe various state programs. These Informational Papers, which include descriptions of Medical Assistance and BadgerCare, may be found at http://www.legis.state.wi.us/lfb/index.html (click on Publications).

2. ***OCI*** has prepared a number of publications that provide assistance to persons purchasing health insurance and other types of insurance. Those publications may be found at http://oci.wi.gov/pub_list.htm. Included in the list of OCI publications are the following:

   - Guide to Long-Term Care (http://oci.wi.gov/pub_list/pi-047.htm).
   - Wisconsin Guide to Health Insurance for People With Medicare (http://oci.wi.gov/pub_list/pi-002.htm).
   - Fact Sheet on Managed Care Consumer Protections in Wisconsin (http://oci.wi.gov/pub_list/pi-102.htm).

3. ***DHS*** has prepared a number of consumer publications and websites that describe programs and services under the jurisdiction of the department. These may be found at http://www.dhs.wisconsin.gov/programs/consumer.htm. Some of the specific information prepared by DHS are as follows:

   - Consumer Guide to Health Care (http://dhs.wisconsin.gov/guide/index.htm).
   - Choosing Wisconsin Residential Options (http://dhs.wisconsin.gov/bqaconsumer/ResidOpts/seek.htm).

Medigap Help Line: 1-800-242-1060.

4. The ***Board on Aging and Long Term Care*** operates a Medigap help line, with a toll-free number of 1-800-242-1060. The help line is designed to answer questions about health insurance, primarily Medicare supplemental policies, long-term care insurance, and other health care plans available to Medicare beneficiaries.

   The Board on Aging and Long Term Care also operates an ombudsman program that serves as an advocate for long-term care consumers who reside in nursing homes or group homes or are participating in the Community Options Program. The toll-free number for the ombudsman program is 1-800-815-0015.

In addition to the toll-free number, persons may contact the Medigap help line or the ombudsman program at BOALTC@ltc.state.wi.us or by writing to the Board on Aging and Long Term Care at 1402 Pankratz Street, Suite 111, Madison, WI 53704-4001.

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[1] *Rush Prudential HMO, Inc. v. Moran*, 122 S. Ct. 2151 (2002).

[2] *Oconomowoc Residential Programs v. Greenfield*, 24 F. Supp. 2d 941 (E.D. Wis. 1998).

Glossary of Terms and Abbreviations

APNP – Advanced practice nurse prescriber. A nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or clinical nurse specialist who meets specified requirements and is granted a certificate to prescribe drugs by the Board of Nursing.

CBRF – Community-based residential facility. A place in which five or more adults live and receive care, treatment, or services, but only limited nursing services.

CMS – Federal Centers for Medicare and Medicaid Services. Part of DHHS.

COBRA – Consolidated Omnibus Budget Reconciliation Act of 1985. This federal law includes provisions for continuation of group health care coverage after a person would otherwise leave the group.

Defined network plan – A health care plan in which an enrollee's choice of health care providers is generally limited to those selected by the plan, although under some of the plans, enrollees may choose other providers and pay a larger share of the cost. Types of defined network plans include health maintenance organizations (HMOs) and preferred provider plans (PPPs).

DHS – State Department of Health Services.

DHHS – Federal Department of Health and Human Services.

ERISA – Employee Retirement Income Security Act. This federal law preempts states from applying their insurance laws to nongovernmental self-insured plans.

OCI – Office of the Commissioner of Insurance.

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K-2 **Housing Assistance**

K-7 **Housing Discrimination**

K-10 **Residential Landlord-Tenant Law**

K-13 **Residential Real Estate Law**

K-14 **Additional References**

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Chapter K

Housing

This chapter contains sections on four housing-related topics: housing assistance, housing discrimination, residential landlord-tenant law, and residential real estate law.

The section on ***housing assistance*** describes financial assistance available through various government programs to subsidize the cost of housing. The key federal agency involved in housing is the U.S. Department of Housing and Urban Development (HUD). The Division of Housing and Community Development (DHCD) in the Department of Commerce and the Wisconsin Housing and Economic Development Authority (WHEDA) have primary roles at the state level in administering housing assistance for low- and moderate-income families. In addition, the state Department of Veterans Affairs (DVA) provides help for homeless veterans and administers two home loan programs for eligible veterans. The Department of Administration (DOA) administers energy assistance, weatherization, and lead abatement programs.

The section on ***housing discrimination*** discusses the law, often referred to as "fair housing" law, that prohibits discrimination in connection with real estate sale or rental. HUD administers the federal Fair Housing Act. The Wisconsin fair housing law is administered at the state level primarily by the Department of Workforce Development's (DWD's) Equal Rights Division. In addition, local government and organizations such as the Milwaukee Fair Housing Council play an important role in providing fair housing services.

The section on ***residential landlord-tenant law*** describes the law governing the rental of property which is administered at the state level primarily by the Department of Agriculture, Trade and Consumer Protection's (DATCP's) Division of Consumer Protection.

The section on ***residential real estate law*** provides an overview of the law governing the sale of homes and the operation of condominiums.

Housing Assistance

HUD Programs

This section on housing assistance is organized in five parts, addressing the programs administered by HUD, DHCD, WHEDA, DVA, and DOA.

HUD supports homeownership by low- and moderate-income families through the Federal Housing Administration's (FHA's) extensive ***mortgage insurance program***. HUD/FHA insures mortgages against loss, thus encouraging lenders to make loans to people who might not otherwise be able to meet the larger down payment requirements or higher interest rates that would be required in the absence of mortgage insurance.

Foreclosure Counseling Agencies. HUD sponsors housing counseling agencies that can provide advice on avoiding foreclosure as well as advice on buying a home, renting, defaults, credit issues, and reverse mortgages. A list of HUD-approved counseling agencies located in Wisconsin can be found at http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=WI.

"HOPE for Homeowners" Foreclosure Assistance Program. On October 1, 2008, HUD began a new program under which HUD will refinance mortgages for borrowers who are having difficulty making their payments, but can afford a new loan insured by HUD/FHA. This program, scheduled to expire on September 20, 2010, gives qualified borrowers adjusted loan terms. Information is available at http://www.hud.gov/hopeforhomeowners/index.cfm.

HUD supports homeownership by low- and moderate-income families through HUD/FHA's extensive mortgage insurance program. HUD also provides rental housing assistance.

HUD's Public Housing Program. In addition to the HUD rental assistance programs administered by WHEDA and DHCD, described below, HUD's public housing program provides public housing at affordable rents for eligible low-income families, the elderly, and persons with disabilities. Local housing agencies receive HUD funds to manage the housing and determine applicant eligibility based on income limits developed by HUD.

HUD's Housing Choice Voucher Program. The HUD housing choice voucher program, formerly known as Section 8, also provides assistance to low-income renters and first-time home buyers. To be eligible for the program, a renter must have income below 50% of an area's median income. Under the program, participants must contribute 30% of their adjusted monthly income for rent. The program then issues a voucher for the difference between the participant's contribution and the area's fair market rent. Participants are responsible for rent in excess of the fair market rent.

Housing choice vouchers may be issued on a tenant or a project basis. A project-based voucher subsidizes a particular project and stays with the project. Tenant-based vouchers stay with tenants as they move and may be used so long as a landlord accepts them.

Local public housing agencies (PHAs) administer the housing choice voucher program. A list of all PHAs in Wisconsin and links to their websites may be found at http://www.hud.gov/offices/pih/pha/contacts/states/wi.cfm. Recently, the program was modified to allow local agencies to include first-time home buyers in the voucher program. However, additional eligibility requirements must be met and local agencies are not mandated to include homeowners in their programs.

DHCD-Administered Programs

DHCD has primary responsibility for most of the housing grant and loan programs administered by the state. The majority of these programs provide state funding or federal HUD funding for housing through local organizations and housing authorities. Expenditure information on the DHCD-administered programs listed below is available in the Legislative Fiscal Bureau's Informational Paper, *State Housing Programs* (#89), discussed in item 4. on the last page of this chapter under "Additional References."

The Department of Commerce website lists all foreclosure resources available through the state and HUD at http://commerce.wi.gov/cd/CD-index-individuals.htm.

The Department of Commerce also prepares a comprehensive five-year state housing strategy plan, as required under federal law and s. 560.9802, Stats., that also serves as the state's application to HUD for key federal program funds. More information on this important plan, referred to as the ***State of Wisconsin Consolidated Plan*** and prepared in coordination with other state and local housing community development agencies, is provided in item 2. on the last page of this chapter under "Additional References."

DHCD-Administered Housing Programs Financed With State Funds. Housing programs financed with state funds include:

- The Homeless Prevention Program (HPP), formerly HODAP, provides funds for short-term rental assistance.
- The Interest Bearing Real Estate Trust Account (IBRETA) program. This program is funded from earnings on interest-bearing real estate common trust accounts into which real estate brokers and salespersons deposit down payments, earnest money, and similar types of real estate payments. Interest or dividends from IBRETA accounts are sent to the state to provide funds for programs serving homeless individuals and families.
- The Transitional Housing Grant program, which provides competitive grants to organizations and county or municipal governments for the provision of transitional housing and associated supportive services for the homeless, to facilitate transition to self-sufficiency.
- The State Shelter Subsidy Grant program, which gives formula-based grants to support homeless shelter facilities and services for homeless persons to recipients including nonprofit organizations, federally recognized American Indian tribes or bands, housing and community development authorities, and county or municipal governments.
- The Wisconsin Fresh Start program. This program replicates a City of Madison program designed to provide at-risk young people with education, employment skills, and career direction leading to economic self-sufficiency. The work component of this program includes new construction or rehabilitation of housing into well-built, affordable dwellings for low- and moderate-income residents.
- The Housing Cost Reduction Initiative provides direct financial assistance to reduce the housing costs of low- and moderate-income households. Funds may be used for assistance for eligible home buyers and eligible homeowners facing foreclosure. Funds are awarded to local governments, tribes, and organizations.

DHCD-Administered Housing Programs Financed With HUD HOME Funds. HUD provides funding for the Home Investment Partnerships program, generally referred to as the HOME program. (This HOME program is separate from WHEDA's home ownership mortgage loan program, described below, which uses the same HOME acronym, but is funded with the money WHEDA raises by selling mortgage revenue bonds.) The federally funded HOME program comprises various initiatives that primarily help households having incomes no greater than 80% of county me-

dian income, although this threshold drops to 60% for rental rehabilitation and home rental housing development programs for most assisted households. These initiatives include the following:

- The Home Homebuyer and Rehabilitation (HHR) program provides grants to local organizations assisting qualified low-income home buyers and landlords. Assistance funded by the program includes subsidization of housing rehabilitation expenses, acquisition costs such as down payments and closing costs, or construction expenses for single-family, owner-occupied dwellings. The program also provides grants and low-interest loans for repairs to rental units that are leased at or below fair market rental levels to low-income persons.

- The HOME Rental Housing Development program funds projects leading to additional rental units for low-income households, either through new construction or by the acquisition and rehabilitation of existing properties. Awards are made to community housing development organizations that sponsor the developments. Funds are also set aside for WHEDA to piggyback with low-income housing tax credits and multifamily programs.

- The HOME Tenant Based Rental Assistance program provides funds through local governments, housing authorities, and nonprofit organizations for rental assistance and support services coordinated by the participating agency, to help homeless persons and to prevent homelessness.

DHCD-Administered Housing Programs Financed With Other Federal Funds. In addition to administering the HUD-funded HOME program, DHCD administers various other programs funded with federal dollars. These include the following:

- The Emergency Shelter Grant program, under which DHCD distributes federal grants for emergency shelters, homeless prevention programs, and services for homeless persons to eligible applicants such as cities, counties, tribal agencies, and private, nonprofit agencies.

- The Critical Assistance program provides financial assistance to reduce the housing costs of low- and moderate-income households. Grant awards may be used to provide rental assistance and assistance with mortgage payments, property taxes, and utility arrearages to avoid foreclosure.

- The housing component of the federal small cities Community Development Block Grants (CDBG) program provides funds for grants to local governments for housing programs which principally benefit low- and moderate-income households. The goal of the program is to upgrade the quality and expand the supply of decent, safe, and sanitary housing for low- and moderate-income households.

- The Housing Opportunities for Persons with AIDS program, which helps persons affected by AIDS/HIV and their families develop long-term strategies for meeting their housing needs and preventing homelessness.

- The Projects for Assistance in Transition from Homelessness provides funds to local agencies to serve individuals with serious mental illnesses who are homeless.

WHEDA-Administered Programs

The state Legislature created WHEDA's predecessor, the Wisconsin Housing Finance Authority, in the early 1970s to support housing for low- to moderate-income Wisconsin households. In 1983, its mission broadened to include financing of economic and agricultural development, and its name changed to WHEDA to reflect this expanded mission. WHEDA sells mortgage revenue bonds to finance housing

development and provide mortgage loans through participating banks, savings and loans, mortgage bankers, and other types of lenders for low- and moderate-income households at below-market interest rates. WHEDA can market its tax-exempt bonds at relatively low-interest rates and thereby reduce its cost of borrowing.

The Wisconsin Constitution does not explicitly authorize the state to incur debt by selling mortgage revenue bonds to finance private housing. [Wis. Const., art. VIII, s. 7.] To avoid the issue of whether the Constitution prohibits the state from selling such bonds, the Legislature created the Authority so that it is not a state agency and its operating budget is not included in the state budget. Instead, WHEDA's operating budget is financed primarily from interest earnings on loans it makes, from its investments, and from administrative fees it assesses. The Wisconsin Supreme Court agreed that the Authority is not a state agency and held that the state does not have an enforceable legal obligation to back its bonds. [*State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391 (1973).]

Although the state is not legally obligated to back WHEDA's bonds, WHEDA is statutorily required to establish a capital reserve fund to meet debt service requirements on its bonds and notes, in case of default. Moreover, if WHEDA's capital reserve fund should experience a deficit, WHEDA is statutorily required to certify to DOA, the Governor, and the Joint Committee on Finance the amount required to restore the fund to the level necessary to meet debt service costs. The Joint Committee on Finance is then required by statute to introduce a bill appropriating the certified amount to WHEDA. Although the Legislature is not obligated to approve the appropriation, according to statute: "Recognizing its moral obligation to do so, the legislature hereby expresses its expectation and aspiration that, if ever called upon to do so, it shall make such appropriation." [s. 234.15 (4), Stats.]

WHEDA is a Wisconsin public corporation and has a board of directors consisting of 12 members: the Secretaries of Administration and Commerce or their designees, four legislative members representing the majority and minority party in each house, and six public members appointed by the Governor with the advice and consent of the Senate for staggered four-year terms, one of whom is selected by the Governor to serve as chairperson for a one-year term. The board meets monthly to fulfill such responsibilities as authorizing bond issues, approving WHEDA's annual budget, and setting policy for WHEDA and its staff.

WHEDA's key programs are described below, organized by funding source. Most of WHEDA's program funding comes from money raised by selling bonds and notes. Additional programs are funded from money in excess of WHEDA's operating costs and statutorily required reserves (the excess is referred to as "surplus" reserves). A third category comprises two federally funded programs that WHEDA administers on behalf of the state. Expenditure information on the WHEDA-administered programs listed below is available in the Legislative Fiscal Bureau's Informational Paper, *Wisconsin Housing and Economic Development Authority* (#88), discussed in item 4. on the last page of this chapter under "Additional References."

WHEDA Housing Programs Funded From Bond Revenues. Key programs funded from revenue raised by WHEDA's sale of bonds and notes include:

- WHEDA Advantage Home Loan program, which provides mortgage loans to qualified first-time low- and moderate-income home buyers. The program also provides loans for major rehabilitation of a home.

- WHEDA's Home Improvement Loan program, which provides home improvement loans to low- and moderate-income households at below-market rates to improve home energy efficiency.

- WHEDA's Multifamily Loan Fund, which provides financing for the development of multifamily housing for low- and moderate-income persons.

WHEDA Housing Programs Funded From Surplus Reserves. WHEDA is statutorily required to deposit any assets in excess of its operating costs and required reserves into an unencumbered general reserve fund. Programs funded primarily from this surplus fund include the following:

- Multifamily housing programs, which use a multifamily housing revolving loan fund to provide capital for developing and preserving multifamily housing for low-income persons, homeless persons, or persons with special needs.

- The WHEDA Foundation Grant program, under which grants are provided by the foundation, a nonprofit corporation, to nonprofit organizations and local governments for improving housing opportunities for low- and moderate-income persons, elderly persons, disabled persons, and persons in crisis.

- WHEDA's Lease-Purchase program, under which nonprofit organizations, public housing authorities, and government agencies use loan funds to purchase or construct homes for low-income households that the lessees have an option to purchase within three years of leasing.

- The HOME Plus program, which offers loans at a fixed interest rate in amounts up to $10,000 for a 15-year term to buy properties at least 10 years old. Initial draw on the credit line for meeting down payment and closing costs cannot exceed 5% of the home's purchase price.

- The Property Tax Deferral Loan program, under which low-income elderly homeowners are able to convert home equity into income to pay property taxes. A more complete discussion of this program can be found in the Legislative Fiscal Bureau's Informational Paper, *Property Tax Deferral Loan Program* (#26), at http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.

Federally Funded Programs That WHEDA Administers on Behalf of the State. WHEDA administers the following two federally funded housing programs on behalf of the state:

- The Low-Income Housing Tax Credit program, under which WHEDA distributes the state's annual allocation of federal tax credits to qualifying low-income rental units to support the development or rehabilitation of affordable rental housing.

- The HUD Housing Choice Voucher program, described under HUD programs above, under which WHEDA acts on behalf of the state to distribute rental vouchers for low-income Wisconsin households in communities that do not have local housing agencies.

DVA-Administered Loan Programs

DVA's Veterans Assistance Program (VAP) helps homeless veterans and those at-risk of becoming homeless with services including job training, education, counseling, and drug and alcohol abuse treatment. Information on this program is available at: http://dva.state.wi.us/Ben_homeless.asp.

In addition, DVA administers two home loan programs for veterans who are residents of Wisconsin. Unremarried spouses of deceased veterans who were eligible may also qualify. Subject to funding availability, DVA's Primary Mortgage Home Loan program provides loans to qualifying state veterans to purchase or construct a home. More information on this program is available at: http://dva.state.wi.us/Ben_mortgageloans.asp.

DVA's Home Improvement Loan program provides loans to qualifying state veterans for property alterations, repairs, or improvements. Eligible veterans can borrow up to 90% of their home equity at rates as low as 5.85%. Additional information on this program is available at: http://dva.state.wi.us/Ben_improvementloans.asp.

DOA-Administered Programs

DOA's Division of Energy Services administers Wisconsin's Home Energy Assistance program, Weatherization Assistance program, and other related energy assistance programs for persons with low incomes, as well as a Lead Abatement program. Information on these programs can be found at: http://www.homeenergyplus.wi.gov/.

Housing Discrimination

HUD's Office of Fair Housing and Equal Opportunity administers the federal Fair Housing Act and establishes national policies relating to fair housing. Fair housing law also exists on the state level. DWD's Equal Rights Division has primary responsibility for administering and enforcing Wisconsin's fair housing law.

The federal Fair Housing Act and Wisconsin's fair housing law prohibit discrimination in housing. HUD's Office of Fair Housing and Equal Opportunity administers the federal Fair Housing Act and establishes national policies relating to fair housing. DWD's Equal Rights Division has primary responsibility for administering and enforcing Wisconsin's fair housing law. DWD also provides technical assistance regarding fair housing to local government and private nonprofit organizations.

Federal Law. The Fair Housing Act is Title VIII of the Civil Rights Act of 1968, and is codified at 42 U.S.C. s. 3601, *et seq.* The traditional grounds for discrimination prohibited by the federal Fair Housing Act passed in 1968 are those of race or color, national origin, religion, and sex. Disability and familial status were added to these grounds by the Fair Housing Amendments Act of 1988. Each of these prohibited grounds for discrimination is a characteristic that defines a "protected class" of persons--persons with that characteristic who are protected by the law from discrimination based on that characteristic.

Prohibited Grounds for Discrimination

With respect to disability, the amended Fair Housing Act prohibits refusal of reasonable modifications or accommodations to persons with disabilities and requires certain multifamily dwellings to be designed and constructed as accessible housing.

With respect to familial status, the amended Fair Housing Act includes prohibitions on discrimination based on characteristics such as being pregnant or having children under the age of 18 living with parents or legal custodians. However, if a building qualifies as housing for older persons, it is exempt from the prohibition against familial status discrimination. Also, a family with "too many" people may be turned away if a reasonable government requirement limits the number of occupants for the dwelling unit.

Wisconsin Law. Wisconsin's fair housing law, also known as the "open housing law," prohibits discrimination based on a wider range of characteristics than does the federal law: sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age, or ancestry. [s. 106.50, Stats.] The five characteristics that are not protected from discrimination under federal law, but are protected under state law, are: age, ancestry, lawful source of income, marital status, and sexual orientation.

Prohibited Actions

Sales and Rentals. Actions generally prohibited by fair housing law, if based on the characteristics described above as prohibited grounds for discrimination, include:

- Refusing to rent, sell, or negotiate for housing.
- Making housing unavailable.

- Setting different terms, conditions, or privileges for sale or rental of a dwelling.
- Providing different housing services or facilities.
- Falsely denying that housing is available for inspection, sale, or rental.
- Persuading owners to sell or rent for profit by making representations regarding the entry or prospective entry into the neighborhood of a protected class of persons (blockbusting).
- Denying anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

Mortgage Lending. In addition, fair housing law generally prohibits the following actions related to mortgage lending based on the characteristics described above as prohibited grounds for discrimination:

- Refusal to make a mortgage loan.
- Refusal to provide information regarding loans.
- Imposing different terms or conditions on a loan, such as different interest rates, points, or fees.
- Discrimination in appraising property.
- Refusal to purchase a loan.
- Setting different terms or conditions for purchasing a loan.

Advertising. The Fair Housing Act prohibits advertising or making any statement that indicates a limitation or preference based on race or color, national origin, religion, sex, disability, or familial status. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Interference With Exercise of Rights. Finally, it is illegal under the Fair Housing Act to threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.

Covered Housing and Accessibility Requirements

Covered Housing. The federal Fair Housing Act covers most housing, but generally excludes single-family housing sold or rented without the use of a broker, as well as owner-occupied buildings with no more than four units.

Unlike federal law, Wisconsin's fair housing law covers single-family residences that are owner-occupied. According to the governing statute: "The legislature finds that the sale…of single-family residences constitute a significant portion of the housing business in this state and should be regulated." [s. 106.50 (1), Stats.]

Accessibility Requirements. The Fair Housing Act imposes accessibility requirements on buildings with four or more units ready for first occupancy after March 13, 1991. These requirements depend on whether such multifamily dwellings have an elevator, as follows:

- If they have an elevator: public and common areas must be accessible to persons with disabilities; doors and hallways must be wide enough for wheelchairs; and all units must have an accessible route into and through the unit, accessible light switches, electrical outlets, thermostats, and other environ-

mental controls, reinforced bathroom walls to allow later installation of grab bars, and kitchens and bathrooms that can be used by people in wheelchairs.

- If they do not have an elevator: the above standards apply to ground floor units, rather than to all units.

Enforcement and Complaints

Fair housing law is enforced primarily in response to complaints initiated by individuals who feel that they have been unfairly discriminated against in their search for housing. Complaints may be filed under federal or state law, as described below. Some areas of the state are served by a fair housing council, an organization that can help persons understand their rights under the law and the options they have to pursue a complaint.

Complaints Filed Under Federal Law. A person alleging a violation under the federal Fair Housing Act has the following two general options for proceeding. A benefit of the first option described below is that the federal government pays for the proceeding if HUD does not dismiss the complaint, whereas a person choosing the second option does so at his or her own expense.

- A person may file a complaint with HUD no later than one year after the alleged discrimination occurred. HUD will then investigate the claim and determine whether it finds reasonable cause to believe that discrimination occurred. If HUD does not find such reasonable cause, it will dismiss the complaint. If HUD does find reasonable cause to believe that discrimination occurred, it will issue a charge on behalf of the person who filed the complaint (the complainant), and the complainant will not have to pay the costs of pursuing a legal remedy. Either the complainant or the person who is accused of discrimination (the respondent) can then choose to proceed in federal court or in an administrative hearing conducted by a HUD administrative law judge.

- A person may file a civil action at his or her expense in federal district court or state court no later than two years after the alleged discrimination occurred. This option is only available if an administrative law judge has not yet started a hearing.

If the first option described above is chosen and HUD conducts the administrative hearing, HUD attorneys will litigate the case on behalf of the complainant, although the complainant can intervene in the case and be represented by his or her own attorney. If the administrative law judge decides that discrimination occurred, the respondent may be ordered to do any of the following:

- Compensate the complainant for actual damages, including humiliation, and pain and suffering.

- Provide injunctive or other equitable relief, for example, to make the housing available.

- Pay the federal government a civil penalty to vindicate the public interest.

- Pay reasonable attorney's fees and costs.

If one of the parties chooses federal court instead of an administrative hearing after HUD finds reasonable cause to believe that discrimination occurred, the U.S. Attorney General will file a suit in federal district court and litigate it on behalf of the complainant. One possible reason for choosing federal court is that, in addition to ordering the damages that an administrative law judge could order in an administrative hearing to compensate the complainant, a federal court can award punitive

damages to the complainant--i.e., damages intended to punish and deter discrimination.

A person may file a complaint with HUD by any of the methods listed on the HUD website at: http://www.hud.gov/complaints/housediscrim.cfm.

Complaints Filed Under Wisconsin Law. A person alleging a violation under Wisconsin's fair housing law [s. 106.50, Stats.] may file a complaint with the DWD's Equal Rights Division no later than one year after the alleged discrimination occurred. The Equal Rights Division will investigate the claim. Unlike HUD at the federal level, which need only find **reasonable** cause to believe that discrimination occurred, the Equal Rights Division must find **probable** cause to believe that discrimination occurred before it can issue a charge on behalf of the complainant. If it finds such probable cause, at that point either the complainant or the respondent can choose to have the charge decided in a civil action filed by the complainant in circuit court, or have the complaint decided after a hearing held by an administrative law judge of the Equal Rights Division.

One possible reason for choosing to file in circuit court is that a court can award a type of remedy to the complainant (punitive damages, described above under federal law) beyond those that can be awarded by the administrative law judge of the DWD's Equal Rights Division.

Information on how to file a fair housing complaint with the DWD's Equal Rights Division, as well as the discrimination complaint form for doing so, is available at the following website: http://www.dwd.state.wi.us/er/discrimination_civil_rights/open_housing_law.htm.

Metropolitan Milwaukee Fair Housing Council. A fair housing council is an organization that helps persons understand their rights under the fair housing law and the different options they have to pursue a complaint. Fair housing councils may also conduct investigations using "testing," a method of investigating complaints that compares treatment of various persons seeking housing to determine whether differences in treatment are occurring which may constitute discrimination. Such testing has the potential to yield significant evidence in later administrative hearings or court proceedings. A fair housing council may also refer persons to attorneys experienced in fair housing issues and, in some cases, can itself be a plaintiff.

In Wisconsin, the Metropolitan Milwaukee Fair Housing Council, Inc. (MMFHC) can provide information on whether a particular area of the state is served by a fair housing council. Its telephone number is 414-278-1240 and it has an Internet site at http://www.fairhousingwisconsin.com that includes links to the Fair Housing Center of Northeast Wisconsin and the Fair Housing Center of Greater Madison. The latter can be reached at 608-257-0853.

Wisconsin's DATCP has responsibility for promulgating and administering the main body of rules relating to landlord-tenant law, codified at ch. ATCP 134, Wis. Adm. Code (Residential Rental Practices).

Residential Landlord-Tenant Law

Residential landlord-tenant law is a mix of statutes, rules promulgated by state agencies, and common law (law derived from court decisions on individual cases). Chapter 704, Stats., sets forth the main part of Wisconsin statutory law governing landlord and tenant relationships. Wisconsin's DATCP has responsibility for promulgating and administering the main body of rules relating to landlord-tenant law, codified in ch. ATCP 134, Wis. Adm. Code (Residential Rental Practices).

Rental Agreements

Rental agreements generally fall into two categories: (1) those with no fixed termination date; and (2) "leases," defined by statute as agreements for a definite period of time. A lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date, or if the commencement and expiration can be ascertained by reference to some event, such as completion of a building. Tenants who do not have a lease, but have rental agreements to pay rent on a periodic basis, are generally referred to as "periodic tenants." Tenants with rental agreements who do not have a lease and do not pay rent on a periodic basis are referred to as "tenants at will." [s. 704.01, Stats.]

Rental Agreements Sometimes Override Statutory Provisions. The express terms of a written rental agreement often prevail over statutory provisions intended to serve as default protections, i.e., provisions to be triggered in the absence of a written rental agreement. The notice requirements for termination of leases for less than a year's duration, described below, are an example of statutory provisions that can be preempted by clear and convincing proof that the parties expressly agreed otherwise. However, certain rental agreements are prohibited, as listed under s. ATCP 134.08, Wis. Adm. Code, such as an agreement to evict a tenant by other than the judicial eviction procedures provided under ch. 799, Stats.

Landlord Disclosure Duties. Under s. ATCP 134.04, Wis. Adm. Code, landlords must disclose housing code violations of which they have been notified, but have not corrected. They also must disclose structural defects, a lack of hot or cold running water, serious plumbing or electrical problems, if the heating unit cannot maintain a temperature of at least 67 degrees, if the tenant is required to pay utilities, and how utility charges will be divided if the dwelling is one of several and not individually metered.

Leases Must Be in Writing. Under s. 704,03, Stats., if a lease is for more than one year, it is only enforceable if it is in writing and meets the formal requirements of s. 706.02, Stats., for conveyance of real property. In addition, to be enforceable, a written lease must either: (1) set forth the amount of rent or other consideration, the time of commencement and expiration of the lease, and a reasonably definite description of the premises; or (2) be signed by the landlord and the tenant and set forth the amount of rent or other consideration, the duration of the lease and a reasonably definite description of the premises, and establish the commencement date of the lease.

If a lease is for a year or less, it does not have to be in writing, but it is nevertheless generally advisable to have a written agreement to avoid misunderstandings. In addition, written agreements can sometimes override statutory requirements where oral agreements may not. For example, a written agreement is more likely to constitute the "clear and convincing proof" required to override the statutory requirement for terminating periodic tenancies and tenancies at will. [s. 704.19, Stats.]

Prohibited Lease Terms. A rental agreement may not do any of the following:

- Authorize the landlord to evict a tenant, except by the eviction procedure prescribed under ch. 799, Stats.
- Accelerate rent payment obligations when a tenant fails to pay rent, or waive the landlord's obligation to mitigate damages by rerenting.
- Require a tenant to pay the landlord's attorneys fees.
- Relieve the landlord from liability for the landlord's negligent acts or omissions, or impose liability on a tenant for damages outside the tenant's control.

- Waive the landlord's maintenance obligations under ch. 704, Stats., or under other applicable law.

Notice to Terminate a Tenancy. In the absence of a written rental agreement, if the tenant has not moved out, a landlord or a tenant who wants to terminate the tenancy generally must give written notice at least 28 days before the end of the rent-paying period. As an exception, if the rent-paying period under a periodic tenancy is less than monthly, either a landlord or tenant can terminate by giving written notice at least as much in advance of the requested termination as the length of the rent-paying period. [s. 704.19, Stats.]

Tenant Breaches and Evictions

Tenant Nonpayment of Rent. If rent has not been paid on time, and was paid on a month-to-month basis, the landlord has two options for giving notice to terminate the tenancy: the landlord can either give the tenant a notice to pay or leave within five days, or the landlord can give the tenant notice to leave within 14 days. Whereas a five-day notice gives the tenant the right to pay and continue to stay on the premises, a 14-day notice does not. [s. 704.17, Stats.] Subject to notice requirements, death of a tenant, or mobilization of a reserve component military member can entitle the tenant to break a lease.

Tenant Refusal to Leave. If a tenant fails to pay rent or otherwise breaches the rental agreement, and fails to leave after receiving either the five-day "pay or leave" notice or the 14-day "leave" notice described above, a landlord can begin eviction proceedings, as set forth under ch. 799, Stats. These judicial eviction procedures must be followed by the landlord and no rental agreement may authorize the eviction of a tenant from the premises by means other than the judicial eviction procedures under ch. 799, Stats. These require that a landlord produce two documents. First, the landlord needs a summons, which requires that the tenant appear in court on a specific date and at a specific time. Second, the landlord needs a complaint, which essentially outlines the landlord's claim. Copies of the completed papers must be left with the court and served on the tenant.

Security Deposits and Landlord Breaches

A landlord can require a tenant to pay a security deposit as protection, in case the tenant fails to live up to his or her obligations under the rental agreement, for example, by damaging the landlord's property or failing to pay rent. A security deposit includes all rent payments in excess of one month's prepaid rent. In general, there is no limit on the amount of a security deposit that a landlord can require under state law. Section ATCP 134.06, Wis. Adm. Code, is the primary rule administered by DATCP relating to security deposits.

Return of Security Deposit. If a landlord requires a security deposit, a tenant has at least seven days from the start of tenancy to inspect the premises and notify the landlord of any defects, so as to avoid being unfairly charged for defects. Also, the tenant has at least seven days from the start of tenancy to request a list of damages charged to the previous tenant.

A landlord may withhold some or all of a tenant's security deposit, at the end of a tenancy, to pay for any of the following:

- Repairs resulting from damage beyond ordinary wear and tear.
- Waste or neglect of the premises.
- Nonpayment of rent.
- Nonpayment of amounts owed for utility service provided by the landlord but not included in the rent.

- Nonpayment of utility service provided by a government-owned utility to the extent that the landlord becomes liable for the tenant's nonpayment.

The landlord must return a tenant's security deposit within 21 days after a tenant surrenders the rental premises, unless the landlord gives the tenant a written reason for withholding some or all of the security deposit. However, the landlord is not in violation if the tenant has not provided the landlord with a forwarding address and, therefore, does not receive the written explanation.

Tenant Legal Action. If a landlord does not comply with the requirements for withholding security deposits, or otherwise violates the requirements for residential rental practices set forth in ch. ATCP 134, Wis. Adm. Code, a tenant may be able to start an action in small claims court. A tenant who suffers a monetary loss because of the violation may sue the violator directly under s. 100.20 (5), Stats., which allows such a tenant to recover twice the amount of any actual monetary loss, together with court costs and reasonable attorney fees.

DATCP has information on its consumer protection website addressing tenants' rights and responsibilities. In addition, a tenant can file a complaint online against his or her landlord with DATCP.

DATCP's consumer protection website is: http://www.datcp.state.wi.us/core/consumerprotection/consumerprotection.jsp.

Additional assistance in dealing with landlord problems is available to tenants from local groups and from DATCP. One example of a local group is the Tenant Resource Center, a nonprofit organization with a small staff located in Madison that relies primarily on volunteers to provide housing counseling. The Tenant Resource Center home page provides information and links for tenants and landlords in Wisconsin: http://www.tenantresourcecenter.org.

DATCP has information on its consumer protection website addressing tenants' rights and responsibilities. In addition, a tenant can file a complaint online against his or her landlord with DATCP. DATCP's consumer protection website is: http://www.datcp.state.wi.us/core/consumerprotection/consumerprotection.jsp. More housing-related information is available at: http://www.datcp.state.wi.us/cp/consumerinfo/cp/top-complaints/tenants.jsp.

Residential Real Estate Law

Statutory provisions governing residential real estate practice are set forth in ch. 452, Stats. This chapter requires all real estate brokers and salespersons to be licensed by the Department of Regulation and Licensing. The chapter also specifies various duties of brokers and real estate salespeople with respect to buyers and sellers of homes.

The Department of Regulation and Licensing has an informative brochure entitled "Your Rights When Buying or Selling a Home." It may be found at http://drl.wi.gov/dept/savvy.htm.

Duty of Owners of Residential Real Estate Have to Disclose Defects to Buyers. Chapter 709, Stats., governs disclosures by owners of residential real estate. Although there are some exceptions, owners selling residential property are generally required to disclose "defects" in the property that adversely impact its value or structural integrity or that pose a health or safety risk. This disclosure must be made within 10 days of a buyer's acceptance. Chapter 709, Stats., provides a mandated form containing queries relating to 27 types of possible "defects" that must be disclosed. Examples of the types of defects that must be disclosed include defects in the roof, electrical system or plumbing, seepage in the basement, boundary or lot line disputes, the presence of asbestos, current or previous termite or carpenter ant infestations, and the designation of the property as a historical building.

Disclosure Duties of Real Estate Brokers. Although ch. 709, Stats., places much of the burden of disclosure duties on sellers, brokers still have a common law duty not to mislead or deceive buyers. Under s. 452.133 (1), Stats., a broker must disclose to each party all "material adverse facts" that the broker knows and that the other party does not know or cannot discover through reasonably vigilant observa-

tion, unless the disclosure of a material adverse fact is prohibited by law (for example, the seller's minimum sale price may be a disclosure prohibited by law).

Condominiums. Wisconsin statutory law governing condominiums is set forth in ch. 703, Stats. The law requires every condominium development to establish a condominium association with a board of directors and sets forth the powers of a condominium association. The law authorizes an association to collect assessments from unit owners for common expenses. The law requires each condominium to establish bylaws covering certain topics such as governance of the condominium, the conduct of association meetings, the collection of assessments from unit owners, and the powers of the board of directors.

Manufactured Homes. Section 710.15, Stats., provides special protection to owners of manufactured homes ("mobile homes") who rent sites in manufactured home parks ("mobile home parks"). The owner of the rental site cannot require the manufactured home owner to move from the site solely due to the age of the home or its sale. Tenancy can only be terminated for good cause, and leases must be at least a year unless the manufactured home owner consents to a shorter term. The statutes and DATCP regulations specify additional protections as well.

Additional References

1. ***DHCD's*** Internet site is http://www.commerce.wi.gov/cd/cd-boh-Home.html. A useful ***guide identifying public sources of housing financial and informational assistance*** is available by clicking on the "general housing information" link at DHCD's Internet site.
2. The ***State of Wisconsin Consolidated Plan*** for the State's Housing and Community Development Needs ("Consolidated Plan") serves as the state's application to HUD for key federal program funds, as well as a plan for distributing federal and state dollars to a variety of housing, community, and economic development programs. The Department of Commerce takes the lead in its development and has issued the ***2005-2009 Consolidated Plan***. Details on the plan are available at http://commerce.wi.gov/cd/CD-Consolidated-Plan.html.
3. ***WHEDA's*** Internet site is http://www.wheda.com/.
4. At the beginning of each legislative session, the Legislative Fiscal Bureau prepares Informational Papers that describe various state programs. Two papers related to housing assistance were published in January 2005: *Wisconsin Housing and Economic Development Authority* (#88) and *State Housing Programs* (#89). The informational Papers are available at http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.

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Wisconsin Legislative Council

Wisconsin Legislator Briefing Book 2011-12

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Chapter L

Human Services and Aging

Human services encompass a wide range of services provided to persons in need, including persons with low income, the elderly, persons with physical and developmental disabilities, mental illness, and children. The federal, state, local, and tribal governments fund and administer an array of human services programs including: Wisconsin Works (W-2); child welfare services; mental health and substance abuse services; and community-based long-term care and residential care for the elderly or developmentally disabled.

Human services and aging programs are administered primarily by two state agencies: the Department of Health Services (DHS); and the Department of Children and Families (DCF).

DHS administers:

- Long-term care services, including family care and the Medicaid waiver programs.
- Residential long-term care programs, including the State Centers for the Developmentally Disabled.
- The regulation of various types of long-term care facilities, such as nursing homes and other facilities.
- Community-based services for elderly persons, children with long-term care needs, and persons with developmental disabilities, hearing and visual impairments, and brain injuries.
- Community-based services for persons with mental illness and alcohol and other drug abuse (AODA) issues.

In Wisconsin, these community-based services are administered primarily on a county level, and DHS is responsible for distributing various types of block grant funds, including community aids, to counties for the operation of these programs.

The programs administered by DCF include the following:

- Adoption programs.
- Brighter Futures Initiative.
- Child care licensing, certification, and regulation of the Wisconsin Shares Child Care Subsidy program.
- Child protective services.
- Child support enforcement.
- Child welfare in Milwaukee County.
- Domestic violence and abuse programs.
- Foster care licensing.
- The Kinship Care program.
- The W-2 program.

Economic Assistance Programs

W-2

The W-2 program[1] replaced the Aid to Families with Dependent Children (AFDC) program in September 1997. The Division of Family and Economic Security in DCF administers the W-2 program, while counties, private agencies, and tribes ("W-2 agencies") provide services under the terms of contracts signed with DCF. W-2 is funded by state general purpose revenue (GPR), federal Temporary Assistance to Needy Families (TANF) block grant funds, and program revenue, which is primarily from child support collections assigned to the state by public assistance recipients.

Nonfinancial eligibility requirements for W-2 participation include all of the following:

- Being a custodial parent who is at least 18 years old.
- Being a U.S. citizen or qualifying alien.
- Residing in Wisconsin.
- Fully cooperating in efforts to establish paternity of a dependent child and obtain support payments.
- Not receiving federal or state supplemental security income (SSI) payments or federal Social Security disability insurance payments (SSDI).

W-2 participants must also meet financial eligibility requirements. An individual, his or her spouse or nonmarital coparent, and any dependent children and grandchildren who reside together may not have a gross income that exceeds 115% of the federal poverty level. In addition, the family may not have assets that exceed $2,500 in combined equity value, excluding the equity value of vehicles up to a total of $10,000 and one homestead property.

All W-2 participants are assigned by their local W-2 agency to either unsubsidized employment or one of three types of subsidized employment: trial jobs, community services jobs, or transitional placements.

All W-2 participants are assigned by their local W-2 agency to either unsubsidized employment or one of three types of subsidized employment: trial jobs, community services jobs, or transitional placements. Participants in W-2 subsidized employment positions are required to search for unsubsidized employment throughout their participation. A W-2 agency is required to assist a participant in searching for unsubsidized employment.

- ***Unsubsidized Employment.*** Job search assistance is provided to an unemployed individual who, once employed, will receive wages from his or her employer. Generally, unsubsidized employment is appropriate for an unemployed person who has no barriers to work which cannot be addressed through supportive services, has recent work experience, and has an educational or training background that allows the individual to compete in the unsubsidized labor market.
- ***Trial Job.*** Individuals who have basic skills, but lack sufficient work experience, may be placed in a trial job. Through a trial job contract, the employer agrees to provide the participant with on-the-job work experience and training in exchange for a wage subsidy.
- ***Community Services Job.*** Generally, community services jobs are developed for participants who lack basic skills and work habits needed in a regular job environment. Participants receive a monthly cash grant for up to 30 hours per week in work training activities and up to 10 hours per week in education or training.
- ***W-2 Transition (W-2T).*** W-2T is designed for participants who have a limited ability to perform independent, self-sustaining work. Participants receive a monthly cash payment for up to 28 hours per week for participating in work training or other employment-related activities, and up to 12 hours per week in education and training.

The lifetime eligibility limit for W-2 is 60 months; however, extensions may be granted in limited circumstances.

Additional support services are available for all W-2 participants. These services may include the following:

- Job access loans to help eligible individuals meet immediate expenses related to obtaining or maintaining employment. These are short-term loans that must be repaid in cash or a combination of cash and volunteer services.
- Transportation assistance to get to and from work, child care, or school.
- The Children's Services Network, which brings together the community resources administered outside of the W-2 agency that are available to help low-income individuals and families.

W-2 recipients may also be eligible for the state and federal earned income tax credit, child care subsidies through the Wisconsin Shares Child Subsidy program, and Food Stamps. Participants may also be eligible for Medicaid or BadgerCare Plus.

Transitional Jobs Demonstration Project

In 2009 Wisconsin Act 28 (the 2009-11 Biennial Budget Act; hereafter, "Act 28"), DCF was directed to conduct a transitional jobs demonstration project.[2] The project, which began in July 2010, offers transitional jobs to low-income adults. These jobs are allocated among the counties of Milwaukee, Dane, Racine, Kenosha, Rock, Brown, and other regions of the state, as determined by DCF, based on the allocation of W-2 participants among those counties and regions.

In order to be eligible to participate in the transitional jobs program, an individual must satisfy all of the following criteria:

- Be at least 21 years of age, but not more than 64 years of age.
- Be ineligible for W-2.
- Have an annual household income below 150% of the federal poverty level.
- Be unemployed for at least four weeks.
- Be ineligible to receive unemployment insurance benefits.

The project is funded with federal funds under the American Recovery and Reinvestment Act.

