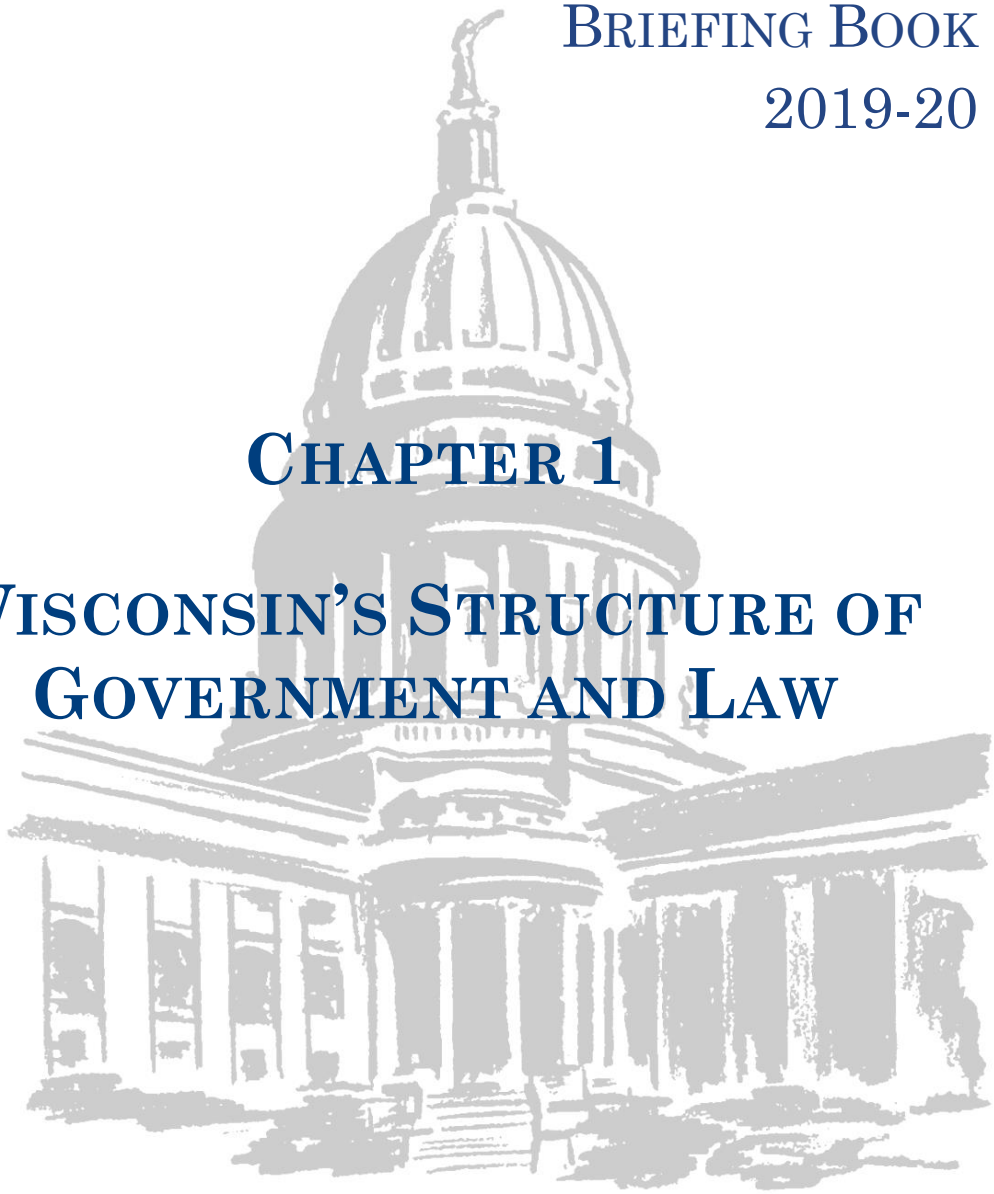
WISCONSIN LEGISLATOR BRIEFING BOOK

PART I – THE LEGISLATURE AND LAWS RELATED TO THE LEGISLATURE

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 1

WISCONSIN'S STRUCTURE OF GOVERNMENT AND LAW

Rachel Letzing, Principal Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

Wisconsin has a tripartite form of government with three separate but equal branches—the legislative, executive, and judicial. Wisconsin's Constitution created a separation of the powers of the three branches, giving each branch exclusive "core powers," in which other branches may not intrude. Beyond those core powers there is a great deal of overlap in the powers of the three branches. The Wisconsin Supreme Court has described Wisconsin's government as a system of "separateness but interdependence." Wisconsin's tripartite governmental structure also gives each branch the power to check and balance the other branches.

STRUCTURE OF WISCONSIN GOVERNMENT

The Legislative Branch

The legislative branch in Wisconsin is bicameral, meaning it consists of two houses. The two houses of the Wisconsin Legislature are the Senate and the Assembly. The Legislature sets state policy and designs state programs through enactment of laws, passage of resolutions, and funding government operations. The leadership of the Legislature includes the Majority and Minority Leaders in both houses, the President in the Senate, and the Speaker in the Assembly, among others. Each legislative house elects a Chief Clerk and a Sergeant-at-Arms who, along with their staffs, administer the business of the Legislature. The Legislature is supported by five nonpartisan service agencies that perform various functions such as auditing, legal, fiscal, and policy analysis and research, drafting of bills and other legislative documents, and information technology services.

For more information about the legislative branch, see Chapter 2, *Legislative Procedure and Glossary*, and Chapter 3, *Legislative Services Agencies and Staff*.

One of the Legislature's checks on the executive branch is the power to impeach the Governor. [Wis. Const. art. VII, s. 1.]

The Judicial Branch

The Wisconsin judiciary is comprised of trial courts, called circuit courts, and two levels of appellate courts. There are approximately 250 circuit court judges in the state. If someone is unsatisfied with a circuit court's decision, he or she may appeal to an appellate court. Wisconsin's two levels of appellate courts are the Court of Appeals, organized into four districts (16 judges), and the Supreme Court (seven justices). The Supreme Court is the state's highest court. Wisconsin statutes also allow municipalities to create their own courts to handle municipal ordinance violations. [See generally ch. 755, Stats.] There are approximately 240 municipal courts in Wisconsin. A decision of a municipal court may be appealed to the circuit court.

Two of the judicial branch's checks over the Legislature are its powers to decide the constitutionality of legislative enactments and to address conflicts between local, state, and federal laws.

The Executive Branch

Most of Wisconsin's executive branch is headed by the Governor, who is the state's chief executive. In addition to the Governor, the Wisconsin Constitution provides for the election of five other "constitutional officers": Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, and State Superintendent of Public Instruction. Currently, there are approximately 30 State of Wisconsin departments and independent agencies ("state agencies"). There are also special committees, boards, commissions, and councils in the executive branch that have been created by statute or by the Governor that are designed to address specific issues. The executive branch's core powers are to execute and administer laws, programs, and policies created by the Legislature. Most of the state agencies are empowered to promulgate administrative rules in order to execute their duties. [See generally ch. 15, Stats.]

One of the executive branch's checks over the Legislature is the power of the Governor to approve or veto legislation. The Governor has six days (excluding Sunday) to approve or disapprove legislation that has been presented to him or her. Vetoed legislation is returned to the legislative house of origin with the Governor's objections. A two-thirds vote by each house is required to override a veto. The Governor may partially veto a bill only if it is an **appropriations bill**, and if what remains is a complete and workable law and other requirements are met. [Wis. Const. art. V, s. 10.] For further discussion of the partial veto in the context of the biennial budget bill, see Chapter 25, *Taxes, Revenue, and the Budget Process*.

State and Federal Authority

Exclusive and Concurrent Powers

In the United States, our system of federalism provides for governance by both a national (federal) government and state governments. The U.S. Constitution grants specific authority and powers to the federal government, such as the exclusive power to coin money, engage in certain foreign affairs, and regulate interstate commerce. All other powers are reserved to the states.

Federal Preemption

The federal government and the states exercise concurrent powers over some areas of the law. At times, conflicts occur regarding the exercise of these 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] . . . shall be the supreme law of the land . . . and . . . every state shall be bound thereby, anything in the [state]

Constitution or laws of any state to the contrary notwithstanding." [U.S. Const. art. VI, cl. 2.] Thus, in the exercise of concurrent powers, state law must yield to **validly enacted** federal law in situations where they are in conflict.

The U.S. Supreme Court has developed a framework for determining whether a federal law, if within the scope of federal powers, will preempt a state law:

- When Congress has clearly expressed its intent that federal law is exclusive as to a specific subject matter.
- When the extent of federal regulation over a specific subject matter is so pervasive that no other conclusion regarding congressional intent can be permitted than that additional state regulation of the subject matter is preempted.
- When the federal interest in uniformity is of such dominance that state regulation of a given subject matter should be precluded.

Sources of Law in Wisconsin

The U.S. Constitution vests the U.S. Congress with primary federal lawmaking authority, subject to the veto power of the President and review for constitutional compatibility and interpretation by the federal judiciary. Even with constitutional restrictions, the states retain substantial legislative authority. Each state has developed a large body of state law that has a direct impact on the day-to-day lives of its citizens. In addition to the U.S. Constitution and federal laws, the basic sources of law that form the foundation of government at the state and local level in Wisconsin include:

The Wisconsin Constitution. In Wisconsin, the fundamental principles of state law and government, the rights and obligations of citizens, and much of the structure of the relationship between the state and local governments are expressed in the Wisconsin Constitution. The Wisconsin Constitution can only be amended by legislative action and subsequent ratification by statewide 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 review for constitutional sufficiency and interpretation by the state judiciary.

Statutes. Statutes are laws that are passed by the Legislature, signed into law by the Governor (or enacted notwithstanding a gubernatorial veto), and formally codified in the Wisconsin Statutes.

Administrative rules. Administrative rules are promulgated by executive branch state agencies to interpret and implement state statutes. A state agency cannot adopt rules that exceed or are outside the scope of its statutory authorization, and the content of such rules must also be consistent with state law. The Governor and Legislature play key roles in the statutory rule review process that occurs prior to the promulgation of a rule. For more information about administrative rules, see Chapter 4, *Administrative Rulemaking*.

Ordinances. Ordinances are laws created by local governments (counties and municipalities) and are limited in scope by the Wisconsin Constitution and statutes.

Common law. Unlike the U.S. Constitution, Wisconsin's founders expressly provided that the "common law" 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." [Wis. Const. art. XIV, s. 13.] The common law is an accumulation of judicial decisions in specific cases, arising both from before and after the ratification of the Wisconsin Constitution. A large body of common law has been developed over the years. Some of the most important and far-reaching laws in Wisconsin can only be found in the common law. While the importance of the common law has diminished as it has been superseded in part by legislative enactments, it continues as an important source of law.

Criminal and Civil Law

Wisconsin's criminal law is the body of law that does the following:

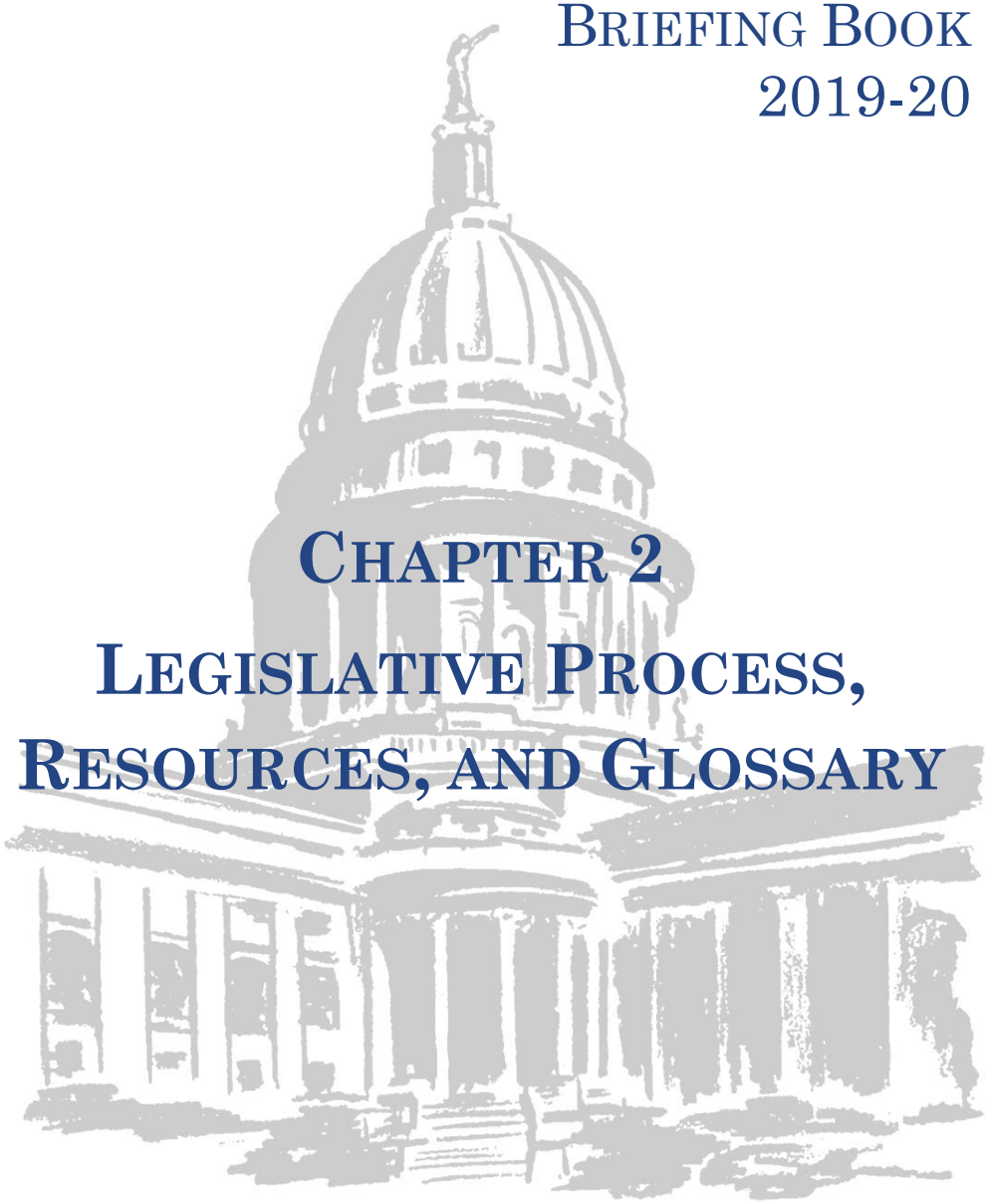
- Prohibits persons from engaging in specified conduct or activities and authorizes the imposition of penalties against violators in the form of a fine or imprisonment, or both.
- Establishes procedures for law enforcement and the apprehension and detention of persons accused or suspected of committing 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.

For more information about criminal law and the criminal justice system, see Chapter 9, *Criminal Justice, Corrections, and Juvenile Justice*.

At the state level, all laws and legal proceedings not involving the matters listed above make up the body of law that is outside of the criminal context. 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 ordinance, usually involve minor offenses such as parking violations, local dwelling code violations, and minor hunting and fishing violations.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 2
LEGISLATIVE PROCESS, RESOURCES, AND GLOSSARY

Jessica Karls-Ruplinger, Acting Director
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

The principal function of the Legislature is the enactment of laws through the passage of bills. Approximately 1,000 to 2,000 bills are introduced in each legislative session, and a few hundred of those are enacted into law.

This chapter provides an overview of the legislative process, including the following:

- **Legislative proposals (bills or resolutions)**, which are introduced in the Legislature and may be acted upon by either or both houses of the Legislature and, for some types of proposals, by the Governor.
- **Laws and administrative rules**, which include the laws currently in force and administrative rules, which are promulgated by state agencies and have the force and effect of law.

A wide variety of legislative resources are available through links on the Legislature's website:

http://www.legis.wisconsin.gov

In addition, this chapter highlights informational resources relating to the Legislature. Many of these resources are available to the public online and to legislators and legislative branch employees through the Legislature's in-session websites and the Folio database. Lastly, this chapter provides a glossary of terms that are commonly used in the Legislature.

LEGISLATIVE PROCESS

Bills and Resolutions

Preparation and Introduction of Bills

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. After being passed by both houses in an identical form, a bill is 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 Wis. Const. art. V, s. 10.

Each bill must be prepared for introduction by the Legislative Reference Bureau (LRB). [Joint Rule 51.] The process for preparing legislative proposals is highly systematic, so as to reduce errors in the process, to the greatest extent practicable. The LRB employs a staff of bill drafting attorneys who work 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 committee, 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, and may have the request noted in the heading of the bill.

Contents of Bills

State statutes are created, revised, and repealed by bills. The Legislature also makes all appropriations through bills.

The first page of each bill provides its date of introduction, the authors and cosponsors, and the committee to which the bill was referred upon introduction. Each bill then lists the statutory sections affected by the bill, followed by a "relating clause" briefly stating the bill's subject. Following the relating clause, each bill contains a LRB analysis of the bill in plain language. Included at the end of the LRB analysis are any notes about required fiscal estimates, committee reports, or other special requirements for the particular bill.

Each law is required by the Wisconsin Constitution to begin with the phrase: "The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:". [Wis. Const. art. IV, s. 17.] This is called the "enacting clause" and is found after the LRB analysis. Following the enacting clause, the substantive provisions of the bill begin.

A bill may create a new statute, modify an existing statute, or repeal an existing statute. Each bill 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. These nonstatutory, or "nonstat," provisions in bills that are enacted are not included in the state statutes.

Fiscal Estimates

A **fiscal estimate** is required for any bill that makes an appropriation, increases or decreases an existing appropriation, affects state or local fiscal liabilities or revenues, or creates or modifies a court surcharge. [s. 13.093, Stats.] A fiscal estimate is a prediction of the cost of a bill to the state and, 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 more than one agency to prepare fiscal estimates on the same bill.

A fiscal estimate is required to be prepared and available before the Legislature can take any action on a bill. [s. 13.093, Stats.]

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 automatically published, unless the author authorizes earlier publication. If the author disagrees with the fiscal estimate's accuracy, he or she may request that 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). [Joint Rules 41 to 50.]

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. [s. 13.093, Stats.; Joint Rule 41.]

Joint Survey Committee and Joint Review Committee Reports

Bills containing the following types of proposals are statutorily required to be referred to the specified committees for the preparation of **written reports**: proposals relating to or affecting public retirement laws (Joint Survey Committee on Retirement Systems) and proposals that would affect tax exemptions (Joint Survey Committee on Tax Exemptions). These reports are statutorily required even if the proposed provision relating to one of those topics is only a small portion of a larger bill dealing primarily with other subjects. Proposals 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 for the preparation of a written report on the proposal. [ss. 13.50 to 13.525, Stats.]

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

How a Bill Becomes a Law

The chart on page 13 of the publication "How a Bill Becomes a Law" (available at http://legis.wisconsin.gov/assembly/acc/media/1106/howabillbecomeslaw.pdf) illustrates the process that a bill must complete in order to be enacted into law. As noted earlier, bills may begin the legislative process in either chamber and may be introduced by a number of entities. The chart tracks the typical path for a bill originating in the Assembly that is introduced by a state representative after it is drafted by the LRB.

Amendments and Substitute Amendments

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 of an amendment.

Amendments may be offered by legislators and by legislative committees in either house.

A **simple amendment** affects only a portion of a bill. It may propose one or more changes, deletions, or additions to a bill. Amendments may also be amended. Amendments are only allowed to the second degree, i.e., an amendment to an amendment. [Joint Rule 99 (4); Senate Rule 51; Assembly Rule 52.] A simple amendment specifies particular changes to the bill by citing the page and line numbers of the bill where the changes are to be made.