Wisconsin Shares Child Care Subsidy Program

Under Wisconsin Shares,[3] the state subsidizes child care expenses for eligible W-2 and other low-income working families. The Division of Family and Economic Security in DCF administers Wisconsin Shares through local W-2 agencies and county human or social services departments. The subsidy is available to enable parents to work or participate in certain work or educational activities.

In order to qualify, parents must meet the applicable income, asset, and employment or educational requirements. Generally, families whose gross income does not exceed 185% of the federal poverty level are eligible. Once eligible, a family remains eligible until the family's gross income exceeds 200% of the federal poverty level. Most parents who qualify for the subsidy are required to make a copayment, based upon the family's income, family size, the type of child care selected, and the number of children in the family who receive child care services.

In the 2009-10 Legislative Session, several changes were made to the regulation of child care providers generally, and to the Wisconsin Shares program specifically. 2009 Wisconsin Act 76 broadened the law relating to criminal background checks for child care providers. Act 76 also requires DCF to refuse to pay a Wisconsin Shares child care provider for care provided by a person who is convicted of a serious crime, or if a caregiver or nonclient resident of the child care provider is convicted or adjudicated delinquent on or after his or her 12th birthday. Payments must be suspended in the case of pending criminal charges or delinquency petitions alleging the commission of a serious crime by a caregiver or nonclient resident of a provider, pending the outcome of the investigation. Finally, if a recipient or former recipient of a child care subsidy is found to have violated any program statute or rule, the person is ineligible to receive a child care subsidy for up to five years from the date of the judgment.

SSI

SSI[4] is a federal program that provides cash benefits to persons who are age 65 or older, as well as to children or adults who are blind or disabled. Individuals who receive SSI payments automatically qualify for Medicaid and may also qualify for FoodShare.

SSI eligibility is based upon nonfinancial and financial requirements. To qualify for SSI payments for blindness, a person must have vision of 20/200 or less or have a limited field of vision of 20 degrees or less with the best corrective eyeglasses. To receive SSI payments based on disability, an adult must have a physical or mental impairment that prevents the individual from performing any substantial gainful activity and which has lasted, or is expected to last, for a continuous period of at least 12 months or result in death. Substantial gainful activity is generally considered to be a job that pays $700 or more of earnings per month. A child's impairment must result in "marked and severe functional limitations," which is expected to result

in death or which has lasted or can be expected to last for a continuous period of 12 months.

Eligible individuals must also have limited income and resources. An individual may be eligible for SSI payments if the person has little or no income and has countable resources of up to $2,000 for a single person, or $3,000 for married couples. Certain resources are excluded from consideration, including the person's home and a car, depending on its use or value.

Individuals may apply for SSI at their nearest Social Security office.

Wisconsin has chosen to supplement federal SSI payments with a state supplemental payment to SSI beneficiaries.

State SSI Supplement. Wisconsin has chosen to supplement federal SSI payments with a state supplemental payment to SSI beneficiaries.[5] Individuals do not have to apply separately for the state SSI payment, but must qualify for a federal SSI payment in order to receive a state SSI payment.

The state SSI cash benefit includes three components: a basic supplement, an exceptional expense supplement, and a supplement for caretakers of dependent children. The Division of Disability and Elder Services in DHS administers state SSI benefits. A recipient's cash benefit level is based upon whether the individual is living:

- Independently.
- In the household of another person (such as a relative or friend).
- Independently with an ineligible spouse.
- In the household of another person with an ineligible spouse.
- In Exceptional Expense Supplement-supported living in nonmedical substitute care (eight or fewer beds) or in a natural residential setting (a home or apartment).

If an SSI recipient has a spouse who is also eligible to receive SSI payments, the couple receives a combined benefit.

The **SSI Exceptional Expense Supplement (SSI-E)** is an additional payment of up to $96 per month added to the state SSI payment of each individual who meets eligibility requirements. Generally, an SSI recipient who lives in a natural residential setting (home or apartment) who needs at least 40 hours of primary long-term support services each month is eligible for the SSI-E benefit.

The **SSI Caretaker Supplement**[6] is an additional payment available to SSI recipients who have dependent children. Eligible recipients receive a cash benefit of $250 per month for one dependent child and $150 per month for each additional dependent child. SSI recipients and their dependent children must meet eligibility requirements. The SSI Caretaker Supplement is funded by TANF and GPR funds.

FoodShare Wisconsin and WIC

FoodShare Wisconsin. The federal Food Stamp program is administered by the U.S. Department of Agriculture (USDA). In Wisconsin, it is called FoodShare Wisconsin.[7] DHS administers FoodShare Wisconsin at the state level according to federal law and regulations. Eligibility determinations, issuance of debit cards used to purchase food (Quest cards), and implementation of the Food Stamp Employment and Training (FSET) program are generally done by county human or social services agencies or tribal agencies.

In Wisconsin, the Federal Food Stamp program is called FoodShare Wisconsin.

Participants must meet all of the following eligibility requirements:

- Be a U.S. citizen or qualified resident alien.
- Live in the county where the application is made and not reside in an institution that provides meals, such as a nursing home.
- Provide a Social Security number for all members of their household.
- Comply with certain requirements regarding the establishment of paternity and child support.
- Participation in the FSET was made voluntary in 2007 Wisconsin Act 20 (the 2007-09 Biennial Budget Act) and the administration of the FSET was transferred from DWD to DHS.

Households may have up to $2,000 worth of assets, or up to $3,000 if at least one household member is at least age 60 or disabled. Only certain types of assets are counted toward these limits.

In a household without an elderly or disabled member, the household must meet a monthly gross income and net income test. To qualify for FoodShare benefits, a household's gross cash income must be below 130% of the poverty income guidelines for the household size. Net income must be lower than 100% of the poverty income guidelines for the household size. In a household with an elderly or disabled member, only the net income test is applied.

Households with a gross monthly income at or below 200% of the federal poverty level and authorized to receive a TANF-funded benefit or service are categorically eligible to receive FoodShare Wisconsin benefits, except when the household includes a member who was sanctioned from FoodShare Wisconsin for a drug felony or fraud.

FoodShare benefits are entirely federally funded. State administration of the program is generally 50% state and 50% federally funded.

Under Act 28, eligibility for the low-income energy assistance program was provided to any household that included at least one person eligible for FoodShare.

Special Supplemental Nutrition Program for Women, Infants and Children (WIC).[8] WIC is a federally funded program administered by the Division of Public Health in DHS to promote and maintain the health of nutritionally at-risk pregnant, breastfeeding, or new mothers, infants under one year old, and children under age five. To be eligible, families may not earn income that exceeds 185% of the federal poverty level.

All WIC participants receive screening for nutrition and health needs; financial assistance to purchase WIC-approved nutritional foods and infant formula; and referrals to doctors, dentists, and programs such as FoodShare and Head Start. In addition, women receive information on healthy eating during pregnancy and on breastfeeding.

Human Services and Aging Programs

A majority of the state's human services programs are funded through the community aids program. Community aids[9] are a combination of state GPR and federal revenues from a variety of sources that are distributed by DHS to counties for the provision of human services, including services for low-income persons, children in need of protection or services, and persons with needs relating to mental illness, substance abuse, or developmental disabilities. The programs funded through community aids are county administered.

Community aids funds are provided to counties under the "basic county allocation" block grant and in five categorical allocations. A majority of funds are provided in the basic county allocation, which funds certain services that counties are required to provide, such as services ordered by the courts. However, beyond these required services, counties have discretion in the expenditure of the remaining funds, limited by the availability of funds and the demands of competing programs. Community aids categorical allocations must be used for specific purposes. The five categorical allocations are:

- The Family Support program.
- Community mental health services.
- Tribal child care.
- Prevention and treatment of substance abuse.
- The Alzheimer's Family and Caregiver Support program.

Counties are required to provide matching funds for the basic county allocation and the Alzheimer's Family and Caregiver Support program allocation. Most counties provide county funds in excess of the required match, which is referred to as "overmatch."

Child Welfare Services

The Division of Safety and Permanence in DCF supervises child welfare services, including child protective services, foster care, and kinship care.

Child protective services are administered by county human or social services departments in 71 counties and by the DCF Bureau of Milwaukee Child Welfare (BMCW) in Milwaukee County. The juvenile court and a county department of human or social services, or the BMCW in Milwaukee County, share responsibility for children in the child welfare system. Under the federal Indian Child Welfare Act (ICWA), special provisions apply to American Indian children in child custody proceedings, and some tribes have child welfare departments which deal with those cases. In 2009 Wisconsin Act 94, substantial changes were made to the statutes to incorporate ICWA into the Children's Code.

The Children's Code, ch. 48, Stats., grants the juvenile court jurisdiction over children who are alleged to be in need of protection or services, including children who are abused or neglected. The appropriate child welfare agency is responsible for providing intake and investigation services to determine if a child had been abused or neglected, case management services to children placed by the juvenile court in out-of-home placements, and services to children placed for adoption whose parents have had their parental rights terminated. Counties and the BMCW are also responsible for the placement costs of children in out-of-home care.

Jurisdictional Grounds. The juvenile court may take jurisdiction over a child as a "child in need of protection or services" (CHIPS). The jurisdictional grounds include, among others, the following situations:

- The child is without a parent or guardian.
- The child is at substantial risk of, or has been the victim of, sexual or physical abuse.
- The child is at substantial risk for, or has been the victim of, neglect.
- The child is in need of special treatment or care.

Dispositional Alternatives. If a juvenile court adjudicates a child as a CHIPS case, the court orders a disposition of the case. The dispositional process includes determining whether custody of the child should be transferred to the county (or to the BMCW in Milwaukee County) and whether they should be placed outside the home. If a child is placed outside the home, the court's dispositional order must contain a finding that continued placement of the child in his or her home would be contrary to the health, safety, and welfare of the child. The order must also contain a finding as to whether the appropriate agency has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns. If applicable, the order may contain a finding as to whether the agency primarily responsible for providing services has made reasonable efforts to make it possible for the child to return safely to his or her home. The agency may be the county department of social or human services, the BMCW in Milwaukee County, or the child welfare agency primarily responsible for providing services under the court order.

For each child living outside his or her home in a licensed facility (e.g., a foster home or group home), the agency that placed the child, arranged the placement, or is primarily responsible for providing services to the child must prepare a written permanency plan that identifies the goal for a permanent placement for the child and the services provided to the child and the family in order to achieve the identified goal. An identified goal could be reunification with the birth family, transfer of legal guardianship to a relative, termination of parental rights, or long-term foster care. The court or a panel appointed by the court must review a permanency plan every six months from the date on which the child was first held in physical custody or placed outside of his or her home.

In contrast to other counties where child welfare services are provided by the county department of human or social services, DCF must provide child welfare services in Milwaukee County.

Milwaukee Child Welfare Responsibilities. Child welfare services in Milwaukee County are provided by DCF's BMCW. Various duties assigned to DCF are enumerated in the Children's Code, and include receiving and investigating reports of suspected child abuse and neglect, providing child welfare intake services for the purpose of screening children who are taken into custody and not released, and investigating and supervising child welfare cases for the court.

Foster Care. A child may be placed in a foster home or treatment foster home under the Children's Code, ch. 48, Stats., or Juvenile Justice Code, ch. 938, Stats. Treatment foster homes provide specialized services to children with mental illness, behavioral disorders, alcohol or other drug abuse problems, or developmental disabilities. Treatment foster care parents are specially trained to be a part of the child's treatment process. Foster care and treatment foster care placements typically are made pursuant to a court order. A court may order foster care or treatment foster care following CHIPS adjudication (for example, based on abuse or neglect); an adjudication that a juvenile is delinquent; or an adjudication that a juvenile is a juvenile in need of protection or services (JIPS) (for example, based on being uncontrollable or habitually truant from home or school). Foster care and treatment

foster care placements also may be made without a court order for up to six months under a voluntary placement.

A foster home is licensed pursuant to administrative rules[10] by a county department of human or social services; by the BMCW in Milwaukee County; by licensed private child placement agencies; or by tribes. A foster home may provide care and maintenance for no more than four children unless all of the children are siblings, or up to six children if that will allow a sibling group to stay together.

Foster care payments are made to a licensed foster parent who is caring for a child. The payments are made if a court has placed the child with a foster parent or the child has been placed with the foster parent on a voluntary basis. The amount of the foster care payment is based on the age of the child, and whether the child needs more than the usual amount of care because of individual needs.

Under Act 28, DCF was directed to establish a new foster care licensing system providing levels of care that a licensed foster home is certified to provide. As of January 1, 2010, DCF had promulgated an emergency rule that established the licensing categories for Level One and Level Two foster homes. Additional levels of care will be established as this new licensing system is developed. In addition, DCF will establish a customized assessment tool, and provide the process to determine monthly rates of reimbursement above the basic maintenance payment under levels of care. Treatment foster home is still a licensing category; however, this category will ultimately be eliminated and the specialized care provided by treatment foster homes will be incorporated into the foster home levels of care.

A foster home licensed at Level One may provide only child-specific foster care, which is a license that is issued to a relative of a child or an individual who has a previous existing relationship with the child or the child's family. For Level Two certification, an individual must submit at least three favorable reference letters written by persons unrelated to the applicant.

Act 28 changes the way certain out-of-home care providers, including treatment foster homes, are reimbursed. First, the provider proposes a rate for the upcoming year to DCF. DCF then reviews the proposed rate to determine if it is appropriate to the level of services being provided. Then, if DCF does not approve of the proposed rate, DCF and the provider enter into a negotiation process. A mediation process with appeal rights was added by 2009 Wisconsin Act 335. Act 335 also creates a performance-based contracting system for group homes, residential care centers, and child welfare agencies that will be implemented over a three-year period beginning January 1, 2011.

Kinship Care. Kinship care[11] provides a payment of $215 per month to eligible kinship care relatives who are providing care and maintenance for a child. A "kinship care relative" means a relative other than a parent.

Kinship care is administered by county departments of human or social services; by the BMCW in Milwaukee County; or by a federally recognized American Indian tribe or band that has entered into an agreement with DCF to administer the program.

The basic eligibility requirements for kinship care include the following:

- The basic needs of the child can be better met with the relative than with the parent.
- The placement is in the best interests of the child.

- The child currently meets or would potentially meet the requirements of being found CHIPS if the child were to remain with his or her parent.

Kinship care is funded with federal TANF block grant funds. Based on a formula established by DCF, the moneys are allocated to counties, to the BMCW for Milwaukee County, and to tribes.

Under Act 28, as a condition of eligibility, a court-ordered kinship care relative who applies to the county department or DCF for kinship care payments must apply for a license to operate a foster home. This will enable the DCF to capture federal Title IV-E funds for these placements. However, if a kinship care relative's application for a foster home license is denied, the county department or the department (the BMCW) may make kinship care payments to the kinship care relative for as long as the relative continues to meet the conditions for eligibility for those payments, provided that certain information is submitted to the juvenile court.

Youngstar Child Care Quality Rating System

Under Act 28, the Legislature authorized the creation of a child care quality rating system, referred to as "Youngstar." In June 2010, the Joint Committee on Finance approved a five-category rating system and funding to begin implementing the system.

Mental Health and Substance Abuse Services

Community Mental Health Services. The state oversees community mental health services through the Division of Mental Health and Substance Abuse Services in DHS. Counties have the primary responsibility for the treatment and care of persons with mental disabilities who reside in the county. Under standards established by administrative rule, each county establishes its own program and budget for mental health services.

There are four primary funding sources for community mental health services in Wisconsin:

- The federal community mental health block grant.
- State and local funding.
- Medicaid and BadgerCare Plus.
- Private insurance and individual copayments.

The primary mental health programs offered in the community are Community Support Programs (CSP). The CSPs provide community-based, individualized services, including coordinated care, treatment, rehabilitation, and support services to adults with serious and persistent mental illness.

Coordinated Services Teams (CST). The Division of Mental Health and Substance Abuse Services in DHS distributes state GPR and federal funding to counties for collaborative systems of care, which are also called Coordinated Services Teams (CSTs), and "Children Come First." All of these projects provide "wraparound services," which "wrap" services around the child and family to treat and support them in the community. CSTs target children and families who have complex needs and are involved in two or more service systems, including mental health, child welfare, or juvenile justice. A directory of the CSTs in the state may be found at: http://dhs.wisconsin.gov/mh_bcmh/cstisp.htm.

Involuntary Commitment. Current law requires an adversary civil court proceeding to obtain involuntary mental health treatment or care.[12] Under the statutory procedures, the decision to involuntarily commit a person is made by an objective decision-maker (the judge) based on professional opinions, factual evidence, and a

balancing of the interests of the state and the interests of the person alleged to be mentally ill. Special provisions apply to minors.

Three statutory criteria must be proved before a person may be involuntarily committed. The person must be shown to be all of the following:

- Mentally ill, drug dependent, or developmentally disabled.
- A proper subject for treatment.
- Dangerous, under at least one of the five following standards:
  - There is a substantial probability that the person will physically harm himself or herself.
  - There is a substantial probability that a person will physically harm other individuals.
  - The person's judgment is impaired to the extent that there is a substantial probability of physical impairment or injury to himself or herself.
  - The person is unable to satisfy his or her basic needs for nourishment, medical care, shelter, or safety, because of mental illness, unless the person receives treatment. Under this standard, there must be a substantial probability that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the person receives prompt and adequate mental health treatment.
  - There is a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. This is referred to as the "fifth standard" of dangerousness.

The Division of Disability and Elder Services in DHS operates two mental health institutes in the state. These institutes provide psychiatric services to adults and children who are either involuntarily committed or are forensic patients committed as a result of a criminal proceeding. The Mendota Mental Health Institute, located in Madison, opened in 1860. The Winnebago Mental Health Institute, located near Oshkosh, began operating in 1873.

Substance Abuse. The Division of Mental Health and Substance Abuse in DHS administers a variety of county-operated programs that provide AODA prevention, treatment, and educational services. A major source of funding for state substance abuse programs is the federal Substance Abuse Prevention and Treatment (SAPT) block grant administered by DHS. DHS is also responsible for certifying publicly funded substance abuse programs, including detox centers, day treatment, inpatient and outpatient facilities, residential programs, and intervention and prevention efforts.

DHS also administers tobacco control programs, such as the Wisconsin Wins campaign, designed to reduce illegal sales of tobacco to young people and a statewide compulsive gambling awareness campaign.

Services for the Elderly

Older Americans Act Programs. Established under the federal Older Americans Act (OAA) in 1973, the federal Department of Health and Human Services Administration on Aging administers an aging network and a variety of programs which

support elderly persons in the community. The Administration on Aging distributes funds to the states. In Wisconsin, DHS distributes federal as well as state funding to area agencies on aging, which administer the aging network through county and tribal aging offices.

The National Family Caregiver Support Program (NFCSP) was created by the federal OAA Amendments of 2000. The NFCSP provides grants to states to enable area agencies on aging to provide an array of support services to family caregivers of older adults, as well as grandparents and relative caregivers of children under age 18.

Basic support services that must be provided under the NFCSP include:

- Information to caregivers about available services.
- Assistance to caregivers in gaining access to support services.
- Individual counseling.
- Organization of support groups and caregiver training to assist caregivers in making decisions and solving problems relating to their caregiving roles.
- Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities.
- Supplemental services, on a limited basis, to complement the care provided by caregivers.

Elderly Nutrition. The Elderly Nutrition program is authorized under the OAA and administered by the Division of Long-Term Care in DHS. The program is operated by county and tribal aging offices. The program addresses the nutrition and nutrition-related health needs of older adults by providing congregate meals in the community, such as in senior or community centers, or in individual homes. Home-delivered nutrition services are commonly referred to as "meals on wheels." There are no income eligibility requirements for the nutrition program; however, the home-delivered nutrition services are for persons who are age 60 or older who are homebound due to health reasons.

A directory of county and tribal aging offices is available at: http://dhs.wisconsin.gov/aging/contacts/coagof.htm.

Board on Aging and Long Term Care. The board was created by the state Legislature in response to the 1979 OAA Amendments.[13] In Wisconsin, the board operates the Long Term Care Ombudsman program. An ombudsman serves as an advocate for long-term care consumers who are age 60 and over who reside in nursing homes, group homes, or are participating in the Community Options Program (COP). Some of the services an ombudsman offers include complaint investigation, education on resident rights, abuse reporting and prevention, and assistance with choosing a nursing home or community-based residential facility (CBRF).

Medigap Help Line
1-800-242-1060

The Board on Aging and Long Term Care also operates the Medigap Help Line, which answers questions and provides counseling related to Medicare, Medicaid, Medicare supplemental insurance, the Health Insurance Risk-Sharing Plan (HIRSP), long-term care insurance, and other forms of health insurance.

Alzheimer's Family and Caregiver Support Program. The Alzheimer's Family and Caregiver Support Program (AFCSP)[14] is administered by the Division of Long-Term Care in DHS and operated by county or tribal aging offices. The program is

designed to respond to the service needs of families caring for someone with irreversible dementia at home. To be eligible, a person must have a diagnosis of Alzheimer's disease or a related disorder and be financially eligible. A couple must have a joint annual income of $40,000 or less; however, if their income is more than $40,000, the costs related to Alzheimers may be subtracted from the gross income for eligibility purposes. If the net income is then less than $40,000, the couple becomes eligible.

Under the AFCSP, up to $4,000 per year may be available to a participant. Participants may use the funds to purchase goods and services including: nutritional supplements; security systems; specialized clothing; home-delivered meals; respite care; adult day care; and transportation.

A directory of county and tribal aging offices is available at: http://dhs.wisconsin.gov/aging/contacts/coagof.htm.

Anyone age 60 or older who is having a problem securing benefits, including Medicare, Medicaid, SSI, and FoodShare or is having problems regarding housing or consumer issues, is eligible for the Elderly Benefit Specialist program.

Elderly Benefit Specialists. Anyone age 60 or older who is having a problem securing benefits, including Medicare, Medicaid, SSI, and FoodShare or is having problems regarding housing or consumer issues, is eligible for the Elderly Benefit Specialist program.[15] Elderly benefit specialists are trained to help older persons with paperwork often required to apply for a benefit program and can help older persons determine what benefits they may be entitled to and what to do to receive them. The program is supported by funding from the state and the OAA. The Bureau of Aging in DHS coordinates the program, but services are provided through county and tribal aging units.

A list of elderly benefit specialists by county and a list of elderly benefit specialists serving tribes is available at: http://dhs.wisconsin.gov/aging/contacts/benspecs/CNTYBNSP.htm.

Community-Based Long-Term Care

Community-based long-term care programs use state funds or a combination of federal and state funds monitored by the DHS and administered by county agencies to deliver community-based services to elderly or disabled persons who need long-term assistance in performing the activities of daily living.

COP. Under COP (also known as COP-Regular or COP-R),[16] persons who need the same levels of physical or mental health care provided in nursing homes are screened to determine if they could remain in the community if adequate support services were provided. COP serves five targeted groups, including:

- Persons with developmental disabilities.
- The elderly.
- Persons with chronic mental illness.
- Persons with physical disabilities.
- Persons who are alcohol or drug dependent.

There are three components of COP, including:

- A screening process, which attempts to determine if the individual could live in the community if provided with adequate support services.
- Supplementary funding to county agencies to enable them to provide support services to COP clients remaining in the community.
- Coordination of services provided to COP clients by separate agencies.

Services provided to COP participants include home-delivered meals; transportation and escort services; placement in a community-based treatment facility; day services; supportive home care; and alterations to a residence to accommodate disabling conditions.

COP is administered at the state level by the Division of Long-Term Care in DHS and at the county level by either the county human or social services department. COP is funded by state GPR funds. Under current law, COP funds may also be used to expand the Medicaid waiver programs.

A list of COP coordinators by county is available at: http://dhs.wisconsin.gov/ltc_cop/contacts.htm.

Medicaid waivers are a source of funding for long-term support services for persons who are otherwise eligible for Medicaid-funded institutional care.

Medical Assistance Waiver Programs. Medicaid waivers are a source of funding for long-term support services in the community for persons who are otherwise eligible for Medicaid-funded institutional care. The Division of Long-Term Care in DHS supervises the waiver programs and county human or social services agencies administer the programs. Wisconsin operates all of the following Medicaid waiver programs that offer medical and support services to certain groups of Medicaid-eligible recipients:

Community Options Program Waiver (COP-W). COP Waiver,[17] or COP-W, serves persons who are elderly or physically disabled. COP-W is intended to divert persons from nursing homes and to relocate nursing home residents; therefore, COP-W does not require that a nursing home bed be closed before a new COP-W slot is created. Under COP-W, counties are allocated a specific amount of funding, rather than a given number of slots or placements. Counties are subject to the federally imposed waiver requirement that the average cost of care statewide under COP-W does not exceed the average cost of care in nursing homes.

Community Integration Program II (CIP II). Community Integration Program II,[18] or CIP II, participants are persons who are either elderly or physically disabled who are relocated or diverted from nursing homes. Under state statute, a CIP II placement requires the closing of a nursing facility bed. Once a nursing home bed has been de-licensed and a community "slot" has been established, the number of Medicaid recipients who receive CIP II services at any time may not exceed the number of Medicaid beds that are closed.

Under CIP IA, participating counties receive a payment to relocate persons into appropriate community settings from the state centers for the developmentally disabled.

Community Integration Programs IA and IB (CIP IA and IB). The Community Integration Programs IA and IB, or CIP IA and IB, permit federal Medicaid funds that would normally be required to fund institutional care for persons with developmental disabilities to be used for long-term community support services. Both programs are funded from federal Medicaid funds and state GPR.

Under CIP IA,[19] participating counties receive a payment to relocate persons into appropriate community settings from the state centers for the developmentally disabled with the assistance of home and community-based services and with continuity of care. The payment is a per person daily rate. When a CIP IA placement is made, the state center's bed capacity and Medicaid reimbursement is reduced. The participant remains eligible for SSI and all other Medicaid services.

The purpose of CIP IB[20] is to provide home or community-based care to persons with developmental disabilities who are relocated from an institution other than a state center for the developmentally disabled or persons who require the level of care necessary to qualify for Medicaid reimbursement in an intermediate care facility for persons with mental retardation (ICF-MR). CIP IB attempts to relocate persons from nursing homes to individualized, integrated community services. The program

also diverts people from entering these facilities. Counties receive a payment that is a statewide average payment per day for each person relocated under the program to a community setting. A CIP IB participant remains eligible for SSI and other Medicaid services.

Brain Injury Waiver (BIW). Under the BIW program,[21] adults and children who are substantially disabled by a brain injury and who receive, or are eligible for, admission to a brain injury rehabilitation facility may receive supportive services available under other Medicaid waivers in the community. Individuals who are eligible for the BIW must be eligible for Medicaid and have a disability that meets the state's statutory definition of a "brain injury."

In some counties, disability benefit specialists provide assistance and information about benefit programs, including Medicaid waiver programs, and private health and disability-related insurance issues, to adults ages 18 to 59 with physical disabilities, developmental disabilities, mental illness, or substance abuse disorders.

Disability Benefit Specialists. In some counties, disability benefit specialists provide assistance and information about benefit programs, including Medicaid waiver programs, and private health and disability-related insurance issues, to adults ages 18 to 59 with physical disabilities, developmental disabilities, mental illness, or substance abuse disorders.

Disability benefit specialists can also help individuals apply for benefits or appeal a denial of benefits. A list of disability benefit specialists by county is available at: http://dhs.wisconsin.gov/disabilities/benspecs/counties.htm.

Children's Long-Term Support (CLTS) Waiver. A Medicaid waiver program operating under the three Medicaid home and community-based waivers[22] provides children with long-term care needs with Medicaid services and a single entry point for eligibility determinations in each county. The CLTS program is designed to improve access to services, choice, coordination of care, quality, and financing of long-term care services for children with physical, sensory and developmental disabilities, and severe emotional disturbance.

State funding supports waiver slots in several counties across the state. Counties may also create waiver slots by supplying a local match to obtain federal matching funds to support waiver services. The services provided under the CLTS program are similar to those available under other Medicaid waiver programs, but also include support services that are not available under the other waivers, such as intensive in-home autism services and specialized medical and therapeutic supplies. Children enrolled in the CLTS program also have access to all Medicaid card services, which are services provided to a Medicaid recipient, as detailed in the state Medicaid plan.

Children must meet functional and financial eligibility criteria in order to be eligible for the program. Families may be required to contribute to the cost of services, based upon their income level. Children may continue receiving waiver services until they reach age 21, as long as they continue to be eligible for Medicaid.

Intensive In-Home Autism Services. The intensive in-home autism benefit under the Medicaid home and community-based waiver program authorizes the provision of intensive in-home autism services. Intensive in-home autism services are defined as one-on-one behavioral modification therapy services for children with autism, Asperger's disorder, or a pervasive developmental disorder. Children must also meet diagnostic and functional criteria before starting services.

Children are eligible for in-home autism services at the intensive level for up to three years as long as they begin receiving services by the time they are eight years old. Children receiving services at this level may receive 20 to 35 hours of face-to-face contacts per week, plus one hour per week of case management services. DHS may grant variances to the three-year limit. Services are also available at the on-

going level until the child is 16 years old. There is a statewide waiting list for these services. Participants are limited by the services identified in their individual service plans (ISPs), which are developed for each participant to identify the type of care and number of hours of services that each individual requires, and the funding that is available.

Counties are responsible for administering the in-home autism benefit; therefore, the counties conduct assessments, establish ISPs, and perform quality assurance activities for each participant.

The Governor's Council on Autism advises DHS on strategies for implementing statewide supports and services for children with autism.

Contact information for autism services by county is available at: http://dhs.wisconsin.gov/bdds/clts/autism/county.htm.

Act 28 requires insurers to cover certain treatments for individuals with autism spectrum disorders. Specifically, health insurers must provide coverage of at least $50,000 for intensive-level services per year for up to four years. Insurers are also required to provide coverage of at least $25,000 per year for nonintensive-level services. DHS has issued guidance on how this new mandated benefit coordinates with the intensive in-home autism treatment program. In general, if a child has access to an insurance plan that is subject to this mandate, the child will be required to obtain services covered by that insurance prior to accessing the intensive in-home autism treatment program, except that the child may have access to service coordination services provided by the program. The guidance on the coordination of these two benefits may be found at: http://www.dhs.wisconsin.gov/bdds/clts/autism/insuranceFAQ20100115.pdf.

Early Intervention Services for Infants and Toddlers With Disabilities (Birth to Three Program)

The Birth to Three program is a federal grant program that is administered by the Division of Long-Term Care in DHS and operated by counties and tribes. State and county funds also support the program.

Birth to Three operates a "child find" system to ensure identification of children who may be eligible for the program. Identified children are screened and referred for further evaluation. If a child is determined to be eligible for the program, due to a finding of developmental delay or a physical or mental condition likely to result in developmental delay, a child may receive early intervention services. Services are based on an Individual Family Service Plan developed for the child and his or her family. Core services offered include occupational and physical therapy services and nutrition services.

There are no income eligibility requirements to meet for the Birth to Three program; children who meet disability criteria are eligible regardless of their family's income status. However, parents contribute to the cost of the services based on their ability to pay.

State, regional, and tribal Birth to Three resources are available at: http://dhs.wisconsin.gov/bdds/b3dir/state.htm.

Katie Beckett Program

The Katie Beckett Program enables certain children with long-term disabilities or complex medical needs to live at home with their families and to obtain Medicaid coverage. A disabled child under these circumstances may be eligible for Medicaid if all of the following criteria are met:

- Is under age 19 and determined to be "disabled" by Social Security Act standards.

- Requires a level of care at home that is typically provided in a hospital, nursing facility, or ICF-MR.
- Can be provided with safe and appropriate care at home.
- Does not have assets or income in his or her name in excess of current standards for a child living in an institution.
- Does not incur costs at home to Medicaid that exceed the costs Medicaid would pay if the child were in an institution.

The Katie Beckett Program is administered by the Division of Long-Term Care in DHS and funded with a combination of federal and state funds.

A list of program consultants is available at:
http://dhs.wisconsin.gov/bdds/kbp/kbpcons.htm.

Family Support Program

The Family Support Program[23] is a state-administered, county-operated program that provides supportive services to families that include a severely disabled child under age 21. The program is intended to enable a family to keep a child at home or to return a child home from an institution or other out-of-home placement. Under the program, parents work with a county Family Support program coordinator to develop an individualized service plan for each family. Examples of items and services which the program may help a family purchase include: home modifications, transportation, specialized equipment, nursing care, and respite care. The application process includes an eligibility determination and a needs assessment; family income is not a basis for eligibility. However, families contribute to the cost of the program's services based on ability to pay. Family Support is a state-funded program.

Information about the program is available at:
http://dhs.wisconsin.gov/bdds/fsp.htm.

Family Care

Family Care[24] serves persons, if the person resides in a Family Care county, who are frail adults age 65 or older (age 60 or older in Milwaukee County), people with physical disabilities, and people with developmental disabilities.

The purpose of Family Care is to provide a single program in which an eligible person can receive all long-term care services, rather than having the person's care fragmented among several different programs, each with its own eligibility criteria and service parameters. Family Care establishes both functional and financial eligibility criteria. Cost-sharing requirements apply to individuals above a certain income level. Family Care includes both Medicaid and non-Medicaid eligible persons.

Under Family Care, Aging and Disability Resource Centers (ADRCs) serve as the primary point of entry for accessing long-term care services. The ADRC provides information and referral services, determines functional and financial eligibility for Family Care, and helps persons enroll in Family Care.

When a person enrolls in Family Care, they become a member of a Care Management Organization (CMO), which manages and delivers the Family Care benefit. The Family Care benefit combines funding and services from a variety of programs into one long-term care benefit which is tailored to an individual's needs, circumstances, and preferences.

As of August 2010, Family Care is offered in 55 counties. A list of Family Care counties, as well as ADRC and CMO contacts, is available at: http://dhs.wisconsin.gov/LTCare/Generalinfo/Where.htm.

The Division of Long-Term Care in DHS supervises Family Care. Funding for Family Care includes federal funds and state GPR. All counties which participate in Family Care by offering a CMO must either provide a payment to DHS or authorize DHS to allocate a portion of the county's basic community aids allocation to fund the operation of the county's CMO.

Residential Facilities

State Centers. The Division of Disability and Elder Services in DHS operates three residential institutions for the care of developmentally disabled persons: Northern Center, established in 1897 and located in Chippewa Falls; Central Center, established in 1959 and located in Madison; and Southern Center, established in 1919 and located in Union Grove.

The purpose of the centers is to provide residents with services that may not otherwise be available to them and to assist them in returning to the community when their needs can be met at the local level. Over the years, the centers' mission has shifted from primarily a residential approach to a treatment approach, and there has been a corresponding decrease in long-term extended care admissions at the centers. Only Central Center and Southern Center serve individuals with developmental disabilities on a long-term basis. The centers are certified as ICFs-MR, which makes them eligible for Medicaid funding.

Nursing Homes and ICFs-MR. A nursing home is a residential facility where three or more persons who are not related receive care or treatment and, because of their mental or physical condition, require access to 24-hour nursing services,

Glossary of Terms and Abbreviations

BIW – Brain Injury Waiver Program. A Medicaid home and community-based waiver program in which adults and children who are substantially disabled by a brain injury and who receive, or are eligible for, admission to a brain injury rehabilitation facility, may receive the same services available under Medicaid in the community.

CHIPS – Child in need of protection or services. Under ch. 48, Stats., the juvenile court has jurisdiction over children who are alleged to be in need of protection or services.

CIP IA – Community Integration Program IA. A Medicaid waiver program to relocate developmentally disabled persons into community settings, with the assistance of home and community-based services, from the state centers for the developmentally disabled.

CIP IB – Community Integration Program IB. A Medicaid waiver program that provides home and community-based care to developmentally disabled persons who are relocated from an institution, other than a state center for the developmentally disabled, such as a nursing home.

CIP II – Community Integration Program II. A Medicaid waiver program that assists elderly or physically disabled persons in moving or being diverted from a nursing home into a community-based setting.

CLTS – Children's Long-Term Support Waiver. A Medicaid waiver program that provides children with long-term care needs with Medicaid services and a single entry point for eligibility determinations in each county.

COP – Community Options Program. A state-funded program that screens persons who are elderly, developmentally or physically disabled, have chronic mental illness, or who are alcohol or drug dependent and who are about to enter nursing homes or state centers for the developmentally disabled to determine if they could live in the community, and provides community-based services.

COP-W – Community Options Program Waiver. A Medicaid waiver program that funds long-term support services for elderly or physically disabled persons who are relocated or diverted from nursing homes into community-based settings.

SSI – Supplemental Security Income. A federal program that provides cash benefits to low-income elderly, blind, and disabled persons who meet financial and nonfinancial eligibility requirements; each Wisconsin recipient of a federal SSI benefit is eligible for a basic state supplement to his or her federal benefit.

SSI-E – Supplemental Security Income Exceptional Expense Supplement. An enhanced payment added to the state SSI payment of each SSI recipient who meets the program requirements.

TANF – Federal Temporary Assistance to Needy Families Block Grant Program. The 1996 federal Personal Responsibility and Work Opportunity Reconciliation Act replaced the AFDC program with the TANF program, under which public assistance benefits are funded with block grants to states.

W-2 – The Wisconsin Works program is funded with a combination of state funds and federal TANF block grant funds, which generally provides persons who satisfy financial and nonfinancial eligibility requirements with benefits based upon employment status.

including limited nursing care, intermediate level nursing care, and skilled nursing services. Nursing homes are licensed by the Division of Quality Assurance in DHS according to whether the level of care is skilled nursing care or intermediate nursing care.

ICFs-MR are institutions (or a distinct part of an institution) that primarily provide treatment or rehabilitative services for persons with mental retardation or related conditions and provide ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at his or her greatest ability. A license from the Division of Quality Assurance in DHS is required to operate an ICF-MR for three or more unrelated persons.

***Assisted Living Facilities*.** The Division of Quality Assurance in DHS licenses adult family homes, CBRFs, and residential care apartment complexes (RCACs) for adults. Adult family homes are places where three or four adults reside and receive treatment, care, or services that may include up to seven hours per week of nursing care per resident. CBRFs are facilities where five or more adults who do not require care above intermediate level nursing care reside and receive care, treatment, or services that include no more than three hours of nursing care per resident per week. RCACs, commonly known as assisted living facilities, are places where five or more adults reside and that consist of individual apartments and that provide up to 28 hours per week of services that are supportive, personal, and nursing services.

Lists of residential options, including nursing homes, assisted living facilities, and adult family homes, are available by county at: http://dhs.wisconsin.gov/bqaconsumer/ResidOpts/seek.htm.

Additional References

- Wisconsin Legislative Fiscal Bureau Informational Papers, http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.
- DCF website, http://dcf.wisconsin.gov.
- DHS website, http://dhs.wisconsin.gov/programs.htm.
- Coalition of Wisconsin Aging Groups, www.cwag.org.
- Wisconsin Board for People with Developmental Disabilities (formerly the Wisconsin Council on Developmental Disabilities), www.wcdd.org.
- Wisconsin Board on Aging and Long Term Care (includes Ombudsman program), http://longtermcare.state.wi.us/.
- Wisconsin Affordable Assisted Living, http://www.wiaffordableassistedliving.org.

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[1] ss. 49.141 to 49.161, Stats.

[2] s. 49.162, Stats.

[3] s. 49.155, Stats.

[4] 42 U.S.C. ss. 1381 to 1383d.

[5] s. 49.77, Stats.

[6] s. 49.775, Stats.

[7] s. 49.79, Stats.

[8] 42 U.S.C. s. 1786.

[9] ss. 46.40, 46.45, 46.49, and 46.495, Stats.

[10] s. 48.62, Stats., and ch. DCF 56.
[11] s. 48.57 (3m), Stats.
[12] s. 51.20, Stats.
[13] s. 16.009, Stats.
[14] s. 46.87, Stats.
[15] s. 46.81, Stats.
[16] s. 46.27, Stats.
[17] s. 46.27 (11) (am), Stats.
[18] s. 46.277, Stats.
[19] s. 46.275, Stats.
[20] s. 46.278, Stats.
[21] s. 46.278, Stats.
[22] ss. 20.435 (6) (gc) and (7) (h) and 46.011 (1g), Stats.
[23] s. 46.985, Stats.
[24] ss. 46.2805 to 46.2895, Stats.

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Chapter M

Municipal and County Government

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 villages[1] 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 established[53] 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, http://www.doa.wi.gov/index.asp?locid=9.

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).

Wisconsin Alliance of Cities, http://www.wiscities.org.

Wisconsin Counties Association, http://www.wicounties.org.

Wisconsin Towns Association, http://www.wisctowns.com.

Kettl Commission, http://www.lafollette.wisc.edu/publicservice/reform/default.htm.

Paddock, Susan C., "The Changing World of Wisconsin Local Government," pp. 99-172, *1997-1998 Wisconsin Blue Book*.

Ohm, Brian W., *Guide to Community Planning in Wisconsin*, Department of Urban and Regional Planning, UW-Madison Extension (1999, Board of Regents of the UW System).

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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.

[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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N-1 **Natural Resources and Applicable Laws**

N-4 **Summary of Current Issues**

N-6 **Additional References**

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Chapter N

Natural Resources

"Natural resources," for purposes of this chapter of the Briefing Book, consist of the water, land, wild animals, and wild plants within this state.

Most of the state agency responsibilities related to natural resources are delegated by the Legislature to the Department of Natural Resources (DNR), although some are also assigned to other agencies. Local units of government (counties, cities, villages, and towns, and certain special purpose districts such as lake districts) also have responsibilities related to natural resources.

In addition to this governmental role, much of the management of natural resources is undertaken by individual landowners and private organizations and associations.

Natural Resources and Applicable Laws

Water. Wisconsin has approximately 15,000 lakes that consist of about one million acres of surface water, not including Lake Michigan or Lake Superior. (The entire state is almost 35 million acres.) Wisconsin has hundreds of miles of shoreline along Lake Superior and Lake Michigan. Wisconsin also has 44,000 miles of streams, of which nearly 10,000 miles are of sufficient quality to provide trout habitat. In addition to these surface water resources, Wisconsin has over 5 million acres of wetlands.

Water Regulations. The Wisconsin Constitution protects a variety of public uses of navigable waters and protects certain rights of private waterfront property owners. The state's water resources are subject to numerous and varied regulations at all levels of government intended to reconcile and protect these uses while protecting the water resource. Water resources can be the source of many questions directed to the offices of legislators and to the DNR and local units of government. Some of the examples of regulation are:

- Based on a statutory framework of regulations, the DNR issues a variety of permits for activities that may affect navigable waters, such as dredging, grading near waters, constructing dams, or placing structures or fill in the water. Many of these regulations can be found in ch. 30 of the statutes.
- Local units of government (counties, cities, villages, and towns) administer certain water regulatory programs pursuant to state mandates, including shoreland zoning, wetland regulation, and floodplain zoning.
- Local units of government are authorized to regulate boating activities. Local units of government are not required to adopt such regulations, but any regulations adopted must be consistent with certain statutory limits set by the Legislature.

Public Trust in Navigable Waters. Water resources in Wisconsin that meet the standard for navigability as established by the Wisconsin Supreme Court are subject to the "public trust doctrine," which is part of the state's constitution. The public trust doctrine requires that "the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost, or duty therefore."

The Wisconsin Supreme Court has construed the public trust doctrine broadly to include not just navigation by means of watercraft, but also fishing, hunting, swimming, and enjoyment of scenic beauty. While the navigable waters in Wisconsin are public, they may only be used by the public if access is available without trespass. The DNR or local units of government frequently purchase land to provide such public access.

Land

Publicly Owned Land. There are more than 5 million acres of publicly owned land in Wisconsin that is dedicated to conservation and recreation. The U.S. government owns nearly 1/3 of the public lands which are primarily in the national forests. The DNR owns approximately 1/4 of the public lands. The largest portion of these DNR lands are state forests and wildlife habitat. Other examples of DNR lands include parks, natural areas, and lands related to fishing. The largest public land ownership in Wisconsin is in county parks and forests, consisting of 45% of the public lands. There are additional entities that own public land that has recreational potential, such as other local governments, school districts, the Department of Transportation, the University of Wisconsin (UW), and the Board of Commissioners of Public Lands.

In addition to publicly owned land, there is land that is privately owned but is subject to publicly or privately owned easements that protect the natural values of the land. In many cases, this land is available for public uses specified in the easements, such as for fishing in a streamside buffer area.

Private Forestry. Wisconsin has 16 million acres of forest land that cover close to 1/2 of the state's area, mostly concentrated in the north. A variety of state and federal programs encourage individuals and families to keep land as forest, rather than converting it to other uses, and to manage the land for timber production. The primary program is Wisconsin's managed forest law which gives a property tax reduction for enrolled land. The managed forest law encourages private owners to allow public use of the land entered in the program by providing a lesser tax on land upon which public access is allowed. The law also recognizes the interests of private forest owners in having some exclusive use of the land, by allowing the owner to close up to 160 acres to public access without paying the higher tax rate.

Acquisition Programs for Public Land. Wisconsin has had active programs for land acquisition in the DNR and its predecessor agency, the Conservation Commis-

sion. The latest version is the Warren Knowles-Gaylord Nelson Stewardship Program, reauthorized for an additional 10 years (to 2019-20) in the 2007-09 Biennial Budget. Under this program, the state may issue bonds for $86 million annually, primarily for state land acquisition, with lesser amounts provided for property development and local assistance. In addition, the stewardship program includes cost-sharing opportunities for private conservation organizations.

Land Use Regulations. Some of the most well-known state land use regulations bear a direct relation to natural resources, including regulations concerning shorelands, wetlands, and floodplains. Other land use regulations in Wisconsin related to natural resources are primarily a local matter, including zoning and comprehensive planning.

Wild Animals and Plants

The regulation of uses of wild animals and plants is primarily a state function. The Legislature sets state policy in statute, and the DNR promulgates rules to administer those statutes. For example, the DNR promulgates major rule packages annually for hunting and fishing seasons.

Regulation and Enforcement. The statutory framework for fish and game regulation is primarily found in ch. 29, Stats. These statutes govern the regulations applicable to hunting, trapping, and fishing, and the licenses or approvals required for those activities. Chapter 29 also regulates commercial activities regarding fish and game (such as commercial fishing), hunter education, and stocking of fish and game. Chapter 29 also contains the provisions regarding endangered and threatened species. One key statutory provision is s. 29.014, which is the broad grant of authority to DNR to establish open and closed seasons and to adopt regulations regarding the taking of fish and game.

The enforcement of regulations regarding hunting, fishing, and trapping is done by DNR wardens and is based on a citation system similar to that used for traffic law violations. The penalty for a citation is a civil forfeiture rather than a criminal penalty. Some of the more serious fish and game law violations do have criminal penalties.

DNR wardens may generally enter private “open fields” areas without a warrant for enforcement activities; however, constitutional restrictions limit all law enforcement officers’ authority to perform warrantless searches in the area around a house and other areas in which the owner has an expectation of privacy.

Fish and Game Management. The DNR has many programs for fish and game management that involve stocking animals or fish, improving habitat for fish and game, and conducting surveys of fish and game to determine species status and to set appropriate regulations and bag limits.

The state has mounted a major effort to contain and eradicate chronic wasting disease among wild deer in the south central portion of the state. The DNR and the Department of Agriculture, Trade and Consumer Protection (DATCP) have the primary responsibility for administering this effort. The situation has evolved rapidly since the disease was first discovered early in 2002. More information can be found at: http://www.dnr.state.wi.us/org/land/wildlife/whealth/issues/CWD/index.htm.

Summary of Current Issues

This portion of the chapter highlights some natural resources issues that arise on a regular basis.

The OHWM is defined in Wisconsin law as: "the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic."

Shoreland Zoning. The state's shoreland zoning program regulates certain activities within shorelands (generally 1,000 feet from a lake, pond, or flowage and 300 feet from a river or stream). These regulations generally only apply to shorelands in unincorporated areas. The purposes of this program include to "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses and preserve shore cover and natural beauty."

The shoreland zoning statute, and DNR's rules administering it, set minimum standards; counties can opt to be more restrictive in their implementing ordinances. Shoreland zoning restrictions control lot size, require building setbacks and buffer strips, control modification or expansion of buildings, restrict a lot's total impervious surfaces, require mitigation of certain activities, and restrict land divisions. A major revision of this program was recently promulgated by the DNR.

For purposes of shoreland zoning regulation and many other regulations, the transition point between a lake or a stream and its shorelands is the ordinary high-water mark (OHWM). The OHWM is defined in administrative code as "the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic." The location of the OHWM is a critical issue because it determines where many activities can occur, including the location of building setbacks. It also forms the boundary line between public ownership of lakes and lake beds and private ownership of shorelands (this is generally not the case with rivers and streams–the public owns the water resource but unlike with lakebeds, riverbeds are typically privately owned). Because so much rests on the location of the OHWM, problems arise when errors are made determining the OHWM, when the OHWM changes over time, or there is just disagreement about its location.

Dams. According to the DNR, Wisconsin has over 3,800 dams, many of which are in a poor state of repair. Approximately 100 dams have been removed from Wisconsin streams since 1967. DNR has a dam safety program which focuses on inspections, but there is very little funding available to help to repair or remove dams. DNR has broad authority over dams, including the power to require a dam to be repaired or removed, if necessary.

Piers. Statutes control the size and configuration of piers that may be placed by riparian owners without a permit from DNR (exempt pier). An exempt pier must generally be no more than six feet wide, with an eight foot wide loading platform extending only to the depth necessary to moor a boat or three feet (whichever is deeper), and have no more than two boat slips for the first 50 feet of water frontage and one more boat slip for each additional 50 feet of frontage. Statutes also address piers that were placed prior to the enactment of the existing exemption. The statutes allow an owner to seek a permit for a larger pier.

The Legislature in the 1990s created a program for payment of aids in lieu of property taxes for property acquired by the DNR.

Loss of Tax Base. Land acquisition for public purposes, particularly the large-scale acquisitions by the DNR for parks, forests, and recreation areas, often creates conflict at the local level due to the perceived consequences to the property tax base because land in public ownership is not subject to property taxation. In the 1990s, the Legislature created a program for payment of aids in lieu of property taxes for

property acquired by the DNR. These state aids are calculated so as to be equivalent to property taxes that would otherwise have been levied on the land.

Liability on Private Land. The recreational immunity statute reduces the potential liability of private property owners who allow other people to use their land, to encourage private owners to provide recreational opportunities for the public. The statute only applies if the landowner is generally not in the business of receiving compensation in exchange for the use of his or her land. This statute does not prohibit the filing of a lawsuit by an injured person.

Hunting and Trapping. Hunting and trapping statutes and regulations are constantly evolving. Some of the many recent changes include:

- The creation of a hunter mentoring program.
- New trapping regulations related to possession of green skins, transfer of animals and animal parts, and identification tags on traps.
- Expansion of crossbow hunting opportunity.
- Repeal of the archery license waiting period.
- New bobcat season regulations.

Invasive Species. Certain prolific, nonnative types of plants, insects, animals, or other living things, referred to as invasive species, often lack the natural controls, like predators, from their home territory and may be able to out-compete native species for food, habitat, and other resources. The Legislature recently enacted revisions to the statewide invasive species control program that modify existing rules relating to the transportation of aquatic plants and animals and the placement of objects in navigable waters. It is now generally illegal to place or operate a vehicle, seaplane, watercraft, or other object of any kind in a navigable water if it has any aquatic plants or aquatic animals attached to its exterior, except during the period of time when the object is being operated in the same navigable body of water in which the plants or animals became attached. People also may not take off with a seaplane, or transport or operate a vehicle, watercraft, or other object of any kind on a highway with aquatic plants or aquatic animals attached.

Endangered Resources. The DNR maintains a list of species that are either endangered or threatened in Wisconsin. The U.S. Fish and Wildlife service also maintains a list of endangered and threatened species under the federal Endangered Species Act (ESA). A good deal of controversy has surrounded the gray wolf, which has experienced a very successful recovery in this state. The estimated wolf population is far above the target state population goal. This species has been removed from Wisconsin's protected list and efforts have been underway since before 2003 to remove it from the federal ESA list. Multiple lawsuits have prevented the federal delisting of the gray wolf in Wisconsin, which prevents the DNR from using lethal means of controlling problem wolves or wolf populations. Damages caused by wolf depredations are paid by DNR, usually for attacks on livestock or hunting dogs.

Wildlife Damage. The Wildlife Damage program is funded by fees collected from hunters. Payments are available from this program for damage caused by deer, bear, geese, and turkey. The statute also authorizes wildlife damage payments for sandhill cranes or elk, if hunting of either species is authorized by the DNR. Land for which wildlife damage payments are made may be required to be open to hunting.

Additional References

A key DNR contact for state legislators is Paul Heinen, Policy Advisor to the Secreatary [(608) 266-2120].

The DNR website contains useful information about natural resources management. Current topics of special interest are noted on the home page, and other information is readily available at: http://www.dnr.state.wi.us.

The DNR website has a weekly posting of news articles on subjects of current interest at: http://dnr.wi.gov/news/weekly.asp.

State park campsites can be reserved by calling the toll-free number, 1-888-947-2757, or on the web through ReserveAmerica at: http://www.reserveamerica.com/client/client_wi.jsp.

The UW-Extension website has a large number of articles regarding natural resource issues at: http://learningstore.uwex.edu/Natural-Resources-C5.aspx.

The Legislative Fiscal Bureau also has prepared very detailed summaries of many state programs related to natural resources. For informational papers on topics such as the Conservation Fund or the Warren Knowles-Gaylord Nelson Stewardship Program, see: http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.

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O-1 **Major Privacy Laws in Wisconsin**

O-8 **Glossary of Terms and Abbreviations**

O-8 **Additional References**

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Chapter O

Privacy

There is no particular state agency with general responsibility for privacy in Wisconsin. Instead, the state relies on a number of privacy laws that are generally enforced privately in the case of civil violations or by local district attorneys in the case of criminal violations.

Major Privacy Laws in Wisconsin

The laws described in the following paragraphs were selected as a representation of the major privacy provisions in Wisconsin. This is not an exhaustive list of the privacy provisions included in the Wisconsin statutes. It represents a listing of some of the more significant privacy provisions that are often the subject of constituent questions.

Wisconsin statutes recognize an individual's right to privacy.[1] An invasion of privacy is defined as any of the following:

- An intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner that is actionable for trespass.
- The use, for advertising purposes or for purposes of trade, of the name, portrait, or picture of any living person, without having first obtained the written consent of the person or, if the person is a minor, of his or her parent or guardian.
- Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed.
- Conduct involving a representation that depicts nudity without the knowledge and consent of the person who is depicted nude in a circumstance in which the person has a reasonable expectation of privacy, regardless of whether there has been a

criminal action related to the conduct or regardless of the outcome of such a criminal action.

However, it is not an invasion of privacy to communicate any information available to the public as a matter of public record.

Under Wisconsin law, a person whose privacy has been invaded is entitled to the following remedies:

- Equitable relief to prevent and restrain an invasion of privacy, excluding prior restraint of constitutionally protected speech;
- Compensatory damages based on the plaintiff's loss or the defendant's unjust enrichment, if proven; and
- Reasonable attorney fees.

If the court determines that an action for invasion of privacy is frivolous, the court must award the defendant reasonable fees and costs relating to the defendant. A frivolous action is an action that was commenced in bad faith or for harassment purposes or an action that was commenced without an arguable basis.

Crime of Invasion of Privacy

Wisconsin law specifically prohibits an individual from engaging in any of the following crimes of invasion of privacy:[2]

- Installing or using a surveillance device in a private place with the intent to observe a nude or partially nude person without the consent of the person observed.
- Looking into, for the purpose of sexual arousal or gratification, a private place that is or is part of a public accommodation (public restrooms, etc.) in which a person may be nude or partially nude, regardless of whether an individual is present or not.
- Enters another person's private property without consent or enters an enclosed or unenclosed common area of a multi-unit dwelling or condominium and views an individual who has a reasonable expectation of privacy in that part of the dwelling, without consent, for the purposes of sexual gratification or arousal and with the intent to intrude upon or interfere with the individual's privacy.

If a person is convicted of an invasion of privacy crime, he or she is guilty of a Class A misdemeanor and may be fined up to $10,000, imprisoned for nine months, or both. The court may also order an individual convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect to register with the Department of Corrections as a sex offender.

Representations Depicting Nudity

In addition to the crimes of invasion of privacy mentioned above, Wisconsin law prohibits certain representations depicting nudity without the express permission of the subject of the depiction.[3] A representation is defined as a photograph, exposed film, motion picture, videotape, other visual representation, or data that represents a visual image. Specifically, the law provides that anyone who engages in the following may be found guilty of a Class I felony:

1. Captures a representation that depicts nudity without the knowledge and consent of the person who is depicted nude while that person is nude in a circumstance in which he or she has a reasonable expectation of privacy, if the person knows or has reason to know that the person who is depicted nude does not know of and consents to the capture of the representation.

2. Makes a reproduction of a representation that the person knows or has reason to know was captured in violation of par. 1. and that depicts the nudity depicted in the representation captured in violation of par. 1., if the person depicted nude in the reproduction did not consent to the making of the reproduction.

3. Possesses, distributes, or exhibits a representation that was captured in violation of par. 1. or a reproduction made in violation of par. 2., if the person knows or has reason to know that the representation was captured in violation of par. 1. or the reproduction was made in violation of par. 2., and if the person who is depicted nude in the representation or reproduction did not consent to the possession, distribution, or exhibition.

Class I felony convictions under this provision are punishable by a fine of up to $10,000 or imprisonment up to three years and six months, or both.

Identity Theft

The unauthorized use of personal identifying information, or identity theft,[4] is prohibited in Wisconsin. A person who intentionally uses or attempts to use personal identifying information or personal identification documents (a birth certificate, PIN number, or financial transaction card) of another individual to obtain credit, money, goods, services, or anything of value, without that individual's authorization or consent, to avoid civil or criminal process or penalty, or to harm the reputation, property, person, or estate of an individual, is guilty of a Class H felony. A Class H felony is punishable by imprisonment for up to six years, a fine of up to $10,000, or both.

For the purposes of this statute, personal identifying information includes an individual's:

- Name.
- Address.
- Telephone number.
- Driver's license number.
- Social Security number.
- Employer or place of employment.
- Employee identification number.
- Mother's maiden name.
- Financial account numbers.
- Taxpayer identification number.
- Deoxyribonucleic acid (DNA) profile.
- Any number or code that can be used alone or with an access device to obtain money, goods, services, or any other thing of value.
- Unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.
- Any other information or data that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled.
- Any other information that can be associated with a particular individual through one or more identifiers or other information or circumstances.

In addition, the law provides that if any individual reports an identity theft violation to the law enforcement agency where the individual resides, but the violation occurs outside of that law enforcement agency's jurisdiction, the law enforcement agency receiving the complaint must prepare a report on the violation and forward it to the law enforcement agency in the appropriate jurisdiction.

Disposal of Records Containing Personal Information

Wisconsin law prohibits financial institutions, medical businesses, and tax preparation businesses in this state from disposing of records that contain personal information unless the personal information is first rendered undiscoverable.[5] The statutes provide that these businesses may discard the records only after they have done one of the following prior to disposal:

- Shred the records;
- Erase the personal information contained in the records;
- Modify the records to make the personal information unreadable; or
- Take actions that the businesses reasonably believe will ensure that no unauthorized individual will have access to the personal information contained in the records prior to their destruction (e.g., locked dumpsters).

For the purposes of this statute, personal information generally includes medical information, account or credit information, account or credit application information, and tax information, by which an individual is capable of being associated through one or more identifiers.

A business that improperly disposes of such records may be required to forfeit up to $1,000 per violation and may be held liable for damages received by the individual whose personal information was disposed of improperly. A person who uses personal information that was improperly disposed of is also liable for damages and may be fined $1,000, imprisoned for 90 days, or both. Such a violation is commonly referred to as "**dumpster diving**."

Notice of Unauthorized Acquisition of Personal Information

Wisconsin law requires certain business entities to notify individuals of unauthorized acquisitions of personal information.[6] If an entity whose principal place of business is located in Wisconsin or an entity that maintains or licenses personal information in Wisconsin knows that personal information in the entity's possession has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity must make reasonable efforts to notify each subject of the personal information. The notice must indicate that the entity knows of the unauthorized acquisition of the personal information.

General Issues. The law applies to entities that: (a) conduct business in Wisconsin and maintain personal information in the course of business; (b) license personal information in Wisconsin; (c) maintain for a Wisconsin resident a depository account; or (d) lend money to a resident of Wisconsin. An "entity" also includes: (a) the state and any office, department, independent agency, authority, institution, association, society, or other body in state government created or authorized to be created by the constitution or any law, including the Legislature and the courts; and (b) a city, village, town, or county.

"Personal information" means an individual's last name and the individual's first name or first initial, **in combination with and linked to** any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code,

or password that would permit access to the individual's financial account; (d) the individual's DNA profile; and (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical characteristic.

If an entity whose principal place of business is **not** located in Wisconsin knows that personal information pertaining to a Wisconsin resident has been acquired by a person whom the entity has not authorized to acquire the personal information, the entity must make reasonable efforts to notify each Wisconsin resident who is the subject of the personal information. The notice must indicate that the entity knows of the unauthorized acquisition of personal information pertaining to the resident.

If a person, other than an individual, that stores personal information pertaining to a Wisconsin resident, but does not own or license the personal information, knows that the personal information has been acquired by a person whom the person storing the personal information has not authorized to acquire the personal information, and the person storing the personal information has not entered into a contract with the person that owns or licenses the personal information, the person storing the information must notify the person that owns or licenses the information of the acquisition as soon as practicable.

If, as a result of a single incident, an entity is required to notify 1,000 or more individuals that personal information pertaining to the individuals has been acquired, the entity must, without unreasonable delay, notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis of the timing, distribution, and content of the notices sent to the individuals.

An entity is **not** required to provide notice if: (a) the acquisition of personal information does not create a material risk of identity theft or fraud to the subject of the personal information; or (b) the personal information was acquired in good faith by an employee or agent of the entity and the personal information is used for a lawful purpose.

Timing and Method of Notice. An entity must provide the required notice within a reasonable time, not to exceed 45 days after the entity learns of the acquisition of personal information. A determination of reasonableness must include consideration of the number of notices that an entity must provide and the methods of communication available to the entity. Notice must be provided by mail or by a method the entity has previously employed to communicate with the subject of the personal information. If an entity cannot with reasonable diligence determine the mailing address of the subject, and if the entity has not previously communicated with the subject, the entity must provide notice by a method reasonably calculated to provide actual notice to the subject. Upon written request by a person who has received a notice, the entity that provided the notice must identify the personal information that was acquired.

Exemptions. These notice provisions do not apply to financial institutions that are subject to and in compliance with federal law relating to disclosure of nonpublic personal information or a person that has a contractual obligation to such an entity, if the entity or person has in effect a policy concerning breaches of information security. In addition, the provisions do not apply to health plans, health care clearinghouses, or health care providers, if the entity complies with federal law relating to security and privacy of information maintained by those entities.

In addition, a law enforcement agency may, in order to protect an investigation or homeland security, ask an entity not to provide a notice that is otherwise required for a period of time. The notification process must begin at the end of that time period.

If an entity receives such a request, it may not provide notice of or publicize an unauthorized acquisition of personal information, except as authorized by the law enforcement agency that made the request.

Privacy of Health Care Records

Wisconsin law requires that all patient health care records remain confidential unless a patient or a person authorized by the patient gives explicit **informed consent** to the release of the patient's health care record or unless the situation comes within one of the exceptions listed in the law.[7] A patient health care record is defined as any record related to the health of a patient prepared by or under the supervision of a health care provider. Informed consent to disclose patient health care records to an individual, agency, or organization must be written. A statement of informed consent must include all of the following:

- The name of the patient whose record is being disclosed;
- The type of information to be disclosed;
- The types of health care providers making the disclosure;
- The purpose of the disclosure;
- The individual, agency, or organization to which disclosure may be made;
- The signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person;
- The date on which the consent is signed; and
- The time period during which the consent is effective.

Q: Can I see my own medical records?

A: Yes. A health care provider must allow you to inspect your medical records during regular business hours if you provide reasonable notice of your intent to inspect the records. You may also receive a copy of your health care records; however, the health care provider may charge reasonable costs for providing copies.

Under certain specified circumstances, patient health care records may be released without the informed consent of the patient. Included in the list of exceptions are release of information to other health care workers who are caring for the patient, government agencies with certain health care responsibilities, and certain health care research organizations. Generally, recipients of patient health care information without informed consent must keep that information confidential and may not disclose such information further.

Violations of the laws on confidentiality of patient health care records are punishable by penalties, with the severity of the penalty varying depending on whether the violation was negligent, intentional, or intentional with a pecuniary gain. Private lawsuits are also authorized in which a plaintiff may recover actual damages, specified exemplary damages, and costs and attorney fees.

Although similar to general patient health care records, the treatment of mental health records and human immunodeficiency virus (HIV) test results is governed by separate statutes. Mental health record laws are in s. 51.30, Stats., and HIV test result laws are in s. 252.15, Stats.

Prohibition on Wiretapping

Wisconsin law generally prohibits the intentional actual or attempted interception, actual or attempted use of a device to intercept, intentional alteration, and actual or attempted disclosure of information obtained through the interception of wire, electronic, or oral communication.[8] Generally, a person not acting under color of law may intercept wire, electronic, or oral communication, commonly referred to as wiretapping, only if that person is a party to the communication or has prior consent from one of the parties to the communication. A person is strictly prohibited however from performing any interception with the purpose of violating a law or committing any other injurious act. Violations of the wiretapping prohibitions are

punishable by a fine of up to $10,000, imprisonment for up to seven years and six months, or both.

Prohibition on Unauthorized Telephone Solicitations

Residents of Wisconsin who do not wish to receive telephone solicitations may request to be included on the state's telephone nonsolicitation directory.[9] The directory, also referred to as the ***Do-Not-Call List***, is maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP). There is no charge to the resident for this service. Companies engaging in telephone solicitation in Wisconsin must pay a registration fee that is proportional to the number of telephone lines used for solicitation. These fees are used to fund costs associated with the operation of the nonsolicitation directory.

State Do-Not-Call List

1-866-966-2255
(1-866-9NO-CALL)

https://nocall.wisconsin.gov/web/registration.asp

A telephone solicitor or employee or contractor of a telephone solicitor may not make a telephone solicitation to a residential customer if that individual is listed in the nonsolicitation directory. A telephone solicitor also may not make a telephone solicitation to a nonresidential customer if the nonresidential customer (e.g., a business) has provided the solicitor with notice by mail that the nonresidential customer does not wish to receive telephone solicitations. Finally, a telephone solicitor may not require an employee or contractor to make a telephone solicitation in violation of the provisions of the nonsolicitation prohibition. These prohibitions do not apply if a telephone solicitation is made in response to the recipient's request for such a solicitation or when the recipient is a current client of the person selling property, goods, or services through telephone solicitation. The nonsolicitation prohibition does not apply to a nonprofit corporation, or its employees or contractors, that engages in telephone solicitation.

In addition, a telephone solicitor may not use a prerecorded message in a telephone solicitation without the consent of the recipient of the solicitation.

A person who violates the telephone solicitation regulations may be required to forfeit $100 per violation. The DATCP enforces these provisions.

Collection of Social Security Numbers

General Issues. Federal law places a number of restrictions on state and local governmental use of an individual's Social Security number. For example, the federal Privacy Act of 1974 generally prohibits federal, state, or local government agencies from denying to an individual any right, benefit, or privilege provided by law because that individual refuses to disclose his or her Social Security number. This prohibition does not apply if the disclosure is required by federal law or the disclosure is required by a federal, state, or local agency: (a) maintaining a system of records in existence and operating before January 1, 1975; and (b) if the disclosure was required under statute or regulation adopted prior to that date to verify the identity of an individual.

Federal law also authorizes several specific uses that a state or local government, or an agency thereof, may make of a person's Social Security number. For example, the Social Security Act authorizes states or local units of government to require persons to disclose their Social Security numbers and to utilize such numbers as a form of identification in the administration of a tax program, a general public assistance program, a driver's license or motor vehicle registration program, or a blood donor program, and in the administration of laws relating to birth certificates.

While a state or local governmental agency is limited in its ability to require persons to disclose their Social Security numbers, those agencies are not prohibited from requesting that a person provide their Social Security number. However, if a state or local governmental agency requests a person to disclose his or her Social Security number under any situation, the federal Privacy Act of 1974 requires the state or local government agency to advise the individual whether the disclosure is manda-

tory or voluntary, under what statutory authority or other authority the Social Security number is requested, and what uses will be made of the Social Security number.

Q: Can a private company require me to provide my Social Security number as a condition of engaging in business?

A: Yes. Federal law does not prohibit private business use of Social Security numbers for any legitimate purpose. Financial institutions and other creditors often use Social Security numbers as financial identifiers when checking credit histories. You may refuse to provide your Social Security number on such occasions; however, the business making the request is under no obligation to provide goods or services if you refuse.

Recent Federal Laws. The federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Balanced Budget Act of 1997 established a requirement that all states collect Social Security numbers as a condition of receiving federal funding for child support and family assistance programs. These laws were created to assist states and the federal government in finding and reducing the number of individuals evading child support payments. Thus, as a condition to receive any license in Wisconsin, an individual's Social Security number must be recorded on the license application. Social Security numbers are also required for records relating to a divorce decree, support order, paternity determination, and on death certificates.

Private Collection of Social Security Numbers. While the Social Security number is commonly used as a financial identifier, the federal government does not regulate the collection of Social Security numbers by private individuals or corporations. Certain industries (credit, banking, etc.) may require a Social Security number as a condition of conducting business; however, it is up to the discretion of the individual to decide to release or withhold a Social Security number in private matters.

Additional References

1. ***National Conference of State Legislatures*** (NCSL) Telecommunications and Information Technology website at http://www.ncsl.org/default.aspx?TabID=7568tabs=951,71,532#532. NCSL publications that are not available on the NCSL website are usually available at no charge to legislators and staff. To order copies, contact the NCSL Publication Department at 303-364-7812.

2. ***Federal Communications Commission*** website at http://www.fcc.gov/.

3. ***Office of Privacy Protection*** at the DATCP website at http://www.privacy.wi.gov/.

4. The ***Federal Trade Commission's*** website on identity theft at http://www.ftc.gov/bcp/edu/microsites/idtheft/.

Glossary of Terms and Abbreviations

DATCP – Department of Agriculture, Trade and Consumer Protection.

Do-Not-Call List – State's telephone nonsolicitation directory maintained by the DATCP.

PRWORA – Personal Responsibility and Work Opportunity Reconciliation Act.

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[1] s. 995.50, Wis. Stats.
[2] s. 942.08, Wis. Stats.
[3] s. 942.09, Wis. Stats.
[4] s. 943.201, Wis. Stats.
[5] s. 134.97, Wis. Stats.
[6] s. 895.507, Wis. Stats.
[7] s. 146.82, Wis. Stats.
[8] s. 968.31, Wis. Stats.
[9] s. 100.52, Wis. Stats.

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Chapter P

State and Local Revenue System

This chapter reviews the many revenue sources for cities, villages, towns, and counties. State school aid programs are discussed in Chapter D of the Briefing Book and transportation aid programs are discussed in Chapter Q of the Briefing Book.

Since 1972, Wisconsin has employed a system through which revenue collected by the state is distributed to counties and municipalities. This system was designed to provide property tax relief and equalize revenue among the municipalities. Though the equalization objective has been relaxed somewhat, the system remains in place and accounted for the transfer of nearly a billion dollars in fiscal year (FY) 2009. The program has traditionally been referred to as "shared revenue," which still is the largest component of it, but since a major overhaul in 2004, they are more generally referred to as "unrestricted aid programs."

General program revenue (GPR) represented about 42% of the state budget for 2009-11, and is the largest and most flexible of the state revenue sources. It is also the largest source of funds for transfers to counties and municipalities. Almost 60% of GPR is transferred as unrestricted aid to counties, cities, villages, towns, and school districts. As the name implies, unrestricted aid may be spent at the discretion of the recipient, and is not restricted to a specific purpose or program (as opposed to "categorical" aid).

In addition to these transfer payments from the state, local governments in Wisconsin rely heavily upon the property tax to fund their programs and services. The property tax is the largest source of combined state and local tax revenue in Wisconsin. As compared to local governments in other states, local governments in Wisconsin rely more heavily upon the property tax and intergovernmental revenues and rely less upon revenues from fees and miscellaneous charges.

Recent Significant Activities

Tax and Spending Limits

Section 5 of Article VIII of the Wisconsin Constitution constrains the Legislature from running a deficit budget. Any deficit existing at the end of a fiscal year must be remedied in the following fiscal year. Section 20.003 (4m), Stats., is entitled "Required General Fund Structural Balance." The statutory requirement under s. 20.003 (4m) is designed to ensure that each fiscal year of a biennial budget is structurally balanced by subtracting any carry-over balances from the prior year from on-going revenues. See Wisconsin Legislative Fiscal Bureau (LFB) Informational Paper 71, *State General Fund Expenditure Limits* (January 2009), for a detailed discussion and analysis of these budgetary restraints.

One of the more significant and contentious issues that has occupied legislative attention for many of the recent legislative sessions involves the proposed imposition of tax and spending limits on the state and local governments. Both statutory and constitutional limits were considered by the Legislature. These issues are likely to be revisited in future sessions.

In **2005 Enrolled Assembly Bill 100** (the 2005-07 Biennial Budget Bill), the Legislature approved expenditure limits on state government. The legislation provided that, beginning in FY 2007-08, state GPR appropriations and certain other expenditures may not exceed the amount of those expenditures in the previous FY as increased by the prior year's percentage increases in the Consumer Price Index (CPI) and in state population plus 1%. Amounts received over the expenditure limits would be required to be deposited in a fund designated as the "taxpayer protection fund." Moneys in the taxpayer protection fund could only be appropriated upon a recommendation from the Governor and approval by a vote of 3/4ths of those voting in each house of the Legislature. In addition, if the balance in the taxpayer protection fund exceeds 10% of allowable expenditures, that amount would be required to be returned to taxpayers as a reduction in state income taxes.

These provisions were deleted from the bill by the Governor, using his partial veto.

Also in **2005 Enrolled Assembly Bill 100**, the Legislature would have prohibited any city, village, town, or county from increasing its total property tax levy over the prior year's levy by more than a percentage equal to the percentage change in equalized property value due to new construction, less improvements removed. Adjustments to the property tax levy limits would be allowed under specified circumstances, including the repayment of certain debts. Also, amounts in excess of the levy limits could be approved by voters in a referendum. The expenditure limits would have applied to property tax levies collected in 2006, 2007, and 2008. In addition, technical colleges would have been prohibited from increasing their property tax levy by more than 2.6% over the prior year's levy.

The Governor used his partial veto to modify these provisions. As enacted in **2005 Wisconsin Act 25**, any city, village, town, or county is prohibited from increasing its total property tax levy over the prior year's levy by more than 2% or the percentage change in equalized property value due to new construction, less improvements removed, whichever is greater. In addition, the expenditure limits will apply to property tax levies collected in 2006 and 2007, but not 2008. Also, the levy limits on technical colleges were vetoed.

The levy limit program was modified and reauthorized in **2007 Wisconsin Act 20** (the 2007-09 Biennial Budget Act). Initially, the 2007-09 Budget Bill maintained the

maximum allowable levy increase at the greater of 2% or the percentage change in equalized property value due to new construction, less improvements removed. Via the Governor's partial veto, 2007 Wisconsin Act 20 allows increases that do not exceed 3.86% for levies in 2007-08. The Act does not specify "whichever is greater" although the administration indicates the provision will be interpreted in that manner.

Under **2009 Wisconsin Act 28**, in 2010, any city, village, town, or county is allowed to increase its levy over its maximum allowable levy in 2009 by no more than 3% or the percentage increase in equalized value due to net new construction, whichever is greater. Changing the formula to calculating from last year's allowable levy as opposed to the actual levy enables an entity that taxed below its limit in the prior year to "recapture" that levy in the following year. The 3% levy limit imposed under Act 28 sunsets on December 31, 2010.

2005 Assembly Joint Resolution 77 and Senate Joint Resolution 63 were identical constitutional amendments that would have imposed revenue limits on the state and local governments. These were before the Legislature on first consideration during the 2005-06 Legislative Session. They would have limited the annual growth in revenues by a formula that would include, depending upon the unit of government affected, the percentage increase in the CPI, population growth, enrollment growth, or property value growth. In the final days of the 2005-06 Legislative Session, a number of substitute amendments were offered to these proposals. However, none of these proposed constitutional amendments were approved by both houses of the Legislature prior to adjournment.

2007 Assembly Joint Resolution 99 would have imposed revenue limits in a similar manner to the limits proposed by 2005 Assembly Joint Resolution 77 and Senate Joint Resolution 63. 2007 Assembly Joint Resolution 99 failed to gain approval by either house of the Legislature prior to adjournment.

Upcoming Issues

An issue that may resurface in the 2011-12 Legislative Session is the adoption of spending and taxation restrictions on both local governments and the state. This issue was debated in recent sessions, and is sometimes referred to as "Taxpayer Bill of Rights (TABOR)." Both amendments to the Constitution that would limit state and local spending and taxation and statutory changes to freeze property taxes were debated by the Legislature. Proposed constitutional changes and statutory tax freezes may be debated again in the upcoming session. Additional related issues that are likely to surface include a reexamination of local aid formulas, state mandates to local governments, and the consolidation of services between local governments.

Major Sources of Wisconsin State and Local Tax Revenue

The major sources of 2008 state and local tax revenue in Wisconsin are shown in Table 1. The property tax, the individual income tax, and the state sales tax accounted for nearly 90% of the $24,270,400,000 collected in 2008.

UUTABLE 1

2008 Wisconsin State and Local Revenue by Major Tax Source

Tax	*$ Amount*	*Percent of Total*
Property (Net)[1]	9,250,300,000	38.11
Individual Income	6,713,700,000	27.65
State Sales	4,268,000,000	17.59
Corporate Income	837,800,000	3.45
Excise[2]	540,200,000	2.23
Public Utility	324,200,000	1.34
County Sales	277,900,000	1.15
Other[3]	2,058,300,000	8.48
Total	24,270,400,000	100.00

[1] Levied in 2007 and collected in 2008.
[2] Figure is for calendar year 2008.
[3] Includes the following taxes: inheritance and estate, insurance company premiums, real estate transfer, lawsuits, and other.

Sources: Property tax: Wisconsin Department of Revenue (DOR) – Town, Village and City Taxes, 2007.

County sales: Unpublished data from the Wisconsin DOR.

Other taxes: Wisconsin Department of Administration – Annual Fiscal Report, Budgetary Basis, 2008.

Sources of Wisconsin Local Government Revenue Compared to U.S. Average

Table 2 compares the sources of local government (including school districts) revenues in Wisconsin to the average for all local governments in the United States. The table is based upon the most recent data (2005-06) from the U.S. Census Bureau.

Local governments in Wisconsin rely more upon the property tax and upon revenues received from other levels of government as revenue sources and less upon charges and nonproperty taxes to pay for government services and programs, on average, than do other local governments in the United States.

TABLE 2

2005-06 Sources of Local Government General Revenue - Wisconsin Compared to U.S. Average

Source of Revenue	*Wisconsin*	*U.S. Average*
Property Tax	35.5%	28.0%
General Sales Tax	1.2%	4.5%
Income Tax (individual and corporate)	NA	2.32%
Other Taxes	1.2%	2.3%
Charges and Miscellaneous Revenues	16.5%	22.8%
Intergovernmental Revenues	45.4%	38.3%

Source: U.S. Department of Commerce, Census Bureau; State and Local Government Finances, 2005-06.

State General Expenditures for Local Government Assistance: 2007-09 Budget

Of the $28,035,709,400 budgeted in 2007 Wisconsin Act 20 for state spending from GPR in the 2007-09 biennium, $15,575,000,000, or 56% of the total, is for assistance to local government. As shown in Table 3, below, the largest amount of state aid to local government, $10,700,000,000, or 38% of **all** GPR expenditures, is budgeted for general and categorical aids to elementary and secondary schools. An additional $1,265,000,000 is distributed as a property tax credit to reduce school property tax levies. The second largest amount, $1,905,000,000, or 7% of all GPR expenditures, is distributed as county and municipal aids to municipalities and counties

TABLE 3

2007-09 State General Fund Expenditures for Local Assistance*

Expenditure	*$ Amount*	*Percent of Total*
Elementary and Secondary School Aids	10,296,746,200	67.3
Shared Revenues to Municipalities and Counties	1,857,718,900	12.1
School Levy Tax Credit	1,697,625,200	11.1
Community and Juvenile Correctional Services	503,577,700	3.3
Environmental Aids	196,502,100	1.3
Technical College System Aids	273,943,800	1.8
Long-Term Care Programs	175,619,400	1.2
Other	294,314,900	1.9
Total	15,296,048,200	100.0

Source: LFB.

*As contained in 2007 Wisconsin Act 20.

Property Tax Levy, 1990-2007

Table 4 shows the gross property tax levy and the percentage increase in the gross property tax levy for the years 1990 through 2007. State laws enacted during the 1990s had a noticeable effect on the rate of property tax increases during the period. In 1994, the state generally restricted the annual increase in school district revenue per pupil from general school aid and property taxes. In 1994, the state also imposed limits on the aggregate amount of salary and fringe benefit increases which a school board may offer to its professional employees (termed a "Qualified Economic Offer," or QEO) to avoid compulsory arbitration. In 1995 and 1996, school district property tax levies were frozen, with the state paying the additional school costs; in 1997, the state began funding 2/3rds of school district costs. In 2009, the state repealed the 1994 Qualified Economic Offer Rule. The state maintains its policy of 2/3rds funding, but some of this money goes to property owners rather than the school directly.

TABLE 4

Property Tax Levy, Amount, and Percentage Increase, 1990-2008

Year of Levy	*$ Amount*	*Percentage Increase*
1990	4,388,000,000	7.6
1991	4,733,000,000	7.9
1992	5,169,000,000	9.2
1993	5,438,000,000	5.2
1994	5,572,000,000	2.5
1995	5,739,000,000	3.0
1996	5,378,000,000	-6.3
1997	5,636,000,000	4.8
1998	5,975,000,000	6.0
1999	6,191,000,000	3.6
2000	6,605,000,000	6.7
2001	7,044,000,000	6.7
2002	7,364,000,000	4.5
2003	7,687,000,000	4.4
2004	8,151,000,000	6.0
2005	8,327,000,000	2.2
2006	8,706,000,000	4.6
2007	9,251,000,000	6.2
2008	9,284,000	.4

Major General State Aid Programs for Municipalities and Counties

County and Municipal Aid

2001 Wisconsin Act 109 and 2003 Wisconsin Act 33 revised the system under which shared revenue and other aid payments to counties, cities, villages, and towns are calculated. The shared revenue program (except for the public utility component of the shared revenue program), the county mandate relief program, and the small municipalities shared revenue program were replaced with a program called "county and municipal aid" beginning with payments made in 2004.

Under this program, each county and municipality received aid payments based on the sum of its payments in 2003 under the shared revenue program (excluding utility aid), county mandate relief, and small municipalities shared revenue program. The amount in 2004, as compared to 2003, was reduced by $70 million, of which the share for each municipality and county was calculated on a per capita basis. Payments under the county and municipal aid program in 2005 and 2006 for each county, city, village, and town will be the same as the payments received in 2004.

Table 5 shows the shared revenue and county and municipal aid payments to counties and municipalities by total amount and annual percentage increase for the years 1987-2007.

TABLE 5

Shared Revenue and County and Municipal Aid Payments, Amounts, and Annual Percentage Increase, 1987-2007

Year	*$ Amount*	*Percentage Change in Funding*
1989	807,400,000	2.0
1990	835,600,000	3.5
1991	869,000,000	4.0
1992	886,000,000	2.0
1993	903,700,000	2.0
1994	920,300,000	1.8
1995	950,600,000	3.3
1996	950,600,000	0.0
1997	950,600,000	0.0
1998	950,600,000	0.0
1999	950,600,000	0.0
2000	951,200,000	0.6
2001	951,200,000	0.0
2002	960,700,000	1.0
2003	970,300,000	1.0
2004	893,500,000	-7.9
2005	893,500,000	0.0
2006	898,300,000	0.5
2007	899,200,000	0.1
2008	899,600,000	0.0
2009	916,900,000	1.0
2010	890,000,000	-1.1

Sources: LFB and DOR, unpublished data.

Utility Aid

Utility aid is the only component of the shared revenue program that remains following that program's replacement by the county and municipal aid program in 2004. Utility aid compensates local governments for costs they incur in providing services to heat, light, and power companies and for the location of utility property in their territory. [s. 79.04, Stats.] Property owned by these companies is exempt from municipal and county property taxation. In lieu of property taxation, heat, light, and power companies pay a gross receipts tax to the state.

In general, the public utility distribution for a particular unit of local government is computed by multiplying a fixed rate by the net book value of public utility property within the boundaries of the local government. Payments to cities and villages are computed at a rate of $6 per thousand dollars of net book value of qualifying utility property. Payments to towns are computed at a rate of $3 per thousand dollars of net book value. Payments to counties are at the $3 per thousand rate if the property is located in a city or village or at $6 per thousand if the property is located in a town. Therefore, a total rate of $9 per thousand dollars of net book value is applied to the full value of all qualifying utility property in determining the amount of the public utility payment.

However, in computing the amount of the distribution, the value of utility property at a specific site is limited to $125,000,000. In addition, generally, each municipality and county is guaranteed a payment of $75,000 if a utility plant with a capacity of 200 megawatts or greater is located within its borders. Also, each municipality and county where spent nuclear fuel is stored receives an annual payment of $50,000.

Utility aids paid with respect to new plants that begin operation in 2004 are calculated based on generating capacity rather than property value. Utility aids paid to municipalities and counties that contain these production plants are paid at the rate of $2,000 per megawatt of generating capacity. For production plants located in cities and villages, the city or village receives 2/3rds of the payment. For production plants located in towns, the town receives 1/3rd of the resulting payment. The county receives the amount of utility payment not paid to a city, village, or town.

The total amount of utility aid paid annually to a city, village, or town may not exceed an amount that is $300 times the municipality's population. The total amount of utility aid paid annually to a county may not exceed an amount that is $100 times the county's population.

An additional type of utility aid payment, which began in 2005, applies to municipalities and counties that contain qualifying production plants that begin operation after December 31, 2003. These payments are made at the rate of either $600 or $1,000 per megawatt of generating capacity, depending upon the type of facility. The amount of incentive aid payment to a municipality or county is not subject to the per capita payment limits for utility aid.

Expenditure Restraint Program for Municipalities

The expenditure restraint program allows cities, villages, and towns to receive state aid if they limit their year-to-year budget growth as specified by statute and have a municipal purpose tax rate in excess of five mills ($5 per thousand dollars of property value). The expenditure restraint program is administered by the DOR.

Eligibility

To be eligible for an expenditure restraint payment, a city, village, or town must:

- Have a property tax levy rate greater than five mills. The mill rate is based on the municipality's equalized value less tax increments and tax incremental values under the tax incremental financing law.

- Limit the increase in its municipal budget over the previous municipal budget by a percentage determined by statutory formula.

For purposes of the eligibility requirement, "municipal budget" represents the municipality's general fund, less principal and interest on long-term debt. A municipality is prohibited, in order to qualify for a payment under the expenditure restraint program, from establishing a fund, other than a general fund, that does not conform to generally accepted accounting principles as promulgated by the Governmental Accounting Standards Board.

The permitted rate of growth for a municipal budget for purposes of eligibility for the expenditure restraint program is the inflation rate plus an adjustment to that rate based on growth in municipal property values. The inflation rate is the percentage equal to the average annual percentage change in the U.S. CPI for all urban consumers, U.S. city average, for the 12-month period ending on September 30 two years prior to the payment year. The inflation rate is adjusted by adding to it a property "valuation factor" which is a percentage equal to 60% of the percentage change in the municipality's equalized value due to new construction, less improvements removed, but not less than 0% nor more than 2%.

Distribution Formula

If eligible, a city, village, or town receives a payment under the expenditure restraint program according to the following formula, which is based on municipal levy rates and full values: (1) five mills is subtracted from the municipality's property tax levy rate to produce the "excess tax rate"; (2) the municipality's equalized value, including the value of tax increments, is multiplied by the municipality's excess tax rate to produce the "excess levy"; (3) the municipality's excess levy is divided by the total of excess levies for all municipalities that qualify (resulting in the municipality's percentage share); and (4) the municipality's percentage share is multiplied by the amount appropriated for the expenditure restraint program.

Data on Expenditure Restraint Payments

Table 6, below, summarizes the payment over time of tax rate disparity payments and expenditure restraint payments. The table includes the number of towns, villages, and cities that received payments in each year; the percentage of all towns, villages, and cities that receive payments; the total amount of payments received; the percentage of total payments received by towns, villages, and cities as a class; and the average payment received by towns, villages, and cities. The first portion of the table refers to "tax rate disparity payments" because the program was initially designated as a tax rate disparity program. However, effective with 1994 payments, the program was renamed the expenditure restraint program.