A **substitute amendment** is an amendment that redrafts the entire original bill and, if approved, replaces the original bill. [Joint Rule 99 (88).] 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 also be amended by simple amendments.

Amendment Memos can be found at the Legislative Council website:

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

If an amendment is recommended for adoption by a standing committee or adopted on the floor of either house, the Legislative Council staff prepares an Amendment Memo that explains how the amendment modifies the bill.

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 and been messaged to the Senate. If the Senate amendment is adopted, the bill, as amended, must return to the Assembly for approval of 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 consisting of members from both houses will be appointed to settle these differences. This committee's recommendation or "report" may be accepted or rejected by each legislative house, but it cannot be amended. [Joint Rule 3.]

Resolutions and Joint Resolutions

Resolutions and joint resolutions are legislative proposals that do not propose changes to laws, other than constitutional amendments, as described below, and do not require the approval of the Governor. They are, nevertheless, formal legislative proposals that may achieve meaningful results.

A **resolution** is acted upon by the house of the Legislature in which it is introduced. Resolutions proposed in the Legislature may be proposed to achieve numerous purposes, including to:

- Adopt or modify procedural rules of the house.
- Request an opinion of the Attorney General on the legality of a legislative proposal.
- Recognize a particular event or occasion, or extend the commendations, condolences, or congratulations of the house to a particular person or group.

A **joint resolution** is acted upon and adopted by the house in which it is introduced and concurred in by the second house. A joint resolution may be prepared for a number of reasons, including to:

- Create the session schedule for each biennial session of the Legislature.
- Propose an amendment to the Wisconsin Constitution.

- Ratify an amendment to the U.S. Constitution.
- Adopt joint rules regarding the conduct of business involving both houses.
- 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.

[Joint Rule 99 (39) and (71).]

Laws and the Statutes

After both houses of the Legislature approve the identical form of a bill, the proposal is presented to the Governor for the Governor's action. The Governor may sign the bill into law, veto the bill, or 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. [Wis. Const. art. V, s. 10.]

If the Governor approves a bill, or the Legislature overrides the Governor's veto of a bill (or a bill is allowed to become law without the Governor's approval), notice of the enactment is published on the Internet. Unless the bill otherwise provides, the bill takes effect on the day after its publication. [Wis. Const. art. IV, s. 17; ss. 35.095 and 991.11, Stats.]

The Legislative Council staff prepares memoranda on each Act. These Act Memos are available at:
http://www.legis.wisconsin.gov/lc

After a bill is signed into law and published, it is called an **Act**. The Acts of each legislative session are numbered chronologically in the order of their approval by the Governor (or their becoming law without such approval). For example, 2015 Wisconsin Act 1 was the first law enacted in the 2015-16 Legislative Session. At the end of the biennial legislative session, all Acts are published in one or more volumes called the **Laws of Wisconsin** (also referred to as "**Session Laws**"). [ss. 35.095 and 35.15, Stats.]

The LRB incorporates new laws into the electronic version of the **Wisconsin Statutes** as they are enacted during the legislative session. Biennially, after completion of the legislative session, the LRB updates and publishes the hard copy version of the Wisconsin Statutes. [s. 35.18, Stats.] The Wisconsin Statutes are available online at: https://docs.legis.wisconsin.gov/statutes/prefaces/toc.

Administrative Rules

Administrative rules are promulgated by executive branch agencies and have the force and effect 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. [s. 227.01 (13), Stats.] Rules are published in the Wisconsin Administrative Code, available online at: https://docs.legis.wisconsin.gov/code/prefaces/toc. For more information about administrative rules, see Chapter 4, *Administrative Rulemaking*.

Like statutes, administrative rules have the force and effect of law.

RESOURCES

The informational resources about the legislative process include publications from various sources that describe legislative proposals, current laws, and other matters of interest to the Legislature, and official legislative publications that allow legislators, their staff, and the public to keep track of legislation as it moves through the legislative process as well as other legislative actions.

Sources

Informational documents about the legislative process are available electronically from a number of different sources.

Wisconsin Legislature's Website

The Legislature's website (http://legis.wisconsin.gov) provides public access to all of the following:

- A quick-search field for **legislative proposals**.
- The **Law and Legislation** link, which is a publicly accessible, searchable database of bills and amendments, statutes, acts, the Administrative Code, and many other legislative documents.
- A **Notification Service**, which provides e-mail tracking of legislative activities on proposals, committees, authors, and subjects.
- The **Committee Schedule** link, which provides a calendar for all scheduled public hearings and executive sessions for legislative committees.
- The **Senate Session** and **Assembly Session** links, which access the **InSession** website, provide information about the agendas for Senate and Assembly floor sessions, and provide links to live audiovisual coverage of floor sessions.
- The links to each **legislative service agency's** website, as described below.

Legislative Service Agency Websites

The legislative service agency websites provide access to each agency's publications and services. The following list highlights some examples:

The legislative service agency websites are available under the "Legislative Service Agencies" tab at:

http://www.legis.wisconsin.gov

- The **Legislative Audit Bureau** website includes audit reports, audio archives of Joint Legislative Audit Committee hearings, best practice reviews, and information about the Fraud, Waste, and Mismanagement Hotline.
- The **Legislative Council** website includes Act Memos and Amendment Memos, informational reports and memoranda describing various areas of the law, study committee records and materials, Law Revision Committee records, administrative rules and Rules Clearinghouse reports, materials submitted to legislative standing committees during hearings, and this Briefing Book.
- The **Legislative Fiscal Bureau** website includes budget papers that provide plain language analyses of the budget bill, informational papers describing various state programs, bill summaries, and revenue estimates.
- The **Legislative Reference Bureau** website includes bill drafting records, statutes, the Administrative Code and Register, the *Wisconsin Blue Book*, the *Fiscal Estimate Manual*, and informational reports and publications.

Folio Database

The Folio database contains current and archived statutes, bill histories, journals, Assembly and Senate floor calendars, committee records, Clearinghouse Rules, Attorney General opinions, acts, and indices to proposals and acts. Folio is only available to legislators and legislative staff on the legislative network.

WisconsinEye

WisconsinEye maintains audiovisual recordings of many committee hearings and all legislative floor sessions, and some coverage of campaigns and other events. WisconsinEye can be found at: http://www.WisEye.org.

Official Legislative Publications

Calendar

Each house prints a calendar covering each day on which the house meets. The matters to be considered by the house on that day are listed and serve as an agenda for the business of the day. If a bill has been considered by a standing committee or joint committee, the report of the committee appears on the calendar with the notation of the bill. [Joint Rule 99 (8); Senate Rule 18; Assembly Rule 29.]

Journal of Proceedings

The Wisconsin Constitution requires each house to keep and publish a Journal of Proceedings that contains a daily record of the actions of the house. The journals are prepared under the direction of each Chief Clerk and 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. [Wis. Const. art. IV, s. 10; Joint Rules 73 and 99 (41).]

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. 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 Legislature's website contains indices to the Bulletin of Proceedings. [Joint Rules 76 to 78.]

The *Wisconsin Blue Book*

The Blue Book is an encyclopedia of information regarding Wisconsin state government. The Blue Book is compiled, edited, and published in each odd-numbered year by the LRB. It is also available electronically on the Legislature's website.

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 all of the following:

- Biographies and pictures of elected officials and the officers of each house.
- A copy of the Wisconsin Constitution, along with the history of amendments that have been proposed and adopted.
- 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.
- Information on recent elections in Wisconsin.

[s. 35.24, Stats.]

GLOSSARY

Below are terms that are commonly used in the Legislature. Many terms are unique to the Legislature or have a different meaning in a legislative setting than in other contexts.

Address: A legislative procedure to remove any justice or judge from office. Any justice or judge may be removed from office by "address" of both houses of the Legislature, with the concurrence of two-thirds of all the members elected to each house.

Adjourn: To conclude a legislative day's business, a floorperiod, or a legislative session (regular, special, or extraordinary).

Administrative rules: Regulations, standards, or policies promulgated by executive branch agencies to implement statutes and administer agency programs. Administrative rules have the force and effect of law and are compiled in the Wisconsin Administrative Code. See also, "Clearinghouse rule."

Amendment: A suggested change to a bill or other proposal that has been introduced into the legislative process. An amendment may propose the addition, deletion, or substitution of language in a proposal. See also, "Simple amendment" and "Substitute amendment."

Annual appropriation: A sum certain appropriation that is authorized within the indicated fiscal year. Any unused funds remaining in the appropriation at the end of the indicated fiscal year lapse (revert) back to the fund or account balance from which they were appropriated. See also, "Appropriation," "Biennial appropriation," "Continuing appropriation," and "Sum sufficient appropriation."

Apportionment: The process by which the seats in the U.S. House of Representatives are allocated to the states according to the relative population of the states. Reapportionment of House seats among the states occurs every 10 years following the U.S. Census. See also, "Redistricting."

Appropriation: A legislative authorization for the expenditure of funds.

Assembly: One of the two houses of the Wisconsin Legislature. The 99 members elected to the Assembly are referred to as State Representatives.

Assembly Committee on Rules: The Assembly Committee on Rules (often referred to as the "Assembly Rules committee") functions as a standing committee and as the calendar scheduling committee for the Assembly. The Assembly Rules committee consists of the speaker, speaker pro tempore, majority leader, assistant majority leader, majority caucus chairperson, minority leader, assistant minority leader, minority caucus chairperson, and four members from the majority party and three members from the minority party appointed by the speaker.

Assembly Organization, Committee on: The Committee on Assembly Organization, or "Assembly Org," performs various functions relating to the operations of the Assembly. Assembly Org consists of the speaker, majority leader, assistant majority leader, speaker

pro tempore, majority caucus chairperson, minority leader, assistant minority leader, and minority caucus chairperson. As compared to the Senate Committee on Organization in the Senate, Assembly Org plays a more limited role in the operations of the Assembly.

Assembly Rules Manual: The official procedural rules of the State Assembly adopted and from time to time amended by Assembly resolution. The Assembly Rules are published in a manual by the Assembly Chief Clerk.