TABLE 6

Tax Rate Disparity and Expenditure Restraint Payment Distribution Summary

	Number of Municipalities	Percentage of All Municipalities	Total Payment $ Amount	Percentage of All Dollars	Average Payment $ Amount
2001					
Towns	30	11.1	844,429	1.5	28,148
Villages	105	38.9	5,019,086	8.8	47,801
Cities	135	50.0	51,136,485	89.7	378,789
	270	100.0	57,000,000	100.0	211,111
2002					
Towns	39	12.9	768,297	1.4	19,699
Villages	128	42.2	5,147,973	8.9	40,218
Cities	136	44.9	51,653,727	89.7	379,806
	303	100.0	57,569,997	100.0	189,999
2003					
Towns	30	10.1	724,827	1.3	24,160
Villages	122	41.2	4,985,806	8.6	40,867
Cities	144	48.7	52,435,065	90.1	364,132
	296	100.0	58,145,698	100.0	196,438
2004					
Towns	27	8.8	420,325	0.7	15,567
Villages	134	43.8	5,482,828	9.4	40,916
Cities	145	47.4	52,242,547	89.9	360,293
	306	100.0	58,145,700	100.0	190,018
2005					
Towns	33	9.79	461,094	0.79	13,973
Villages	152	45.1	5,198,193	8.94	34,199
Cities	152	45.1	52,486,413	90.27	345,305
	337	100.0	58,145,700	100.00	172,539
2006					
Towns	36	11.43	239,473	0.41	6,652
Villages	133	42.22	5,338,424	9.18	40,139
Cities	146	46.35	52,567,803	90.41	360,053
	315	100.00	58,145,700	100.00	184,590
2007					
Towns	24	7.41	144,689	0.25	6,029
Villages	147	45.37	4,896,596	8.42	33,310
Cities	153	47.22	53,104,415	91.33	347,088
	324	100.00	58,145,700	100.00	179,462
2008					
Towns	27	8.5	178,396	0.3	6,607
Villages	136	42.9	4,817,503	8.3	35,423
Cities	154	48.6	53,149,799	91.4	345,129
	317	100.00	58,145,700	100.00	387,159
2009					
Towns	13	4.8	146,107	0.3	11,239
Villages	119	43.6	4,334,188	7.4	36,422
Cities	141	51.6	53,665,404	92.3	380,606
	273	100.00	58,145,700	100.00	428,267

Source: LFB.

Additional References

1. At the beginning of each legislative session, the ***LFB*** prepares informational papers that describe the fiscal relationship between the State of Wisconsin and local governments. These informational papers, which include descriptions of Wisconsin state and local finances and taxation, may be found at http://www.legis.state.wi.us/lfb/index.html (click on Publications).

2. The Wisconsin ***DOR*** has prepared a number of publications that describe state and local taxation and various state aid programs. These publications may be found at http://www.dor.state.wi.us/html/pubs.html.

3. The ***Wisconsin Taxpayers Alliance*** frequently describes and analyzes state and local finances in its monthly publication, *The Wisconsin Taxpayer,* and in its periodical, *Focus*. The Wisconsin Taxpayers Alliance can be contacted at http://www.wistax.org.

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Chapter Q

State-Tribal Relations

American Indians and American Indian tribes and bands ("tribes") in Wisconsin have a complex and evolving relationship with the federal and staUUte governments. Over the decades, the federal government has gone through many phases in its policy toward tribes, sometimes with abrupt shifts in direction. Court decisions continue to define these relationships, with the U.S. Supreme Court typically deciding several Indian law cases each term. U.S. Supreme Court decisions also have periodically shifted direction, typically without explicitly overruling prior decisions. This often leaves contradictory pronouncements by the court. Moreover, the nature of tribal government continues to change as many tribes now have increasing resources to further develop the infrastructure of tribal government and to increase the services provided to tribal members and others residing on reservations.

Because of the complex and evolving nature of the law, the unique status of each tribe, and considerations of brevity, this document describes only general principles; one or more exceptions typically apply to any principle described. Information on legislation affecting American Indians and Indian tribes enacted in the 2009-10 Session of the Wisconsin State Legislature can be found at: http://www.legis.state.wi.us/lc.

American Indian Tribes in Wisconsin

There are 11 federally recognized tribes in Wisconsin. Each has its own independent government, tribal membership, and land base. The following table indicates the name of each tribe, the county or counties in which its land base is located, the approximate number of acres of land in Wisconsin held in trust[1] for the tribe or tribal members, and the number of enrolled tribal members.

Name of Tribe	Number of Enrolled Tribal Members	Wisconsin Counties in Which Reservation or Off-Reservation Trust Land Is Located	Approx. Number of Acres of Land in Wisconsin Held in Trust for the Tribe (As of January 2009)
Bad River Band of Lake Superior Chippewa Indians	6,945	Ashland, Iron	57,884
Forest County Potawatomi Community	1,250	Forest, Marinette, Milwaukee, Oconto	12,280
Ho-Chunk Nation	6,563	Adams, Clark, Crawford, Dane, Eau Claire, Jackson, Juneau, La Crosse, Marathon, Monroe, Sauk, Shawano, Vernon, Wood	2,108
Lac Courte Oreilles Band of Lake Superior Chippewas	6,918	Burnett, Sawyer, Washburn	24,365
Lac du Flambeau Band of Lake Superior Chippewas	3,415	Iron, Oneida, Vilas	39,403
Menominee Nation	8,339	Menominee, Shawano	235,524
Mohican Nation, Stockbridge-Munsee Band	1,565	Shawano	16,255
Oneida Tribe of Indians of Wisconsin	15,336	Brown, Outagamie	6,646
Red Cliff Band of Lake Superior Chippewas	5,312	Bayfield	6,404
St. Croix Band of Chippewa Indians	1,054	Barron, Burnett, Polk	2,126
Sokaogon Chippewa Community (Mole Lake)	1,261	Forest	1,320

Sources: For membership information: The Bureau of Indian Affairs (BIA) publishes tribal enrollment data in its Labor Force Report. Although required to be issued every two years, as of this writing, the most recent report is dated 2005. Therefore, membership data and trust land information is taken from "Tribes of Wisconsin," prepared by the Department of Administration (DOA) (January 2009), and reflects information provided by each tribe.

Tribal Government

Each tribe in Wisconsin has a constitution that establishes the structure of its government. All of the tribes in Wisconsin have an elected tribal council (sometimes called a tribal governing board or business committee or legislature) and a chair or president. Tribal councils typically enact legislation (which often is collectively called the tribal code or ordinances) and may make certain administrative or business decisions. Some tribal constitutions provide that certain issues must be voted on by the general membership of the tribe, rather than the elected governing body. Some of the tribal chairs or presidents are elected by the general membership of the tribe; however, some are elected by the tribal council. In addition to serving as part of the tribal council, a tribal chair or president typically performs additional duties.

Some constitutions provide for a tribal court or other dispute resolution forum. The subject matter over which a tribal court or dispute resolution forum has jurisdiction varies from tribe to tribe. Information about the tribal courts in Wisconsin and the jurisdiction of each is available at: http://www.judicare.org/ilo (then click on "Wisconsin Tribal Courts").

In addition to these decision-making bodies, tribal governments typically have various departments with staff assigned to work on particular issues, such as human services, child welfare, education, environment, business development, health, or transportation. Some tribal governments have law enforcement departments.

In addition, some tribal governments have established or chartered tribal corporations or tribal business enterprises.

Great Lakes Inter-Tribal Council

Each tribe in Wisconsin is a separate government. No tribe in Wisconsin is controlled by another tribe or speaks for another tribe. However, all Wisconsin tribes belong to the Great Lakes Inter-Tribal Council (GLITC), which is a consortium of federally recognized tribes in Wisconsin and the Lac Vieux Desert Tribe of Michigan.

GLITC was originally devoted to delivering services and programs (such as health, aging, and economic development programs) to member tribes and to the rural Indian communities of Wisconsin. However, as many tribes have become increasingly capable of providing services to their own communities, GLITC's role has largely changed from direct delivery of services to assisting member tribes in the delivery of services and supplementing a tribe's service capacity.

The GLITC Board of Directors is comprised of the tribal chair of each member tribe or the chair's designated representative. The GLITC Board meets several times a year to discuss items of mutual interest. However, neither GLITC nor the GLITC Board has authority over any tribe.

American Indians in Wisconsin

Definition

There is no one definition of an Indian, American Indian, or Native American. Federal law and Wisconsin statutes define "Indian" or "American Indian" in a variety of ways for different purposes and programs.

There is no consensus as to which of these terms is the most acceptable to describe individuals collectively. However, there is consensus that it is preferable to refer to an individual's particular heritage if at all possible, for example, by referring to a person as an Oneida or a Menominee, rather than referring to the person by the more generic term Indian, American Indian, or Native American.

Tribal Membership

Courts have held that a tribe has the power to establish its own criteria for determining tribal membership. Examples of criteria used include blood quantum requirements, ancestors on a specific roll, and patrilineal or matrilineal descent rules. Some individuals who have "Indian blood" may not be eligible for tribal membership (typically called enrollment) in any tribe or may be eligible for membership in more than one tribe.

Census Data

U.S. Census data count individuals as American Indians based on self-identification, without regard to whether the individual is legally recognized by a tribe as a member. In the 2000 Census, 69,950 individuals in Wisconsin identified themselves as "American Indian or Alaska Native" either as one race or in combination with one or more other races, which is about 1.3% of the total Wisconsin population.[2] The U.S. Census population estimates in July 1, 2010 are that 67,857 individuals in Wisconsin would so identify themselves.

Not all of these individuals are legally recognized as members of a Wisconsin tribe, nor do they all live on a reservation. In fact, significant American Indian populations reside in urban areas in Wisconsin, especially in Milwaukee.

Indian Lands in Wisconsin

All of the federally recognized tribes in Wisconsin, except the Ho-Chunk Nation, have a reservation, that is, land that the United States has set aside out of the public domain for the use of a tribe (for example, by treaty, executive order, statute, or U.S. Secretary of Interior proclamation). The Ho-Chunk Nation does not have a consolidated reservation but has trust lands in 11 counties; a few of these trust lands have reservation status. As discussed below, reservation and trust land are not synonymous: not all land on a reservation is trust land; not all trust land is on a reservation.

As discussed below, for purposes of determining civil, criminal, and civil regulatory jurisdiction, the ownership and location of land may be pertinent.

Trust Land Versus Fee Land

Congress provided that the Secretary of Interior has authority to hold and acquire land in trust for the benefit of American Indians and tribes. Trust land refers to land the title to which is held by the United States in trust for a tribe or individual American Indian. Trust land cannot be sold without the prior approval of the Secretary of Interior. Federal law provides that trust land is exempt from taxation by state and local government. In contrast, fee land (sometimes referred to as fee simple land or fee-patented land) refers to land the title to which is held by the owner. In general, an owner of fee land may freely alienate it, for example, by selling it. In general, fee land is subject to taxation by state and local government.[3]

Another category of land tenure unique to American Indians is restricted fee land in which the tribe or tribal member holds the title in fee subject to a federal patent that restricts alienation. For most purposes, such land is treated the same as trust land.

If a tribe or American Indian purchases land and holds the title in fee simple, the tribe or American Indian may, but is not required to, petition the Secretary to take the land in trust, and the Secretary may or may not agree to do so. Unlike a tribe, which may apply to have any land that the tribe owns held in trust, an American Indian may do so only with respect to land owned by the American Indian that is on or adjacent to a reservation or land that is already in trust or restricted status. Federal regulations promulgated by the BIA set forth the procedure and criteria used by the Secretary to make a decision as to whether to take land in trust.

General Background

Each tribe and reservation has a unique history. However, many reservations in the United States were greatly affected by the General Allotment Act of 1887 (also known as the Dawes Act) or by similar federal legislation allotting tribal land. On the affected reservations, the Dawes Act provided for a certain number of acres to be allotted to each tribal member to be held in trust for a certain period of time, after which a fee patent would be issued. Because property taxes generally had to be paid once it became fee land, many sales resulted when a tribal member could not pay property taxes or, in some cases, because a tribal member wanted to sell the land for other reasons. Many such allotted lands were then purchased by non-Indians. The Dawes Act also provided for the disposition of all “surplus” lands remaining after allotment so that the land could be used for non-Indian settlement. In the United States, it is estimated that the 138 million acres of land held by tribes and American Indians in 1887 had declined to about 48 million acres in 1934 when the allotment era ended with passage of the federal Indian Reorganization Act. Among other things, the Indian Reorganization Act prohibited further allotments and continued the trust status of lands then remaining in trust.

Land Tenure on Reservations

However, not all reservations or all lands on a reservation were allotted, and the trust status of all allotments did not expire. Moreover, tribes and individual American Indians may own or purchase fee land on a reservation which they may either hold

title to as fee land or request that it be placed in trust. Thus, there are six broad categories of land tenure on reservations:

- Trust land held for a tribe (commonly called tribal trust land).
- Trust land held for an American Indian who is a member of the tribe which has that reservation (tribal member).[4]
- Trust land held for an American Indian who is not a member of the tribe that has that reservation. (The tribe's permission is required to place land in trust under these circumstances.)
- Fee land owned by a tribe.
- Fee land owned by a tribal member.
- Fee land owned by an entity or individual other than a tribe or tribal member (typically a non-Indian).

Land tenure patterns on reservations in Wisconsin and around the United States vary greatly. For example, almost all of the Menominee Reservation is tribal trust land; in contrast, a small part of the Oneida Reservation is tribal trust land but most of the Oneida Reservation is fee land, much of which is owned by non-Indians. The table on page Q-2 lists the approximate number of acres of trust land in Wisconsin for each tribe, including lands held in trust for American Indians.

Reservation Boundaries

The exact boundaries of a reservation are sometimes clear and are sometimes disputed.[5] For example, in Wisconsin, the extent of the Oneida Reservation was the subject of litigation in the 1980s; the boundaries of the Stockbridge-Munsee Reservation were the subject of a Wisconsin Supreme Court decision in 1995 and of a 2004 decision by a federal district court (which has been appealed to the U.S. Seventh Circuit Court of Appeals); and land that is ostensibly part of the Menominee Reservation in Shawano County may be part of the Stockbridge-Munsee Reservation.

Off-Reservation Trust Land

Federal law permits a tribe to apply to have land that is owned by the tribe held in trust, even if the land is outside the boundaries of the tribe's reservation. Because Indian gaming may be conducted only on a reservation or on trust land, some tribes have shown an interest in acquiring land outside the boundaries of the tribe's reservation and having it placed in trust for the tribe. A tribe also may acquire land outside its reservation for other purposes.

The Secretary of Interior has discretion in deciding whether to hold the land in trust. Under federal regulations, the criteria that the Secretary uses to decide vary somewhat depending on whether the land is within the boundaries of or contiguous to a tribe's reservation or outside the boundaries of and noncontiguous to a tribe's reservation.

Because of its history, the Ho-Chunk Nation does not have a consolidated reservation but has scattered trust lands in 11 counties; a few of these trust lands have been granted reservation status. Therefore, most Ho-Chunk lands are off-reservation trust lands.

While the status of off-reservation trust land has not been fully litigated for all purposes, in general, courts have held that off-reservation trust land is considered to have the same status as trust land on a reservation for jurisdictional purposes.

Tribal Sovereignty

In very general terms, sovereignty refers to the right or power to govern, including the ability of the governing entity to make and enforce its own laws in its own territory. Tribes are self-governing entities. The sovereign status of tribes is established as a matter of federal law and tribal law. Tribal sovereignty is not dependent on state action.

The sovereignty that a tribe possesses is inherent, which means that it comes from within the tribe itself, and existed before the founding of the United States. However, the U.S. Supreme Court has held that tribal sovereignty is not absolute but, rather, is subject to certain limits resulting from the unique relationship of the tribes to the United States. In general, under federal law, tribes retain those attributes of their original sovereignty that have not been: (1) given up in a treaty; (2) divested by an act of Congress; or (3) divested by implication as a result of their status as, to use the term adopted by the U.S. Supreme Court, "domestic dependent nations." In general, the third category is constituted by decisions of federal courts holding that a particular aspect of sovereignty does not apply to a tribe. For example, in 1978, the U.S. Supreme Court held that, because of its domestic dependent status, a tribe could not impose a criminal penalty on a non-Indian for an alleged crime against an Indian on the tribe's reservation.[6] The extent of tribal sovereignty continues to be discussed and litigated.

Relation to Federal Government

Tribes have a unique legal and political relationship with the federal government. Early in the history of the United States, a decision was made to have the federal government, not the states, in charge of affairs with the tribes.

Trust Responsibility. Courts have held that the federal government has a trust responsibility to the tribes which is sometimes asserted in litigation, especially in cases involving tribal lands and resources. It is similar, but not identical, to the fiduciary duty of a guardian in a guardian-ward relationship. The trust doctrine continues to evolve as the extent of the federal government's trust responsibility to the tribes continues to be litigated.

Congress. The U.S. Constitution grants to Congress the power to regulate commerce with the Indian tribes. Early on, Congress set a pattern of regulating relations between American Indians and non-Indians. In general, the courts have held that Congress has "plenary power" over tribes, which generally means that Congress can make any decision with respect to tribes. For example, Congress has even gone so far as terminating federal recognition of a tribal government and reservation, including the Menominee Tribe effective in 1961. (Congress later restored federal recognition of the Menominee Tribe and reestablished the Menominee Reservation in 1973 by passing the Menominee Restoration Act.) The U.S. Supreme Court also has held that Congress may abrogate a treaty with a tribe, as long as Congress makes clear its intent to do so.

Executive Branch. The President, with the advice and consent of the Senate, may make treaties. Presidents entered into treaties with many, but not all, tribes, up until 1871 when Congress forbade making further treaties with tribes.

On a day-to-day basis, the executive branch of the federal government has the primary responsibility for interacting with tribal governments. The BIA in the U.S. Department of Interior has a central role in federal executive branch dealings with tribes. However, other federal executive branch agencies are also responsible for carrying out the federal trust responsibility to the 564 federally recognized tribes.

U.S. Presidents dating back to President Richard Nixon have referred to a government-to-government relationship between the federal government and individual tribes. Under Executive Order 13175 issued by President Bill Clinton in 2000, federal agencies are to consult with tribal officials before taking major action that would affect tribes. President Barack Obama confirmed this consultation requirement in November 2009.[7]

Relation to State Government

A tribe is distinct and separate from a state and is not a political subdivision of a state. In general, unless Congress, a treaty, or court decisions have specified otherwise, a state does not have jurisdiction over a tribe or over American Indians in Indian country.[8] This means, for example, that the state may not enact legislation requiring a tribe to do anything unless Congress, a treaty, or court decision explicitly grants such power to a state. However, a state may enact legislation permitting a tribe to do certain things if the tribe chooses to do so (for example, administer a state program) or legislation conditioning the receipt of state funds on certain actions by a tribe.

On February 27, 2004, Governor Doyle issued Executive Order 39 affirming the government-to-government relationship between the state and the tribes in Wisconsin and directing cabinet agencies, whenever feasible and appropriate, to consult with tribal governments regarding state action or proposed state action that is anticipated to directly affect a tribe or tribal members. The consultation policies adopted by executive branch agencies under the Wisconsin State Tribal Relations Initiative are available at: http://witribes.wi.gov/.

Sovereign Immunity

Sovereign immunity refers to the doctrine established by the courts that prohibits a lawsuit against a government without its consent. Like the federal and state governments, courts have held that sovereign immunity also applies to tribes and tribal business organizations. The exact extent of tribal sovereign immunity continues to be litigated. However, in general, it applies to activities of a tribe or tribal business organization in Indian country and, in most cases, to activities outside Indian country.

Sovereign immunity may be asserted under various circumstances, for example, for injuries sustained at a tribal facility by workers or visitors or in connection with contracts. A tribe may waive its sovereign immunity, and whether a tribe has done so is sometimes litigated.

Treaties

Most, but not all, tribes in the United States entered into treaties with the United States, often several treaties over a period of time. The tribes often ceded (gave up) the right to occupy certain lands but reserved other rights such as hunting and fishing rights and the right to occupy a smaller territory or agreed to be removed to a different territory that would be reserved for them. Treaties also contained other conditions.

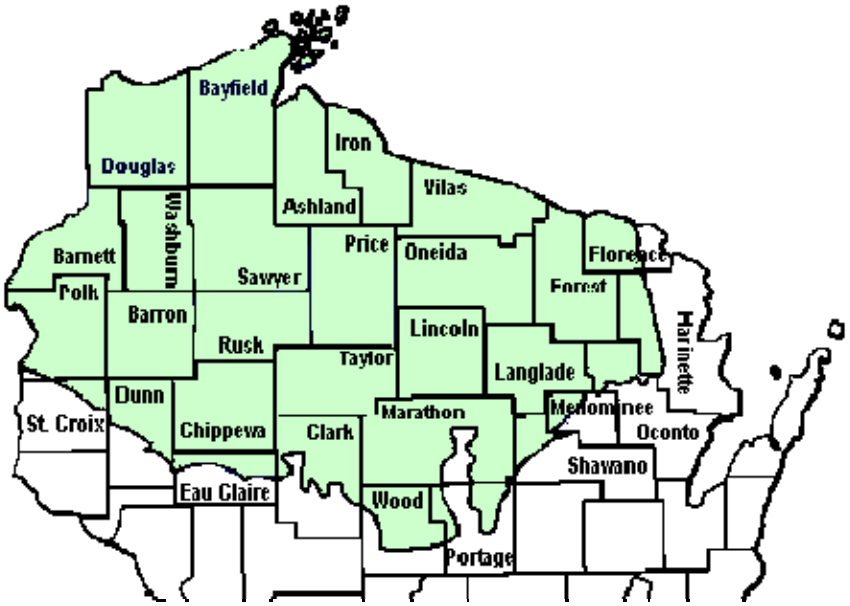
In 1871, Congress essentially prohibited the President from entering into future treaties with tribes. However, then-existing treaties continue to be the law of the land unless Congress has made clear its intent to abrogate a treaty. When considering any legal issue with respect to a specific tribe, any treaty with that tribe may be pertinent if the treaty addresses that particular issue. This means that, from one

tribe to another, there may be different answers to a legal question, depending on whether any treaty provisions are pertinent.

Chippewa Treaties

For example, in 1837 and 1842 treaties with the United States, the Chippewa reserved certain lands in Wisconsin (that is, their reservations) and agreed to cede certain other lands in Wisconsin to the United States.[9] However, in the treaties, the Chippewa reserved the right to hunt, fish, and gather on those ceded lands which cover approximately 22,400 square miles in the northern third of Wisconsin as shown in the following map:

Territory in Wisconsin Ceded by Chippewas in 1837 and 1842 Treaties



Source: Wisconsin Department of Natural Resources (DNR).

In a series of decisions from 1983 to 1991, the federal courts upheld the rights reserved in the treaties for Chippewas to hunt, fish, and gather off the reservations in the ceded territory in Wisconsin on public lands. Subsequent memorandums of understanding between the Wisconsin DNR, Chippewa bands, and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC)[10] provide for cooperative efforts between the state, Chippewa bands, and GLIFWC relating to regulating hunting, fishing, and gathering in the ceded territory, including regulation of Chippewas by their tribal governments.

Jurisdiction

The question as to whether the federal government, state, or tribe (or more than one of these entities) has jurisdiction over an activity or person in Indian country is one of the most complicated issues in Indian law. Issues arise with respect to: (1) criminal jurisdiction; (2) civil jurisdiction (which typically involves lawsuits between persons); and (3) civil regulatory jurisdiction. Most of the case law involves adjudicatory jurisdiction, that is, which court system has jurisdiction. However, questions occasionally have been raised in the criminal context about enforcement jurisdiction, that is, which officials have arrest authority.

Criminal Jurisdiction

In Wisconsin, criminal jurisdiction depends on whether a reservation is or is not subject to Public Law 83-280, commonly referred to as Public Law 280 or P.L. 280. Passed by Congress in 1953, P.L. 280 mandated the transfer of criminal jurisdiction in Indian country from the federal government to five states (later six states when Alaska was admitted to the Union), with exceptions for certain reservations. Other states were given the option to have jurisdiction transferred to them, and some states exercised that option in varying ways--although subsequent congressional action limited the option unless the tribe consented.[11]

Wisconsin is one of the six mandatory states. However, Congress made an exception for the Menominee Reservation, and this exception was reinstituted when Wisconsin retroceded (gave back) jurisdiction to the federal government after the Menominee Reservation was restored as noted above. Federal law permits states to retrocede jurisdiction under certain circumstances, but Wisconsin has not done so except for the Menominee Reservation. This means that criminal jurisdiction on the Menominee Reservation (a non-P.L. 280 reservation) is radically different from criminal jurisdiction on the other reservations in Wisconsin.

P.L. 280 Reservations in Wisconsin. All reservations and off-reservation trust lands in Wisconsin, except the Menominee Reservation, are subject to P.L. 280. In general, this means that state courts and state law enforcement officials[12] have jurisdiction over an activity on the reservation or off-reservation trust land that is a crime[13] under state law. It is generally agreed that the tribes retained jurisdiction over Indians for certain crimes committed in Indian country, that is, that a tribe has concurrent jurisdiction if an Indian also violated tribal law.

Non-P.L. 280 Reservations in Wisconsin--Menominee Reservation. The Menominee Reservation is not a P.L. 280 reservation. This means that jurisdiction is determined by the nature of the crime and whether the perpetrator and victim are Indian or non-Indian. In very general terms, if an Indian is involved as either the perpetrator or victim, depending on the nature of the crime, the federal court or tribal court (or, in some cases, both) have jurisdiction. However, if both the perpetrator and victim are non-Indian or if the perpetrator of a victimless or consensual crime is non-Indian, the state has jurisdiction if a state criminal law was violated.[14]

Wisconsin statutes authorize the Wisconsin Attorney General to negotiate an agreement with the Menominee Tribe relating to the extradition of fugitives, witnesses, and evidence from the Menominee Reservation. However, no extradition agreement is currently in place. In 2001, the U.S. Supreme Court held that state law enforcement officials were not prohibited by federal law from entering a reservation (including a non-P.L. 280 reservation in that case) to investigate and prosecute a tribal member for an off-reservation violation of state law.[15]

Civil Jurisdiction

Civil jurisdiction essentially refers to matters in a court that relate to private rights and status, as contrasted with criminal proceedings. Civil actions include, for example, a tort claim that arises following an automobile accident or a lawsuit over a contract. It also has been held to include causes of action relating to a person's status, such as a person's involuntary commitment as a sexually violent person under ch. 980, Stats.[16] In addition to its transfer of criminal jurisdiction, P.L. 280 also mandated the transfer of civil jurisdiction to five (later six) states, including Wisconsin, except on the Menominee Reservation, and allowed optional assumption of civil jurisdiction in other states. Thus, as with criminal jurisdiction, a distinction is made between the Menominee Reservation and the other reservations in Wisconsin (that is, the P.L. 280 reservations) for purposes of civil jurisdiction.

P.L. 280 Reservations in Wisconsin. In general, on all reservations and off-reservation trust land in Wisconsin, except the Menominee Reservation, P.L. 280

essentially provides that even if American Indians are involved as parties, state courts have jurisdiction over a civil matter that arises on the reservation or off-reservation trust land. For example, if two individuals had an automobile accident on a P.L. 280 reservation, the state court would have subject matter jurisdiction. Tribal courts may retain concurrent jurisdiction under certain circumstances.

Non-P.L. 280 Reservations in Wisconsin--Menominee Reservation. Because of the exception made for the Menominee Reservation as discussed above, P.L. 280 does not delegate civil jurisdiction to the state on the Menominee Reservation. Therefore, whether the state court, tribal court, or federal court (or more than one such court) has jurisdiction over a matter arising on the Menominee Reservation is based on court decisions that have established principles with respect to other non-P.L. 280 reservations. In general, the courts have held that civil jurisdiction is, in part, determined by: (1) the status of the land where the claim arose, that is, fee land versus trust land on the reservation;[17] and (2) whether one of the parties is a member of the tribe, in this case, the Menominee Tribe.[18]

As a general principle developed by the U.S. Supreme Court in 1997,[19] on the Menominee Reservation, a state court likely has exclusive jurisdiction over a lawsuit between individuals who are **not members** of the Menominee Tribe for actions arising on **fee land** on the Menominee Reservation that is **not** owned by the Menominee Tribe or an American Indian, including an action arising on a state highway right-of-way. If a claim arose on **fee land** on the Menominee Reservation and a **tribal member was a party**, the answer to which court has jurisdiction may depend on whether the tribal member is the plaintiff or defendant, but this area of the law is unsettled. When a tribal member or tribal interest is involved on **trust land** on the Menominee Reservation, a state court generally would not have civil jurisdiction. These general principles leave some questions unanswered and will not necessarily be applied by a court in all instances.

Federal Jurisdiction. In some cases, a federal court, rather than a state court, has jurisdiction in a civil suit because the plaintiff and defendant are not from the same state (diversity jurisdiction) or because a federal question is involved. Depending on whether the claim arose in Indian country and the exact status of the land where the claim arose and depending on whether the plaintiff or defendant is a tribal member, a federal court or a tribal court, or both, may have jurisdiction. In certain circumstances, a party may be required to exhaust its remedies in tribal court before the federal court will proceed.

Civil Regulatory Jurisdiction

Outside Indian Country. The general rule is that, absent an express federal law to the contrary,[20] activities of American Indians and tribes outside of Indian country are subject to a state's nondiscriminatory civil regulatory laws.[21] However, the U.S. Supreme Court has yet to resolve the issue of whether a tribe has sovereign immunity (that is, immunity from lawsuit without consent) with respect to suits for violation of a state civil regulatory law outside Indian country.

In Indian Country. In general, a tribe may exercise civil regulatory jurisdiction over its tribal members on the tribe's reservation or off-reservation trust land. However, the applicability of state civil regulatory laws in Indian country and the applicability of tribal civil regulatory laws to non-Indians in Indian country are two of the most complex and unsettled areas of Indian law. Moreover, they are two of the most frequently litigated.

<u>Applicability of State Civil Regulatory Laws.</u> The U.S. Supreme Court has consistently held that P.L. 280 did not transfer civil regulatory jurisdiction to the states. The courts have devised general guidelines to determine if a law is "civil regulatory" (and, thus, not subject to P.L. 280) or "criminal prohibitory" (and, thus, subject to P.L. 280

in Wisconsin on all but the Menominee Reservation). While it may be difficult to categorize some laws as clearly civil regulatory, rather than criminal prohibitory, there are many examples of laws that clearly are civil regulatory, for example, certain laws relating to taxation, banking regulations, employment and workplace regulations, most traffic regulations, building codes, and environmental regulations.

In the absence of a treaty provision or a specific congressional delegation of jurisdiction to a state, a state's civil regulatory laws do not apply to tribes or tribal members in Indian country unless the courts have held otherwise. In recent years, the courts have increasingly held otherwise by moving away from prior court decisions that generally presumed that state civil regulatory laws did not apply in Indian country. The U.S. Supreme Court has created several tests to determine whether a state may validly assert civil regulatory jurisdiction in Indian country. Because the Supreme Court generally has not explicitly overruled its earlier decisions on this issue, there is some uncertainty as to which test a court will apply to make its determination. Moreover, in some decisions, courts have distinguished between: (1) American Indians who are members of the tribe on whose reservation the activity occurred (tribal members) versus American Indians who are not members of that tribe; (2) tribal members who live on the reservation versus tribal members who do not live on the reservation; (3) American Indians versus non-Indians; (4) whether the activity occurred on fee land or trust land; or (5) whether the activity occurred on fee land owned by a tribe or American Indian versus fee land owned by a non-Indian.

One of the tests that may be used by a court is the balancing of state, federal, and tribal interests used by the U.S. Supreme Court in *California v. Cabazon Band of Mission Indians*[22] to determine if a state civil regulatory law applies in Indian country. In general, if the state's interests outweigh the federal and tribal interests, the state civil regulatory law would be applicable. However, in conducting this balancing test, the U.S. Supreme Court indicated that the balancing should proceed in light of traditional notions of tribal sovereignty and the congressional goal of tribal self-governance, including the overriding goal of encouraging tribal self-sufficiency and economic development. Because a balancing of interests test is dependent on the facts of the case, it may be difficult to accurately predict the outcome of this test.

In *Vilas v. Chapman*,[23] the Wisconsin Supreme Court used the tradition test based on U.S. Supreme Court precedent established in *Rice v. Rehner*,[24] rather than the balancing of interests test. Under the tradition test, the Wisconsin Supreme Court allowed state civil regulatory jurisdiction over a tribal member in Indian country because the tribe did not have a tradition of self-government in that particular area of regulation. Although the U.S. Supreme Court has not explicitly overturned *Rice v. Rehner*, subsequent decisions of that court (including *Cabazon*) appear to have moved away from the tradition test. Thus, it is likely that, in the future, the Wisconsin Supreme Court will similarly move away from the tradition test used in *Vilas v. Chapman*.

In contrast to other civil regulatory laws, the U.S. Supreme Court has developed a clearer test in recent years with regard to state civil regulatory laws involving taxation. The U.S. Supreme Court has generally held that if the legal incidence of a state tax falls on a tribe or tribal member in Indian country, the tax does not apply absent an express congressional authorization.[25] However, taxation is a frequently litigated issue in Indian law.

<u>Applicability of Tribal Civil Regulatory Laws to Non-Tribal Members, Including Non-Indians.</u> In recent decisions, the U.S. Supreme Court has used the test developed in *Montana v. United States*[26] to determine if a tribe may assert tribal civil regulatory jurisdiction over non-tribal members **on fee land in Indian country that is owned by a non-tribal member**. Under that test, a tribe may do so only if: (1) the non-tribal member has entered into consensual relationships with the tribe or tribal

members through commercial dealings, contracts, leases, or other arrangements; or (2) the non-tribal member's conduct threatens or has some direct effect on the political integrity, economic security, health, or welfare of the tribe.

If the non-tribal member were **on trust land or on fee land owned by a tribe or tribal member in Indian country**, up until 2001, it seemed less likely that the *Montana* test would be used and more likely that a court would permit a tribe to apply tribal civil regulatory laws, even with respect to non-Indians. However, in June 2001, the U.S. Supreme Court's decision in *Nevada v. Hicks*[27] cast doubt on that assumption when the Court held that, when non-tribal members are concerned, tribal jurisdiction could be exercised only to the extent necessary to protect tribal self-government or control internal relations in the tribe--regardless of the status of the land on the reservation on which an incident occurred--unless Congress had conferred regulatory jurisdiction on the tribe. It remains to be seen whether the holding of *Nevada v. Hicks* will be extended beyond the circumstances of that case which involved whether a tribe had authority to regulate the ability of state law enforcement officials to search the defendant tribal member's home on trust land on a reservation for a violation of state law off the reservation.

Summary. In summary, unless a specific issue has been fully litigated, there is some uncertainty about civil regulatory jurisdiction. Even if it were clear which test a court would apply to analyze whether a particular state civil regulatory law applies in Indian country, the outcome of the application of the test is by no means certain because the analysis typically would depend on the facts and circumstances involved.

In some cases, uncertainty can be minimized if there is an explicit agreement between a tribe and the state or local government about an issue. For example, Wisconsin statutes authorize the Department of Revenue (DOR) to enter into agreements with tribes about cigarette taxes, and this has occurred.[28] As another example, Wisconsin statutes provide that the Secretary of Natural Resources must enter into a reciprocal agreement with a Wisconsin tribe to exempt from state registration and certification requirements boats, snowmobiles, and all-terrain vehicles that are owned by tribal members and registered under a tribal registration program if the tribe requests the agreement and certain conditions are met.

Indian Gaming

Indian Gaming Regulatory Act

As noted above, Congress may enact legislation that affects jurisdiction in Indian country. Congress did so in 1988 with passage of the federal Indian Gaming Regulatory Act (IGRA). IGRA divides gaming into three classes: Class I (social and traditional games played by Indians); Class II (bingo, certain games similar to bingo if played at the same location as bingo, and certain card games under limited circumstances); and Class III (all other forms of gaming, which include casino games, slot machines, pari-mutuel betting (for example, on horse or dog races), and certain forms of lottery).

IGRA permits Class III gaming on Indian lands in a state only if the state permits such gaming for any purpose by any person, organization, or entity. Further, Class III gaming may be conducted by a tribe or person authorized by a tribe only if there is a state-tribal compact. If requested to do so by a tribe, IGRA requires a state to negotiate with the tribe in good faith regarding entering into a compact. However, in *Seminole Tribe of Florida v. Florida*,[29] the U.S. Supreme Court held that a state may claim immunity under the Eleventh Amendment of the U.S. Constitution if the state is sued in federal court to compel good faith negotiation under IGRA. Thus, the requirement to bargain in good faith may not be enforceable. Consequently, the BIA

has issued regulations prescribing procedures to permit Class III gaming when a state asserts its immunity from suit by a tribe that claims the state has failed to negotiate in good faith.[30]

Under IGRA, special provisions apply with respect to Indian land that is outside of and not contiguous to the tribe's reservation boundaries on October 17, 1988 and placed in trust after October 17, 1988. In general, Class III gaming is not permitted on such land unless: (1) the U.S. Secretary of Interior determines that the proposed gaming establishment would be in the best interest of the tribe and its members and would not be detrimental to the surrounding community; and (2) the Governor of the state concurs with the Secretary's determination. Of course, the terms of the compact also would have to permit (or be amended to permit) a gaming facility on such off-reservation trust land.

Gaming Compacts

Governor Negotiates. IGRA does not specify which entity in the state is responsible for good faith negotiation at the request of a tribe to operate Class III gaming. Wisconsin statutes authorize the Governor to enter into compacts with tribes under IGRA.[31] The Wisconsin Supreme Court has held that the purpose of this statute is to designate the Governor as the state's lead negotiator.[32] Further, the Director of Indian Gaming in the DOA is responsible for various functions related to Indian gaming and the state's regulation of Indian gaming, and the Office of Indian Gaming assists the Governor and Secretary of Administration with respect to gaming compacts.[33]

Provisions of Compacts. Each of the tribes in Wisconsin has entered into a compact with the state that permits the tribe to operate Class III gaming. While there are many similarities, each compact is unique. The compacts, including the amendments, are available on the DOA Division of Gaming website at: http://www.doa.state.wi.us/gaming/index.asp under "Indian Gaming."

Duration of Compacts. The original compacts were entered into on various dates in 1991 and 1992 and were for terms of seven years. All of the compacts were amended and renewed in 1998 and 1999 for additional five-year terms. (However, the Menominee Tribe entered into compact amendments with the state in August 2000, which provided for a different expiration date for the proposed Kenosha facility, which has not yet been established.) Compacts with 10 of the 11 tribes were amended and renewed in 2003 (the 2003 Amendments). (The compact with the Lac du Flambeau Band of Lake Superior Chippewas was automatically extended for five years from July 1, 2004, because neither the state nor Lac du Flambeau sent a notice of nonrenewal.)

In the 2003 Amendments, a provision in each compact that had permitted the state to give timely notice of nonrenewal at five-year intervals was deleted. Instead, the 2003 Amendments specified that a compact remains in effect until terminated by mutual agreement of the tribe and state or by the tribe revoking its own authority to conduct casino gaming. Also, three of the compacts were additionally amended to specify that if this indefinite compact duration provision were determined to be unenforceable or invalid by a court, the compact term would be 99 years.

In *Panzer v. Doyle,*[34] certain aspects of the 2003 Amendments to the compact with the Forest County Potawatomi Community, which included the indefinite duration provision, were challenged. In that case, the Wisconsin Supreme Court characterized the duration provision as creating a "perpetual" compact and held that the Governor had not been delegated authority to agree to such a duration provision. As for the three compacts that default to a 99-year term, no appellate court has been asked to determine whether the Governor had authority to enter into such a default duration provision.

In 2005, the state and Forest County Potawatomi Community entered into a compact amendment which substituted a 25-year term (instead of the indefinite duration provision) with automatic renewal unless a notice of nonrenewal complying with the compact is timely served. In 2008, a 25-year term was also substituted in the compact with the Ho-Chunk Nation (instead of the indefinite duration provision) and the same term was included in the 2009 Amendments to the Lac du Flambeau compact. When any such amendments become effective, they should be posted to the DOA Division of Gaming website at: http://www.doa.state.wi.us/gaming/index.asp.

Scope of Games. Prior to the 2003 Amendments, the compacts provided that the tribes had the right to operate the following Class III games: electronic games of chance with video facsimile or mechanical displays, blackjack, and pull-tabs or break-open tickets when not played at the same location as bingo. (The 2000 Amendments to the Menominee compact also permitted the Menominee Indian Tribe of Wisconsin to conduct Menominee Lotto and pari-mutuel racing and wagering activity conducted at the Kenosha facility, which has not yet been established.)

The 2003 Amendments authorized additional games, including roulette, poker and certain other card games, craps, keno, and pari-mutuel wagering on live simulcast horse, harness, and dog racing events. The Governor's authority to agree to the additional games specified in the 2003 Amendments to the Potawatomi compact was challenged in *Panzer v. Doyle*. The Wisconsin Supreme Court held that the Governor did not have authority to agree to the additional games (other than pari-mutuel wagering on live simulcast horse, harness, and dog racing events). However, in *Dairyland Greyhound Park, Inc. v. Doyle*,[35] the Wisconsin Supreme Court withdrew this language in *Panzer v. Doyle* and stated that: "gaming can be expanded to the extent that the State and Tribes negotiate for additional Class III games."

Payments to the State. Beginning with the renewals of the compacts in 1998 and 1999, each tribe agreed to make payments to the state over and above the $350,000 that the tribes collectively had paid to the state annually for the cost of state regulation of Indian gaming. The annual payments under the 1998 and 1999 Amendments collectively totaled approximately $24 million. Collectively, the 2003 Amendments, 2005 Potawatomi Amendment, and 2008 Ho-Chunk Amendment provided for significantly increased payments to the state. In fiscal year 2008-09, Wisconsin tribes paid the state $122 million from gaming revenue.

However, in general, the 2003 Amendments provided that certain payments to the state would not be required if the indefinite compact duration provision were determined by a court to be unenforceable or invalid and, in the case of the default 99-year term provision in three compacts, if both provisions were found to be unenforceable or invalid. As discussed above, the Wisconsin Supreme Court held in *Panzer v. Doyle* that the Governor did not have authority to enter into the indefinite duration provision in the 2003 Amendments to the Potawatomi compact. This holding raises questions about the similar provision in the 2003 Amendments to other compacts; moreover, it does not address the 99-year default provision in three compacts. When any such amendments become effective, they should be posted to the DOA Division of Gaming website at:
http://www.doa.state.wi.us/gaming/index.asp.

General Information. General information about Indian gaming in Wisconsin is available in the following publications:

- *Tribal Gambling in Wisconsin*, Informational Paper #87, Legislative Fiscal Bureau (January 2009), at:
  http://www.legis.state.wi.us/lfb/Informationalpapers/info.html. To view the

most recent version, go to the Legislative Fiscal Bureau's website (http://www.legis.state.wi.us/lfb/index.html) and click on "Publications."

- *An Evaluation, Division of Gaming, Department of Administration*, Report 10-11, Legislative Audit Bureau (August 2010), at: http://www.legis.wisconsin.gov/lab/PastReportsByDate.htm.

Indian Child Welfare Act

In 1978, Congress passed the Indian Child Welfare Act (ICWA) in order to reduce the high incidence of removing American Indian children from their homes and placing them in non-Indian foster care, adoptive homes, or institutions. ICWA applies to certain child custody proceedings in which an Indian child may be removed from his or her home, such as a child in need of protection or services (CHIPS), juvenile in need of protection or services (JIPS) under certain circumstances, adoption, or termination of parental rights proceeding; ICWA does not apply to divorce proceedings or delinquency proceedings.

Four tribes have exclusive jurisdiction for Indian children who reside on the tribe's reservation. Under certain circumstances, a child custody proceeding in state court that is subject to ICWA must be transferred to tribal court; if the state court retains jurisdiction, the child's Indian custodian and tribe have the right to intervene in the state court proceeding. If an American Indian child must be placed outside the home, ICWA provides certain preferences for the child's placement that attempt to keep the child as close as possible to the Indian community. For example, for adoptive placements, the order of preference (in the absence of good cause to the contrary) is with a member of the child's extended family, then a member of the child's tribe, and then a member of another tribe, before consideration is given to placing the child outside the Indian community.