Assembly Speaker: see "Speaker."

Assembly Speaker Pro Tempore: see "Speaker Pro Tempore."

Author: The legislator or legislative committee that introduces a bill or resolution. Members of the same house who "sign on" to the proposal are referred to as "co-authors." Members of the other house who sign on are called "co-sponsors."

Bicameral: A body having two branches, chambers, or houses. The Wisconsin Legislature is bicameral, consisting of the Senate and the Assembly.

Biennial: Lasting for two years. The Wisconsin Legislature uses a biennial session system.

Biennial appropriation: A sum certain appropriation that is authorized within the indicated biennium. Although the appropriations schedule in the statutes contains an identification of an estimated expenditure level for each year of the biennium, these figures are not controlling by year and expenditures are limited only by the total amount appropriated for the biennium. Any unused funds remaining in the appropriation at the end of the indicated biennium lapse (revert) back to the fund or account balance from which they were appropriated. See also, "Appropriation," "Annual appropriation," "Continuing appropriation," and "Sum sufficient appropriation."

Bill: A proposed change in state law originating in either house of the Legislature and, to become effective, requiring approval in identical form by both houses and approval by the Governor (or passage notwithstanding a gubernatorial veto or inaction).

Blue Book: Published since 1853, the Blue Book is an "almanac" of Wisconsin state government and includes comprehensive information about the organization and functions of Wisconsin state government and about elected and appointed officials.

Budget bill: A bill first proposed by the Governor and then introduced in the Legislature that outlines the expected state revenues and proposed expenditures for the upcoming fiscal biennium.

Bulletin of Proceedings: A publication specific to a particular legislative biennium containing procedural histories for all introduced proposals; a subject index to all bills, resolutions and session laws; a listing of the statutory sections affected by the session laws; and legislators' names and committee assignments.

Calendar: The "Session Calendar" is the schedule of floorperiods, and other actions for a biennial session, as laid out in the biennial scheduling joint resolution. The "Daily Calendar" is the Assembly or Senate agenda for a legislative day.

Caucus: A meeting of members of the same political party in a particular house of the Legislature. A caucus can be closed or open to the public.

Censure: In cases that do not merit expulsion, a legislative house may discipline one of its members through censure or reprimand by a majority vote of that house.

Chair: The head of a committee or, with respect to floor session, the position that the presiding officer fills.

Chief clerk: The officer elected by a house of the Legislature to perform and direct the clerical and personnel functions of that house.

Clearinghouse rule: A proposed administrative rule that has been assigned a Clearinghouse rule number by the Legislative Council Rules Clearinghouse. See also, "Administrative rules."

Committee: A group of legislators appointed to consider and make recommendations on proposals related to particular subject areas, among other functions. Committees hold informational sessions, public hearings on proposals, and executive sessions.

Committee clerk: A member of a committee chair's staff who performs the clerical duties for a legislative committee.

Committee report: A report to the house by a committee on the committee's action on a proposal, administrative rule, or appointment. The process of a committee sending a proposal to the scheduling committee for floor action is referred to as "reporting" the proposal out of committee. Committee reports are reproduced in the legislative journals. See also, "Minority report," "Joint survey committees," and "Conference committee."

Committee work period: The days designated by the biennial scheduling resolution for committee activity, usually comprised of all days not reserved for organizational business or floorperiods.

Conference committee or committee of conference: A committee consisting of members from both houses of the Legislature that can be formed to resolve differences between different versions of the same proposal passed in the Senate and Assembly. A report of a committee of conference may not be amended and may not be divided in either house.

Confirmation: Ratification by a house of the Legislature of a nomination for appointment by the Governor. In Wisconsin, most legislative confirmation is conducted by the Senate.

Constitution, United States: The document that establishes and organizes the structure and principles of the U.S. Government. The U.S. Constitution limits federal power by providing in the Tenth Amendment that powers not granted to the federal government nor prohibited to the states are reserved to the states or the people.

Constitution, Wisconsin: The document that establishes and organizes the structure and principles of the government of the State of Wisconsin. The Wisconsin Constitution shares many similarities with the U.S. Constitution, but it also provides much more detail about the structure and process of government than does the U.S. Constitution.

Constitutional amendment: An amendment to the state or federal constitution. In Wisconsin, a constitutional amendment is accomplished by the passage of identical joint resolutions by two successive Legislatures and ratification by the people by a referendum vote.

Continuing appropriation: An appropriation under which an agency may expend the amounts that have been made available by the Legislature at any time until the funds are exhausted or the appropriation is repealed. See also, "Appropriation," "Annual appropriation," "Biennial appropriation," and "Sum sufficient appropriation."

Dipping a bill in Joint Finance: The practice of satisfying the requirement under s. 13.093, Stats. (that proposals involving appropriations, revenue, or taxation be referred to the Joint Committee on Finance), by Senate or Assembly floor action temporarily referring a proposal to the Joint Committee on Finance and then "pulling" the proposal back to the floor for subsequent action.

District: The area of the state represented by a Representative or Senator.

Draft: A preliminary version of a legislative proposal. Also, the process of writing a legislative proposal. See also, "Slash number" and "Preliminary draft or P-draft."

Drafter: The person who writes a legislative proposal in the official LRB drafting format. The drafter is different than the "author," who is the legislator with the idea for a bill. The drafter of a proposal is generally an attorney employed by the LRB.

Drafter's note: An official note from the drafter to the requestor of the draft that provides additional information about the draft or raises questions or concerns for consideration by the requester.

Engross: To incorporate all adopted amendments and corrections to the original proposal in the house of origin before consideration by the second house.

En masse: Together, in a group. Wisconsin legislative committees routinely take up motions on less controversial matters "en masse," which allows them to vote on a number of items at once.

Enroll: To incorporate all amendments and corrections to a proposal that were passed, adopted, and concurred in by both houses.

Executive session or "exec": A legislative committee meeting during which the committee votes, or takes "executive action," on a bill or other proposal. The public is generally not allowed to testify at an executive session. The word "exec" is also used to mean holding a committee vote on a proposal during an executive session.

Ex officio: A member of a board, committee, council, or other body who holds that membership because of holding another office. Many legislative leadership offices and other legislative positions include ex officio memberships on other bodies.

Expulsion: To remove a legislator from office. Each house may expel a member with the concurrence of two-thirds of all members elected. A member cannot be expelled a second time for the same cause.

Extraordinary session: The convening of the Legislature to accomplish specific business identified in the action calling the session. Extraordinary sessions can be called by the Assembly and Senate committees on organization, by petition, or by joint resolution of the Legislature. When used to continue a floorperiod of the regular session for a limited purpose, the extraordinary session is referred to as an "extended session."

First reading: The formal recognition by a legislative body that a bill or other proposal has been introduced.

Floorperiod: Periods of time identified in the legislative session calendar as available for consideration of proposals by the full Assembly and Senate.

General fund: A fund that is not segregated for a particular purpose from which the state makes general expenditures for various programs.

Hearing: A legislative committee meeting during which the committee gathers information about proposals under consideration by the committee or other topics related to the committee's assigned issue areas. Public testimony is generally accepted at legislative hearings.

Impeach: To charge a public official with misconduct. The Assembly may vote to impeach civil officers of this state for corrupt conduct in office, crimes, or misdemeanors. An affirmative impeachment vote in the Assembly requires the majority of all the members elected to the Assembly and serves as a formal accusation. Impeachment trials are conducted by the Senate, with conviction requiring an affirmative vote of two-thirds of the Senators present and constituting a quorum. An impeachment trial may result in removal from office and disqualification for other state office, but does not result in criminal liability.

Incumbent: The holder of an office or post.

Interim: A period of time of a legislative session beginning after the adjournment of the last regularly scheduled general-business floorperiod.

Interstate compact: An agreement between two or more states that is ratified by Congress.

Introduction: The formal offering of a legislative proposal, for consideration by the house in which it is introduced, by a legislator or a legislative committee. Once introduced, a legislative proposal is assigned a number, for example 2015 Senate Bill 1.

Jacket: The folder for an introduced bill that contains the official history file for that proposal. Assembly bill jackets are printed in black and Senate bill jackets are printed in red.

Jefferson's Manual: A manual of parliamentary procedure authored by Thomas Jefferson.

JCLO: The Joint Committee on Legislative Organization. JCLO consists of the Assembly speaker, the Senate president, the majority and minority leaders of each house, and the assistant majority and minority leaders of each house. Among other tasks, JCLO is responsible for adopting the compensation and classification plan for legislative employees.

JCOER: The Joint Committee on Employment Relations. JCOER consists of the Senate president, the Assembly speaker, the majority and minority leaders of each house, and the co-chairs of the Joint Committee on Finance. JCOER reviews and approves the compensation plan for state employees and reviews collective bargaining agreements for state employees and, if it approves such contracts, introduces legislation for their ratification.

JCRAR: The Joint Committee for Review of Administrative Rules. JCRAR consists of five Senators and five Representatives, appointed in the same manner as are the members of standing committees in each house. Prior to promulgation, all proposed administrative rules are referred to JCRAR following standing committee review. Additionally, JCRAR has the authority to temporarily suspend existing administrative rules.

JFC or Joint Finance Committee: The Joint Committee on Finance, a joint committee that is charged with review of all state appropriations and revenues and, in particular, the biennial budget recommendations of the Governor.

Joint Legislative Audit Committee: A joint committee comprised of five Senators and five Representatives, including the co-chairs of the Joint Finance Committee. The Joint Audit Committee oversees the work of the nonpartisan Legislative Audit Bureau and directs the Bureau to conduct audits and evaluations of state programs.

Joint Legislative Council: A joint committee comprised of 11 Senators and 11 Representatives that, among other actions, establishes study committees to examine major issues and problems identified by the Legislature and provides symposiums on topics of interest to the legislative branch.

Joint Rules Manual: The official joint procedural rules of the Assembly and Senate adopted and from time to time amended by joint resolution.