ICWA includes various requirements for these child custody proceedings. In order to comply with ICWA, Wisconsin statutes provide that ICWA supersedes any inconsistent provision in state statutes.[36]

The Department of Health and Family Services, and later the Department of Children and Families (DCF), consulted with tribal officials and developed a legislative proposal which codified ICWA requirements in Wisconsin statutes and defined terms used in ICWA. 2009 Wisconsin Act 94 took effect on December 22, 2009.

Tribal-State Relations in Wisconsin

On February 27, 2004, Governor Doyle issued Executive Order 39 affirming the government-to-government relationship between the state and the tribes in Wisconsin.

Tribes in Wisconsin provide many services to individuals on their reservations, including non-Indians, such as health care, housing, and education. Some Wisconsin statutes specify that tribes may administer a particular state program and provide funding for a tribe to do so. For example, some, but not all, tribes participate in administering the Wisconsin Works (W-2) program.

In addition, Wisconsin statutes explicitly provide that if a law authorizes a grant of state funds by a state agency to any county, city, village, or town, a grant also may be made to any tribe for the same purpose.[37] Moreover, the statutes specify that the state or any state agency and local units of government may contract with a tribe to

receive or furnish services or to jointly exercise any power or duty required or authorized by law unless a statute specifies otherwise.[38] The state and some local units of government have entered into intergovernmental cooperative agreements with a tribe for various purposes.

Wisconsin does not have a state counterpart to the BIA. There is no one state agency assigned primary responsibility for interacting with tribes. The state executive branch negotiates gaming compacts. Various state executive branch agency officials have on-going relationships with tribal officials with respect to programs administered by their state agency. For example, the Department of Health Services contracts with tribes for various services. Executive Order 39 directs cabinet agencies, whenever feasible and appropriate, to consult with tribal governments regarding state action or proposed state action that is anticipated to directly affect a tribe or tribal members. Consultation policies have been developed under the Wisconsin State Tribal Relations Initiative and are available at: http://witribes.wi.gov/ under "Government to Government."

Legislative Branch

The Wisconsin Legislature as a whole does not have a formal relationship with tribal governments. However, Wisconsin statutes require the Joint Legislative Council to establish the Special Committee on State-Tribal Relations (formerly known as the American Indian Study Committee) in every biennium to study issues relating to American Indians and tribes in Wisconsin and develop specific recommendations and legislative proposals relating to these issues. By statute, the Special Committee consists of legislators and public members who are recommended by the tribes and GLITC. The committee meets periodically and has developed many proposals over the years. The activities of the committee may be followed on its website at: http://www.legis.state.wi.us/lc under "Study Committees." In addition, in the past four years, the tribes have been invited each year to present a State of the Tribes address to the Legislature.

Judicial Branch

Wisconsin statutes provide that a state court must give full faith and credit to the judicial records, orders, and judgments of a tribal court in Wisconsin under certain circumstances.[39] In *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians,*[40] the majority opinion of the Wisconsin Supreme Court interpreted this statute as applying in situations when a tribal court holds proceedings and enters a judgment and a party then goes to state court to enforce the judgment. However, the Court held that this full faith and credit statute does not apply when a tribal court and state court are exercising concurrent jurisdiction over the same dispute involving the same parties at the same time. In such cases, principles of comity require that the courts consider various factors listed by the Supreme Court to decide, in the spirit of cooperation, not competition, which court should proceed and which court should abstain and cede its jurisdiction.[41]

In response to the first *Teague* case, in December 2001, the 10th Judicial Administrative District of Wisconsin (consisting of Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Eau Claire, Polk, Rusk, St. Croix, Sawyer, and Washburn Counties) and four Chippewa bands in that district (Bad River, Red Cliff, St. Croix, and Lac Courte Oreilles) signed a protocol for allocating jurisdiction over a controversy when both the tribal court and state court have jurisdiction and the same issue is pending in both courts at the same time. In July 2005, the 9th Judicial Administrative District (consisting of Florence, Forest, Iron, Langlade, Lincoln, Marathon, Menominee, Oneida, Price, Shawano, Taylor, and Vilas Counties) and five tribes (Bad River Band, Forest County Potawatomi Community, Lac du Flambeau Band, Sokaogon Chippewa Community (Mole Lake), and the Mohican Nation Stockbridge-Munsee Band) also signed a protocol allocating jurisdiction and listing the factors to be considered in determining which court exercises jurisdiction. The protocols are available at: http://www.wicourts.gov/about/committees/tribal.htm.

Beginning in the late 1990s, the Wisconsin Supreme Court, the Wisconsin Tribal Judges Association, and the federal judges in Wisconsin have made concerted efforts to bridge the gaps of understanding, respect, and working relationships between courts, especially between the state courts and tribal courts in Wisconsin. In 2005, Wisconsin Supreme Court Chief Justice Shirley Abrahamson established the State-Tribal Justice Forum to promote and sustain communication, education, and cooperation among tribal and state court systems.

In response to Petition 07-11 filed on behalf of the State-Tribal Justice Forum with the Wisconsin Supreme Court, the Supreme Court created a rule [s. 801.54, Stats.], effective January 1, 2009, and subsequent amendment effective July 1, 2009, which in general authorized a circuit court to transfer a civil action to a tribal court when the courts have concurrent jurisdiction. Unless all parties agree to the transfer, the circuit court is required to consider all relevant factors, including factors specified in s. 801.54, in exercising its discretion as to whether to transfer the civil action.

Additional References

1. http://www.legis.state.wi.us/lc/publications/im/IM_2010_12.pdf.

2. http://www.legis.state.wi.us/lc. Website of the Legislative Council staff which lists the study committees of the Joint Legislative Council, including the Special Committee on State-Tribal Relations.

3. http://witribes.wi.gov/. Website of the Division of Intergovernmental Relations, Division of Administration, providing information about the Wisconsin State Tribal Relations Initiative and other information about tribes in Wisconsin.

4. http://www.glitc.org. Website of the GLITC. This website provides links to the websites of all of the tribes in Wisconsin.

5. http://www.glifwc.org. Website of the GLIFWC.

6. http://www.judicare.org/ilo/index.html. Website of Wisconsin Judicare, Indian Law Office. This website provides links to tribal websites, including information about tribal courts in Wisconsin.

7. http://www.ncsl.org/programs/statetribe/statetribe.htm. Website of the National Conference of State Legislatures (NCSL) relating to state-tribal relations, including links to various NCSL publications and resources.

Glossary of Terms and Abbreviations

BIA – Bureau of Indian Affairs. Agency in the U.S. Department of Interior primarily responsible for Indian Affairs.

GLIFWC – Great Lakes Indian Fish and Wildlife Commission. Organization composed of six Chippewa bands in Wisconsin and five Chippewa bands in Michigan and Minnesota which concentrates on Chippewa treaty-guaranteed rights to hunt, fish, and gather.

GLITC – Great Lakes Inter-Tribal Council. Consortium of federally recognized tribes in Wisconsin (currently not including the Ho-Chunk Nation) and one Michigan tribe.

Indian country – all land on reservations, all dependent Indian communities, and all Indian allotments.

P.L. 280 – Public Law 280. 1953 federal law transferring federal criminal and civil jurisdiction (but not civil regulatory jurisdiction) to several states (including Wisconsin, other than on the Menominee Reservation) and providing other states the option of assuming such jurisdiction.

Trust land – land the title to which is held by the United States in trust for a tribe or American Indian.

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[1] Trust land is discussed on page Q-3.

[2] Of these, 48,322 individuals identified themselves as of one race in the category of "American Indian or Alaska Native," which is about 0.9% of the total Wisconsin population.

[3] Some fee lands on certain reservations may be tax-exempt based on provisions of a treaty. Moreover, fee land may be tax-exempt for a reason unrelated to Indian law, for example, if it is owned by certain nonprofit organizations, such as a church, or by the federal, state, or local government.

[4] Just as fee land may be owned by more than one individual, land may be held in trust for more than one tribal member.

[5] Because of its importance, the U.S. Supreme Court has considered several cases relating to the existence of a reservation and its boundaries.

[6] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

[7] Presidential memorandum, November 5, 2009.

[8] In general, "Indian country" is defined as: all land on reservations, all dependent Indian communities, and all Indian allotments. In Wisconsin, Indian country likely consists of all land on reservations and all off-reservation trust land.

[9] The Chippewa also reserved certain lands and ceded other lands in Minnesota and Michigan in treaties dating from 1836 to 1854.

[10] GLIFWC, located in Odanah, Wisconsin, is comprised of the six Chippewa bands in Wisconsin and five Chippewa bands in Minnesota and Michigan. GLIFWC's purposes are to: (a) protect and enhance treaty-guaranteed rights to hunt, fish, and gather in the ceded territory; (b) protect and enhance treaty-guaranteed fishing on the Great Lakes; and (c) provide cooperative management of these resources.

[11] In addition to P.L. 280, Congress has occasionally passed laws relating to criminal jurisdiction on specific reservations, typically in connection with land claim settlement acts. For the United States as a whole, criminal jurisdiction in Indian country has been likened to a "jurisdictional maze" because of: reservation-specific enactments, the diversity between mandatory versus optional states under P.L. 280, exceptions for certain reservations under P.L. 280, the varying approaches taken by the optional P.L. 280 states (including not exercising the option in some cases or exercising the option only for certain crimes, on certain reservations, or in certain counties), and the possibility of state retrocession of jurisdiction.

[12] In this section, references to state courts and state law enforcement officials include county circuit courts and law enforcement officials of local governments as they are political subdivisions of the state.

[13] P.L. 280 does not transfer jurisdiction to a state if state law regulates conduct (civil regulatory law), rather than prohibits conduct (criminal prohibitory law). In most cases, it is clear whether an activity is criminal prohibitory (thus, subject to P.L. 280) or civil regulatory (thus, not subject to P.L. 280). However, in some cases, the answer is not always clear and the matter is sometimes litigated.

[14] The fact that a state court has jurisdiction when only non-Indians are involved is based on decisions of the U.S. Supreme Court, rather than a congressional delegation of authority to the states.

[15] *Nevada v. Hicks*, 533 U.S. 353 (2001).

[16] *Burgess v. Wisconsin*, 2003 WI 71, 262 Wis. 2d 354, 665 N.W.2d 124 (2003), *cert. denied*, 541 U.S. 961 (2004).

[17] In contrast to the law relating to criminal jurisdiction where Indian country includes all the land on reservations, including fee land and rights-of-way, for civil jurisdiction, the courts have distinguished between fee land and trust land and between rights-of-way that are state highways versus tribal roads.

[18] This is in contrast to criminal jurisdiction where the distinction is Indian versus non-Indian, instead of tribal member versus non-tribal member.

[19] *Strate v. A-1 Contractors*, 520 U.S. 438 (1997).

[20] An example of an express law to the contrary is a treaty reserving off-reservation rights to hunt, fish, and gather.

[21] However, specialized statutes may vary this result. For example, federal statutes that provide that tribes may be treated as states under certain circumstances with respect to certain environmental laws may result in tribal law having an impact off the reservation.

[22] 480 U.S. 202 (1987).

[23] 122 Wis. 2d 211, 361 N.W.2d 699 (1985).

[24] 463 U.S. 713 (1983).

[25] Whether a tribal member resides on or off a reservation has sometimes been pertinent to a court for certain kinds of taxes, such as income tax, in determining whether the legal incidence falls in Indian country.

[26] 450 U.S. 544 (1981); also see *Plains Commerce Bank v. Long Family Land and Cattle Co.,* 128 S. Ct. 2709 (2008) (further discussing *Montana* and holding that a tribal court did not have jurisdiction to hear a claim against a non-tribal member relating to discrimination regarding the sale of fee land on a reservation because the tribe did not have authority to regulate a non-tribal member's sale of fee land on a reservation).

[27] 533 U.S. 353 (2001).

[28] DOR may enter into an agreement with a tribe to provide for refunding all of the cigarette tax imposed on cigarettes sold on that tribe's reservation to enrolled members of that tribe who reside on that reservation. [s. 139.325, Stats.] For cigarettes sold to others, DOR may enter into an agreement with a tribe to provide for refunding to the tribal council 70% of the cigarette tax collected on that tribe's reservation or land placed in trust for that tribe before January 2, 1983, if certain conditions are met. [s. 139.323, Stats.]

[29] 517 U.S. 44 (1996).

[30] 25 C.F.R. ss. 291.1 to 291.15.

[31] s. 14.035, Stats.

[32] *Panzer v. Doyle*, 2004 WI 52, ¶ 67, 271 Wis. 2d 289, 680 N.W.2d 666 (2004).

[33] ch. 569, Stats.

[34] 2004 WI 52, 271 Wis. 2d 289, 680 N.W.2d 666. Legislative Council Information Memorandum 04-6, *Wisconsin Supreme Court Decision on Indian Gaming Compact [*Panzer v. Doyle*]*, May 27, 2004, describes the court's decision.

[35] 2006 WI 107.

[36] ss. 48.028 and 938.028, Stats.

[37] s. 20.002 (13), Stats.

[38] s. 66.0301 (2), Stats.

[39] s. 806.245, Stats.

[40] 2003 WI 118, ¶ 67, 265 Wis. 2d 64, 665 N.W.2d 899 (2003). See, also, *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*, 236 Wis. 2d 581, 612 N.W.2d 709 (2000), when the court first dealt with this case in which a suit over a contract was brought in state court and also in tribal court while the state court action was pending.

[41] *Teague*, 2003 WI 118, ¶ 71.

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Chapter R

Transportation

The state plays a large role in the provision and administration of transportation in Wisconsin. The focus of this chapter is on motor vehicle transportation on highways. Included are a summary of the state's motor vehicle statutes and related Wisconsin Administrative Code provisions, a description of the framework of the Department of Transportation (DOT), examples of the "rules of the road" for motor vehicles, information on vehicle and driver requirements, and a summary of the state's highway system. The chapter also briefly discusses transit services and other modes of transportation in the state and lists some additional transportation resources.

Introduction

Wisconsin's motor vehicle laws are primarily contained in chapters 340 to 349 and 351 of the Wisconsin Statutes (the motor vehicle code) and the DOT rules in the Wisconsin Administrative Code that interpret and administer these statutes.

The following is a list of where key statutory provisions in the motor vehicle code may be found. More detail on many of these provisions is provided in subsequent sections of this chapter:

Definitions. Most of the defined terms used in the motor vehicle code are contained in ch. 340, Stats.

Registration of Vehicles. Chapter 341, Stats., contains the statutes related to registration of vehicles and vehicle license plates.

Vehicle Title. Chapter 342, Stats., includes statutes specifying how vehicles are titled and transferred in this state.

Operator's (Driver's) License. Chapter 343, Stats., provides for the administration of the state's driver licensing system, including general driver's licenses, graduated and probationary licenses, commercial licenses, and occupational licenses.

Traffic Tickets. Chapter 345, Stats., contains statutes that control the issuance, form, and processing of traffic citations.

"Rules of the Road." Chapter 346, Stats., lists most of the traffic rules that govern the operation of vehicles on highways, including provisions relating to traffic signs and signals, parking requirements, speed restrictions, drunk driving, pedestrians, and bicycles.

Vehicle Equipment. Chapter 347, Stats., contains requirements for equipment that vehicles must have and the use of such equipment. This includes lighting, brakes, horns, mufflers, mirrors, and safety glass.

Vehicle Weight Limits and Size Limits. Chapter 348, Stats., lists rules controlling the size, load, and weight restrictions for vehicles, which can depend on axle number and configurations, type of highway traveled, time of year of travel, and type of load the vehicle may be carrying.

Traffic Law Authority of Local Governments. Chapter 349, Stats., provides local units of government with limited authority to control and enforce traffic law, including the authority to adopt traffic regulations, place signs, control traffic movement, set speed limits, regulate parking, use parking meters, set weight limits, and authorize use of neighborhood electric vehicles. The chapter also requires the motor vehicle code to be uniform across the state, and most local traffic regulations to be "in strict conformity" with state law.

Electronic access to these Wisconsin Statutes is available at: http://www.legis.state.wi.us/rsb/stats.html.

Administrative Rules. The DOT administrative rules that interpret and administer the motor vehicle code are chs. Trans 1 through 515. For more information about Wisconsin's administrative rules process, see the chapter of this Briefing Book titled "Review of Administrative Rules" in Part I. Electronic access to the Administrative Code is available at: http://www.legis.state.wi.us/rsb/code.htm.

Department of Transportation

Wisconsin DOT. The Wisconsin DOT is responsible for the planning, promotion, and protection of the transportation systems in the state. Its major responsibilities involve highways, motor vehicles, motor carriers, traffic law enforcement, railroads, bicycles and pedestrians, waterways, mass transit, and aeronautics.

DOT works with several federal agencies in the administration of federal transportation aids and all local governments in the administration of local aids. DOT also cooperates with departments at the state level in travel promotion, consumer protection, environmental analysis, and the provision of transportation services for elderly and handicapped persons.

DOT is organized into three executive offices (Public Affairs; Policy, Budget, and Finance; and General Counsel) and the following five divisions:

- Division of Transportation System Development.
- Division of Transportation Investment Management.
- Division of Business Management.
- Division of Motor Vehicles.
- Division of State Patrol.

More detailed information on the divisions and information for programs offered is available at: www.dot.wisconsin.gov/.

Rules of the Road

Many of the laws that govern the operation of various types of vehicles on public highways can be found in ch. 346, Stats. These traffic laws include provisions requiring vehicle operators to obey traffic control officers and traffic control signs and signals, the rules establishing rights-of-way of vehicles in various situations, speed limits, rules governing emergency vehicles, pedestrian responsibilities, parking requirements, reckless driving rules, text messaging and emailing while driving, and special rules related to bicycles and low-speed vehicles. Chapter 346 also contains more obscure rules, such as what to do when passing or meeting a frightened animal, the right-of-way of livestock on a highway, a prohibition on crossing a fire hose, and the rules governing transporting buildings on highways.

Traffic Tickets

Law enforcement agencies in the state have been issuing "uniform traffic citations" for moving traffic violations for decades. To provide additional uniformity for traffic citations, the Wisconsin Judicial Conference sets "deposit" amounts for traffic offenses, many of which have a range of statutory penalties. This deposit amount is the total dollar amount that a law enforcement officer writes on a traffic citation after adding statutory fees and other costs.

As an example, the statutory penalty for speeding in excess of a 65-mile per hour (MPH) speed limit is from $50 to $300. The Judicial Conference has set a range of deposit amounts for violations of this offense, the amount of which depends on how fast a person was driving. For instance, the deposit amount for a citation issued to a person who was traveling 76-80 MPH in a 65 MPH zone would be $50 and the deposit amount for a person traveling 100 MPH or faster in the same zone would be $300.

Each citation amount, regardless of the jurisdiction that issued the citation, includes a penalty surcharge (26% of the deposit amount) and a jail surcharge/crime lab drug surcharge ($18). Citations to be processed in county circuit court also include a justice information system surcharge/court support services surcharge ($80) and circuit court costs ($25). Citations to be processed in municipal court do not include the justice information system surcharge/court support services surcharge but do include court costs which the jurisdiction can set from $15 to $28 per citation.

Therefore, the dollar amount written on a citation for the 76-80 MPH violation example would be $186 if the citation was to be processed in circuit court and $109 if the citation was to be processed by a municipal court that collects the maximum court costs allowed. The dollar amount on the citation for the 100 MPH or faster violation example would be $501 for circuit court or $424 for municipal court.

The Judicial Conference publishes a comprehensive bond schedule which outlines the penalty ranges, deposit amounts, fees, and costs for moving violations, and is available online at: http://www.wicourts.gov/about/pubs/supreme/docs/bondsched08.pdf. To see how the citation amount was calculated for the speeding examples above, see page 42 and the final page of the bond schedule.

Demerit Points

In addition to monetary penalties, demerit points are assessed against a person's driving record when the person is convicted of a moving traffic violation. When 12 or more demerit points are accumulated by a driver in one year, the driver's license is suspended for a minimum of two months. Demerit points are doubled for traffic violations committed by a person with a probationary license who has had more than one traffic violation.

The total demerit points assessed to a driver may be reduced in certain ways including taking an approved traffic safety course. The demerit points for particular offenses are listed in the Judicial Conference's bond schedule (see above). For the two speeding examples discussed above, the demerit points are four and six points, respectively. Convictions remain on the driver's record for five years but some alcohol-related and some commercial violations remain on the record for 10 years to life.

Habitual Traffic Offenders

Drivers who accumulate four or more "major" traffic offense convictions or a combination of 12 minor and major convictions in a five-year period are considered "habitual traffic offenders." Major offenses include operating a vehicle while intoxicated (OWI), eluding an officer, and reckless driving. The driver's license of a habitual traffic offender is revoked for five years.

Wisconsin's Drunk Driving Laws (OWI)

In Wisconsin, it is illegal to operate a motor vehicle while under the influence of an intoxicant, a controlled substance, any other drug which renders a driver incapable of safely driving, or any combination of these (OWI). This prohibition is found in s. 346.63, Stats., and subsequent sections. OWI and OWI-related offenses can be found on page 44 of the Judicial Conference's bond schedule, discussed above.

The prohibited blood alcohol concentration (BAC) for operators of vehicles in Wisconsin is 0.08%. Penalties for OWI and OWI-related laws include driving privilege sanctions, monetary penalties, imprisonment, vehicle seizure or immobilization, and required ignition interlock device installation. The severity of penalties depends on how many OWI-related offenses the person has committed, the harm caused during intoxicated operation, and other penalty enhancers, such as the presence of a child younger than 16 years of age.

2009 Wisconsin Act 100 made a number of significant changes in the laws relating to operating a motor vehicle under the influence of an intoxicant. For a detailed description of the changes, please see the 2009 Wisconsin Act 100 Act Memo: http://www.legis.state.wi.us/lc/publications/act/2009/act100-sb066.pdf.

Implied Consent

Under Wisconsin's "implied consent" law, a person who operates a motor vehicle upon a public highway in this state is generally deemed to have consented to submit to a chemical test to determine his or her BAC. A person who refuses to submit to a chemical test is subject to strict penalties such as the loss of driving privileges for one year, and the person may still be prosecuted for the related OWI violation. Refusal to submit to a chemical test is included when calculating the number of prior OWI violations for the purpose of determining the OWI offense to be charged for a subsequent violation.

For penalty information for specific OWI offenses and for refusal of a chemical test, see the following: http://www.dot.state.wi.us/safety/motorist/drunkdriving/offenses.htm.

Notes: OWI laws for snowmobile operators are in s. 350.101, Stats., and subsequent sections. OWI laws for all-terrain vehicle (ATV) operators are in s. 23.33 (4c), Stats.

Convictions for traffic law violations generally remain on a person's driving record for five years from the date of conviction. However, alcohol-related violations and some commercial violations remain on the record for 10 years to life.

Licensing of Drivers

Licensing of Drivers in General

To obtain a Wisconsin driver's license to operate a car, a person must generally be at least 16 years old, provide documentation of the person's identity and legal presence in this state, and must provide other information. The person also must pass knowledge, vision, and skills tests. DOT may require particular drivers to undergo medical or other special examinations. The regular license authorizes the operation of cars and light trucks ("Class D" vehicles). A driver's license must generally be renewed every eight years.

Note: There are exceptions to the general requirement that a driver be licensed to operate a motor vehicle on public highways, including armed services personnel operating federal government vehicles, and drivers operating farm equipment for certain purposes.

If a driver's license has been suspended or revoked, the following DOT website may be used to determine eligibility for reinstatement: http://www.dot.wisconsin.gov/drivers/drivers/eligibility.htm.

Instruction Permit

A person is generally eligible to receive an instruction permit if the person is 15-1/2 years of age or older, passes a knowledge test, and vision screening. A driver operating a vehicle under an instruction permit must obey restrictions on who may and who must accompany the driver. (See below for additional requirements for younger drivers under Wisconsin's graduated driver licensing laws.)

An instruction permit for the operation of Class D vehicles is generally valid for one year. Instruction permits for motorcycle operation (Class M vehicle) and commercial vehicle operation (Class A, B, or C) are also available and may have different age limits and be valid for different lengths of time than Class D instruction permits.

Probationary License

Most new driver's license holders are issued a probationary license. Demerit points double for traffic violations committed by a person with a probationary license. Probationary licenses generally expire two years from the date of the driver's next birthday.

Graduated Driver Licensing Requirements

Wisconsin has special graduated driver licensing (GDL) requirements for persons between 15-1/2 and 18 years old, including the following:

Instruction Permit. In addition to the general requirements for drivers with instruction permits identified above, drivers under the age of 18 must be enrolled in or have completed an approved driver education course to receive an instruction permit. These drivers must also follow additional restrictions on who may accompany the driver.

Probationary License for Drivers Under 18. In addition to the general requirements for probationary licenses described above, drivers under the age of 18 must have held an instruction permit for at least six months and may not commit a moving violation during the six months prior to receiving a probationary license. The driver must have completed at least 30 hours of behind-the-wheel training, must have completed an approved driver education course, and must be enrolled in a school program or have completed high school. Applications for any license by a person under age 18 must be signed by a parent, guardian, or an adult sponsor.

During the first nine months following issuance of a probationary Class D license, or until the driver turns 18 years old, the driver must meet certain restrictions on who may accompany the driver (generally not to exceed more than one nonfamily member) in a vehicle and what times of day the driver may operate a vehicle for various

purposes. These restrictions are extended for six months (but not past the driver's 18th birthday) if during this initial nine-month period or a prior extension of this period the driver is convicted for a moving violation, has his or her probationary license suspended or revoked, or otherwise violates the terms of these restrictions.

For more information about GDL requirements, see the DOT website at: http://www.dot.state.wi.us/drivers/drivers/gdl/index.htm.

Commercial Driver's Licenses

Commercial driver's licenses (CDLs) are required in Wisconsin to operate vehicles that weigh over 26,000 pounds, carry certain hazardous materials, or are designed or used to carry 16 or more persons including the driver. Special federal and state regulations govern the operation of commercial motor vehicles. To receive a CDL, a driver must pass a knowledge test and driving skills test in the type of vehicle they drive. Additional testing requirements are required for certain types of vehicles. Strict rules apply to CDL holders related to alcohol and serious traffic violations.

A driver is not eligible to obtain a CDL until age 18 for travel within the state and must be age 21 for an unrestricted CDL which allows interstate travel. Drivers are not required to have a CDL to operate certain commercial vehicles in certain situations, such as operation by fire fighters and farmers, and operation of recreational vehicles.

For more information about CDLs, see the DOT website at: http://www.dot.wisconsin.gov/drivers/drivers/apply/types/commercial.htm.

Occupational License

A person whose driving privileges are suspended or revoked may be eligible for a restricted driver's license called an "occupational license." An occupational license limits where and when you can drive. An occupational license holder may only drive to and from work, church, school, or other places indicated on the license, during specific times of the day. An occupational license may not be used for recreational purposes and the total driving time is limited to 12 hours each day and no more than 60 hours per week. Occupational licenses cannot be issued for the operation of commercial vehicles.

A driver's eligibility for an occupational license depends on the reason that the driver's license was revoked or suspended. For instance, a person whose license is revoked under the habitual traffic offender law is not eligible to apply for an occupational license until after a two-year waiting period.

A person can check his or her eligibility for an occupational license at the DOT's website at: https://trust.dot.state.wi.us/occsin/occsinservlet?whoami=occsp1.

Vehicles

Vehicle Registration and License Plates

A person must apply for a certificate of title for most vehicles upon taking ownership of a vehicle, regardless of whether the vehicle will be immediately operated on public highways. In addition, if the person intends to operate the vehicle on public highways, the vehicle must be registered and license plates must be displayed on both the front and rear of most vehicles if two plates are issued (temporary license plates may be required in some situations). An applicant may be allowed to transfer license plates between certain vehicles.

The registration for most vehicles must be renewed every year. DOT sends the vehicle owner notice of the date by which a vehicle's registration must be renewed. This notice will list any unpaid parking violations (including applicable towing and storage charges) and other unpaid judgments against the registrant. The vehicle

may not be registered until these are addressed. The general initial and yearly registration fee for passenger cars and light trucks is currently $75.

If a vehicle is purchased from a licensed dealer in Wisconsin, the dealer will generally process the title and registration application with the vehicle owner. If a vehicle is purchased privately, the purchaser is responsible for applying to DOT for a certificate of title and registration of the vehicle. The seller must provide the buyer with an original, assigned title to the vehicle. To assign the title, the seller must complete the odometer disclosure and provide any other required information for assignment on the back of the title, and provide the buyer with a lien release for each lien listed on the title. Most importantly, the title must be signed by the seller(s).

"Vanity" and Special License Plates

Upon application for initial registration or registration renewal, an applicant may opt to receive license plates with a personalized registration number. This "number" can be letters or numbers or a combination of the two, up to a total of seven characters or spaces for regular vehicles, and may not duplicate a license plate number for another Wisconsin vehicle. An applicant may also choose from a list of special license plates offered by DOT, including license plates for vehicle collectors, antique vehicles, military service, and other special license plates. The applicant for some special license plates must meet certain eligibility requirements. Some special license plates serve as a fundraising mechanism for certain organizations, including "Golf Wisconsin," "Ducks Unlimited," and "Green Bay Packers" plates. All personalized license plates and most special license plates require the payment of additional fees.

Certain vehicles are exempt from the registration requirements, including some farm equipment, snowmobiles, Segway scooters, bicycles, and even amphibious vehicles like the Wisconsin Ducks used in the Wisconsin Dells area. There is a separate registration system administered by the Department of Natural Resources (DNR) for ATVs.

For more information about applying for vehicle title and registration, see the DOT's website at: http://www.dot.wisconsin.gov/drivers/vehicles/index.htm.

Disabled Parking License Plates and Placards

A vehicle lawfully displaying disabled license plates, disabled veteran license plates, or a disabled placard, and operated by the disabled person or another qualified operator for the use of the disabled person, may exercise certain parking privileges. Such privileges include an exemption from ordinances of general application imposing time limitations of 1/2 hour or more and an exemption from parking meter payment requirements for parking spots with such time limitations (ordinances with specific time limits for disabled parking may be applicable). The vehicle may also be parked in marked disabled parking spots reserved for this purpose.

Disabled license plates are available to state residents who submit a statement from one of a list of certain health care professionals every four years certifying that the person has a disability that limits or impairs his or her ability to walk. These plates are also available to licensed drivers on whom a disabled person is regularly dependent for transportation and to employers that provide a vehicle for a disabled employee.

Disabled veteran license plates are available to veterans who submit a statement from the Department of Veterans Affairs (DVA) every four years certifying that the veteran has a disability that limits or impairs his or her ability to walk because of injuries sustained while in the active U.S. military service. Disabled veteran license plates and the renewal of such plates are free.

Up to two disabled placards are available to people eligible for disabled license plates or disabled veteran license plates (placards for temporary disability are also available). A second placard is allowed when the individual does not have disabled license plates or disabled veteran license plates. Placards for nontemporary disabilities are valid for four years. While a disabled placard is in use, the disabled person is required to show the statement verifying the person's disability provided by the health professional or DVA to a traffic officer upon request.

For more information about disabled parking, see the DOT website at: http://www.dot.wisconsin.gov/drivers/vehicles/disabled/.

Vehicle Equipment Standards

Chapter 347, Stats., and ch. Trans. 305, Wis. Adm. Code, prescribe numerous equipment standards for motor vehicles related to vehicle identification numbers, various types of vehicle lights (head lights, turn signals, tail lights, and brake lights), mirrors, safety glass, brakes, bumpers, horns, seat belts, and odometers. Additional equipment standards also apply to heavy trucks, trailers, and semi-trailers. These chapters also set requirements for how and when certain equipment is to be used, including the requirement that headlights and certain other lights be illuminated during the "hours of darkness."

Vehicle Size and Weight Limits

Wisconsin has laws controlling the size, load, and weight restrictions for vehicles. A permit is typically required if vehicle dimensions (plus the load on the vehicle) exceed 8-1/2 feet wide, 13-1/2 feet tall, or 40 to 75 feet long depending on the vehicle configuration. Loads also cannot extend beyond the fender line on the left side of the vehicle, more than six inches beyond the right side of the vehicle (not including some safety equipment and other equipment), or more than three feet forward of the front of the vehicle without a permit. Certain exceptions to the vehicle size restrictions apply.

Weight limits depend on a number of factors, including the type of highway, the number and configuration of axles on a vehicle, the type of cargo, the time of year, and other factors. Vehicles must comply with both the gross vehicle weight requirements and individual weight requirements for particular axles or wheels.

A single trip, consecutive month, or annual permit may be available for a vehicle that exceeds statutory weight limits. Permits may not be issued if a load can be divided or reduced to comply with statutory limits.

Vehicles carrying cargo like certain raw forest products are allowed to carry additional weight in winter, without a permit, when roads are frozen and damage to roads is less likely. DOT makes a "frozen road declaration" triggering these increased limits for highways under its jurisdiction. This declaration usually extends from approximately mid-December until late February or early March. The frozen road declarations for county highways and other local highways are made by local maintenance authorities.

Conversely, the travel of vehicles under overweight permits is restricted during spring thaw due to the unstable condition of a roadway during this period, and allowed vehicle weight may also be restricted for other special or temporary conditions. Special weight limits can also be established for particular bridges and culverts.

For more information on oversize/overweight permits, see the DOT website at: http://www.dot.wisconsin.gov/business/carriers/osowgeneral.htm.

For more information on seasonal weight limits, see the DOT website at: http://www.dot.wisconsin.gov/business/carriers/seasonal.htm.

Vehicle Insurance

Beginning on June 1, 2010, drivers and owners of motor vehicles are required to show proof of insurance at traffic stops/accidents if requested by law enforcement. Proof is not required for trailers or semi-trailers.

Operating a motor vehicle without insurance may result in a fine of up to $500. Drivers and owners who fail to show proof of insurance at the time of the stop/accident may be fined up to $10. Offering proof that is found to be fraudulent may result in a fine of up to $5,000.

For more information about proof of insurance requirements, see the DOT website at: http://www.dot.wisconsin.gov/drivers/vehicles/ins-req.htm.

Highways

State Trunk Highway Program

Jurisdiction over highways in Wisconsin is shared by the state, counties, cities, villages, and towns. The state has jurisdiction over major highways that function as corridors for interstate and interregional travel, called the state trunk highway system. DOT is responsible for the construction, improvement, and maintenance of the state trunk highway system and for improvement on connecting highways under local jurisdiction. For maps of the state trunk highway system, see the following DOT website: http://www.dot.wisconsin.gov/travel/maps/sth.htm.

For detailed information on the state trunk highway system, including the structure and scope of the program, its administration by DOT, a description of the main program components, and information on program financing, see the following Informational Paper prepared by the Legislative Fiscal Bureau (LFB): http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.

County and Local Highways

Counties and other local governments share responsibility for the remainder of the highways in Wisconsin, including highways that serve intra-regional traffic purposes, residential municipal streets, and town roads, and may share responsibility with the state for connecting highways. For information about local transportation assistance programs, see the DOT website at: http://www.dot.wisconsin.gov/localgov/ and the following Informational Paper prepared by the LFB: http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.

Transit

There are two classifications of transit systems in Wisconsin, defined by the type of service they operate and to whom the service is available.

First, public transit systems have regular operating schedules and established fares and are available to anyone who chooses to use the service. Currently, public transit is available in 54 of our 72 counties and in five reservations. Most public transit systems in Wisconsin primarily serve a single municipality, although some serve a broader region. 2009 Wisconsin Act 28, the Biennial Budget Act, authorized the creation of regional transit authorities (RTAs) in certain areas of the state. Please see Wisconsin Legislative Council Information Memorandum 2010-03 at http:// www.legis.state.wi.us/lc/publications/im/IM_2010_03.pdf for information on RTAs in Dane County, Chippewa Valley Area, and Chequamegon Bay Area. For information on RTAs in Southeastern Wisconsin, please see Wisconsin Legislative Council Information Memorandum 2010-04 at www.legis.state.wi.us/lc/publications/im/IM_2010_04.pdf.

Second, specialized transportation services are available for use by specific groups (e.g., the elderly or persons with disabilities) and usually are limited to certain times, trip purposes, or locations.

Both public transit systems and specialized transit services are supported by a combination of local, state, and federal funds. DOT oversees the administration of over $175 million in state and federal aid for public and specialized transit services. DOT also administers and awards three competitive federal grant programs, which provide additional federal funds to Wisconsin to address the transit needs of low-income workers, disabled riders, and communities with limited local funding for transit.

For more information about transit in Wisconsin, see the DOT's website at: http://www.dot.wisconsin.gov/travel/transit/ and http://www.dot.wisconsin.gov/localgov/transit/specialized.htm.

Other Modes of Transportation

Although motor vehicle travel on highways is the focus of this chapter, there are other modes of transportation in which the state plays a role. For more information on aeronautics, see ch. 114, Stats., or see the DOT website at: http://www.dot.wisconsin.gov/business/engrserv/airports/getting-to-know-us.htm.

For more information on railroads, see the DOT website at: http://www.dot.wisconsin.gov/modes/rail.htm, or see the website for the Office of the Commissioner of Railroads at: http://ocr.wi.gov/.

For information about recreational transportation by water, see the DNR website at: http://dnr.wi.gov/org/es/enforcement/safety/boatsaf.htm and for information about freight transportation by water, see the DOT website at: http://www.dot.wisconsin.gov/modes/waterways.htm.

For information about bicycling in Wisconsin, see the DOT website at: http://www.dot.wisconsin.gov/modes/bicycles.htm.

Additional References

1. For information on transportation finance prepared by the Legislative Fiscal Bureau, see: http://www.legis.state.wi.us/lfb/Informationalpapers/info.html. For information on Wisconsin's motor vehicle fuel tax, see: http://www.legis.state.wi.us/lfb/Informationalpapers/info.html.
2. For more information and statistics related to transportation funding in Wisconsin and the DOT budget, see: http://www.dot.state.wi.us/about/budget.htm.
3. To view other topics on DOT's "quick facts and statistics" page, go to: http://www.dot.wisconsin.gov/library/services/ref/quick.htm.
4. For other publications that describe programs and services under the jurisdiction of the DOT, see: http://www.dot.state.wi.us/siteindex/index.htm.
5. For a list of DOT Service Centers, see: http://www.dot.state.wi.us/about/locate/dmv/scmap.htm.
6. The ***State of Wisconsin Blue Book*** contains information regarding our state government in Wisconsin, including DOT. The *Blue Book* is compiled by the Legislative Reference Bureau and published in odd-numbered years; see http://www.legis.state.wi.us/lrb/bb/09bb/index.htm.

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Wisconsin Legislator Briefing Book 2011-12

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Chapter S

Utilities and Energy

Utility services, such as electric power, natural gas, telephone, and water service, are easy to take for granted--they are generally available, reliable, and affordable. But they are also absolutely central to the functioning of our modern society. That general availability, reliability, and affordability did not come about by accident. It is the result of decades of development by the industries that provide these services and careful regulation by the state and federal governments. What is more, the industries continue to find innovative ways to provide services to the public, as well as finding entirely new services to provide, and regulators continue their efforts to ensure that these services are as universally available, reliable, and affordable as possible.

This chapter is in two parts. The first part discusses utility policy. It begins with a description of traditional utility regulation and then discusses recent changes and current issues in the regulation of telecommunications and electric utilities. The second part discusses energy policy and programs. It begins with a description of state energy policies adopted by the Legislature and then provides an overview of state programs that address energy conservation, renewable energy resources, energy services for low-income households, and energy use by state and local governments.

Traditional Utility Regulation

A public utility is "a business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation such as fixing rates, standards of service and provision of facilities." [Webster's 3rd New International Dictionary Unabridged (1993).]

The industries that are regulated in this manner are those that provide a vital service to society and that are considered to be "natural monopolies"; that is, because of the massive investments in infrastructure required for these industries, it is perceived to be in the public interest to allow a single company to provide the service as a regulated monopoly, rather than having consumers pay for the

construction of multiple systems by competing service providers. The public utilities that are regulated by the Public Service Commission (PSC) are electric power and natural gas providers, telecommunications companies, and water and sewer utilities.

The purpose of traditional utility regulation is to protect the public interest while allowing a private concern to act as a monopoly in providing a necessary service.

Regulation is designed to ensure that the utility provides adequate service without using its monopoly position to obtain unjust enrichment.

The purpose of traditional utility regulation is to protect the public interest while allowing a private concern to act as a monopoly in providing a necessary service. It is designed to ensure that the utility provides adequate service without using its monopoly position to obtain unjust enrichment. In order to be considered adequate, utility service must be available to all who need or want it, it must be reliable, it must be safe, and it must be reasonably priced. To be considered reliable, the service must be available when needed or wanted, it must be sufficient, and it must meet quality standards. The PSC has a number of tools available to ensure that service meets these various standards.

In many cases, a regulated utility must obtain PSC approval prior to taking major actions, such as changing rates, commencing construction of major facilities, issuing stocks or bonds, or entering into business agreements with certain other entities. For actions that are subject to its approval, the PSC determines whether the action is prudent and in the public interest. The PSC will not allow a utility to take an action that it determines is imprudent or does not meet other specific standards. For example, if the PSC determines that construction of a proposed facility is not needed and would create a financial liability for the utility and its rate payers, it might find that the proposal is not prudent and so not allow it. In such a case, the PSC may deny approval outright, or it may make its approval subject to specific conditions that it considers necessary to protect the public interest.

The rates a utility charges for service is an important area that the PSC reviews. The traditional model of rate setting is known as rate-of-return regulation. Under this model, the PSC sets a rate of return that a utility is allowed to earn on the value of its plant and equipment (its capital investments). Rates for service are then established that will produce revenues sufficient to cover the utility's operating expenses and capital investments (the cost of providing utility service) plus the authorized return on its capital investments.

The PSC also promulgates and enforces service rules, which are designed to ensure reliable and safe service and the fair treatment of customers. Service rules address topics such as connection and disconnection of service, metering and billing, security deposits, extension of service to unserved properties, customer service, consumer protection, safety, and service quality.

State Versus Federal Jurisdiction

The regulation of public utilities is shared between state and federal regulators. There are general principles that set the bounds between state and federal jurisdiction, but their application is not always clear and simple. Some utility transactions are subject to both jurisdictions and in some cases a transaction (such as an interstate merger) may require approval from multiple federal agencies and from agencies in more than one state.

In general, state jurisdiction applies to activities or transactions that occur entirely within one state and that have a retail nature, while federal jurisdiction applies to activities or transactions that cross state lines or that have an interstate or wholesale nature. In the telecommunications sector, this generally means that local telephone service and intrastate long-distance telephone service (toll service within one state) are subject to state regulation, while interstate long-distance service is regulated by

In general, state jurisdiction applies to activities or transactions that occur entirely within one state and that have a retail nature, while federal jurisdiction applies to activities or transactions that cross state lines or that have a wholesale nature.

the Federal Communications Commission (FCC).[1] In addition, many states, the FCC, and the federal Department of Justice review mergers and acquisitions of telecommunications utilities, although Wisconsin statutes do not give the PSC this authority. In general, telecommunications construction projects do not require prior approval from either the PSC or the FCC.

In the electric power sector, federal law gives regulatory jurisdiction to the Federal Energy Regulatory Commission (FERC). In general, state regulators must approve the rates for sales of electric power to end users, while FERC must approve the rates for sales to any entity that will resell the power. The FERC has jurisdiction over long-distance transmission of electric power, while the PSC has jurisdiction over local distribution. The PSC has exclusive jurisdiction over the construction and operation of generation facilities, except for nuclear facilities, which are regulated by the federal Nuclear Regulatory Commission as well. With some exceptions, the sale of generation and transmission facilities and the acquisition or merger of electric utilities are subject to both state and federal regulation.

Jurisdiction over natural gas companies is similar, with federal regulation of wholesale transactions and interstate pipelines and state regulation of retail sales and distribution systems. Water and sewer utilities usually are strictly local functions and are regulated only by the states.

Trend Away From Regulation, Toward Competition

Utility rates were set under rate-of-return regulation for most of the 20th Century and this model still applies to much of the utility industry. Recent technological advances have produced new ways of providing old services, as well as entirely new services. With the new technologies, old assumptions about the monopoly nature of the market for certain utility services no longer hold. Also, the policy decision has been made to give competitors access to established (referred to as "incumbent") utilities' transmission infrastructure, addressing the "natural monopoly" nature of some public utilities. It has become apparent, then, that many services can be provided in a competitive market.