Joint survey committees: Statutory committees consisting of membership drawn from both houses of the Legislature, responsible for the review of legislation relating to subjects including criminal penalties, tax exemptions, and retirement systems.

Journal: The official records of legislative proceedings prepared by each house of the Legislature. The preparations of legislative journals is required under the Wisconsin Constitution.

Leadership: Officers of the Legislature responsible for its operation and management of each political caucus. Examples of legislative leadership positions include the Senate president, the Senate president pro tempore, the Assembly speaker, the Assembly speaker pro tempore, the majority and minority leaders of each house, the assistant majority and minority leaders of each house, and the chairperson for each caucus.

Legislation: A proposed or enacted law or change to a law.

Legislative Audit Bureau or "LAB": A nonpartisan legislative service agency that conducts financial and program evaluation audits of state agency operations.

Legislative Council Staff or "LC": A nonpartisan legislative service agency that staffs all standing committees except the Joint Finance Committee, provides legal, research, and administrative support services to Joint Legislative Council study committees, and assists individual legislators and staff, and others.

Legislative Fiscal Bureau or "LFB": A nonpartisan legislative service agency that provides fiscal and program information and analyses to the Wisconsin Legislature, its committees, and individual legislators, and serves as staff to the Joint Finance Committee.

Legislative Reference Bureau or "LRB": A nonpartisan legislative service agency that provides professional and confidential bill drafting, legal publishing, research, and library services to the Legislature and the public.

Legislative rules: The detailed code of parliamentary procedure that prescribes how the Legislature and legislative committees operate. In addition to the rules of each house, there are joint rules. The rules are published in an Assembly Rules Manual, a Senate Rules Manual, and a Joint Rules Manual.

Legislative Technology Services Bureau or "LTSB": A nonpartisan legislative service agency that provides comprehensive technological services and support to the Wisconsin Legislature.

Legislator: An elected member of the Legislature.

Lobby: To attempt to influence an elected official on an issue. Lobbying is strictly regulated in Wisconsin and lobbying laws are administered by the Ethics Commission.

Local law: See "Special, private, and local laws."

Minority report: A report of a member or members dissenting from a report of a committee stating the reasons and conclusions for that dissent.

Motion: A formal request made for a specific action to be taken in legislative committee executive sessions or during floor debate. Appropriate motions are determined by the applicable rules of procedure.

Motion for adoption: A motion seeking approval of an amendment to a proposal or of a resolution. See also, "Motion for rejection."

Motion for concurrence: A motion in the second house to approve of (concur in) an action of the first house. See also, "Motion for passage."

Motion for passage: A motion seeking approval of a legislative proposal that originated in the house considering the motion. See also, "Motion for concurrence."

Motion for rejection: A motion seeking disapproval of an amendment to a proposal or of a resolution. See also, "Motion for adoption."

Nonpartisan: Not based on, biased towards, influenced by, affiliated with, or supporting the interests or policies of a political party.

Nonstatutory law or "nonstat": A provision in a bill or act that has a temporary application that is not continuing, and therefore is not included in statutory revisions.

Notice: A formal notification under the state's Open Meetings Law of when and where a public meeting will occur and what issues will be addressed, provided in advance of the meeting.

Notification service: A service available on the Wisconsin Legislature's Internet site that allows users to receive email notifications about specified legislative items and activities.

Open meetings law: A state law requiring that public meetings generally be open and made accessible to the public and that public notice be provided in advance of meetings.

Open records law: A state law requiring that governmental records generally be open and made available upon request.

Paired voting: A written agreement between two members of a house of the Legislature who are on opposite sides of a question not to vote on the question when one or both of those members are absent.

Parliamentary procedure: Rules, precedents, and practices used to guide discussion and deliberation and to maintain order during committee meetings and legislative floor sessions.

Per diem: An allowance for daily expenses.

Point of order: A request that the presiding officer rule on some matter of parliamentary procedure.

Preliminary draft or "P-draft": A draft of a legislative document prepared for a legislator by the LRB that is preliminary in at least some respect, denoted by a "/P" after the LRB number on the document.

Presiding officer: The person presiding over the Senate or Assembly in a legislative session.

Private law: See "Special, private, and local laws."

Privilege: Motions and requests related to the meetings, organization, rules, rights, and duties of the Senate or Assembly and its members. Privileged motions or requests take precedence over other questions before the body.

Proposal: A bill, amendment, or resolution before a legislative house awaiting action.

Public hearing: See "Hearing."

Pulling motion: A motion requesting that the rules of a legislative body be suspended and a proposal be removed from a committee and placed before the body for consideration.

Quorum: The minimum number of members of a committee or legislative body that must be present for business to be conducted.

Ratification: Approval, consent, adoption, or sanction. For example, voters must ratify, by binding referendum vote, any change to the Wisconsin Constitution, and the states must ratify a proposed federal constitutional amendment.

Reapportionment: See "Apportionment."

Recall election: A vote to decide whether an elected official will remain in office.

Recess: A temporary suspension of business.

Recommendation: The result of a legislative committee vote on a proposal, for instance, recommending passage of or concurrence in a bill.

Reconsideration: A motion to revisit an action of a committee or legislative body.

Redistricting: The process of changing the boundaries of legislative districts every 10 years following the U.S. Census, to reflect changes in population.

Referendum: A vote by the public on a measure that is passed by a legislative body. A referendum can be binding or advisory.

Referral: Assignment of a proposal to a legislative committee for its review.

Relating clause: The part of a proposal that identifies the general subject matter of the proposal.

Reprimand: See, "Censure."

Resolution: A formal statement of opinion or intention passed by a legislative body. Resolutions in the Wisconsin Legislature can be proposed to both houses through a joint resolution. Amendments to the state constitution must be proposed by a joint resolution. Proposals to create, amend, or repeal a legislative rule and to set the Legislature's session calendar are also made by resolution.

Roll call: The calling of the names of each member of a body to ascertain the members' votes, to determine whether a quorum is present, or for other purposes.

Second: Support of a motion by an additional member, typically required for a motion to be recognized.

Second reading: The stage of consideration of a proposal during a floor session during which amendments to the proposal may be considered.

Senate: One of the two houses of the Wisconsin Legislature. The 33 members elected to the Senate are referred to as State Senators.

Senate Organization, Committee on: The Committee on Senate Organization, or "Senate Org," has broad authority over the operations of the Senate. Senate Org generally consists of the majority leader, president, assistant majority leader, minority leader, and the assistant minority leader. As compared to Assembly Org, Senate Org plays a broader role in the supervision and management of the Senate.

Senate President: A member of the Senate elected by the membership to preside over the Senate and perform other duties specified in statutes and legislative rules.

Senate President Pro Tempore or "President Pro Tem": A member of the Senate elected by the membership to carry out the duties of the Senate president in his or her absence.

Senate Rules Manual: The official procedural rules of the State Senate adopted and from time to time amended by Senate resolution. The Senate Rules are published in a manual by the Senate Chief Clerk.

Sergeant-at-Arms: The officer elected by the members of one house of the Legislature to perform and direct the police and custodial functions of that house.

Service agencies: The LRB, LFB, LAB, LC, and LTSB.

Simple amendment: An amendment that makes changes in the underlying proposal if adopted. See also, "Amendment" and "Substitute amendment."

Slash number: The number signifying the version of a document drafted by the LRB. The "slash number" of a draft is the number following the "/" (slash) in the LRB number on the proposal, with the highest numbered version being the newest version.

Speaker: A member of the Assembly elected by the membership to preside over the Assembly and perform other duties specified in statutes and legislative rules.

Speaker Pro Tempore or "Speaker Pro Tem": A member of the Assembly elected by the membership to carry out the duties of the Assembly speaker in his or her absence.

Special order of business: A proposal ordered by the Senate or Assembly to be given consideration at a specified time and taking precedence over the regular orders of business at that time.

Special, private, and local laws: Enactments of the Legislature that relate to a closed classification or are specific to a person, place, or thing and do not relate to a state responsibility of statewide dimension and do not have a direct and immediate impact on a statewide concern or interest. The Wisconsin Constitution generally prohibits private or local enactments unless forwarded in a single subject bill with that subject expressed in the

title of the bill. The constitution also prohibits such enactments in specific instances even if the above requirement would be met.

Special session: A session of the Legislature convened by the Governor to accomplish a special purpose.

Spill draft: A portion of a bill drafted separately from other parts of the bill. The state budget bill is a compilation of many separate spill drafts.

Stand informal: A brief informal recess of legislative proceedings, expected to be short in duration, during which members are advised to remain in the room rather than depart with plans to return at a certain time. Generally, if members intend to break for a longer period or if either legislative party wishes to convene in caucus, a member will request a recess.

Statutes: The compiled general laws of the state created by legislation.

Stripes: The cover sheet for the official copy of an introduced amendment that contains the official history of that proposal. Assembly "stripes" have black margins and printing and Senate "stripes" have red margins and printing.

Study committee or special committee: A committee appointed by the Joint Legislative Council to examine major issues and problems identified by the Legislature. Study committees are made up of legislators and citizens who are interested in or knowledgeable about the study topic and usually do most of their work when the Legislature is in recess. Study committees are staffed by the Legislative Council staff and make legislative recommendations to the Joint Legislative Council.

Substitute amendment or "sub": An amendment that replaces the underlying proposal if adopted. See also, "Amendment" and "Simple amendment."

Sum sufficient appropriation: An appropriation under which an agency may expend any amount necessary for the program subject only to any other specific program restrictions. An estimate of the amount that will be expended by the agency in each fiscal year is included in the appropriations schedule in the statutes, but an agency may spend more or less than the amount indicated. See also, "Appropriation," "Annual appropriation," "Biennial appropriation," and "Continuing appropriation."

Summary of Proceedings: See "Bulletin of Proceedings."

Suspension of the rules: A motion to take a temporary action otherwise prohibited by rule that requires the support of two-thirds of the members present.

Table: A motion to temporarily set aside a proposal and move to other business.

Testimony: Oral or written remarks provided by interested persons about a proposal being considered during a public hearing of a legislative committee.