This realization has led to a desire to "unleash the forces of the marketplace" on the industry in order to bring a greater choice of services and service providers to consumers and to subject utility service providers to the discipline of market competition. Various service providers have been partially or fully deregulated, alternatives to rate-of-return regulation have been devised, and certain industry sectors have been significantly reorganized. This revolution in utility regulation is ongoing. The following sections give thumbnail sketches of the current status of regulation in the telecommunications and electric utility sectors and identify some of the current issues in each of these sectors.

Telecommunications Utilities

Telecommunications "Deregulation"

The deregulation of the telecommunications industry has focused on replacing state and federal regulatory protections with market forces.

The deregulation of the telecommunications industry has focused on replacing state and federal regulatory protections with market forces. In both the steps that have been taken to date and the issues that are still on the table, protecting the public interest is a concern. Efforts to deregulate the activities of service providers must be balanced by safeguards against market abuses that could occur before fully func-

[1] Note, however, that much of the long-distance market has been deregulated.

tioning markets are created. In addition, there are continuing concerns about ensuring universal service.

Note that, while the term "deregulation" is used in describing the developments in this area, many telecommunications utilities remain at least partially regulated. Many of the innovations that have been adopted represent alternative forms of regulation, rather than full deregulation.

Deregulation of the telecommunications industry began with the landmark federal court action to break up the Bell System in 1984.

Deregulation of the telecommunications industry began with the landmark federal court action to break up the Bell System in 1984. This action ended a nationwide telephone monopoly, creating regional companies to provide local service and opening long-distance service to competition. The Wisconsin Legislature followed this with legislation in 1986 and 1995 that deregulated certain telecommunications services, partially deregulated other services, and created alternative regulatory schemes that reduce or replace PSC review of rates and authorize the PSC to suspend certain other regulations. The Legislature also opened the service territories of certain large telecommunications utilities to competitors, ending the franchise protection they previously enjoyed.

In the Federal Telecommunications Act of 1996, Congress sought to promote competition in telephone service. This Act overrides state regulations that restrict competition in local or long-distance telephone service. It also requires incumbent providers of basic local telephone services to give access to their facilities, at a fair wholesale price, to competitors that wish to enter the local telephone service market and allows local telephone service providers to enter the long-distance market.

The current telecommunications industry is very heterogeneous, and its regulation is equally so. There are numerous entities using various technological or business innovations to provide telecommunications services. The nature and extent of regulation of these entities varies greatly. The following pages describe the entities that provide various telecommunications and information services in Wisconsin and their regulation.

Local Voice Service

Local voice service is what we think of first when we think of telecommunications service. Once provided only by traditional "phone companies" over copper wire, it is now provided by several other technologies, as well – coaxial cable (cable television systems), radio waves via land-based towers (cellular telephones), radio waves via satellite, and, the most recent innovation, voice-over-Internet protocol (VoIP).

Wireless (cell phone) providers have replaced traditional land-line telephone companies as the dominant providers of voice service.

For some time, traditional phone companies have no longer been the leading providers of local voice service, having lost that position to cell phone providers. At the end of 2009, there were 4,265,463 cell phone subscriptions in Wisconsin, as reported to the FCC, while the land-line (copper wire and coaxial cable) phone companies served 2,686,909 access lines, as reported to the PSC. Satellite and VoIP services account for much smaller portions of voice service, though data on the extent of these services is not available.

Land-line telephone companies are the only telecommunications utilities regulated by the PSC.

For a number of historical reasons, services using these various technologies are regulated differently under both state and federal law. The focus of telecommunications regulation has always been on the land-line systems. Traditional phone companies and the newer cable providers are regulated as public utilities. Cellular providers, although defined as public utilities, are exempt from virtually all state regulation; satellite providers are regulated under federal law, which preempts state regulation of these providers. Under current FCC interpretations, calls using VoIP that are either initiated or completed from a telephone (termed "interconnected

VoIP") are telecommunications services subject to state regulation, while those that are both initiated ***and*** completed from a computer are not.

Incumbent Local Exchange Carriers (ILECs)

The majority (70%) of land-line service is provided by entities referred to as incumbent local exchange carriers (ILECs). These are the telecommunications utilities that existed following the break-up of the Bell System. Wisconsin Bell, a former AT&T subsidiary, was by far the largest ILEC in Wisconsin at the time of the break-up, as it remains today. (Wisconsin Bell is now, again, a subsidiary of AT&T, doing business as AT&T Wisconsin.) In addition, there were a large number of small telephone companies that were not a part of AT&T. Figure 1 shows the relative size of ILECs, as indicated by the proportion of access lines served.

ILECs are the most regulated telecommunications utilities, although their regulation has been reduced in significant ways, especially with regard to PSC review of rates.

In addition to inheriting the service territories and land-line systems of the pre-break up phone companies, ILECs inherited their regulation. However, as was indicated earlier, legislative enactments in the 1980s and 1990s created a number of regulatory options for telecommunications utilities. In general, these options limit or even eliminate the PSC's review of rates. They also authorize the PSC to waive certain regulations, but leave other regulations in place. The following paragraphs briefly summarize those options and their current application. Figure 2 illustrates the relative dominance of the various regulatory schemes, as indicated by the proportion of access lines service by the utilities under each scheme.

The default regulatory scheme for ILECs is still ***rate-of-return regulation***. Under this scheme, as described in the first part of this chapter, the PSC regulates various aspects of a utility's operations, in addition to rates. These include the utility's depreciation of its assets, cross subsidies, relations with affiliates, service offerings and standards, consumer protections, and uniform accounting practices. There are two ILECs subject to full rate-of-return regulation: CenturyTel of Central Wisconsin and Telephone USA of Wisconsin. They have a combined total of almost 96,000 access lines.

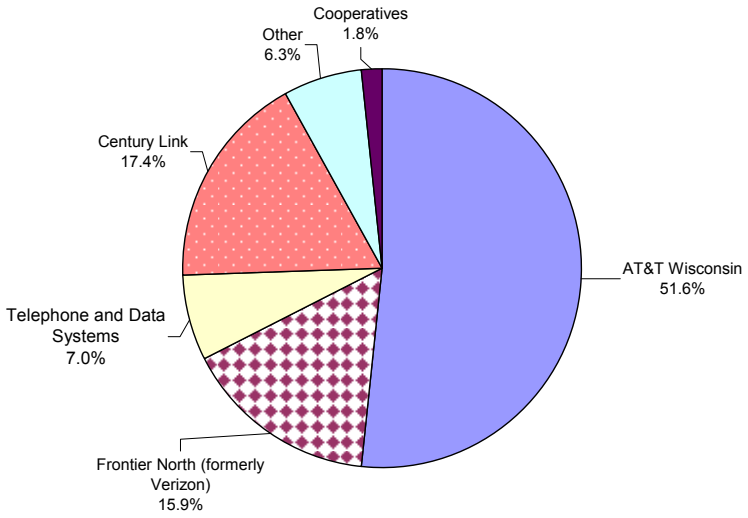
The first of the regulatory options created by the Legislature, ***partial deregulation***, remains an option to telecommunications utilities, although none use it any longer. Under this scheme, the PSC may suspend any of a list of specified regulations, upon petition by a telecommunications utility, if it determines that effective competition exists in the relevant market.

Small telecommunications utilities (ILECs having less than 50,000 access lines) that provided service as of January 1, 1984, may elect to be subject to ***flexible regulation*** and have their rate increases reviewed by the PSC only upon petition by their customers. There are 44 small telecommunications utilities subject to flexible rate-of-return regulation. These utilities serve an aggregate total of over 175,000 access lines.

Alternative regulation is an option intended to give telecommunications utilities incentives to achieve various goals, such as competition, infrastructure deployment, economic development, consumer choice, and other public goods. A telecommunications utility may petition the PSC for approval of an alternative regulation plan for the utility, under which the PSC suspends application to the utility of certain regulations. Although they vary among utilities, all plans allow the utility to adjust prices for basic service within certain limits without PSC review. In 2009, there were 26 ILECs operating under approved alternative regulation plans serving more than 341,000 access lines.

Figure 1

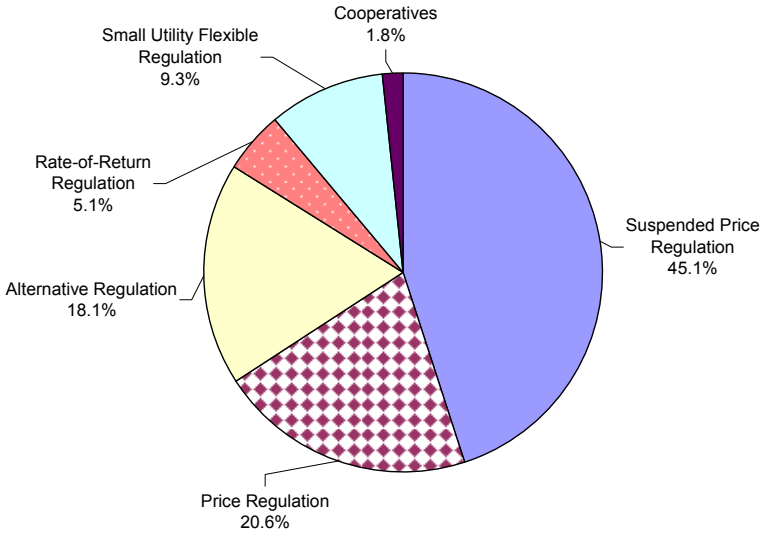
ILECs by Percent of Total Customer Access Lines



Source: PSC, from FCC reports.

Figure 2

ILEC Regulatory Schemes by Percent of Total Customer Access Lines Under Each Scheme



Source: PSC, from FCC reports.

Price regulation is an option under which the PSC regulates a telecommunications utility's rates, but not its rate of return. Under price regulation, a telecommunications utility's rates are based on a formula tied to inflation, except that the PSC may increase the allowable rates to reward infrastructure investments by the telecommunications utility or decrease the allowable rates if it determines that the telecommunications utility has provided inadequate service or has made inadequate infrastructure investments.

45% of the access lines of ILECs are under suspended price regulation.

There are two ILECs subject to price regulation, Frontier North (formerly Verizon) and AT&T Wisconsin. Frontier North has about 266,000 access lines. AT&T has about 124,000 residential access lines in its 60 smallest exchanges subject to price regulation. The PSC has also ***suspended price regulation*** under procedures in the price regulation statute for all of AT&T's residential access lines in its larger exchanges (including its exchanges in Milwaukee and Madison) and all of its business lines statewide, a combined total of over 850,000 access lines. Under suspended price regulation, the PSC has no review of rates, although it required, as a condition of approving the suspension, that rates be uniform across the state for individual customer classes.

The rates of ***telecommunications cooperatives*** are not subject to regulation by the PSC, unless the cooperative elects to be subject to that regulation. There are 11 telecommunications cooperatives in Wisconsin with a total of nearly 35,000 access lines. None have elected PSC regulation.

Alternative Telecommunications Utilities (ATUs) and Competitive Local Exchange Carriers (CLECs)

A number of other entities also provide local telephone service, including competitive local exchange carriers (CLECs), telecommunications resellers, and cable television companies. A CLEC is any company that provides telecommunications services in the service territory of an ILEC. Some ILECs provide local service in the territory of other ILECs; these companies, then, are ILECs in their own service territories and CLECs in other areas. Cable television companies that offer telecommunications service are CLECs. A reseller is a company that buys service at wholesale from an ILEC and resells that service at retail to end users. These entities (along with pay telephone providers) are termed "alternative telecommunications utilities" (ATUs).

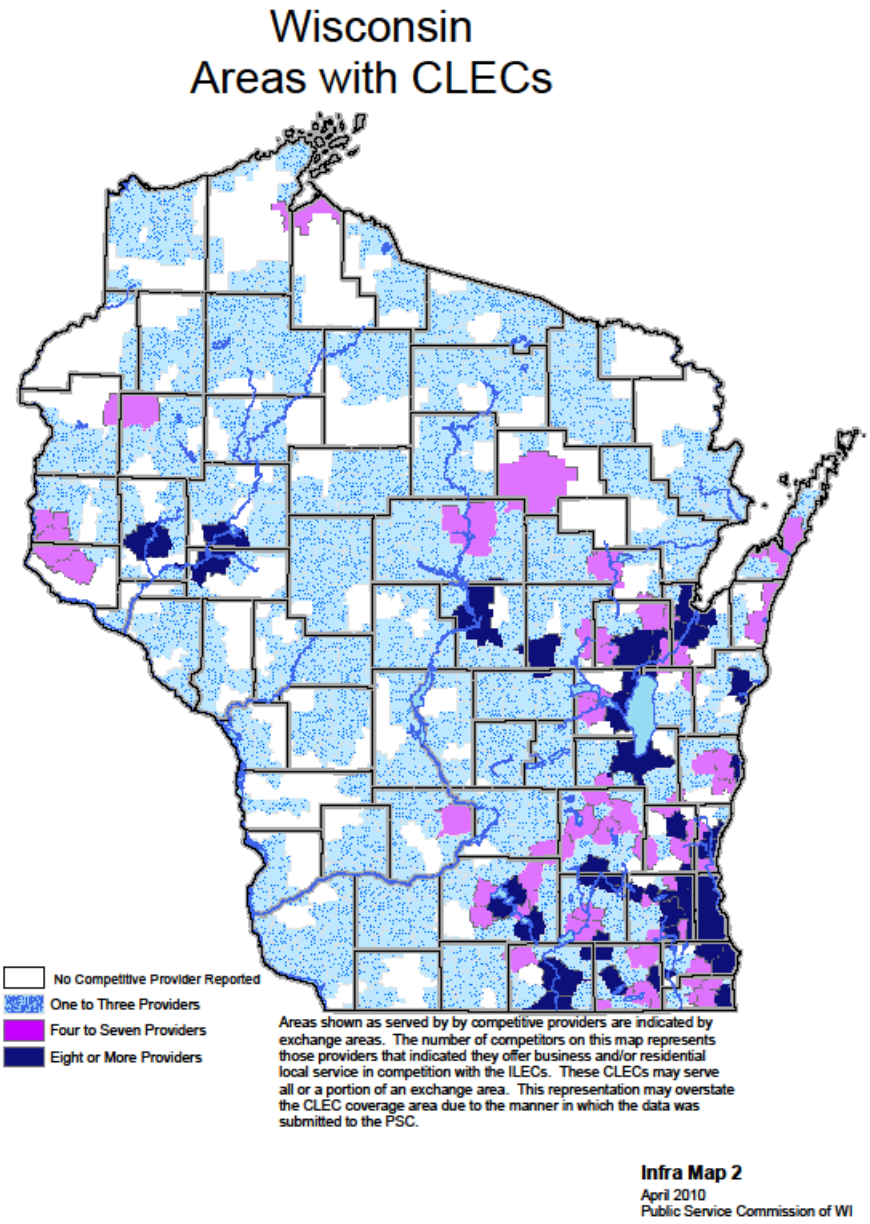
CLECs and other ATUs are generally exempt from PSC regulation, except those the PSC specifically imposes.

CLECs and other ATUs are generally exempt from PSC regulation, except that the PSC may impose individual requirements of the statutes it administers on individual ATUs. The regulations that the PSC typically applies to ATUs include those related to reports filed with the PSC, tariffs of services and rates, relations with non-utility affiliates, consumer protections, and PSC investigations.

PSC staff report that 176 entities were certified as CLECs in Wisconsin at the end of 2009, although only 93 of these reported any business activity as CLECs in that year. These 93 CLECs had a total of just over 800,000 access lines. Figure 3 shows the number and location of CLECs offering service in Wisconsin. As might be expected, the highest levels of competition occur in the state's population centers; large areas of rural Wisconsin have no competitive land-based providers.

Figure 3

Areas With Landline Competition in Local Telephone Service (2008 Data)



Source: PSC website: Telecommunications Infrastructure Maps – Map 2, http://psc.wi.gov/utilityinfo/tele/infrastructureCompetitive/documents/2010/maps/map2.pdf.

Figure 3 illustrates the degree of land-based competition in local voice service across the state. However, this is a very incomplete picture of the competition that ILECs face, since wireless providers serve more than five times the number of customers that CLECs serve. A map showing the number of wireless and satellite providers in any given part of the state is not available. Wireless providers vary in how much of Wisconsin they cover, but most of the state is covered by one or more carrier, with some largely rural areas not covered. Satellite service is available

everywhere, in theory, although topography and vegetation can interfere with satellite signals.

Long-Distance Voice Service

Long-distance providers must file tariffs with the PSC, but their rates are not subject to PSC review.

Companies that provide intrastate long-distance telephone service are termed "telecommunications carriers." Some ILECs and resellers provide such service, as do interstate long-distance companies. Telecommunications carriers must file tariffs of rates and services with the PSC and they must adhere to their filed tariffs, but the tariffs are not subject to PSC review or approval. As stated earlier, interstate long-distance service is regulated by the FCC.

Advanced Telecommunications Services; Broadband

An issue of ongoing concern in the Legislature and the state is the availability of advanced telecommunications services and the deployment of the infrastructure needed to provide those services. The PSC's most recent report to the Legislature on the status of advanced telecommunications deployment, dated June 2010, states the following:

Most advanced telecommunications services will be provided over the Internet, using broadband connections.

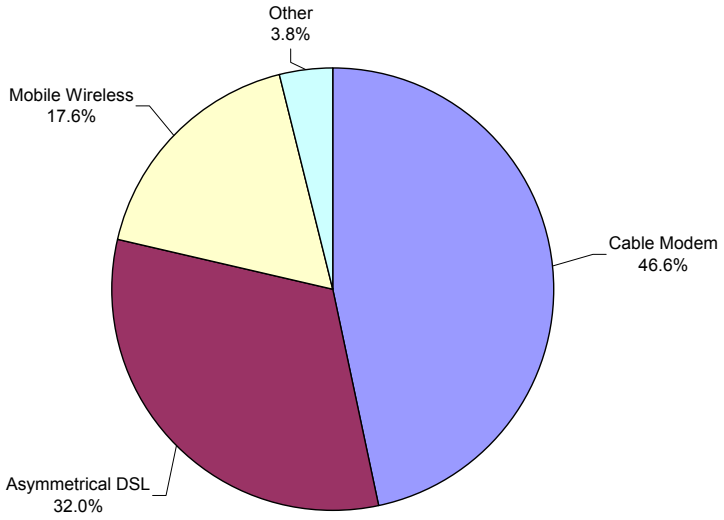
> The evidence suggests that with a few exceptions…the use of telecommunications to provide services such as distance learning, interconnection of libraries, access to health care and services to persons with disabilities will occur on public high-speed broadband networks.

The report finds, as did previous reports, that the factors limiting access to these services are cost, for both providers and customers, and the development of equipment that will allow individuals in the home to more effectively use the telecommunications infrastructure.

The availability of broadband Internet access is of particular interest and has been the subject of recent studies and legislation. The PSC report indicates that deployment of broadband facilities continues to grow and that access is available in almost every telephone exchange (by DSL) or zip code (by cable television), and often by both. In addition, mobile wireless providers offer broadband access. As Figure 4 shows, in January 2010, nearly half of all broadband access in the state was by cable modem, almost a third was by DSL, and the bulk of the remainder was by mobile wireless service. The small amount not provided by one of these technologies includes a small but growing portion of users receiving service by fiberoptic line extended all the way to the user's premises, referred to as fiber to the premises, or FTTP.

Figure 4

Broadband Connections by Technology Type



Source: PSC, from FCC reports.

The PSC's mapping project will create an on-line, interactive map that individuals will be able use to find out what service providers offer broadband access at any location in the state.

Historically, broadband providers have not released information about where their service is available in any more detail than the telephone exchange or zip code level, considering this information to be competitively sensitive. The resulting information gap has frustrated policymakers and planners in the Legislature and at the PSC. Using funds from the American Recovery and Reinvestment Act (ARRA, commonly referred to as "stimulus funds"), the PSC has recently launched a major project to map the availability of broadband service in Wisconsin. The PSC will use the resulting information for planning related to expansion of broadband access and setting priorities for the awarding of both state and federal Universal Service Fund grants for this purpose. The mapping project will also create an on-line, interactive map that individuals will be able to use to find out what service providers offer broadband access at any location in the state. See the resources at the end of this chapter to access a preliminary version of this map.

Video Service

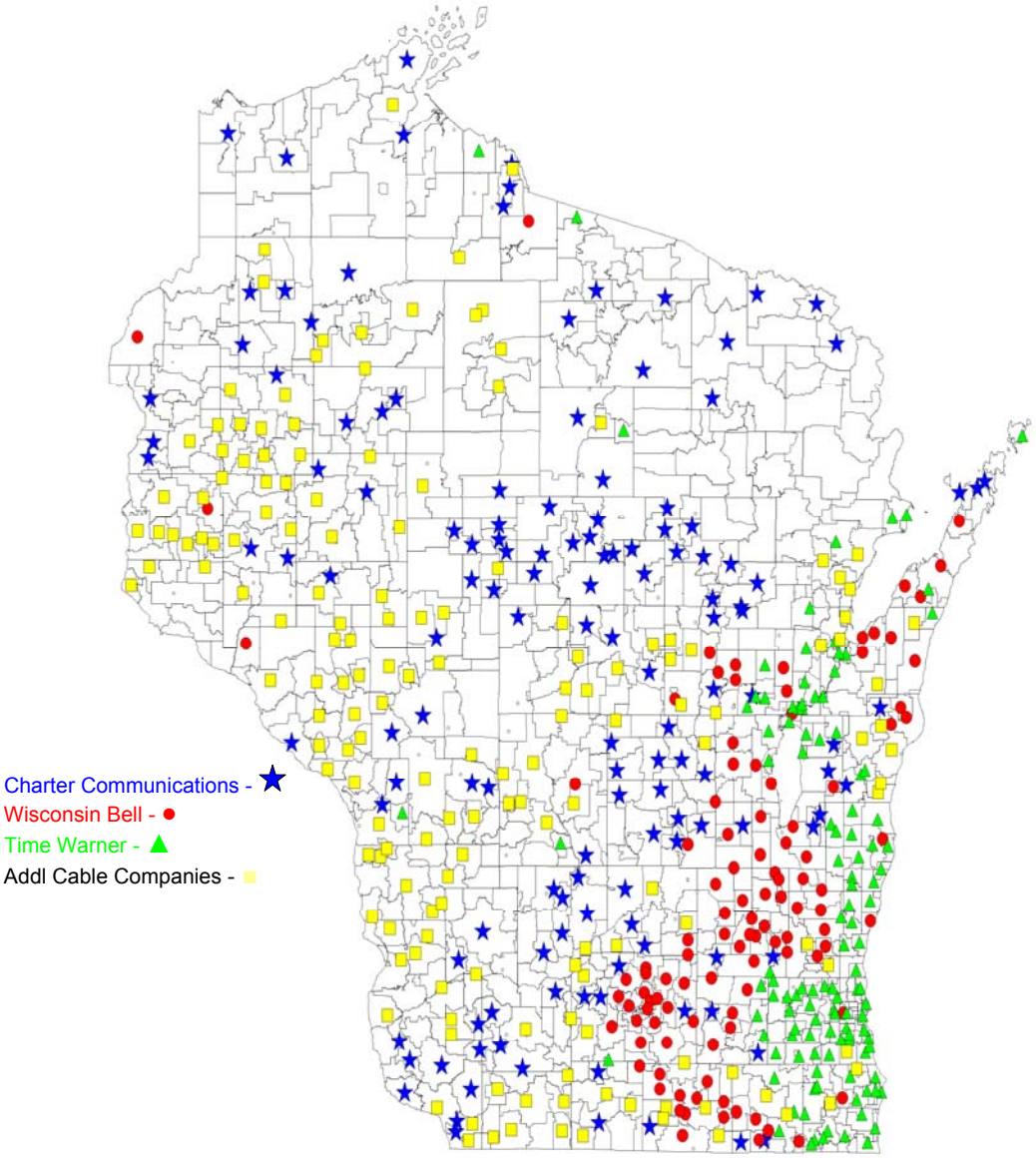
Subscription video services were initially offered by cable television companies, using coaxial cable technology, and by satellite companies. Land-based delivery of video services in Wisconsin was dominated by Time Warner and Charter Communications. At about the time that cable companies began competing with telecommunications companies in the delivery of voice service, telecommunications companies began competing with cable companies in the delivery of video services. At this time, AT&T has become the third dominant video service provider in Wisconsin.

For most of their history, land-based video services were regulated by municipalities under franchise agreements negotiated by the municipality and the service provider. Legislation in 2007 replaced municipal franchises with state franchises, issued by the Department of Financial Institutions (DFI). At this time, DFI has issued about 30 franchises. The three dominant companies provide service primarily in eastern and central Wisconsin. The remaining franchise holders are mostly small cable or

telephone companies, including some municipal and cooperative telephone companies, located throughout the state. Their distribution is shown in Figure 5.

Figure 5

Distribution of Land-Based Video Service Providers



Industry Reconsolidation

The telecommunications industry has undergone considerable reconsolidation, nationally and within Wisconsin.

The telecommunications industry has undergone considerable reconsolidation. Some of the regional Bell operating companies, the entities that were created by the break-up of the Bell System, have merged back together. Ameritech, the regional Bell operating company formed in Illinois, Indiana, Michigan, Ohio, and Wisconsin, was acquired by SBC, formerly Southwestern Bell, forming a large telecommunications company providing local service not only in multiple states but in several widely separated regions of the United States. More recently, a merger brought the local exchange services of SBC and the CLEC and long-distance services of AT&T together in one company under the AT&T name.

Consolidation of ILECs has occurred within Wisconsin as well. AT&T Wisconsin remains by far the largest ILEC, with well over one million access lines in the state. However, several mid-sized to large companies have been formed by the merger and acquisition of existing small utilities. Verizon Communications, for example, grew in this manner to the point that it had about 266,000 access lines and then, in 2010, was itself acquired by Frontier North. CenturyLink is a holding company that includes a dozen separate telecommunications utilities. Collectively, CenturyLink has nearly 330,000 access lines, but nine of its 12 subsidiaries have fewer than 50,000 access lines and so are treated as small telecommunications utilities. TDS Telecom is a holding company of 19 small utilities with a total of nearly 130,000 access lines.

Current Issues in Telecommunications Regulation

The telecommunications industry has evolved tremendously in the quarter century since the breakup of the Bell System, in terms of what services it offers, how it provides them, and how it is organized. Regulation has followed these changes, but not evenly and some would say not far enough. Regulation remains focused on land-based technologies. The distinction between ILECs and CLECs and their different regulatory treatment are based on the desire to allow competition but to prevent market abuses in locations where there is not effective competition. Wireless providers were exempted from regulation explicitly to encourage the development of this innovation in telecommunications.

As Figure 3 shows, large areas of the state have no competition in land-based telecommunications service, leading some to the view that current regulations need to be retained. Others observe that most areas that have no land-based competition in telephone service nonetheless have competition from one or more wireless providers and from satellite providers. This leads to the view that competition in telecommunications services has developed to the point that further deregulation is not only justified but needed to eliminate some of the regulatory disparities between different entities providing the same services and so to create a level regulatory playing field within the industry. Deregulation proposals have been debated in the last two sessions of the Legislature, but not passed. Some form of regulatory reform is likely to be offered in future sessions.

Electric Utilities

Electric Industry "Restructuring"

The "restructuring" of the electric power industry has, in general, the same goals as the "deregulation" of the telecommunications industry--to obtain the benefits of competitive markets in the production and delivery of electric power.

The "restructuring" of the electric power industry has, in general, the same goals as the "deregulation" of the telecommunications industry--to obtain the benefits of competitive markets in the production and delivery of electric power.[2] It has been prompted by a number of factors. A key factor is the fact that the cost of producing electric power varies from plant to plant, depending on things such as the age and efficiency of the plant and the cost of the fuel used. However, utility customers pay a price that reflects the cost of production from all generation facilities that a utility uses. Large users of electricity, in particular, would like the ability to go to the

[2] The term "restructuring" is used fairly universally to describe the recent nationwide changes in the electric utility industry. This term reflects that the historic, integrated structure of these companies is being replaced by other structures intended to protect customers in a competitive environment.

wholesale market to buy power directly from the least expensive source. This led to an interest in creation of competitive retail markets for electric power.

Issues of wholesale competition are subject to federal jurisdiction and so depend on the actions of Congress and FERC; issues regarding retail energy markets, in particular the question of allowing end users to buy electric power directly from the provider of their choice, are governed by the states. In many states, including Wisconsin, wholesale competition has advanced further than retail competition.

Wholesale Competition

Congress and FERC have made very substantial progress in the creation of competitive wholesale markets in electric power. With enactments going back as far as 1978, Congress authorized non-utility entities to compete with electric utilities in producing power, and required the owners of electric transmission lines to let any generator transmit power over their lines at approved and published rates. In numerous subsequent orders, FERC has worked to create conditions in which the owners of generation and transmission facilities are not able to gain unfair advantage over competitors. It has done this, in particular, through ordering the "structural separation" of generation functions from transmission functions, and by setting standards for regional transmission organizations (RTOs), ensuring that all participants in the market have equal and fair access to the transmission functions that are necessary for the market to work.

Retail Competition

The states have varied greatly in the actions they have taken to create competitive retail electric power markets. Some have enacted sweeping restructuring laws, allowing retail competition for all customers, splitting vertically integrated utilities into separate generation, transmission, and distribution entities, and creating market-based mechanisms to set prices for electric power. California led the retail competition experiment and was followed by about half of the 50 states. However, the system California designed to set market prices failed spectacularly in 2000 and 2001, causing extreme spikes in the cost of electricity and contributing to widespread blackouts. The failure was due in part to extreme weather events and inadequate facilities, but was due in substantial part to flaws in the market design and manipulation of the wholesale market by power generators and traders. Following this crisis, California significantly curtailed its retail market experiment, several other states repealed their restructuring legislation, and several more tabled pending restructuring legislation.

*Wisconsin did **not** restructure its electric utility industry.*

Other states did no more than conduct studies of retail electric competition. In Wisconsin, the PSC initiated an incremental process to make the reforms it considered necessary precursors to the creation of a retail power market. However, it did not complete this process and the subject never came to the Legislature. At this time, 18 states operate some form of retail electric power market.

Reliability of Electric Power Supply

For more than a decade, electric utilities largely deferred decisions regarding construction of new generation and transmission facilities.

During the time that restructuring dominated the electric utility policy arena, electric utilities largely deferred decisions regarding construction of new generation and transmission facilities. One reason for this was uncertainty about the future regulatory landscape, in particular the ability of investors to fully recover their investments in these highly capital-intensive facilities. However, demand for electric power continued to grow throughout this period. As a result, Wisconsin and many other states found themselves on the verge of a power supply crisis.

This developing crisis was brought to light dramatically in 1997 when a period of exceptionally hot weather produced record demand for electricity, which taxed the transmission system and threatened to bring it down entirely. The Wisconsin Legislature responded with a series of enactments to strengthen the system and facilitate

the construction of needed facilities. Legislation in 1997 and 1999 brought about the separation of generation and transmission facilities in much of Wisconsin by calling for the formation of an independent transmission company within the framework of an RTO. The purpose and result of these changes were to increase system reliability by strengthening wholesale electric markets and bringing regional coordination to the system, consistent with the FERC actions described earlier.

Additional enactments were designed to facilitate the construction of needed generation and transmission facilities. In particular, efforts were made to shorten and streamline the process by which proposed construction projects are reviewed and approved, including the coordination of the Department of Natural Resources' (DNR's) environmental permitting process with the PSC's review. Legislation also provided revenue enhancements to municipalities in which utility facilities are located. The purpose was to provide financial mitigation to the municipality for the impacts of the facility on the community and to thereby reduce potential local opposition to the siting of new facilities.[3]

Current Electric Industry in Wisconsin

The developments described above have transformed a vertically integrated industry, in which generation, transmission, and distribution functions were all contained in individual companies, into a more diverse industry with varying degrees of vertical integration or separation.

Table 1 shows generation capacity and actual electric generation by fuel type. The largest share of generation capacity is provided by coal-fired facilities, with natural gas-fired generation close behind. These are followed, in order, by nuclear power, petroleum-fired generation, and hydroelectric, wind, and biomass resources.

Actual generation follows a somewhat different pattern. Coal and nuclear power plants are "baseload" facilities that run almost continuously, while most, but not all, natural gas-fired power plants are designed as "peak load" facilities that are run as needed and wind energy systems run only when the wind is blowing. As a result, as shown in Table 1, coal and nuclear facilities provide larger proportions of the total electricity generated in the state than their proportion of capacity, and gas and renewable facilities produce proportionately far less.

Table 1
Electric Generation, by Fuel Type (2009)

Fuel Type	Generation Capacity		Actual Generation	
	Megawatts	Percent of Total	Megawatt Hours (Thousands)	Percent of Total
Coal	7,893	41.9%	42,625	67.1
Natural Gas	7,161	38.0%	5,219	8.2
Nuclear	1,608	8.6%	12,155	19.1
Petroleum	756	4.0%	100	0.2
Hydroelectric	575	3.1%	1,711	2.7
Wind	449	2.4%	487	0.8
Biomass	394	1.9%	1,238	1.9
Total	**18,836**	**99.9%**	**63,535**	**100.0**

Source: Office of Energy Independence.

[3] In addition, utilities often voluntarily agree to make "mitigation" payments to the communities that are host to their facilities.

Wisconsin is coming to the end of a major building cycle, dominated by coal- and gas-fired power plants.

Wisconsin is coming to the end of a major electric generation building cycle, particularly with regard to fossil fuels. Since 2004, 1,178 megawatts (MW) of coal-fired baseload generation has been brought on-line and another 615 MW is expected to come on-line in 2011. In addition, 2,727 MW of gas-fired facilities have come on-line. (In that same time, 980 MW coal-fired electric generating capacity and 43 MW of natural gas-fired capacity has been retired.) All of the coal-fired facilities have been built by public utilities; the majority of the gas projects have been built by public utilities, as well, although a number have been built by non-utility, independent power producers (IPPs). That this building cycle is ending is suggested by the fact that projects for a total of 99 MW of coal-fired generation and 2,682 MW of gas-fired generation, previously approved by the PSC, have either been canceled or are inactive.

In contrast, construction of wind and other renewable energy systems is continuing, spurred by the renewable portfolio standard, described in the final part of this chapter. In 2008 and 2009, 471 MW of wind-powered electric generation capacity was built, and an additional 407 MW is scheduled to come on-line in 2011. Additional wind-powered and biomass-fueled projects totaling 228 MW have been proposed. While utilities are building many of the renewable energy systems, IPPs are also playing a major role in this area.

Of the three nuclear power plants in Wisconsin, two (Point Beach Units 1 and 2) are owned by Florida Power and Light Company and the third (the Kewaunee Nuclear Generating Station) is owned by Dominion Energy, a Virginia-based energy company. The sale of these facilities in 2005 and 2008 by the Wisconsin utilities that originally built and operated them is part of a nationwide trend in which utilities are reducing their risk by selling nuclear plants to a relatively few national companies that are specializing in the operation of nuclear plants.

Other Wholesale Power Providers

Wholesale electric cooperatives and municipal electric companies are entities that supply electricity at wholesale to their member electric cooperatives and municipal utilities, respectively. Dairyland Power Cooperative (DPC) and Wisconsin Public Power, Inc. (WPPI) are the principal players in this arena. Both own small amounts of generating capacity and purchase the majority of their electricity from other generators.

Transmission

In response to the late-1990s legislation described earlier, the utilities in the eastern 2/3rds of the state--Wisconsin Electric Power Company (WEPCO), Wisconsin Public Service Corporation (WPSC), Wisconsin Power and Light (WP&L), and Madison Gas and Electric Company (MG&E)--created the American Transmission Company (ATC) and contributed their transmission facilities in Wisconsin, northern Illinois, and the upper peninsula of Michigan to it. In addition, two municipal electric companies (WPPI and Badger Power Marketing), and a number of municipal utilities and cooperatives have invested in ATC, giving them a share in the company's transmission facilities. The two entities that own the bulk of the transmission facilities in western Wisconsin, Northern States Power of Wisconsin (NSP) and DPC, retained ownership of those facilities at the time ATC was formed. Figure 6 shows the service territory of ATC.

Figure 6
American Transmission Company Service Territory

Note: The diagonal line across northwestern Wisconsin is the Arrowhead-Weston transmission line.

Source: ATC website: About Us--Service Territory, http://www.atcllc.com/A7.shtml.

At the time that ATC was formed, Wisconsin faced serious transmission problems. In particular, there were transmission "bottle necks" which, under the regional power market described under the following heading, increased the cost of transmitting power to Wisconsin users. In addition, the growing interest in renewable energy, especially wind power, created the need for new lines to carry this power from the scattered generation sites to users.

Major investments are being made in the transmission grid in Wisconsin to address these and other issues. Since it became operational in 2001, ATC has invested $2.1 billion to upgrade more than 1,400 miles of existing lines, construct 476 miles of new lines, and make other system improvements. Some of these improvements have increased the efficiency of the system by reducing line losses – the loss of electric power as heat – meaning that more of the electricity put into the transmission system reaches end users. ATC anticipates investing an additional $2.5 billion in the next 10 years in similar projects.

Because of the regional nature of modern energy markets and the fact that the various electric utilities' transmission systems are interconnected and interdependent, regional planning is critical for maintaining a reliable and efficient system. Numerous regional initiatives, involving utilities, regulators, and regional system operators, are ongoing for this purpose. One of the key issues in the midwest is planning the transmission facilities that will bring energy from wind farms in the Great Plains to the major population centers in the Great Lakes region.

Midwest Independent System Operator

The Midwest Independent System Operator (MISO) is a key player in both the generation and transmission of power. It is a membership organization consisting of power generators, power traders, transmission companies, and other entities in a region that includes all or part of 15 states and one Canadian province, from Ohio and Michigan west to Nebraska, Montana, and Manitoba. MISO was originally established as a regional transmission organization (RTO) which, under FERC regulations, was responsible for ensuring the reliability of the transmission system within its region and was required to prepare comprehensive plans for the transmission system. MISO has expanded its functions and now also manages a regional power market, which uses an auction process to set daily wholesale prices of power at more than 1,700 discrete locations throughout its region. It also determines the dispatch of generating facilities within its region as needed to meet demand and maintain the functioning of the transmission system.

Distribution

At this time, electric utilities and cooperatives are the only entities that may provide retail electric service in Wisconsin. Electric utilities continue to be regulated under the rate-of-return model. There are five "major" electric utilities in the state, although they vary substantially in size. (See Table 2 and Figure 7.) In addition, there are six small investor-owned utilities and 82 municipal utilities. Rural electric cooperatives are an important part of the retail electric service market. Apart from the requirements of the State Electrical Code, cooperatives are not subject to PSC regulation. There are 24 cooperatives serving rural areas, primarily in the western and northwestern parts of the state.

Table 2
2007 Retail Electric Sales by Largest Utilities

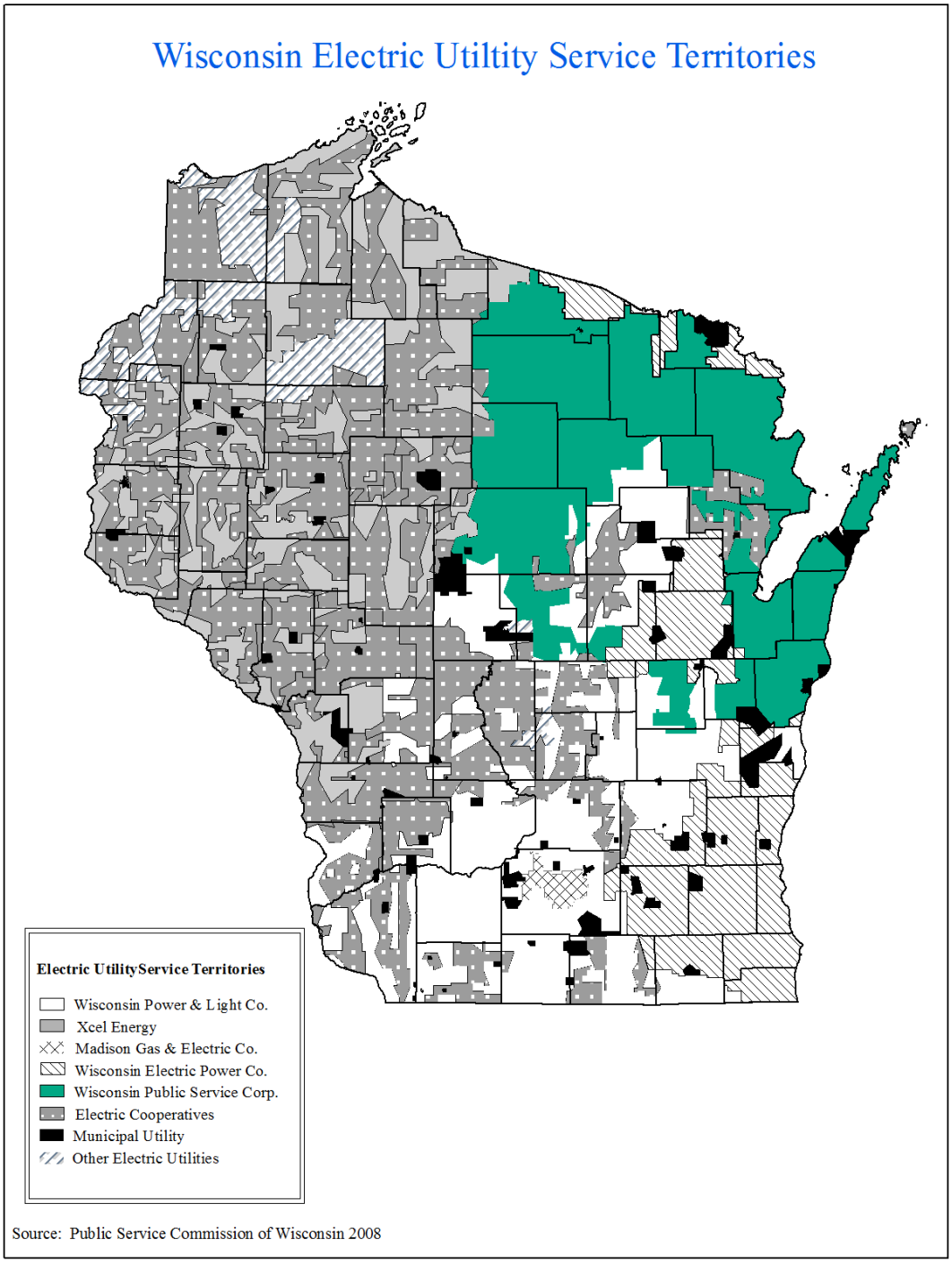
Utility	Sales (Thousands of MW Hours)	Revenues ($ Millions)
Wisconsin Electric Power Co.	25,817	$2,500
Wisconsin Public Service Corp.	10,402	$945
Wisconsin Power and Light Co.	9,806	$915
Northern States Power Co.--WI	6,305	$551
Madison Gas and Electric Co.	3,200	$334

Source: 2007 Annual Reports to PSC.

Structure of Electric Utilities

As in the telecommunications industry, consolidation of energy utilities has also occurred. Nationwide, mergers and acquisitions have created a number of very large, multi-state utilities often in the form of holding companies. In Wisconsin, Alliant Energy was formed by the merger of WP&L with two Iowa utilities; Wisconsin Energy, WEPCO's parent company, grew within the state by acquiring Wisconsin Gas, one of the major natural gas utilities of the state. This trend has not been followed by the small investor-owned utilities, nor the municipal utilities or cooperatives.

Figure 7
Electric Utility Service Territories



Source: PSC Staff.

Electric utilities have also grown by making investments in unregulated activities. Some such investments have been in unregulated aspects of the energy industry and some have been in other areas altogether. In 1985, the Legislature enacted the holding company statute to sanction these investments and to regulate the relations between the utility and non-utility activities within holding companies. With the formation of MGE Energy in 2002, all of the major Wisconsin electric utilities are now in holding companies.

Recent Legislation

The 2009-10 Legislature enacted a major reform of the process for the siting of wind energy systems.

The 2009-10 Legislature enacted a major reform of the process for the siting of wind energy systems. Previously, municipalities were prohibited from restricting the construction of such systems except to protect public health and safety or if the restrictions did not prevent the construction of alternative systems. In spite of these limits on municipal regulation, developers of large wind energy projects complained that municipal governments were unreasonably restricting their projects, projects which they noted were needed to comply with the Renewable Portfolio Standard policy described in the following section of this chapter. In response to these complaints, legislation was enacted directing the PSC to promulgate rules setting limits on municipal regulation of wind energy systems and creating a process by which an aggrieved party can appeal to the PSC to challenge a municipal action on the siting of a wind energy system.

Current Issues in Electric Utility Regulation

Generation and Greenhouse Gas Emissions

The electricity generation fuel mix will pose a tremendous challenge if Wisconsin decides as a matter of state policy – or is compelled by federal policy – to make significant reductions in greenhouse gas emissions. As was noted earlier, we are at the end of a major construction cycle, which began when reserve margins were very low.[4] Now, as this new generation is coming on-line, demand for electricity is below earlier projections, the result of several years of economic recession. Consequently, some would argue that we now find ourselves with more generation capacity than needed.

The majority of the electricity generated in Wisconsin is from the burning of coal and the great majority of the newly constructed generation facilities is also coal- or natural gas-based.

The majority of the electricity generated in Wisconsin is from the burning of coal and the great majority of the newly constructed generation facilities is also coal- or natural gas-based. Since these facilities have useful lives measured in decades, it is clear that fossil fuels will remain a major portion of the electric generation fuel mix in Wisconsin for a long time. However, the generation of electricity from fossil fuels, coal in particular, is one of the largest sources of carbon dioxide (CO_2), the principal greenhouse gas. Any policy effort to significantly reduce CO_2 emissions in Wisconsin will have to address the massive investments that have been made in coal-based electric generation facilities and the cost of building alternative generation facilities at a time when generation capacity may already exceed demand.

Transmission

Ensuring the adequacy of the electric transmission system is another major challenge. In particular, with the continuing development of wind energy facilities comes the need for sufficient transmission capacity to carry their output to energy users. The widely distributed nature of these facilities, often far from load centers, makes this particularly challenging.

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[4] The reserve margin is the percent by which the supply of electricity (generation capacity plus purchase contracts) exceeds demand.

Energy

Five goals form the basis for most, if not all, energy policies and programs. These are:

- To reduce energy consumption, in order to conserve energy supplies for the future.
- To develop new energy sources, in order to increase future energy supplies.
- To reduce the environmental effects of energy production and use.
- To help low-income families obtain adequate energy.
- To reduce expenditures on energy by governmental and other public institutions.

Wisconsin has created a number of policies and programs that advance these goals. This part of this chapter summarizes some of the most significant of these.

State Energy Policy

The Legislature has created a five-part energy policy in the statutes.

The Legislature has created a state energy policy, in s. 1.12 of the statutes. The policy is in five parts. The first part relates to energy conservation. It states that a state agency or local governmental unit shall investigate and consider the maximum conservation of energy resources as an important factor when making any major decision that would significantly affect energy usage.

The second part of the energy policy establishes three goals relating to the generation and use of energy:

- To reduce the ratio of energy consumption to economic activity in the state. This goal seeks to increase the overall energy efficiency of the state's economy by reducing the amount of energy consumed per unit of economic activity.
- To base all new capacity for electric generation on renewable energy resources, to the extent feasible.
- To increase the forested area of the state, in order to ensure a future supply of wood fuel and reduce atmospheric carbon dioxide.

To monitor progress toward achieving the first of these goals, the Department of Administration (DOA) is required to develop an index of the energy intensity of the state economy and report annually to the Legislature regarding progress made. To monitor progress made toward achieving the third goal, the DNR is required to submit a biennial report to the Legislature regarding the extent of forest lands in the state and their potential to provide wood fuel.

The third part of the energy policy is a priority list of options for meeting the energy demands of all energy users in the state. It states that, "to the extent cost-effective and technically feasible," options for meeting energy demands should be considered in the order of the priority list. The options, in order, are the following:

- Energy conservation and efficiency.
- Noncombustible renewable energy resources.
- Combustible renewable energy resources.

- Nonrenewable combustible energy resources, in the order listed:
  1. Natural gas.
  2. Oil or coal with a sulfur content of less than 1%.
  3. All other carbon-based fuels.

The fourth part of the policy is a pair of directives to state agencies and local governmental units. First, it requires that, in designing all new and replacement energy projects, state agencies and local governmental units rely, to the greatest extent feasible, on energy efficiency improvements and renewable energy resources. Second, it requires that, to the greatest extent feasible, state agencies and local governmental units design all new and replacement energy projects following the priority list in the third part of the policy.

The fifth part of the policy is a priority list of options for the siting of electric transmission facilities, similar to the priority list for meeting energy demand. It states that, "to the greatest extent feasible that is consistent with economic and engineering considerations, reliability of the electric system, and protection of the environment," transmission routes should be selected making use of the following types of corridors, in the order listed:

- Existing utility corridors.
- Highway and railroad corridors.
- Recreational trails, to the extent that the facilities may be constructed below ground and that the facilities do not significantly impact environmentally sensitive areas.
- New corridors.

The DOA and PSC are required to implement the priority list of energy sources in designing and implementing energy programs and making energy-related decisions and orders. The DNR, the Department of Transportation, and the PSC are required to implement the transmission corridors priority list in making all decisions, orders, and rules affecting the siting of new electric transmission facilities.

In addition to the policies in s. 1.12, Stats., the PSC is required, upon request, to analyze the impact that a bill or proposed rule will have on the cost or reliability of electricity generation, transmission, or distribution of fuels used in generating electricity and to prepare a report including findings and conclusions. A request for this analysis may be made by the chair or ranking minority member of the standing committee of the Legislature to which the proposal has been referred or, if not referred to a standing committee, by the Speaker of the Assembly or the President of the Senate. The purpose of such a report is to ensure that the Legislature and its committees know the impact that a given proposal will have on the cost or reliability of electric power prior to taking action on the proposal.

The energy policies are binding only on state agencies and local units of government, although they also serve as encouragement to others to follow a similar path in meeting energy needs.

The energy policies in s. 1.12, Stats., are binding only on state agencies and local units of government, although they also serve as encouragement to others to follow a similar path in meeting energy needs. As they apply to state agencies and local units of government, the policies allow considerable latitude for interpretation. In particular, the policies make extensive use of the phrase "to the extent cost-effective and technically feasible." It is largely up to the state agencies and local governments implementing the policies to determine what is cost-effective or technically feasible.

Compliance is reflected in the decision-making process, rather than individual decisions.

Also, there are no penalties or other mechanisms to compel compliance with the priority list in making energy-related decisions, nor are there any standards for determining the extent to which the priority list is actually followed. Note that compliance with the directive that agencies follow the priority list will be reflected in the decision-making process followed by an agency, rather than by the outcomes of those processes.

Nonetheless, while the policy may not compel a given outcome in any individual decision, the policy does require that agencies and governmental units consider the priority list in making decisions. In the late 1990s, the Citizens Utility Board filed a complaint in Dane County Circuit Court that the PSC had failed to consider the priority list in arriving at a particular decision. The court agreed with the complaint and ordered the PSC to review its earlier decision in light of the priority list. Ultimately, the PSC did not change its final decision in the matter, but it did add consideration of the priority list to its decision-making process.

Conservation and Renewable Energy Programs

Since the 1970s, Wisconsin has had active programs to advance both the efficiency with which we use energy and the use of renewable energy resources. Although transportation and other energy sectors have been addressed by the programs, the greatest focus has been, and continues to be, efficiency in the use of energy, especially electric power, in the building sector and the generation of electricity from renewable resources.

"Focus on Energy"

The state's principal conservation and renewable energy program is known as the Focus on Energy program. Under this program, all investor-owned electric and gas utilities are required to collectively fund and contract for the administration of statewide energy efficiency and renewable resources programs. Each utility must spend an amount equal to 1.2% of its annual operating revenues for these programs, which collectively, based on recent utility revenues, is approximately $94 million. The PSC is directed to oversee the programs, setting goals and priorities, establishing program design standards, and coordinating all energy efficiency and renewable resource programs. The Wisconsin Energy Conservation Corporation has the contract to administer the Focus on Energy program.

Program activities include educating energy users (residential, commercial, institutional, and industrial) regarding opportunities to save money through reducing their energy use, and providing technical and financial assistance for energy users to purchase efficient appliances, lighting, and mechanical equipment, to weatherize their homes, to increase the efficiency of industrial processes, and to install renewable energy systems. The programs include concerted efforts to encourage the formation of private markets for energy conservation activities and energy efficient equipment that will, in the long run, function independent of the program.

Wisconsin Energy Independence Fund

The Wisconsin Energy Independence Fund is a program in the Department of Commerce (Commerce) to promote the development of renewable energy resources. The program provides support for projects ranging from the research and development of renewable energy technologies to the development of renewable energy resources and infrastructure and the commercial application of renewable energy technologies. It also may support the construction of one or more plants for the production of ethanol from cellulosic materials (such as corn stalks, switch grass, or wood chips). The statutes specify selection criteria, which include consideration of how individual projects fit into and advance the existing agricultural and industrial base of Wisconsin.

The Wisconsin Energy Independence Fund was conceived as a 10-year, $150 million program. Commerce awarded $7.5 million in the first round of grants and loans under the program in September 2008, but the Legislature did not continue funding for the program in the 2009-11 Biennial Budget.

Office of Energy Independence

In a move that emphasizes the increasing prominence of energy issues, Governor Doyle and the Legislature created an Office of Energy Independence (OEI), transferring to it staff and program responsibilities from the DOA.[5] The statutes charge the OEI with three major tasks:

- Advancing Wisconsin's vision for energy independence by generating at least 25% of power, and at least 25% of transportation fuels, used in this state from renewable resources by 2025.
- Capturing in-state at least 10% of the national emerging bioindustry and renewable energy markets by 2030.
- Ensuring that Wisconsin is a national leader in groundbreaking research that will make alternative energy sources more affordable and create well-paying jobs in this state.

A large portion of the OEI's work involves coordination of other programs and activities, to facilitate the implementation of renewable and other alternative energy projects that relate to the charge of the office. For example, OEI staff will provide technical assistance to the developers of an alternative energy project, help those developers identify and secure financial assistance, or coordinate applications for any regulatory approvals for the project. Much of the OEI's work focuses on wood as a source of biomass, given the state's extensive forest resources and well-developed forest products industry.

The OEI has a number of other responsibilities as the state's energy office. These include the collection and publication of statistics regarding energy use in Wisconsin, oversight of the state's alternative fuels fleet program, and assisting local governments to identify and implement energy efficiency and renewable energy projects. The OEI also has emergency management functions relating to petroleum fuel supplies under the state's Homeland Security Plan.

Renewable Portfolio Standard

To further stimulate the development of renewable energy resources, the state has adopted a renewable portfolio standard (RPS). An RPS is a requirement that suppliers of electric power include in their portfolio of electric supply a specified amount of generation capacity that is derived from renewable resources. Electric power suppliers may comply with the standard by generating electricity from renewable sources, buying electricity from another generator that uses renewable sources, or buying credits from another supplier that has generated or bought more electricity from renewable sources than required to meet the standard itself. The RPS applies to both electric utilities and rural electric cooperatives. The original RPS, created by 1999 Wisconsin Act 9, called for utilities to provide 2.2% of their sales from renewable resources by 2011. As the utilities had already surpassed the original requirement, 2005 Wisconsin Act 141 increased the standard to approximately 10% by 2015.

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[5] The DOA retains responsibility for compliance with the state energy policy described earlier and for implementation of the building and purchasing requirements and administration of the low-income energy programs described below.

Building Codes

In addition to the programs described above, the state promotes energy conservation in the private sector through building codes promulgated by Commerce. The codes relating to commercial buildings, historic buildings, and rental residential units include explicit energy conservation codes; the Commercial Building Code also incorporates the entire International Energy Conservation Code, developed by the International Code Council, by reference. In many other portions of the building codes, such as the design standards for one- and two-family dwellings, Commerce considers energy conservation in setting specific standards. In some instances, such as lighting standards for commercial buildings, the statutes direct Commerce to consider energy efficiency in designing standards.

Energy Use by State Government

For many years, there have been various programs to reduce energy use by state government. These programs serve several purposes. They reduce one of the largest sources of energy demand in the state and save taxpayers significant amounts of money on avoided energy costs. In addition, they encourage similar conservation efforts in other sectors of the economy by demonstrating the effectiveness and feasibility of new, efficient energy systems. Also, at least in theory, these programs stimulate production of new, efficient energy systems by creating demand for them, helping to bring down their cost to the general public.

Construction and Renovation of State Buildings

The Legislature has established a number of requirements for state construction and remodeling projects, including the use of life-cycle cost analysis of building projects and the energy-consuming systems used in such projects, development of energy standards for state buildings that exceed the requirements of the State Building Code, incorporation of passive solar designs in building projects, and use of active solar, photovoltaic, geothermal, and other renewable energy sources to the extent feasible. The statutes also direct the Building Commission to ensure that central steam generating facilities built by the state, to serve state buildings, are designed for the cogeneration of steam and electricity and are designed to utilize biomass and refuse-derived fuels, to the greatest extent feasible.

A separate program targets the energy use of the six state agencies that consume the great majority of electricity purchased by the state (the Departments of Administration, Corrections, Health Services, Public Instruction, and Veterans Affairs, and the University of Wisconsin (UW) System). First, each agency must prepare a biennial energy cost reduction plan that includes all system and equipment upgrades that will pay for themselves over the life of the systems or equipment. Second, the DOA must set goals for the use of renewable electric energy by each agency, with the overall goal that 10% of all state agencies' electric energy use is derived from renewable resources by 2007, and 20% by 2011.

Building on these statutory requirements, Governor Doyle issued two executive orders in 2005 and 2006 intended to further reduce energy use by the state. Under the orders, DOA must, among other things, do the following:

- Using fiscal year (FY) 2005 as a base year, reduce energy use in all state facilities by 10% by FY 2008, and 20% by FY 2010.
- Ensure that new buildings are constructed to be 30% more energy efficient than the Commercial Code.
- Establish sustainable building guidelines applicable to the construction, operation, and maintenance of all state buildings. The guidelines are to be based on the Leadership in Energy and Environmental Design (LEED) rating systems for new and existing buildings.

The DOA is implementing the executive orders and the statutory requirements together as the Conserve Wisconsin Initiative. It has prepared sustainable buildings guidelines and guidelines to accomplish the goal of 30% greater energy efficiency in new state buildings than would be realized under the Commercial Building Code, which it has incorporated into the master specifications and design guidelines for state building projects. The six agencies that are required to prepare biennial energy cost reduction plans have implemented their 2008 plans and submitted their 2010 plans to DOA. Individual energy improvements have included energy audits, lighting upgrades, window replacements, and steam trap replacements. In addition, an administration building now under construction on the University of Wisconsin-Oshkosh campus is designed to meet LEED standards.

The Legislature authorized $30 million bonding revenue in the 2007-09 fiscal biennium and has authorized $50 million bonding revenue in the 2009-11 fiscal biennium to finance energy improvements under these initiatives. Initially, projects were limited to those whose energy savings would exceed the project cost in not more than 10 years; under the second phase of the funding, the program was expanded to include projects with pay-back periods up to 20 years. DOA staff report that, in implementing these programs, they have been able to document that the cost of construction to LEED standards is no greater than the cost of "conventional" construction. They also report that contractors and trades people are well versed in the necessary construction techniques and equipment.

With regard to energy purchased by the state, DOA staff report that the statutory goal that 10% of all electricity purchased by the state be from renewable resources was not met by 2007, but was met in 2008; it does not appear that the 2011 goal of 20% will be met. The Governor's goal of reducing all state energy use by 20% by 2010 has not been met, although the goal has been far exceeded at the State Fair Park and the UW-Green Bay campus, where energy use has been reduced by 50% and 30%, respectively; other UW campuses have made good progress, with UW-Eau Claire and UW-River Falls reducing energy use by 16% and 15%, respectively.

State-Owned Heating Plants

The state owns and operates over 30 plants that generate steam for the heating and cooling of buildings at state institutions, including UW campuses, prisons, veterans homes, and others. About half of them burn coal; the remainder burn natural gas. Collectively, these plants represent a very large portion of the state's energy consumption and greenhouse gas emissions.

In part in response to lawsuits alleging Clean Air Act violations at some of the state's coal-fired heating plants and in part in response to directives from the Governor to reduce greenhouse gas emissions in state facilities, the heating plant on the UW-Madison campus has been converted from coal to natural gas and biomass fuel. Similar conversions are underway at the Capitol Heat and Power plant in Madison and under study at the Waupun heating plant. These three conversions would reduce the state's coal use by 66%. DOA is in discussions with DNR and the U.S. Environmental Protection Agency (EPA) regarding converting the remaining state-owned heating plants to non-coal fuels.

State Procurement

State agencies are required to apply life-cycle cost analysis in purchasing supplies and equipment, whenever such analysis is appropriate. In 2005 Wisconsin Act 141, the Legislature made this requirement more specific with regard to energy-consuming equipment. In the past, DOA has made extensive use of such analysis in the selection of automobiles and copiers, in particular. In 2008, it incorporated "green" purchasing guidelines relating to energy-consuming equipment into the state procurement manual. The guidelines require the purchase of energy equipment identified under either the EPA's Energy Star Program or the U.S. Department of Energy's Federal Energy Management Program, and the application of life-cycle cost analysis for types of equipment not covered by those programs.

State Vehicles

The DOA also operates an alternative fuels program for the state automotive fleet. The statutes require DOA to promote the use of alternative fuels and, by executive order, the Governor has directed DOA to reduce the use in state-owned vehicles of petroleum-based gasoline by 20% by 2010 and by 50% by 2015; and to reduce petroleum-based diesel fuel use by 10% by 2010 and by 25% by 2015.

Low-Income Energy Programs

The DOA administers low-income energy assistance programs under the program name Home Energy +. The programs are funded with federal funds received by the state and fees collected by electric and natural gas utilities and remitted to the state, and are implemented by contract agencies at the county level. The programs offer a variety of services, including direct bill payment assistance for some customers who are unable to make full payments, and early intervention programs to identify and assist customers in danger of falling behind in bill payments. The programs also provide financial assistance for the installation of insulation and other energy conservation measures in the homes of low-income families to reduce the total energy needs of the homes, thereby making energy more affordable for those families. In addition, the programs provide emergency furnace repair or replacement assistance.

Climate Change

Climate policy is, largely, energy policy.

The topic of global climate change dominates environment and energy policy discussions today. While the problems predicted as a result of climate change are largely environmental, the causes are based in the way we use energy, and the policy options for addressing climate change are largely energy policy.[6] Federal climate proposals have been debated for several years but Congress has not enacted any of them. In the absence of federal action (often explicitly to fill that void), many states have taken actions on their own, as individual states and in regional collaborations.

Wisconsin Climate Initiatives

In July 2008, the Governor's Task Force on Global Warming issued its final report, which recommended the following greenhouse gas (GHG) emissions reduction goals:

- A reduction of GHG emissions to 2005 emissions levels by 2014.
- A 22% reduction from 2005 emissions levels by 2022.
- A 75% reduction from 2005 emissions levels by 2050.

In addition, the task force made extensive recommendations relating to the following topics:

- Energy conservation and efficiency.
- Electric generation and supply.
- Transportation.
- Agriculture and forestry.

[6] "Cap-and-trade" programs, which are concerned with the emission of air pollutants rather than with how energy is produced and used, are a notable exception to this generalization.

- Industry.
- Regulation of GHG emissions.

With regard to this last item, the task force concluded that a cap-and-trade program to regulate and reduce GHG emissions is necessary, but that it must be implemented at the national or regional level.[7] It recommended that the state advocate for a national program that meets the specific needs of Wisconsin, but that the Governor continue to work toward a regional program through the Midwestern Governors Greenhouse Gas Accord, described below.

With the exception of wind energy system siting, the 2009 Legislature did not pass climate-related legislation.

Many individual recommendations of the task force have been implemented by the Executive Branch, but many others require legislation to implement. The 2009 Legislature considered extensive legislation implementing many recommendations of the task force. Apart from the legislation relating to the siting of wind energy systems, described in the preceding section, this legislation did not pass. It is likely that elements of this legislation will be offered again in future sessions. For further information regarding Wisconsin and regional climate initiatives, see the references at the end of this chapter.

Regional Climate Initiatives

Numerous regional climate initiatives have been undertaken around the world. The most advanced is that of the European Union, which includes a European cap-and-trade system and other enforceable requirements.

There are three regional climate initiatives in North America.

Three regional initiatives have been undertaken in North America. The oldest of these is the Regional Greenhouse Gas Initiative (RGGI), in the northeast, which includes a mandatory cap-and-trade program for carbon dioxide emissions in the electric generation sector. The other initiatives are the Western Climate Initiative and the Midwest Greenhouse Gas Reduction Accord.

Apart from the RGGI cap-and-trade program, the regional initiatives in North America focus on voluntary actions and the coordination of efforts among the member states. Globally, there has been an effort to establish uniform protocols for emission off-sets, to allow off-sets in one part of the world to count toward emission reduction requirements in another.[8]

In May 2010, the three regional initiatives in North America announced that they had joined in a cooperative effort to share experiences in the design and implementation of regional cap-and-trade programs, to inform federal decision-making on climate change policy, and to explore the potential for further collaboration. Taken together, these initiatives represent 23 U.S. states and four Canadian provinces; when observers are included, this comes to 33 U.S. states, the District of Columbia, 10 Canadian provinces and territories, and six Mexican states.

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[7] Under a cap-and-trade program, regulators set a cap on emissions of a specified pollutant from specified sources. The emissions allowed under the cap are allocated among existing sources, establishing an "allowance" to each source. Each source has the option to meet its lower emissions limit by either reducing its emissions or buying a portion of another source's allowance. If the latter option is taken, the source that sells the allowance must further reduce its own emissions to reflect the allowance it has sold.

[8] Off-sets are like the tradable allowances of a cap-and-trade program, except that they are created by a party not subject to the requirements of the program. They can be used in mandatory cap-and-trade programs or in voluntary emission reduction programs.

Biofuels

After two legislative sessions in which bills to require that gasoline contain a minimum percent of ethanol were debated and defeated, the Joint Legislative Council created the Special Committee on Domestic Biofuels to study the issue more broadly. 2009 Wisconsin Act 401 is based on the recommendations of that committee. It promotes the production and use of biofuels through a wide array of initiatives using many of the standard policy tools available for such purposes, including:

1. Financial tools, including direct financial assistance and tax incentives.
2. Technical assistance and educational programs.
3. Government leadership by example (i.e., state procurement requirements).
4. Direct regulation.

*The Act does **not** require that motor fuel sold in this state include ethanol.*

The Act does ***not*** require that motor fuel sold in this state include ethanol. It does, however, set a goal for the sale of renewable fuels in the state. The goal is 110% of the state's share of renewable fuel sales required under federal law. It directs the Department of Agriculture, Trade and Consumer Protection (DATCP) to monitor renewable fuel sales. If sales fall short of this goal, DATCP must evaluate the reasons for the failure and submit a report to the Legislature.

Glossary of Terms and Abbreviations

CLEC – Competitive local exchange carrier

DATCP – Department of Agriculture, Trade and Consumer Protection

DOA – Department of Administration

FCC – Federal Communications Commission

FERC – Federal Energy Regulatory Commission

GHG – Greenhouse gas

ILEC – Incumbent local exchange carrier

IPP – Independent power producer

NRC – Nuclear Regulatory Commission

PSC – Public Service Commission

RPS – Renewable portfolio standard

RTO – Regional Transmission Organization

USF – Universal Service Fund

Additional References

Legislative Council Staff:

Municipal Regulation of Wind Energy Systems (2009 Wisconsin Act 40), Information Memorandum 2009-5 (October 27, 2009).

The New Law Relating to State-Issued Franchises for Video Service Providers, Information Memorandum 2008-1 (January 15, 2008).

Regional Initiatives to Address Global Climate Change, Information Memorandum 2008-2 (October 5, 2007, revised February 4, 2008).

Recommendations of the Governor's Task Force on Global Warming, Information Memorandum 2008-9 (August 15, 2008).

2005 Wisconsin Act 141: Energy Efficiency, Renewable Energy, and Energy Policy, Information Memorandum 2006-1 (March 30, 2006).

Current list of Legislative Council Staff publications found at: http://www.legis.state.wi.us/lc.

Legislative Fiscal Bureau (LFB):

Taxation and Regulation of Public Utilities, LFB Informational Paper Series (January 2009).

Utility Public Benefits and Low-Income Heating Assistance Programs, LFB Informational Paper Series (January 2009).

Current list of LFB publications found at: http://www.legis.state.wi.us/lfb/index.html (click on Publications).

The LFB is scheduled to release the 2011 edition of its Informational Paper Series in January 2011, which will be available at the above website address.

LinkWISCONSIN Broadband Mapping Project:

http://www.link.wisconsin.gov/lwi/default.aspx?bhcp=1.

Low-Income Energy Programs:

http://homeenergyplus.wi.gov.

Governmental Agencies' Internet Sites:

Wisconsin ***PSC***: http://psc.wi.gov.

Wisconsin ***OEI:*** http://power.wisconsin.gov.

Wisconsin ***DOA, Division of Energy***: http://www.doa.state.wi.us/energy.

FERC: http://www.ferc.gov/.

FCC: http://www.fcc.gov/.

Federal Energy Information Administration: http://www.eia.doe.gov/.

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Chapter T

Veterans and Military Affairs and Emergency Management

The Wisconsin **Department of Veterans Affairs** (DVA) provides a variety of benefits and services to eligible veterans of the U.S. Armed Forces, and, in some instances, their family members, as well as assistance in filing claims for federal veterans benefits. DVA also operates two veterans homes, three veterans cemeteries, and a veterans museum.

The Wisconsin **Department of Military Affairs** (DMA) oversees the operations of the Wisconsin National Guard, whose state mission is to help civil authorities protect life and property and preserve peace, order, and public safety in times of natural and human-caused disasters and emergencies. DMA also administers the state's emergency management system through its **Division of Emergency Management**.

Veterans Affairs

The DVA is governed by a seven-member citizen Board of Veterans Affairs comprised entirely of veterans, including at least two Vietnam War veterans. Board members are appointed by the Governor with the advice and consent of the Senate. The Board in turn appoints the cabinet-level department secretary. Chapter 45, Stats., governs state veterans programs and services. Chapters VA 1-18, Wis. Adm. Code, contain DVA's administrative rules.

The Council on Veterans Programs is comprised of representatives of organizations that have a direct interest in veterans affairs. The Council advises the Board and DVA on solutions and policy alternatives relating to the problems of veterans. The Council and the department, jointly or separately, are required to submit a biennial report to the Legislature, including a general summary of the activities and membership of the Council and each organization represented on the Council over the past two years.

Under state law, each county must have a county veterans service officer (CVSO) and provide the CVSO with office space and clerical assistance. The DVA provides grants to counties for maintaining and operating county veterans service offices. The primary duties of CVSOs are to advise veterans of state and federal benefits and services to which they may be entitled and assist them in applying for those benefits and services. CVSOs also may provide information to members of the National Guard and Reserves and their families about benefits to which they may be entitled, necessary military points of contact, and general deployment information. A number of Wisconsin tribes and bands have tribal veterans service officers (TVSOs). A link to a listing of all CVSOs and TVSOs is available at http://dva.state.wi.us/cvso.

DVA has a toll-free number for information about veterans benefits at: (800) WIS-VETS [(800) 947-8387].

DVA's executive assistant is the agency's chief legislative liaison and can provide assistance with constituent and legislative inquiries and direct people to other sources of information on veterans programs and services. The executive assistant may be reached at (608) 266-1315. DVA's website is: http://dva.state.wi.us and has comprehensive information about veterans programs benefits and services. In addition, DVA produces a biennial guide to all state veterans programs and services, which may be accessed on the DVA website.

State Veterans Programs and Services

Wisconsin veterans are eligible for a number of benefits and services that are in addition to those provided by the U.S. Department of Veterans Affairs (U.S. DVA). State veterans programs are available in such areas as housing, education, employment, health care, subsistence aid, and transportation. The following discussion provides an overview of major programs; more extensive information about these and other benefits and services is available on the DVA website listed above.

Eligibility Requirements

To receive state veterans benefits and services, a veteran must meet certain general eligibility requirements relating to military service and state residency which are set forth in state statutes. Family members of deceased or disabled veterans may also be eligible for certain benefits. Some veterans programs have additional requirements.

Information on eligibility for specific state veterans programs, and applications, are available on the DVA website at: http://www.dva.state.wi.us/benefits.asp or from the CVSO offices.

Military Service. To fulfill the military service requirement for receipt of most veterans benefits, a person must have served for one of the statutorily specified periods of active duty (other than active duty for training purposes) under honorable conditions in the U.S. Armed Forces or in forces incorporated in the Armed Forces. For example, veterans who have served for 90 days in the Iraq war are eligible for benefits. Formerly, eligible military service for purposes of veterans benefits was limited to service occurring during certain war or designated conflict periods. In 1997, eligibility was expanded to include peacetime veterans. Peacetime veterans are those who have served on active duty in the U.S. Armed Forces for two or more continuous years or the full period of their service obligation, whichever is less.

State Residency. With certain exceptions, to be eligible for benefits, a veteran must be a resident of Wisconsin and living in the state at the time of making an application. If a family member of a deceased veteran is applying for benefits, the veteran from whom the applicant derives eligibility must meet one of the following conditions:

1. The veteran's selective service local board, if any, and home of record at the time of entering service (as shown on the separation-from-service or "DD-214" report) were in Wisconsin.

2. The veteran was a resident of Wisconsin at the time of entry into active duty.

3. The veteran was a resident for any consecutive 12-month period after entry and before the date of application for benefits or death.

Veterans who are otherwise eligible and are serving on active duty do not have to be living in Wisconsin on the date of application to qualify for DVA benefits. If DVA once determines that a veteran meets the 12-month residency requirement, the veteran never has to reestablish that he or she meets the residency requirement when applying for any other benefit that requires that residency. Certain programs require that the veteran have entered service from Wisconsin.

Funding

The Veterans Trust Fund finances many programs and services for Wisconsin veterans including, for example, education grants, retraining grants, home mortgage and home improvement loans, state veterans cemeteries, and others. In addition to funding these veterans programs and services, appropriations from the Veterans Trust Fund are also used for the cost of salaries and fringe benefits, supplies, and services related to the administration of veterans programs. State taxpayers may contribute to the Veterans Trust Fund by designating an amount on the Wisconsin individual or corporate income tax form.

Veterans Loan Programs

The DVA administers several loan programs to improve housing purchase opportunities and provide home improvement assistance and access to multi-purpose, low-cost loans for veterans.

Veterans Primary Housing Loan Program

Housing and Home Improvement Loans

The Veterans Primary Housing Loan Program provides fixed-rate mortgage loans to qualifying state veterans to purchase or construct a home. Members of the National Guard and Reserves who have served for six consecutive years and who are living in the state at the time of application are also eligible for the program. DVA is the program lender, with funding for loans coming from the proceeds of state bond issuances. The state program is separate from the federal Home Loan Program administered by the U.S. DVA. Veterans must make a down payment on the home of at least 5%, unless the veteran is totally and permanently disabled. The loan principal amount may not exceed 2-1/2 times the median sales price of a Wisconsin home. The loan must be secured with a mortgage on the property and the home may be the veteran's primary or secondary residence.

Home Improvement Loan Program

Under the Home Improvement Loan Program, veterans may borrow up to 90% of their home's equity for additions, construction of a garage, repairs, and remodeling.

Personal Loan Program

Personal Loans

The Personal Loan Program provides multi-purpose, low-interest loans of up to $25,000 to eligible veterans or the unremarried surviving spouse or child of a deceased veteran. A remarried spouse or parent of a veteran's child may be eligible for a loan to pay for the education of the veteran's children.

Veterans Education Benefits

Wisconsin provides a number of education benefits for state veterans that are in addition to available federal benefits. The various programs have different eligibility criteria, including varying state residency requirements.

Tuition Residency for Wisconsin Veterans

Wisconsin law provides that an eligible veteran who entered active duty from Wisconsin but who is nonetheless considered a non-resident for tuition purposes by the University of Wisconsin (UW) System is entitled to a 100% remission of non-resident tuition. The person must meet the definition of "veteran" in ch. 45, Stats., and be a resident of and living in Wisconsin at the time of registering at an institution. The remission of non-resident fees does not apply to Wisconsin Technical College System (WTCS) schools because eligible veterans in the WTCS are granted statutory residency status.

Wisconsin GI Bill

DVA information about the Wisconsin GI Bill and applications are available at: www.WisVets.com/Education.

The Wisconsin GI Bill provides a 100% waiver ("remission") of tuition and fees for eligible veterans and their dependents for up to eight full-time semesters or 128 credits, whichever is longer, at any UW System or WTCS institution. The remission applies to both undergraduate and graduate level study.

Remission for Veterans. To be eligible for the tuition remission, the veteran must be verified by DVA as being a Wisconsin resident for purposes of receiving state veterans benefits, as having been a Wisconsin resident at the time of entry into the Armed Forces, and as meeting any one of a number of service-related conditions. An eligible veteran who entered the service as a Wisconsin resident but is nonetheless considered by the UW System to be a non-resident for tuition purposes is also eligible to receive 100% remission of the non-resident portion of the tuition.

UW System has a "Frequently Asked Questions" (FAQs) document concerning the Wisconsin GI Bill at: http://www.uwsa.edu/acss/student/WI_GI_Bill_FAQs.htm?_.

The veteran must submit both an application for GI Bill benefits to the educational institution and a form requesting certification of eligibility to DVA. DVA determines the eligibility of the veteran and notifies the institution of its determination. There is no time limit within which the benefit must be used and the veteran may attend school full-time or part-time.

Remission for Family Members. Spouses, unremarried surviving spouses, and children of veterans who entered service from Wisconsin may also receive the tuition remission if the veteran died in the line of duty while in active, National Guard, or Reserves service or received at least a 30% service-connected disability rating. These spouses and children must be resident students (interpreted as residents for tuition purposes) and may receive the remission only during the first 10 years following the veteran's death or receipt of disability rating. For an unremarried surviving spouse of an eligible veteran who had a child with the veteran, the remission applies until 10 years after the youngest child that the spouse had with the eligible veteran reaches or would have reached 18 years of age, or during the first 10 years after the veteran died, whichever is longer. The child of an eligible veteran may receive the remission if the child is at least 17 but not yet 26 years of age.

Federal Post 9/11 GI Bill

Information about the Federal Post 9/11 GI Bill is available at: www.WisVets.com/Education.

The Post 9/11 GI Bill took effect on August 1, 2009. It provides funding for up to 36 months of tuition, books, and living expenses without contributions from the individual while in service, for veterans who served after September 11, 2001.

2009 Wisconsin Act 28 (the 2009-11 Biennial Budget Act) requires veterans and their qualifying dependents to use the Federal GI Bill and any other federal benefits to which they are entitled, prior to using the Wisconsin GI Bill. This language is being interpreted by the UW System and WTCS as requiring a credit-for-credit reduction in Wisconsin GI Bill benefits for every credit paid for with post 9/11 GI Bill funds.

VetEd Tuition Reimbursement Program

The VetEd Program reimburses veterans for tuition and fees paid for courses taken as undergraduates at UW System, WTCS, or private higher education institutions. The maximum number of credits for which a veteran may receive reimbursement is based on the amount of time the veteran served on active duty. The maximum reimbursement cannot exceed what UW-Madison charges for the same number of credits.

VetEd reimbursement will be reduced to the extent that tuition and fees have already been paid by other grants, scholarships, and remissions, including the Wisconsin GI Bill and the Post 9/11 GI Bill. Veterans may apply for VetEd through their CVSO or online at the DVA website.

2009 Wisconsin Act 297 makes changes in the VetEd Program. Under the law prior to Act 297, the veteran could apply for the program for courses begun within 10 years after separation from the service. However, this requirement did not apply to a veteran who was applying for reimbursement for up to 60 credits of part-time classroom study courses.

Act 297 eliminates the requirement that the veteran must apply for courses within 10 years after separation from the service and substitutes a provision that for courses begun later than 10 years after separation from the service, a veteran may not be reimbursed for more than 60 of the credits to which the veteran's eligibility is limited. In addition, for courses begun later than 10 years after separation from the service, the veteran may not be reimbursed for more than 11 semester credits or equivalent trimester or quarter credits, other than a summer semester or session, regardless of the number of credits taken during that semester or session. The Act first applies to applicants for tuition reimbursement for an academic term that begins after May 27, 2010.

Veterans Grant Programs

DVA administers a number of grant programs for veterans and veterans organizations.

Retraining Grant Program

Under this program, veterans who are underemployed or recently unemployed may apply for up to $3,000 a year for up to two years if they demonstrate financial need while enrolled in a training program that is expected to lead to employment. DVA may pay a retraining grant directly to the veteran's employer if the veteran is in a structured on-the-job training program.

Assistance to Needy Veterans Grant Program

This program provides limited financial emergency assistance to financially needy veterans or their dependents who have exhausted all other sources of aid. The grants may be used for specified health care or subsistence needs or for economic emergency assistance for spouses and dependents of activated or deployed service members. There is a cumulative lifetime grant award limit of $7,500.

CVSO Grant Program

DVA provides grants to counties for maintaining and operating a county veterans service office and improving service to former military personnel. A county's grant is based on whether the CVSO is full-time or part-time and the county's total population.

Other Veterans Programs and Services

Property Tax Credit

Veterans and Surviving Spouse Property Tax Credit

Wisconsin law provides a property tax credit to veterans with a 100% disability or their surviving spouses and the surviving spouses of service members who died while on active duty. The credit is equal to the amount of property taxes paid during the year on the principal dwelling.

A veteran must meet all of the following conditions to qualify for the tax credit:

- Served on active duty under honorable conditions in the U.S. Armed Forces or in forces incorporated in the U.S. Armed Forces.
- Was a resident of Wisconsin at the time of entry into active service or was a resident of Wisconsin for any consecutive five-year period after entry into that service.
- Is currently a resident of Wisconsin for purposes of receiving veterans benefits under ch. 45, Stats.
- Either has a service-connected disability rating of 100% from the U.S. DVA or is considered individually unemployable and is rated 100% disabled on that basis.

A person must be the unremarried surviving spouse of **one** of the following, as verified by DVA:

- A veteran who met all of the above conditions.
- An individual who died in the line of duty while on active or inactive duty for training purposes as a member of the National Guard or a reserve component of the U.S. Armed Forces and who was a resident of this state at the time of entry into that service or who had been a resident of Wisconsin for any consecutive five-year period after entry into that service, and died in the line of duty as a Wisconsin resident.

A FAQs document on this credit is available on the DOR website at: http://www.revenue.wi.gov/faqs/ise/vetprop.html.

Forms are available on the DVA website (www.WisVets.com/forms), from the Department of Revenue (DOR) (www.dor.state.wi.us), or by calling DVA toll-free at 1-800-WIS-VETS (1-800-947-8387). See DVA 10106, the application/instructions booklet, on the DVA website (www.WisVets.com/taxes).

Assistance With Filing U.S. DVA Claims

DVA maintains a claims assistance office at the U.S. DVA Regional Office in Milwaukee and develops and files all federal disability and pension claims for veterans in Milwaukee County, in addition to assisting the CVSOs in most other counties in developing those claims. The claims assistance office may be reached at (414) 902-5757.

Information on PTSD is available on the website of the U.S. DVA's National Center for PTSD at: http://www.ncptsd.va.gov.

Post-Traumatic Stress Disorder (PTSD) Outreach and Referral Services

DVA is required to provide services related to PTSD to service members and veterans, including at least one of the following: (1) outreach services to service members and veterans who may be experiencing PTSD; or (2) information on the availability of PTSD medical services and referrals to those services.

Veterans Assistance Program

The Veterans Assistance Program (VAP) helps homeless veterans and those at risk for becoming homeless receive job training, education, counseling, and rehabilitative services (such as alcohol and other drug abuse (AODA) counseling) in order to become employed, find affordable housing, and develop living skills. Regional veterans assistance centers (VACs) or "homeless transition sites" have been established to provide "one-stop shopping" for services for homeless and at-risk veterans. The VACs are located at the veterans homes at King and Union Grove, at Fort McCoy, and in the Oak Grove building on the campus of the Northern Wisconsin Center at Chippewa Falls. Funds for the sites come from DVA and the U.S. DVA. A portion of program funds goes to the Center for Veterans Issues in Milwaukee for outreach services to homeless veterans with PTSD.

Veterans with other than a dishonorable discharge are eligible to participate in the program and there is no state residency requirement for the program. The program will assist a veteran's family to obtain housing, but cannot feed or house the spouse (unless also a veteran) or children of the veteran.

The Legislative Audit Bureau (LAB) released a letter report on the VAP in June 2004: http://www.legis.wisconsin.gov/lab/reports/04-DVAfull.pdf.

Employment and Training Services

Employment Assistance

DVA provides a wide array of employment and training services for veterans, including transition assistance to veterans leaving active service, job placement, coordinating approvals for training courses, entrepreneurial training, recruiting veterans to return to Wisconsin following military service, and reducing barriers to licensure necessary for employment. Also, the Office of Veterans Services in the Department of Workforce Development (DWD) provides an employment service placement program and a job training placement service program for veterans through 22 Wisconsin job centers and 65 additional outreach locations, including correctional facilities and county veterans service offices.

Military Funeral Honors Program

For information about military funeral honors, call: (877) 944-6667 or (608) 261-0510.

DVA administers the Military Funeral Honors Program to honor veterans who served in the U.S. Armed Forces, National Guard, or Reserves, with assistance from veterans service organizations (VSOs) and active and reserve components of the U.S. Armed Forces. The VSOs may be reimbursed up to $50 for providing honor guard details at a veteran's funeral. The Adjutant General of the Wisconsin National Guard may activate Guard members to provide military funeral honors. Depending on availability of personnel, various types of honors may be rendered, including firing rifle volleys, sounding Taps, and folding the flag for presentation to the veteran's next-of-kin.

Students in grades 6-12 and college may receive college tuition vouchers of $25 for sounding Taps at military honors funerals. Family members of a deceased veteran may notify their funeral director of their desire to have military funeral honors rendered and provide the veteran's discharge form or other proof of veteran status or eligibility for funeral honors. The funeral director then contacts the DVA Military Funeral Honors Program to arrange for such honors to be provided.

Supermarkets of Veterans Benefits

DVA periodically sponsors "supermarkets" of veterans benefits in various communities around the state, at which representatives of local, state, federal, and non-profit agencies come to a central location to provide one-stop shopping for veterans needing information and assistance concerning benefits, programs, or services. At this central location, veterans may, among other things, establish their eligibility for state veterans benefits, apply for a range of benefits, loans, and grants, receive a health screening and enroll in the federal veterans health care program, and obtain assistance in obtaining military medals and records.

Mission: Welcome Home Program

DVA administers the Mission: Welcome Home Program to help returning veterans transition back to everyday life. The program provides information about and access to federal and state veterans benefits and outreach and assistance to veterans and their families. Information about the program is available on the DVA website or via email to: MWH@dva.state.wi.us.

Resources for Women Veterans

DVA has hired a coordinator for women veterans services who may be contacted at: WomenVets@dva.state.wi.us.

The Women Veterans Task Force of the Wisconsin Women's Network has compiled a list of resources for women veterans called *Women In Boots: Marching Home*, that is available at http://wiwomensnetwork.org/veterans.

State Veterans Facilities

Veterans Homes

There are currently two veterans homes in Wisconsin, located at King in Waupaca County and at Union Grove in Racine County, with a third one planned for Chippewa Falls in Chippewa County. Wisconsin veterans are eligible to become residents of a veterans home if they have served on active duty for two or more years or the full period of their initial service obligation, whichever is less. They are also eligible if

they served on active duty for at least 90 days, one day of which must be within a wartime period. Spouses of eligible veterans may also live at the home.

The applicant must be a state resident on the date of admission to the home and must have been a state resident either upon entering the service or for any 12-month period after enlistment and before the date of application. The veteran must also be permanently incapacitated due to physical disability or age.

The Veterans Home at King provides residential care, nursing and medical services, food services, and social and counseling services to its resident veterans and eligible dependents. There are currently four licensed skilled nursing care buildings, 14 cottages for married couples who are able to care for themselves, and other support facilities.

The Veterans Home at Union Grove has two community-based residential facilities for veterans and their spouses who require limited nursing care, a residential care apartment complex, a skilled nursing care facility, and a campus activities center.

In the 2005-07 capital budget, the State Building Commission enumerated the state's portion of a project to construct a new skilled nursing facility on the campus of the Northern Wisconsin Center in Chippewa Falls. The project is currently on the U.S. DVA's approved list, but awaiting completion by the state of various design and bidding requirements.

In August 2010, the LAB released a letter report, *Rate Setting at the Wisconsin Veterans Homes*, available at: http://www.legis.state.wi.us/lab/reports/10-ratesetting_ltr.pdf.