Third reading: The stage of consideration of a proposal during a floor session during which bills and other proposals come up for final discussion and possible passage. No amendments may be considered at this point.

Twenty-four hour rule: A rule sometimes imposed by legislative committee chairs requiring that any amendments to be considered in executive session must be distributed to the committee members at least 24 hours prior to the executive session.

Unanimous consent: A motion asking for unanimous approval of a question without a roll call vote. If an objection is not heard, it is assumed that the request has the consent of all members.

Uniform act or uniform law: A proposal sponsored by the Uniform Law Commission or other group that is designed to be adopted, in whole or substantially, by all the states (at their option) so that the law on the subject of that proposal will be similar from state to state.

Veto: The action by which all or a part of a bill is rejected by the Governor.

Veto override: A vote of both houses of the Legislature to overturn a gubernatorial veto. To be successful, such a vote must receive a two-thirds vote in both houses.

Voice vote: A vote taken by asking members in favor to say "aye" simultaneously and then asking those opposed to say "no" or "nay" simultaneously, with the presiding officer deciding which side prevails.

WisconsinEye: A statewide, independent, multimedia public affairs network that focuses on state government, public policy, and civic life. WisconsinEye records and archives all legislative sessions and many legislative committee meetings.

Withdraw: A request by the person who made a motion to remove the motion from consideration.

Zoom calendar: A portion of a day's legislative calendar for which procedures are expedited by prior agreement of the leadership teams of both political caucuses.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20

CHAPTER 3

LEGISLATIVE AGENCIES, STAFF, AND ORGANIZATIONS

Jessica Ozalp and Brian Larson, Senior Staff Attorneys
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Introduction

Legislative staff who serve the Legislature as a whole can be divided into legislative service agencies, chamber assistance, and legislators' personal staff. The five legislative service agencies' nonpartisan staff provide professional services, including bill drafting, audits, analysis and research, and technical support. Chamber staff prepare records of legislative action and provide other services. Legislators' personal staff assist legislators in their committee work, policymaking, constituent services, and managing their personal offices.

Legislative Service Agencies

Although the legislative service agencies are established and managed separately, there are many points of contact among the agencies, both formal and informal. Many legislative issues require the involvement of staff from more than one agency, and the staff of legislative service agencies often collaborate. 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.

Any legislator may request an audit by writing to the Co-Chairs of the Joint Legislative Audit Committee. Legislators are encouraged to discuss their requests with the State Auditor before submitting them to the Audit Committee Co-Chairs.

Legislative Audit Bureau

The Legislative Audit Bureau:

Contact:

Joe Chrisman, State Auditor
22 East Mifflin St., Ste. 500
(608) 266-2818

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

Toll-Free Fraud, Waste, and Mismanagement Hotline:

1-877-FRAUD-17 or 1-877-372-8317

- Performs audits of the accounts and records of state agencies and certain nonstate agencies and organizations to ensure 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.
- Conducts best practices reviews of governmental service delivery by counties and municipalities.

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

Legislative Council Staff

The Legislative Council staff:

Contact:

One East Main St., Ste. 401
(608) 266-1304

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

- Staffs the standing committees of the Legislature (other than the Joint Committee on Finance).
- Prepares Amendment Memos that describe the changes made to a bill by amendments adopted by a standing committee or on the floor of either house of the Legislature.
- Prepares Act Memos to describe enacted legislation.
- Staffs study committees created by the Joint Legislative Council. Legislative Council staff create research documents and prepare implementing legislation related to such studies.
- Prepares reports on all proposed administrative rules and assists standing committees in their oversight of the administrative rulemaking process.
- Provides staff services to the Joint Committee on Legislative Organization and the Joint Committee on Employment Relations.

The Legislative Council staffs every standing committee except the Joint Committee on Finance, which is staffed by the Legislative Fiscal Bureau.

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

Legislative Fiscal Bureau

The Legislative Fiscal Bureau:

Contact:

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

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

The Legislative Reference Bureau:

Contact:

Rick Champagne, Chief and General Counsel
One East Main St., Ste. 200
(608) 266-9930

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

- Prepares the drafts of all legislative proposals; prepares an analysis for inclusion in 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*.
- Researches topics relating to state government and issues studies and 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.

The Legislative Reference Bureau drafts all bills, resolutions, and amendments, and provides research services to legislators.

- Edits and publishes the *Wisconsin Statutes*, the *Wisconsin Administrative Register*, and the *Wisconsin Administrative Code*.
- Develops and distributes the *Wisconsin Statutes*, the *Wisconsin Administrative Code*, and other sources of Wisconsin law in electronic 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.

Legislative Technology Services Bureau

The Legislative Technology Services Bureau:

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

Contact:

Jeff Ylvisaker, Director
17 West Main St., Ste. 200
(608) 264-8582

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

- Manages and supports the Legislature's office automation system, which provides computers and software to each legislative office.
- Creates, manages, and supports specialized software used to produce legislative branch documents and publications.
- Provides computer support and computer training to legislative staff.
- Manages legislative branch access to the Internet.
- Provides technical support for legislative redistricting and Forward, a constituent tracking database application.

CHAMBER ASSISTANCE

Chief Clerks

The Chief Clerks:

Contact:

Jeff Renk, Senate Chief Clerk
B20 Southeast, State Capitol
(608) 266-2517

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

Patrick Fuller, Assembly Chief Clerk
17 West Main St., Rm. 401
(608) 266-1501

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

- Supervise the general business functions of each house, such as the processing of travel vouchers and payrolls and the purchasing of supplies.
- Assist the presiding officer in the conduct of sessions of the house.
- Prepare the official *Journal* of each day's proceedings, the daily *Calendar*, the *Bulletin of Proceedings*, and the weekly *Bulletin of Hearings* for each house.
- Record all legislative actions in the official record books and make required entries on the jackets of bills, resolutions, joint resolutions, and administrative rules.
- Present to the Governor for action all bills that have passed both houses.
- Deposit 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

The Sergeants-at-Arms:

- Execute orders of the house or its presiding officer.
- Supervise access of all persons to and from the house chamber.

Contact:

Ted Blazel, Senate Sergeant-at-Arms
B35 South, State Capitol
(608) 266-1801

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

Anne Tonnon Byers, Assembly Sergeant-at-Arms
411 West, State Capitol
(608) 266-1503

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

- Supervise the distribution to members of all legislative documents.
- Supervise the delivery of bills, resolutions, and other communications to the chief clerk's desk, presiding officer's rostrum, or other required places.
- Maintain order and quiet in and about the chamber.
- Assist committees of the house in conducting orderly public hearings.
- Carry 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

Each Senator has a specific allotment for the biennium for salaries for any combination of full-time or part-time staff, as determined by each individual Senator. The Committee on Senate Organization determines the number of benefited staff positions allocated to each Senator.

Each Representative who is not a committee chair and who has served more than one term has one and one-half staff positions 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.

Interstate Legislative Organizations

Interstate legislative organizations serve several functions on behalf of state legislatures. The organizations collect and provide information to aid in state policy development. They compile issue-based summaries of state legislation, offer briefings and background on various policy areas, and disseminate information directly to legislators and staff.

Interstate legislative organizations host conferences or meetings for legislators and legislative staff. These meetings provide seminars on policy areas and current topics faced by states. The meetings also provide an opportunity for legislators and staff to interact with their counterparts in other states, with representatives of nonlegislative governmental institutions, and with private sector organizations.

In addition, interstate legislative organizations represent the views of state legislatures at the federal level, and promote state cooperation and consistency in state laws in areas where such uniformity is desirable.

NCSL CONTACT INFORMATION:

http://www.ncsl.org

Denver Headquarters
(303) 364-7700

Washington, D.C. Office
(202) 624-5400

STAFF CONTACT FOR WISCONSIN (Denver Office):

Wendy Underhill
wendy.underhill@ncsl.org

(303) 856-1379

This section provides an overview of the interstate legislative organizations to which Wisconsin belongs through a charter or a legislative appropriation.

National Conference of State Legislatures (NCSL)

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

The purposes and objectives of NCSL, as stated in its bylaws, are to: (1) advance the effectiveness, independence, and integrity of the legislatures in the states, territories, and commonwealths of the United States; (2) foster interstate cooperation and facilitate information exchange among state legislatures; (3) represent the states and their legislatures in the American federal system of government consistent with support of state sovereignty and state flexibility and protection from unfunded federal mandates and unwarranted federal preemption; (4) improve the operations and management of the state legislatures and the effectiveness of legislators and legislative staff; encourage the practice of high standards of conduct by legislators and legislative staff; and (5) promote cooperation between state legislatures in the U.S. and legislatures in other countries.

NCSL is a nonpartisan organization that represents and supports state legislators from all political parties. The organization does not participate or intervene in any political campaign and is expressly prohibited from doing so by the organizational bylaws.

NCSL offers several publications and research services:

***NCSL Today*, a daily e-newsletter that covers state-related news stories and research, publications, and multi-media from NCSL.**

***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*, two-page reports summarizing emerging issues facing state legislatures.**

***Capitol to Capitol*, an information service that provides updates to legislators and staff on federal legislation and events in Washington, D.C.**

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.

NCSL is financed by appropriations from member legislatures, as determined by the 63-member executive committee. Each state is assessed a flat-rate charge, plus an amount prorated based on population. NCSL also receives support from the NCSL Foundation for State Legislatures, a nonprofit tax-exempt 501 (c) (3) corporation.

NCSL hosts an annual legislative summit in July or August, as well as a forum held in Washington, D.C. in December.

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)

CSG was founded in 1933 and is a nonpartisan interstate organization serving all three branches of state and U.S. territorial governments. The organization is a region-based, national organization that helps state officials exchange ideas to assist them in shaping public policy. Wisconsin is served by the Midwest forum, which includes 11 states as members and four Canadian provinces as affiliate members. CSG provides policy expertise and resources on best practices, facilitates multistate solutions, fosters leader to leader interactions, and advocates for the states at the federal level.

CSG's membership consists of all 50 states, the District of Columbia, and five U.S. territories.

CSG is supported, in part, through direct contributions by the states and other U.S. jurisdictions. Each state's assessment is calculated from a base fee amount 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. The organization also generates revenue from publication sales and by conducting workshops and conferences.

CSG offers the following publications and research tools:

***The Book of the States*, an annual encyclopedia of information on state governments nationwide.**

***CSG's Shared State Legislation*, a compilation of noteworthy legislation in the states.**

***CSG Knowledge Center*, an interactive website containing hundreds of policy reports, blogs, and other policy items.**

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

***Stateline Midwest*, a monthly newsletter focused on key policies and trends of interest to the Midwest and its elected officials.**

CSG CONTACT INFORMATION:

http://www.csg.org

CSG Headquarters
Lexington, KY
(859) 244-8000

Midwest Office
Lombard, IL
(630) 925-1922

STAFF CONTACT FOR WISCONSIN:

Jon Davis
jdavis@csg.org
Midwest Office

CSG holds an annual National Leadership Conference, as well as annual meetings for the regional conferences.

The Uniform Law Commission (ULC)

The ULC was founded in 1892 and is a nonprofit association that serves the states by drafting state laws on subjects where uniformity is desirable and practicable. The ULC drafts uniform or model acts for individual states to consider and enact.

The ULC is comprised of more than 300 commissioners from all 50 states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico. A commissioner is typically appointed by the Governor of his or her state or by the state's legislature. ULC commissioners must be attorneys and serve on a volunteer basis.

Wisconsin's ULC representatives are selected as specified in state statute which provides for 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).
- Two public members appointed by the Governor (four-year term).

[s. 13.55, Stats.]

If a Senator or Representative is unable to serve, a former Senator or Representative may serve instead as long as the person is 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 ULC meetings, but also comprise a separate commission, the Wisconsin Commission on Uniform State Laws (WCUSL). The WCUSL meets at least once every two years to advise the Wisconsin Legislature on uniform laws and model laws and prepare uniform law legislation to be introduced into the Legislature.

The following publications are produced by ULC:

***Guide to Uniform and Model Acts*, a guide to uniform acts designed to assist legislators, legislative drafting bureaus, commissioners, and others interested in state legislation in understanding acts promulgated by ULC and recommended for enactment.**

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

***ULC Quarterly Report*, a report highlighting drafting news from ULC's various drafting committees, study committees, and standing and governance committees.**

ULC CONTACT INFORMATION:

http://www.uniformlaws.org

Chicago, IL
(312) 450-6600

STAFF CONTACT:

Liza Karsai
Executive Director
lkarsai@uniformlaws.org

The ULC is primarily supported by state appropriations. Every jurisdiction is also asked to fund its commissioners' participation at the ULC annual meeting. In addition, ULC seeks revenue from publication of uniform laws and grants from private foundations and public agencies.

The ULC holds an annual meeting, usually in July or August. Drafting and study committees also meet at various other times throughout the year.

Education Commission of the States

The Education Commission of the United States (ECS) was founded in 1965 and helps states develop effective policy and practice for public education. ECS conducts policy research, tracks state education policy trends, provides advice and policy assistance to states, and fosters nationwide leadership and collaboration in education. ECS is a nonpartisan organization that works on issues at all levels of education from pre-K to postsecondary.

ECS provides the following publications:

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

***Ed Beat*, a biweekly newsletter with links to key research and reports.**

***ArtsEd Digest*, a bimonthly publication addressing timely education issues based on recent studies and reports.**

The commission's outreach and collaborative efforts serve two major purposes: (1) bringing information into ECS to better understand the issues and problems facing its constituents; and (2) providing ECS with opportunities to assist policymakers with complex education decisions.

ECS CONTACT INFORMATION:

http://www.ecs.org

Denver, CO
(303) 299-3600

STAFF CONTACT:
Sara Shelton
sshelton@ecs.org

The ECS Executive Committee has day-to-day oversight of the organization and a Steering Committee of Commissioners maintains broad oversight of ECS.

Forty-nine states, three 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, one member each from the Senate and Assembly, and three members appointed by the Governor. [s. 39.76, Stats.]

ECS is financed by fees paid by member states and territories, as well as grants and sponsorship funding.

ECS holds an annual meeting each summer. The ECS steering committee, which consists of one commissioner from each of the member states, holds two additional meetings and other networks also hold various meetings throughout the year.

Midwest Higher Education Commission (MHEC)

MHEC was established in 1991 under the statutorily created Midwest Higher Education Compact. The purpose of the compact is to provide greater higher education opportunities and services in the Midwestern region, with the aim of furthering regional access to, research in, and choice of, higher education for the citizens residing in the member states. [s. 39.80, Stats.]

The following publications are available through MHEC:

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

***Compact eNews*, monthly electronic publication providing information on MHEC programs and events.**

***Research Briefs*, reports published periodically that provide information on higher education issues and policy research.**

MHEC is charged with promoting interstate cooperation and resource sharing in higher education. The commission seeks to improve access to a wide variety of high-quality postsecondary education programs while maintaining affordability and maximizing return on investment for students and taxpayers.

The Executive Committee, made up of a subset of commissioners, acts for the commission in the interim between annual meetings and oversees development of the compact's short and long-range activities.

MHEC CONTACT INFORMATION:

http://www.mhec.org

Minneapolis, MN
(612) 677-2777

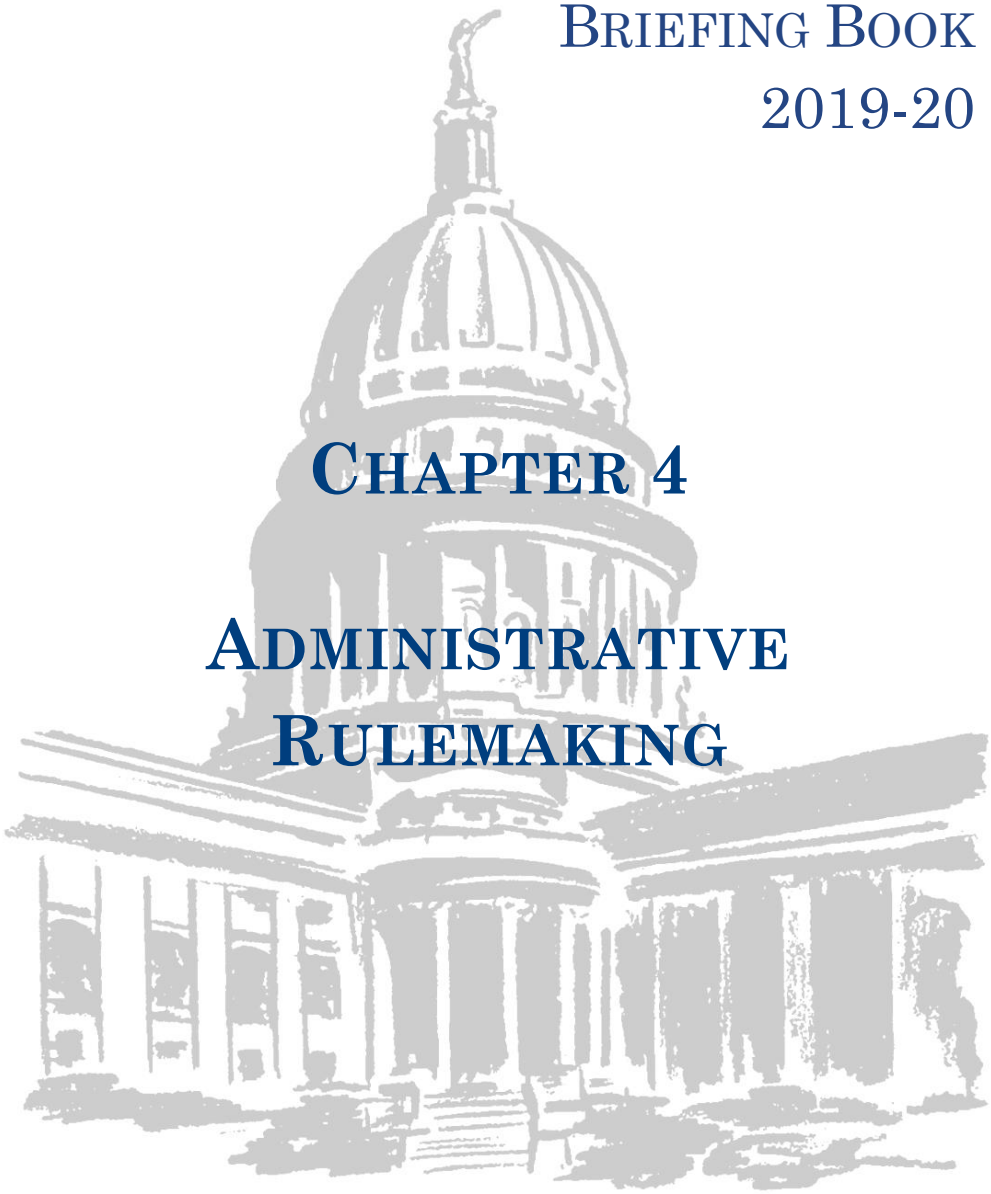
MHEC is comprised of five commissioners appointed by each state. The commissioners include: the Governor or the Governor's designee, a member of each chamber of the Legislature, and two at-large members, one of whom must have background in post-secondary education. [s. 14.90, Stats.] The member states are: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

MHEC is financed through member state dues, program fees, and foundation grants.

MHEC meets annually in November and the Executive Committee meets during the interim.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 4

ADMINISTRATIVE RULEMAKING

Scott Grosz, Principal Attorney, and Margit S. Kelley, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

State agencies promulgate administrative rules pursuant to rulemaking authority conferred by the Legislature. The Legislature retains oversight of the rulemaking process through the review of proposed rules by the Legislative Council's Administrative Rules Clearinghouse, legislative standing committees in each house, and the Joint Committee for Review of Administrative Rules (JCRAR).

Administrative rules are promulgated by state agencies to implement or interpret statutes enforced or administered by the agency.