Veterans Cemeteries

There are three state-run veterans cemeteries in Wisconsin (in addition to the Wood National Cemetery in Milwaukee, which reached capacity in 1996): the Central Wisconsin Veterans Memorial Cemetery at King, the Southern Wisconsin Veterans Memorial Cemetery at Union Grove, and the Northern Wisconsin Veterans Memorial Cemetery at Spooner. Veterans who meet specified requirements are eligible for burial at a Wisconsin veterans cemetery. The veteran must have been discharged or released from active duty under any conditions other than dishonorable or died while on active duty. In addition, the veteran must either have entered military service from Wisconsin, have been a resident of Wisconsin at death, or have entered military service from another state but was a Wisconsin resident at some point for at least 12 consecutive months after entering service.

A person who was a Wisconsin resident at the time of death and served at least 20 years in the National Guard or Reserves and qualified for retirement pay (or would have qualified had death not occurred before age 60) is also eligible for burial at a Wisconsin veterans cemetery. Veterans and their spouses may pre-register for burial at one of the three state cemeteries on a form available on the DVA website or from a CVSO or the cemetery. Currently, no fee is charged for burial of an eligible veteran, but a fee is charged for family members. DVA may assess funeral directors involved in interments the amount necessary to reimburse DVA for the average cost of providing specified services and items.

State Veterans Museum

DVA operates the Wisconsin Veterans Museum on the Capitol Square in Madison. The Museum's mission is to acknowledge, commemorate, and affirm the role of Wisconsin veterans in the United States' military past by means of instructive exhibits and other educational programs. In addition to state funding, the private, non-profit Wisconsin Veterans Museum Foundation contributes funds to the Museum.

Selected New State Laws

The Legislature enacted a number of laws relating to veterans in the 2009-10 Session, including the following:

2009 Wisconsin Act 28 (the 2009-11 Biennial Budget Act) contains a number of provisions relating to veterans and DVA operations. These include:

- Providing additional funding from the Veterans Trust Fund for the health care and subsistence aid grant program.
- Providing funding from the Veterans Trust Fund and a position for the Mission Welcome Home Program.
- Increasing general purpose revenue (GPR) funding for the Military Funeral Honors Program.
- Evaluating the viability of home loan servicing by DVA under the primary mortgage loan program.

2009 Wisconsin Act 35 designates July 27 as "Korean War Armistice Day," to recognize the Wisconsin Armed Forces members who courageously served during the Korean War.

2009 Wisconsin Act 36 designates March 29 as "Vietnam Veterans Day," to recognize the 1,239 Wisconsin Armed Forces members listed on the Vietnam Memorial Wall and to express pride and gratitude to the veterans of that war.

2009 Wisconsin Act 37 exempts the first $50,000 of the cash value of life insurance from being considered in determining whether a veteran or family member is eligible for assistance under the VAP.

2009 Wisconsin Act 49 adds a representative of the Wisconsin American GI Forum to the Council on Veterans Programs.

2009 Wisconsin Act 105 requires that a restitution order relating to a misappropriation of an object from a cemetery that indicates the deceased was a veteran must require the defendant to reimburse an individual, organization, or governmental entity for the cost of replacing the object.

2009 Wisconsin Acts 109 and 132, respectively, provide for reduce-fee fishing licenses for "individually unemployable" disabled veterans and for disabled veterans receiving certain federal pension benefits for a disability not related to the person's military service.

2009 Wisconsin Act 126 requires the Department of Transportation (DOT) to identify on its highway service maps and folded maps: (1) each veterans memorial highway or bridge designated under ch. 84, Stats.; and (2) the location of veterans memorials, cemeteries, homes, and museums specified in the Act.

2009 Wisconsin Act 144 requires the Governor to annually proclaim March 25 as "Medal of Honor Day," to celebrate and honor members of the U.S. Armed Forces who have been awarded the Medal of Honor for their valor on action above and beyond the call of duty.

2009 Wisconsin Act 197 provides that a U.S. Department of Defense document executed by a member of the U.S. Armed Forces to provide an authorization for final disposition of the member's remains qualifies as a valid authorization for final disposition under Wisconsin law.

2009 Wisconsin Act 208 permits a school board to issue a high school diploma to certain veterans who are at least 55 years old and have a service-connected disability in specified circumstances.

2009 Wisconsin Act 210 creates an evidentiary privilege against disclosure of communications made by a veteran to a veteran mentor who is authorized by a circuit court judge to provide assistance and advice about court-related matters to veterans and current Armed Forces members.

2009 Wisconsin Act 230 establishes a special license plate for women veterans which will cost $15 in addition to the regular vehicle registration fee.

2009 Wisconsin Act 298 adds a representative of the Blinded Veterans Association of Wisconsin to the Council on Veterans Programs.

2009 Wisconsin Act 299 creates preferences in awarding state contracts to businesses owned by disabled veterans with at least a 30% disability rating. A bid of up to 5% higher than the lowest bid may be accepted.

Military Affairs

The DMA is headed by the state Adjutant General, who is appointed by the Governor for a five-year term and may be reappointed. The Adjutant General reports to the Governor, who is designated by the Wisconsin Constitution as the commander-in-chief of the Wisconsin National Guard. Chapter 321, Stats. (formerly ch. 21, Stats.), sets forth statutory provisions governing the Wisconsin National Guard, the Adjutant General, and the Governor's military staff. Chapter 322, Stats., sets forth the Wisconsin Code of Military Justice. Chapter DMA 1, Wis. Adm. Code, sets forth administrative rules relating to the military Family Relief Fund (described on page T-23).

The DMA also administers Wisconsin's emergency management system through its Division of Emergency Management which is headed by a division administrator appointed by the Governor. Chapter 323, Stats., governs state and local emergency management. [Formerly, ch. 166, Stats., governed emergency management. That chapter was renumbered ch. 323 and recodified in 2009 Wisconsin Act 42, which was a product of the Legislative Council's Special Committee on Emergency Management and Continuity of Government.] Chapters WEM 1-8, Wis. Adm. Code, contain the Division's administrative rules.

The DMA executive assistant is the primary legislative liaison and is most familiar with the overall operations of the department and may be reached at (608) 242-3009. The department's legal staff may be reached at (608) 242-3071. The department's public information office maintains DMA's website at: http://dma.wi.gov with links to WEM, the Army National Guard, and the Air National Guard.

Wisconsin National Guard

Organization and Dual Missions

The Wisconsin National Guard is the organized militia of the state and is headed by the state Adjutant General. It consists of the Army National Guard and the Air National Guard, each of which is headed by a deputy Adjutant General. The Guard

is an armed military force which is organized, trained, equipped, and available for deployment under official orders in both state and national emergencies. The Guard has dual missions--federal and state. Its federal mission is to provide trained units to the U.S. Army and Air Force in time of war or national emergency. When the Guard is activated in federal duty status, the President becomes its commander-in-chief. Its state mission is to help civil authorities protect life and property and preserve peace, order, and public safety in times of natural or human-caused emergencies. When the Guard is activated in state duty status, the Governor is its commander-in-chief.

The composition of Wisconsin Army and Air National Guard units is authorized by the U.S. Secretary of Defense through the Department of Defense's National Guard Bureau. All Guard officers and enlisted personnel must meet the same physical, educational, and other eligibility requirements as members of the active duty Army or Air Force.

Role of Governor and Duties of Adjutant General

As commander-in-chief of the Wisconsin National Guard, the Governor may order the Guard or a portion of the Guard into active duty in the following circumstances:

- In case of war, insurrection, rebellion, riot, invasion, terrorism, or resistance to execution of the laws of the state or the United States.
- In the event of public disaster resulting from flood, fire, tornado, or other national disaster.
- In the event of a declared public health emergency.
- In order to assess damage or potential damage and to recommend responsive action as a result of natural or man-made events.
- Upon application of a U.S. marshal, village president, mayor, town board chair, or county sheriff.

The Adjutant General serves as the military chief-of-staff to the Governor and has custody of all property, military records, correspondence, and other documents relating to the National Guard and any other military forces organized under state law.

Funding

The Wisconsin National Guard is funded and maintained by both the federal and state governments. The federal government provides arms and ammunition, equipment and uniforms, outdoor training facilities, pay for military and support personnel, and training and supervision. The state provides personnel, conducts training, and shares the cost of constructing, maintaining, and operating armories and other military facilities. The federal government currently provides approximately 90% of the funding for the Wisconsin National Guard.

Army National Guard

The Wisconsin Army National Guard currently has approximately 7,700 members and includes the following subordinate commands:

- Joint Forces Headquarters in Madison with a number of subordinate units including the Drug Control Program, 54th Civil Support Team, Recruiting and Retention Command, and the 505th Trial Defense Team.
- 157th Maneuver Enhancement Brigade with headquarters in Milwaukee and several subordinate units, including the 257th Brigade Support Battalion in Oak Creek, the 1-121st Field Artillery Battalion in Milwaukee, and the 724th Engineer Battalion in Chippewa Falls.

- 32nd Infantry Brigade Combat Team with headquarters in Camp Douglas and several subordinate units, including the Brigade Special Troops Battalion in Wausau, the 2-127th Infantry Battalion in Appleton, the 1-128th Infantry Battalion in Eau Claire, the 105th Reconnaissance and Surveillance Battalion in Madison, the 132nd Brigade Support Battalion in Portage, and the 1-120th Field Artillery Battalion in Wisconsin Rapids.
- 64th Troop Command with headquarters in Madison and several subordinate units, including 1-147th Aviation Battalion in Madison, 641st Troop Command Battalion in Madison, and the 732nd Combat Service Support Battalion in Tomah.

Air National Guard

The Wisconsin Air National Guard is currently comprised of more than 2,200 members and includes the following components:

- State Headquarters at the Office of the Adjutant General and the 115th Fighter Wing at Truax Field, Madison.
- 128th Air Refueling Wing at General Mitchell Field, Milwaukee.
- 128th Air Control Squadron and Combat Readiness Training Center located at Volk Field, Camp Douglas, and Hardwood Range, an air-to-ground bombing and gunnery range, located south of Babcock.

Recent Guard Activities

The Wisconsin Army and Air National Guard have been and continue to be involved in a number of activities relating to the September 11, 2001 terrorist attacks, the global war on terrorism, and the Iraq and Afghanistan wars. The Wisconsin Army National Guard's 32nd Infantry Brigade Combat Team recently returned from its largest deployment since World War II with a year-long mobilization and deployment to Iraq in 2009 to 2010. In addition, the 732nd Combat Support Battalion returned from Iraq, and the 951st Engineer Company and a 17-man Embedded Training Team returned from a deployment to Afghanistan. Currently, the 724th Engineer Battalion is deployed to Iraq with the 1-147th Aviation scheduled to deploy in the next few months. The Wisconsin Air National Guard's 128th Air Refueling Wing continues to support tanker operations, both overseas and domestic, in support of the global war on terrorism to include extended deployments to areas of responsibility and AeroMed evacuations. The 128th Air Control Squadron, based out of Volk Field, returned from Iraq after a successful deployment. The 115th Fighter Wing, coming off an extensive deployment in 2009, maintains their position at "the tip of the sword" with multi-national training deployments. Lastly, the Combat Readiness Training Center continues to aid the fight with thousands of troop movements annually in and out of Volk Field. Information on current Wisconsin Army and Air National Guard mobilizations is available at: http://dma.wi.gov/. Additional information about Department of Defense-wide news is located at: http://www.defenselink.mil/news .

Service Member Support Division

Support for Service Members and Their Families

The Wisconsin National Guard Service Member Support Division manages the administration of benefits, programs, and support services for all Wisconsin service members and their families. The team provides pre-, during-, and post-mobilization support to commanders and service members by establishing a centralized connection to the multitude of public and private agencies that provide benefits, programs, and services to Wisconsin military service members and their families.

Supporting programs include education, advocacy, intervention, short-term counseling, resource awareness education, support in accessing resources, referral to community resources and services, youth and parent education and enrichment programs. Learn more about the programs online at www.wisconsinmilitary.org.

- **National Guard Family Program** establishes and facilitates ongoing communication, involvement, support, and recognition between families and the service member in a partnership that promote the best in both. [1-800-292-9464]

- **Badger Yellow Ribbon Program** provides educational information events and activities for military members, their families, and community members to facilitate access to services and support their health and well-being throughout the entire deployment cycle.

- **Youth Program** provides youth with opportunities to form bonds with other military youth, building support networks that are essential in times of deployment as well as reintegration. Youth activities, camp, social, and educational opportunities are available.

- **Sexual Assault Response Program** provides prevention training to all service members and resource and referral services to victims of sexual assault and domestic violence. The Sexual Assault Prevention Response Program ensures victims of sexual assault are protected, treated with dignity and respect, receive support and advocacy, and assists with identification of treatment resources.

- **Suicide Prevention Program** provides prevention, intervention, and postvention training on the risk factors and warning signs of suicide and connects service members with resources.

- **Military OneSource Consultant** serves as the specialist on resources, programs, and services for military families. Conducts outreach and partners with organizations to develop, identify, catalog, and publicize resources to networks.

- **Military Family Assistance Centers (FAC)** provide family members with information on entitlements and benefits available during the service member's deployment cycle. Assistance is available 24/7. [1-800-292-9464]

- **Transition Assistance (Warrior Support) Advisor (TAA)** assists service members with access to federal and state veterans benefits, programs, and services, as well as public and private programs and services. Wounded warriors and their families are identified, tracked, and monitored through recovery and rehabilitation to ensure a successful transition from active duty.

- **Director of Psychological Health (DPH)** provides assistance and direction to service members who are having transitional difficulties in either adjusting to redeployment or life challenges. The DPH assists in initial problem solving and identification of resources.

- **Military Family Life Consultant (MFLC)** provides life skills information and education; conducts outreach and provides referral services to community resources. Provides direct, short-term, solution-focused counseling to individuals, couples, families, and groups.

- **MFLC Child and Youth** provides parenting and child development information and education. Conducts outreach and referral services to community resources. Provides direct, short-term, solution-focused counseling to children, youth, and young families.

- **Employer Support of the Guard and Reserve (ESGR)** provides Reserve Component members with education and awareness regarding employer relations, rights, and re-employment requirements, as well as programs and services available to help strengthen employer support for the Guard and Reserve.

- **Survivor Outreach Service Coordinator (SOSC)** provides casualty assistance to primary next-of-kin of fallen service members and retirees. They also assist with Service Member Group Life Insurance claims and advise on benefits available to surviving families.

Other DMA Programs and Services

National Guard Tuition Grant Program

DMA administers the Tuition Grant Reimbursement Program for qualified members of the Wisconsin National Guard. All National Guard enlisted members and warrant officers in good standing in the Guard who do not have a bachelor's degree are eligible for tuition reimbursement at an eligible school. Eligible schools include UW-Extension and any UW System campus, a technical college, or an institution of higher education as defined by federal law for student financial assistance purposes. The program will reimburse 100% of actual tuition or 100% of the maximum resident undergraduate tuition at UW-Madison for a comparable academic load, whichever is less. Qualified students may receive reimbursement for up to eight full semesters of undergraduate courses or 120 credits of part-time study.

A Guard member who fails to meet service eligibility criteria or who is absent without leave for more than nine unit training assemblies is not eligible for a tuition grant. Applications for grants must be submitted within 90 days after completion of coursework for which reimbursement is sought. A representative of the school must certify that a member has satisfactorily completed the course and achieved a minimum grade point average of 2.0 (a "C" average) for the semester for which reimbursement is sought. For eligible veterans, the National Guard tuition grant and the Wisconsin GI Bill (see p. T-4) may be used simultaneously. However, an eligible veteran must first use all eight semesters of the tuition grant before using DVA's VetEd Program (see p. T-5).

Student Loan Repayment Program

National Guard members in good standing with pre-existing student loans may be eligible for the Federal Student Loan Repayment Program, if they re-enlist or extend their service for a six-year period and meet other requirements. The program repays loans up to $10,000.

ChalleNGe Academy

The Wisconsin National Guard ChalleNGe Academy began operations in 1998 at Fort McCoy. The mission of the ChalleNGe Academy is to offer Wisconsin youth the opportunity to become successful, responsible citizens. The ChalleNGe Academy is a two-phase, 17-month program that serves 16- to 18-year old youth who have dropped out of school or are at-risk of not graduating from high school. The first phase includes a five-month residential, character development based program in which participants attempt to earn their High School Equivalency Diploma. The second phase, called the Post-Residential Phase, is 12-months long in which the participant's mentor and ChalleNGe Academy staff assist the participant with the transition back into the community. The program is funded 75% by the federal government and 25% with state program revenue (PR). Recent program highlights include:

- Starting July 1, 2010, the federal government began funding 75% of the program funding, up from the previous 60% federal funding.

- In 2010, the Wisconsin ChalleNGe Academy was awarded the "Best All-Around Program" in the nation (among 34 programs in 29 states).

- In 2010, the Wisconsin ChalleNGe Academy surpassed 2,000 graduates, totaling 2,037 graduates as of the completion of Class 24 in June 2010.

Military Funeral Honors

The Adjutant General may activate members of the National Guard to serve on an honors detail of a funeral for a deceased veteran. The Military Funeral Honors Program is administered by DVA and is described on page T-8.

Related Laws

USERRA–Federal and State Laws

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) provides re-employment protection and other benefits to persons returning from federal military service. This includes service in the National Guard under a federal call-up and service in the Reserves. Under USERRA, a person who leaves a civilian job for military service is generally entitled to return to the job with accrued seniority if the person meets several eligibility criteria, including, among others, having notified the employer of the departure for military service, being honorably discharged, and reporting back to the employer in a timely manner following military service. USERRA applies to virtually all civilian employers regardless of size, including the federal government and state and local governments. Because service in the National Guard under a state call-up by the Governor is not covered by USERRA, state legislation was enacted in 2001 to provide for the same re-employment rights for persons called to state service in the National Guard.

Legal Protections for National Guard Members

Wisconsin law provides National Guard members, including Wisconsin residents who serve in the National Guard of another state, certain legal protections, including:

1. Providing legal representation and payment of expenses and judgments at state expense in specified circumstances to a member who is prosecuted for a civil or criminal action for an act committed while performing military duty;
2. Staying civil court proceedings during the period of active service;
3. Capping interest rates at 6% per year on debts incurred prior to entering the service;
4. Protecting the member from eviction or mortgage foreclosure;
5. Extending a member's professional or occupational license that would otherwise come up for renewal while the person is on duty and, if certain conditions are met, extending the license until the next date on which the license is usually renewed;
6. Providing college student members opportunities to complete course work and re-enroll in the school, if called to active duty while in school; and
7. Granting members certain re-employment rights.

Differential Pay for Activated State Employees

Wisconsin law requires that all state employees who are activated to military duty be paid their state salaries while on military duty, minus any military pay and housing allowances they receive, unless the military pay and housing allowances equal or exceed the person's state salary. An activated employee may also accumulate sick leave and paid annual leave as though no interruption in state service occurred.

To qualify for the payment, an employee must: (1) on or after January 1, 2003, be activated to serve or be serving on military duty in the U.S. Armed Forces other than for training purposes; (2) on the date of activation, be a member of either the Wisconsin National Guard or the Reserves, or recalled to active duty from inactive

reserve status; and (3) be on an authorized military leave of absence. The differential pay and benefits also apply to state employees who are activated to serve in the U.S. Public Health Service and detailed to duty with the U.S. Armed Forces.

The law provides that an employee may receive the differential pay and benefits beginning on the date of activation, for a period of not more than 179 days. The Governor may make up to three extensions of two years each from the date of activation for an individual employee or a group of employees. The law also permits an employee to use up to 160 hours of accumulated paid leave within 30 days after completion of duty before resuming employment with the state and to carry over to the next year any remaining paid leave accumulated while on duty. The differential pay benefit is retroactive to January 1, 2003. Employees who were activated prior to that date may receive differential pay retroactively to January 1, 2003, but not for service before that date.

Information on Military Points of Contact and Activations

The Adjutant General is required to provide DVA with information on all necessary military points of contact and general deployment information for activated and deployed members of the National Guard. The DVA, in turn, must provide this information to CVSOs. In addition, the law permits DVA to provide CVSOs with information on military points of contact and general deployment information for Reserves units. CVSOs are authorized to: (1) inform Guard and Reserves members or their dependents living in the CVSO's county regarding potential benefits to which the members may be entitled and necessary military points of contact and general deployment information for activated and deployed members of the National Guard and Reserves; and (2) cooperate with federal and state agencies which serve or grant aid or benefits to members and their dependents.

Wisconsin Homeland Security Council

The contact person for the Homeland Security Council is: Randi Wind Milsap, Chief Legal Counsel, WI Department of Military Affairs, 2400 Wright St., P.O. Box 14587, Madison, WI 53708-0587, (608) 242-3072, FAX: (608) 242-3082.

On March 18, 2003, by Executive Order #7, Governor Jim Doyle created the Wisconsin Homeland Security Council, consisting of seven members (later increased to nine and more recently 13) appointed by and serving at the pleasure of the Governor. The mission of the Council is to advise the Governor and coordinate the efforts of state and local officials with regard to prevention of, and response to, potential threats to the homeland security of Wisconsin. The Council is charged with coordinating the state's terrorism preparedness efforts, assisting local governments and agencies, and providing recommendations to the Governor to enhance Wisconsin's homeland security measures.

The Governor appointed the Adjutant General of the Wisconsin National Guard to chair the Council and serve as the Governor's Homeland Security Advisor. The current Adjutant General is Brigadier General (WI) Donald P. Dunbar. Originally, members of the Council included representatives of: the Wisconsin Division of Emergency Management, the Wisconsin State Patrol, the Wisconsin State Capitol Police, the Office of Justice Assistance (OJA), the Division of Criminal Investigation in the Department of Justice (DOJ), and the Division of Public Health in the Department of Health and Family Services (DHFS) (now the Department of Health Services or "DHS"). In March 2006, the Governor increased the membership of the Council to nine and added a representative each from the Department of Natural Resources (DNR) and the Department of Agriculture, Trade and Consumer Protection (DATCP). In September 2008, four additional members were added, including the Administrator of the Division of Enterprise Technology in the Department of Administration (DOA) and three first responders: a county sheriff, a chief of police, and a fire chief.

The Homeland Security Council's website is: http://www.hsc.wi.gov. In September of each year, the Council releases a report on homeland security in the State of Wisconsin, a link to which can be found on the Council's website.

Wisconsin Emergency Management System

Overview of System

WEM's 24-hour emergency hotline number is: (800) 943-0003.

DMA administers Wisconsin's emergency management system through its Division of Emergency Management, more commonly referred to as "Wisconsin Emergency Management" or "WEM." The purpose of the system is to prepare the state and its subdivisions and the tribes to plan for, respond to, recover from, and mitigate emergencies resulting from enemy action and natural or human-caused disasters. WEM is headed by a division administrator appointed by the Governor and has two bureaus: the Bureau of Planning and Preparedness and the Bureau of Response and Recovery. The WEM website is http://emergencymanagement.wi.gov.

Duties of Various Officials

The Governor, the Adjutant General, the WEM administrator, and other state and local officials have statutory responsibilities relative to the emergency management system. The Governor is required to review state emergency management plans and to utilize WEM during a state of emergency. The Governor may order all or a portion of the Wisconsin National Guard into active service in case of war or other civil unrest or public disaster or to assess damage and recommend action as a result of natural or human-caused events. The Governor may proclaim a state of emergency for the state or a portion of the state and may enter into mutual aid agreements with other states concerning emergency management.

Emergency Management Regions

The state is divided into six emergency management regions, each headed by a regional director. The regional directors exercise powers delegated and duties assigned by the Adjutant General. The regional directors work directly with the counties in coordinating WEM's programs and serve as on-site representatives of WEM during emergencies.

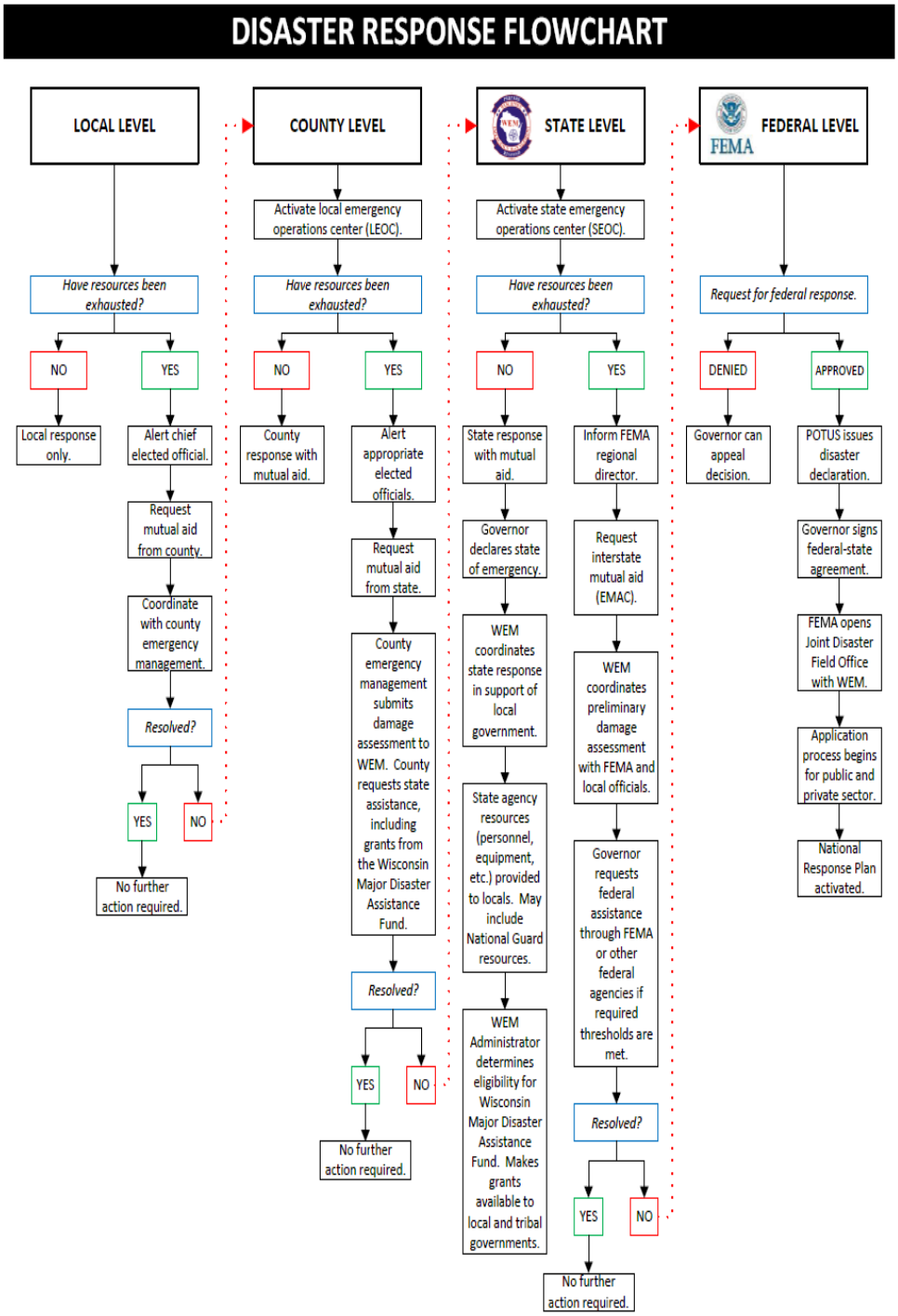
Emergency Police and Fire Services

WEM also provides an Emergency Police Services (EPS) Director and an Emergency Fire Services Coordinator to assist the state, its subdivisions, and the tribes during emergencies. The EPS director coordinates state law enforcement response to emergencies, including coordination of mutual aid for law enforcement assistance in natural and man-made disasters, prison disturbances, and other emergencies. The Fire Services coordinator works with local units of government to coordinate fire services during emergencies. This may include use of the Mutual Aid Box Alarm System (MABAS). In addition, the Fire Services coordinator works closely with fire and EMS departments and other emergency agencies to help ensure appropriate training, planning, and response needs are met at the local, regional, tribal, and state levels.

Role of County Sheriffs

The county sheriff has most of the statutory powers at the local level in the event of an emergency. In addition, there are mutual assistance agreements between law enforcement agencies as well as firefighting agencies, both regionally and statewide. In an emergency, the sheriff may call upon the mutual aid authorized by these agreements before requesting assistance from the state. If the sheriff deems it necessary, he or she will ask the Governor, through the WEM administrator, to call the National Guard into state service to assist in the response. Local officials and other designated local personnel are also authorized to declare a state of emergency at the local level.

Below are two documents prepared by DMA: (1) a disaster response flowchart that delineates local, county, state, and federal level response sequences; and (2) a chart showing various officials who are authorized to declare a disaster.



WHO MAY DECLARE A DISASTER?

1 VILLAGE OR TOWN

Governing body of any Village or Town ss. 323.11 & 323.14(4)(a), Stats.

Village President, subject to ratification ss. 61.24 & 61.34, 323.14(4)(b), Stats.

Town Chairperson, subject to ratification ss. 60.22, 60.24(1), 323.14(4)(b), Stats.

Chief Executive Officer, subject to ratification ss. 60.22, 60.23, & 61.32, 323.14(4)(b), Stats.

Any person, employee, or position empowered and designated by ordinance or resolution.

2 CITY

Governing body of any City ss. 323.11 & 323.14(4)(a), Stats.

Mayor, subject to ratification ss. 323.14(4)(b), 62.09(8), 62.11, 64.29, Stats.

City Manager, subject to ratification ss. 64.11 & 323.14(4)(b), Stats.

Chief Executive Officer, subject to ratification ss. 62.11 & 323.14(4)(b), Stats.

Any person, employee, or position empowered and designated by ordinance or resolution.

3 COUNTY

Majority vote of **County Board** constituting a quorum ss. 59.02, 59.03, 59.04, 323.11, 323.14(4)(a), Stats.

County Board Chair, if empowered by ordinance ss. 59.12 & 323.14(4)(b), Stats.

County Executive, if empowered by ordinance ss. 59.17(2) & 323.14(4)(a), Stats.

County Administrator, if empowered by ordinance ss. 59.18(2) & 323.14(4)(a), Stats.

County Sheriff, s. 59.28, Stats.

Any person, employee, or position empowered and designated by ordinance or resolution.

4 STATE

Governor of the State of Wisconsin, s. 323.10, Stats.

5 FEDERAL

President of the United States, 42 USC s. 5170 (Et seq.)

NOTE: *Statute numbers (i.e., 323.11 or 42 USC s. 5170) refer to the Wisconsin Statutes and United States Code, respectively.*

EMERGENCY CONTACT INFORMATION

24-Hour Emergency Contact Number
To contact the Wisconsin State Duty Officer, dial (800) 943-0003

Wisconsin Joint Operations Center (JOC)
To contact the JOC, dial (800) 335-5147 x8400

Wisconsin Statewide Information Center (WSIC)
To contact the WSIC, dial (888) DCI-WSIC

GENERAL CONTACT INFORMATION

Wisconsin Emergency Management (WEM)
Main Telephone: (608) 242-3232
Fax: (608) 242-3247

Wisconsin Department of Military Affairs (DMA)
Main Telephone: (608) 242-3000
State Legal Office: (608) 242-3072
Judge Advocate General: (608) 242-3077
Fax: (608) 242-3082

When the Governor proclaims a state of emergency, the DMA, through WEM, is generally the lead state agency to respond to the emergency. However, if the Governor determines that a public health emergency exists, he or she may proclaim a state of emergency related to public health and designate the DHS as the lead state agency to respond to that emergency. Additionally, if the Governor determines that an emergency is related to computer and telecommunications systems, the Governor may designate the DOA as the lead agency.

Emergency Management Planning

The Adjutant General, through WEM, is required to develop a comprehensive state plan of emergency management for the security of people and property, which is mandatory during a state of emergency, subject to approval by the Governor. The plan, known as the Wisconsin Emergency Response Plan (ERP), sets forth the responsibilities of state and local officials to take specific actions. The Adjutant General must seek advice from DHS regarding emergency medical aspects of the ERP and from DOA regarding computer or telecommunications aspects of the ERP. The Adjutant General carries out statewide training programs and exercises and

serves as the principal assistant to the Governor in directing emergency management activities.

The governing bodies of counties, towns, and municipalities are required to adopt an effective program of emergency management compatible with the state ERP. WEM provides assistance to local governments in the development of their plans. Each governing body may appropriate funds and levy taxes for this program.

Federal Funding

Grants awarded by the U.S. Department of Homeland Security through WEM and OJA are a major source of funding to the state and local governments. Federal grant funds are awarded through several programs including the state Homeland Security Grant Program, the Urban Areas Security Initiative, and the Emergency Management Planning Grant Program. A LAB report released in May 2010 reviewed expenditures of these grant funds. The audit report is summarized on page T-26.

ICS

The state plan of emergency management requires use of the incident command system (ICS) by all emergency response agencies, including local health departments, during an emergency declared by the Governor or by a municipality or in other multi-jurisdictional or multi-agency emergencies. "Incident command system" is defined in state law as "a functional management system established to control, direct, and manage the roles, responsibilities, and operations of all of the agencies involved in a multi-jurisdictional or multi-agency emergency response." County and municipal emergency management plans are subject to a similar requirement. In addition, DHS is required to ensure that emergency operations are conducted using ICS during a declared public health emergency in which DHS is designated as the lead state agency.

The Adjutant General, through WEM, must provide training in use of ICS in managing emergencies to local government officials, officers, and employees whose duties include responding to emergencies, including officers and employees of local health departments. The Adjutant General must consult with DHS regarding the ICS training for local health department personnel. The Adjutant General is required to utilize federal funding to provide this training, to the extent possible.

First Responder Training

To assist in the training of first responder personnel statewide, DMA, through WEM, manages and operates the Regional Emergency All-Climate Training Center ("REACT" Center) at Volk Field at Camp Douglas. The REACT Center provides training for both military and civilian responders to natural and human-caused disasters. The facility has classrooms and a 15-acre training ground with various collapsed structures to provide a realistic response for rescue teams.

MABAS

The Adjutant General must also furnish guidance and establish standards for fire, rescue, and EMS regarding the adoption of the intergovernmental cooperation MABAS system as a mechanism that may be used for deploying personnel and equipment in a multi-jurisdictional or multi-agency emergency response. This standard is set forth under ch. WEM 8, Wis. Adm. Code. Further, agencies that manage public works departments may adopt a public works mutual assistance agreement developed by WEM for intergovernmental collaboration of public works personnel, equipment, and resources in a multi-jurisdictional or multi-agency emergency response.

Wisconsin Major Disaster Assistance Program

Major Disaster Assistance Fund

This state program was created as a fund to make payments to local units of government for damages and costs incurred as a result of a natural disaster. Payments may be made if the Governor has requested a federal disaster declaration and the request has been denied or if the Governor does not request such a declaration because the disaster does not meet the statewide or countywide criteria issued by the Federal Emergency Management Agency. Local governments must provide a 30% match. Funds may be used for costs including debris removal, emergency protective measures, and road damage.

Federal Disaster Assistance

Various types of federal disaster assistance are available to both the public and private sectors as a result of a Presidential disaster declaration. The public sector (local, tribal, and state government, and certain private not-for-profit agencies) may receive: (1) public assistance grants with a 75% federal, 12.5% state, and 12.5% local cost-sharing, to replace uninsured publicly owned facilities and equipment damaged in a disaster; and (2) hazard mitigation grants (same cost-sharing) to develop hazard mitigation plans and fund mitigation measures.

Private sector funding is available to individuals, farmers, and businesses in the form of: (1) disaster housing grants; (2) Small Business Administration loans; (3) other needs assistance grants; and (4) Farm Service Agency loans.

Hazardous Materials Response

HAZMAT Teams

WEM contracts with a number of municipal fire departments around the state to provide regional coverage for hazardous materials (HAZMAT) incidents that require the highest level of respiratory and skin protection (known as Level A incidents). There are currently eight regional Level A HAZMAT teams operated by the fire departments in Appleton and Oshkosh, Chippewa Falls and Eau Claire, La Crosse, Madison, Milwaukee, Racine, Superior, and Wausau. The state also encourages counties to contract with local fire departments or other entities for countywide response to incidents that are less serious than those requiring Level A protective equipment, but exceed the capabilities of smaller fire departments. Currently, 39 counties have their own Level B teams, another 16 counties contract with one of those 39 teams, and two counties contract with a private HAZMAT contractor.

The LAB released an audit of HAZMAT teams in 2002, which is available through the following link: http://www.legis.wisconsin.gov/lab/reports/02-1full.pdf.

Emergency Planning and Community Right-to-Know Act (EPCRA)

EPCRA

EPCRA is a federal law created to help communities plan for emergencies involving hazardous substances. The law requires each state to establish a State Emergency Response Commission and Local Emergency Planning Committees to develop emergency plans in case of an accidental release and to look for ways to prevent chemical accidents. Chemical storage facilities must report the storage, use, and release of certain hazardous chemicals as well as pay fees based upon the number of different hazardous chemicals present onsite.

Selected New State Laws

The Legislature enacted a number of laws relating to military affairs and emergency management in the 2009-10 Session, including the following:

2009 Wisconsin Act 28 (the 2009-11 Biennial Budget Act) contains a number of provisions relating to military affairs and emergency management. These include:

- Specifying that beginning in 2010, the amount each county and municipality spends each year for emergency services cannot be less than the amount spent in 2009, with certain exceptions.

- Providing $1,000,000 segregated (SEG) funds in 2009-10 as additional funding for the state's major disaster assistance program.

Military Family Relief Fund

- Creating a voluntary tax check-off on individual income tax forms for contributions to a newly created military family relief fund. The purpose of the fund is to provide financial support to service members and their immediate families dealing with emergency situations. [DMA has promulgated an emergency rule, ch. DMA 1, and is currently in the permanent rule-making process.]

- Creating an exception to the levy limits imposed on counties and municipalities for any amount that a county or municipality levies to pay the unreimbursed expenses related to a declared emergency, as defined under current law, beginning in the year in which the emergency occurs or the next year. The exception also applies to amounts levied to replenish cash reserves used to pay unreimbursed expenses related to a declared emergency. Any amount excluded may not be added to the local government's base levy to calculate its levy limit in a year after the unreimbursed expenses have been recovered.

New Emergency Management Laws

2009 Wisconsin Act 42 is the product of the Legislative Council's Special Committee on Emergency Management and Continuity of Government. Act 42 does the following regarding the emergency management provisions of the statutes:

- Moves the emergency management provisions of the statutes that were previously in ch. 166 to a newly created ch. 323.

- Reorganizes the entire chapter by subdividing it into eight subchapters. The current ch. 166 consists of 18 sections that are not organized into subchapters.

- Makes non-substantive editorial changes to modernize language and make it consistent with current drafting style.

- Makes minor changes in the chapter. These include the following:

    - Creates a definition of the term disaster—"a severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or critical systems, including computer, telecommunications, or agricultural systems."

    - Provides that an individual may not simultaneously serve as the head of emergency management for two or more counties.

    - Specifies that alleged violations on tribal land of the statutes relating to hazardous substances information may be enforced only by the DOJ.

In addition, Act 42 contains provisions relating to: (1) liability and licensure of volunteers during emergencies; (2) agricultural issues relating to pest control, animal carcasses, and the plant industry; (3) computation of school days; (4) hospital variances; (5) public works mutual assistance; and (6) computer or telecommunications systems emergencies.

2009 Wisconsin Act 56 requires employers to grant an unpaid leave of absence to an employee for purposes of participation in a Civil Air Patrol emergency service operation, if specified conditions are met.

2009 Wisconsin Acts 135 allows certain former military vehicles to be registered in a similar manner to antique vehicles with similar operating restrictions.

2009 Wisconsin Act 154 authorizes deputy sheriffs to deputize DMA security officers to conduct security checks of areas immediately adjacent to a military installation or of critical concern to the installation's commander, for the sole purpose of protecting the installation's state and federal personnel, assets, and equipment.

2009 Wisconsin Act 195 provides that persons with Wisconsin National Guard special distinguishing license plates may purchase a decal to affix to the plate designating the person's National Guard unit. DMA must specify, by rule, the various Guard units for whom the DOT will provide decals.

2009 Wisconsin Act 225 allows certain former military vehicles to be registered as a type of "special interest vehicle."

2009 Wisconsin Act 329 adopts the Interstate Compact on Educational Opportunity for Military Children. The compact addresses school transition issues that may be encountered by children of military families. The compact defines "child of a military family" as a school-aged child who is enrolled in any of the grades from Kindergarten to 12 and who resides in the household of a person on active duty. The compact contains provisions relating to: (1) educational records and enrollment; (2) placement and attendance; (3) eligibility for enrollment and extracurricular participation; and (4) graduation from high school. The compact also contains provisions setting forth the powers and duties of the Interstate Commission on Educational Opportunity for Military Children and provisions relating to member states to the compact such as the procedures for withdrawal from or dissolution of the compact.

2009 Wisconsin Act 363 contains provisions relating to: (1) emergency interim successors for legislators; (2) virtual meetings of the Legislature; and (3) emergency temporary locations for the Legislature. The Act is a product of the Legislative Council's Special Committee on Emergency Management and Continuity of Government.

Additional References

Veterans Affairs

- The state DVA website describes and has links to the various benefits, services, and facilities available to Wisconsin veterans at: http://dva.state.wi.us. The DVA toll-free information number is (800) 947-8387. Summaries of numerous veterans programs are available at: www.WisVets.com/Factsheets.

- The U.S. DVA website provides information about an array of federal veterans benefits, including burial and memorial benefits, health benefits and services, compensation and pension benefits, home loan programs, and education benefits at: http://www.va.gov.

- There is a veterans suicide prevention hotline at (800) 273-8255.

- The U.S. DVA operates a national center for PTSD. The center's telephone number is (802) 296-6300 and its website is http://www.ncptsd.va.gov.

- The August 2010 LAB report on rate setting for Wisconsin's veterans homes is at: http://www.legis.wisconsin.gov/lab/reports/10-ratesetting_ltr.pdf.

Glossary of Terms and Abbreviations

CVSO – County veterans service officer.

DHS – Wisconsin Department of Health Services (formerly the Department of Health and Family Services).

DMA – Wisconsin Department of Military Affairs.

DVA – Wisconsin Department of Veterans Affairs.

EOP – Wisconsin Emergency Operations Plan.

ICS – Incident Command System.

OJA – Wisconsin Office of Justice Assistance.

PTSD – Post-Traumatic Stress Disorder.

U.S. DVA – The U.S. Department of Veterans Affairs, formerly known as the Veterans Administration.

VSO – A veterans service organization.

WEM – Wisconsin Emergency Management, the more commonly used name for the Division of Emergency Management.

Military Affairs and Emergency Management

- The DMA website describes the activities of the Wisconsin Army National Guard and Air National Guard, as well as the WEM system, at: http://dma.wi.gov/.

- Wisconsin's homeland security website is a comprehensive source of information on homeland security issues. The website is: http://www.hsc.wi.gov.

- Wisconsin's Emergency Management website is: http://emergencymanagement.wi.gov.

- The OJA's website is: http://oja.state.wi.us.

- Information about the rights and responsibilities of employees and employers under the federal USERRA when an employee is called to active military service is available at:

1. http://www.dol.gov/vets/whatsnew/userraguide0903.rtf.
2. Employer Support of the Guard and Reserve, (608) 242-3169.

- Information about re-employment rights for military personnel called to state service by the Governor may be obtained from the Office of the Staff Judge Advocate in the Office of the Adjutant General, (608) 242-3071.

- The LAB conducted a review of efforts by the state and by local governments to prepare for and minimize the effects of emergencies, such as natural disasters and hostile action, in May 2010. The report, *Emergency Management*, is available at: http://www.legis.wisconsin.gov/lab/reports/10-9full.pdf.

  The LAB report reviewed expenditures of U.S. Department of Homeland Security grant funds awarded to Wisconsin for emergency management activities and following presidentially declared disasters. The report looked at activities of WEM, which is the lead state agency for emergency planning, and OJA, which distributes most federal funds. The grants LAB reviewed were spent in accordance with federal requirements. However, the report found that some emergency management priorities remain unmet, most notably in the area of a statewide communications system connecting all emergency responders.

- The LAB conducted a best practices review of county emergency management programs in November 2006. The report, *County Emergency Management Practices*, is available at: http://www.legis.wisconsin.gov/lab/reports/06-0EmgPrepFull.pdf. The report summarizes state and local emergency management requirements, and results from a survey of the 72 county emergency management directors, and provides information on federal emergency management grant funding awarded by DMA and OJA.

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