Statutes governing the rulemaking process are contained in subch. II of ch. 227, Stats. The statutes define an administrative rule as a regulation, standard, policy statement, or order of general application promulgated by a state agency:

- To 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.

An agency undertakes rulemaking when it seeks to create new rules or to amend or repeal existing rules. Administrative rules have the force and effect of law.

[s. 227.01 (13), Stats.]

AGENCY RULEMAKING AUTHORITY

All authority for administrative rulemaking is conferred by statute. An agency may promulgate rules interpreting the provisions of a statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. An agency may not promulgate a rule that conflicts with state law. Likewise, an agency may not find rulemaking authority in a legislative statement of intent, purpose, findings, or policy, or in a statutory provision describing the agency's **general** powers or duties. The agency is limited to rulemaking authority that is explicitly conferred by the Legislature.

[ss. 227.10 and 227.11, Stats.]

Furthermore:

- An agency may not impose any standard, requirement, or threshold, in a rule or as a license condition, unless the standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by another properly-promulgated rule.
- With respect to a specific standard, requirement, or threshold, an agency may not promulgate a rule that is more restrictive than a statute.

Executive Order #50

On November 2, 2011, Governor Walker issued Executive Order #50, which sets forth requirements for agency rulemaking in addition to those specified in the statutes, as well as detailed rule promulgation instructions to agencies. The order also establishes an Office of Regulatory Compliance in the Governor's office as the point of contact for administrative rulemaking. The Office of Regulatory Compliance in the Governor's office may be contacted at 267-3672 or at: SBOAdminRules@webapps.wi.gov.

Executive Order #50 contains rulemaking requirements in addition to those specified in the statutes.

Publication of Administrative Rules

For questions about the rulemaking process or specific Clearinghouse Rules, contact the Legislative Council Rules Clearinghouse staff:

Scott Grosz, Director (504-5715)

Margit S. Kelley, Assistant Director (504-5717)

Administrative rules are published in the Wisconsin Administrative Code. The Legislative Reference Bureau (LRB) publishes and edits the Code, as well as the Wisconsin Administrative Register. The Register is published every Monday. All final administrative rules are initially published in the Register and are then compiled, maintained, and updated in the Administrative Code. Each issue of the Register contains a section with notices and other items that are required to be published during the rulemaking process. The Administrative Code and Administrative Register are published online at: http://docs.legis.wisconsin.gov/code. As of January 2015, printing and distribution of the Code and Register was discontinued, but the Code and Register continue to be available in a printer-friendly PDF format online.

[ss. 227.20 and 227.21, Stats.]

For questions about the Administrative Code and Register, and rule promulgation and publication, contact the LRB (266-3561).

Rule Promulgation Process

Agencies typically promulgate **permanent** rules, which are subject to the rule promulgation and legislative review procedures discussed throughout this chapter. On occasion, however, preservation of the public peace, health, safety, or welfare necessitates placing a rule into effect prior to the time it could take effect as a permanent rule, in which case the agency may initially adopt the rule as an **emergency** rule. Some of the rule promulgation steps discussed in this section pertain only to proposed permanent rules, while others, where indicated, also apply to emergency rules.

A flowchart describing the rulemaking process is located at the end of this chapter.

Preparation and Approval of Scope Statement

The first step in the rule promulgation process is preparation of a scope statement that sets forth information about the agency's intended rulemaking, including the objective of the proposed rule, the statutory authority for the rule, and a description of all entities that may be affected by the rule. Scope statements must be prepared for both proposed permanent rules and emergency rules. [s. 227.135, Stats.]

The Governor has specific authority to approve or disapprove most agency scope statements and final draft rules.

Before work may commence on actual rule drafting, the agency must submit the scope statement to the Department of Administration (DOA), which reviews the rule and forwards it to the Governor for approval in writing. If the scope statement is approved by the Governor, it is then submitted to the LRB for publication in the Wisconsin Administrative Register. Executive Order #50 provides that an agency must submit an approved scope statement to the LRB for publication within 30 days of the Governor's approval, or the scope statement will be considered to have been withdrawn. Following publication, the scope statement must be approved by the individual or body with policy-making powers for the agency. Additionally, prior to this approval, on its own initiative or as directed by the co-chairs of JCRAR, the agency may hold a preliminary public hearing and comment period on the rule. Once a scope statement is published, an agency has 30 months to submit a proposed rule for legislative review.

The requirement that the Governor approve a scope statement does not apply to rules promulgated by the Department of Public Instruction (DPI). The Wisconsin Supreme Court has held that the duties conferred on the Superintendent of Public Instruction by the Wisconsin Constitution, art. X, s. 1, include supervisory power over public instruction that cannot be superseded by other authorities. [*Coyne v. Walker*, 2016 WI 38.]

Rule Drafting

Once the scope statement is approved, agency staff may then begin drafting the rule. Agencies are directed, to the extent possible, to adhere to the format and drafting style of bills prepared for the Legislature and to draft rules in concise, simple sentences, using plain language that can be easily understood.

[s. 227.14 (1), Stats.]

The Legislative Council staff and the LRB jointly publish an *Administrative Rules Procedures Manual* to provide agencies with information on the drafting and promulgation of rules. The *Manual* provides detailed instructions regarding the format and style to be used by agencies in drafting rules.

The *Rules Manual* is available online at:
http://www.legis.wisconsin.gov/lc

[ss. 227.15 (7) and 227.25 (1), Stats.]

Preparation of Economic Impact Analysis

An agency must prepare an economic impact analysis (EIA) for every rule before the rule is submitted to the Legislative Council staff for review. This requirement does **not** apply to emergency rules. The EIA must include information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole and must estimate the total implementation and compliance costs of the rule as a single dollar figure. It must also explain: the policy problem the rule is intended to address; the approach to the problem the rule takes; a comparison to approaches taken by the federal government and by Iowa, Illinois, Michigan, and Minnesota; and any reasons for the agency choosing a different approach. [s. 227.137, Stats.]

In the EIA, an agency must specifically determine whether, over a two-year period, a total of $10 million or more in implementation and compliance costs are reasonably expected to be incurred or passed along to businesses, local governmental units, and individuals as a result of the proposed rule. Upon such a determination, the agency must stop work and may not continue promulgating the proposed rule unless one of two things occur: (1) enactment of a bill specifically authorizing the promulgation of the rule; or (2) adoption of germane modifications to the proposed rule that reduce the economic impact below the $10 million threshold.

All agencies must prepare an economic impact analysis for every proposed permanent rule.

Executive Order #50 requires that, in preparing an EIA, agencies must accept public comments for a specified time period based on the degree of economic impact the rule is likely to have locally or statewide. The comment period is 14 days for a rule with no or

minimal economic impact, 30 days for a rule with moderate economic impact, and 60 days for a rule with significant economic impact.

The EIA and a fiscal estimate must be submitted to the Legislative Council Administrative Rules Clearinghouse at the same time that a rule is submitted to the Clearinghouse for review. DOA has developed a template for agency use that combines the EIA and fiscal estimate in a single form.

Through action by either the co-chairs of JCRAR or JCRAR as a body, an independent EIA may also be requested, with costs of the estimate paid based on the result of the independent EIA in comparison to the agency's estimate.

Review by Legislative Council Administrative Rules Clearinghouse

Each proposed rule, Clearinghouse Report, and other documents related to the rule are available online at:
http://docs.legis.wisconsin.gov/code

When the agency has completed its work on an initial draft rule, the rule is submitted to the Legislative Council staff for review. This requirement does **not** apply to emergency rules. By statute, the Legislative Council staff functions as the Administrative Rules Clearinghouse. Upon receipt of a proposed administrative rule, the Clearinghouse staff assigns the rule a Clearinghouse Rule number, records the date of submission of the rule in the Bulletin of Proceedings of the Wisconsin Legislature, and prepares two numbered rule jackets (similar to bill jackets), one for the Assembly and one for the Senate. [s. 227.15 (1), Stats.]

The rule is assigned to a Legislative Council attorney or analyst for review and preparation of a Clearinghouse Report containing comments about the rule. The rule is then given a secondary review by the Clearinghouse director or assistant director. The Legislative Council staff reviews the rule for form, style, and technical adequacy. The staff also specifically:

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

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

The Legislative Council Administrative Rules Clearinghouse reviews all proposed permanent rules and prepares a Clearinghouse Report containing comments about the proposed rule.

The period for Legislative Council review is 20 working days following receipt of the proposed rule. A Clearinghouse Report

containing the staff comments is sent to the agency. [s. 227.15 (2), Stats.]

Agency Public Hearing

Generally, following Clearinghouse review, an agency must provide notice and hold a public hearing on a proposed rule. Notice of the hearing may be posted before the agency receives the Clearinghouse Report, but the hearing cannot take place until the agency has the Clearinghouse Report in hand or until the end of the 20-working day Clearinghouse review period, whichever comes first. There are some exceptions to the hearing requirement. For example, a public hearing is not required prior to promulgation of an emergency rule or if the rulemaking is undertaken to bring an existing rule into conformity with a statute or judicial decision. The agency's notice of public hearing must include, among other things, the text of the proposed rule, a plain language analysis of the rule, and the EIA and fiscal estimate.

[ss. 227.16 to 227.18, Stats.]

For rulemaking purposes, "small business" is defined as a business entity that is independently owned and operated, that is not dominant in its field, and that employs 25 or fewer full-time employees or that has gross annual sales of less than $5 million.

Initial Regulatory Flexibility Analysis

If a proposed rule will have **any effect** on small business, the agency must prepare an initial regulatory flexibility analysis describing the types of small businesses that will be affected by the rule, the proposed reporting, bookkeeping, and other procedures required for compliance with the rule, and a description of the types of professional skills necessary for compliance with the rule. The agency's initial regulatory flexibility analysis must be included in the notice of public hearing. If the rule **may have an economic impact** on small business, the agency must submit the rule to the Small Business Regulatory Review Board (SBRRB) on the same day the rule is submitted to the Legislative Council staff for Clearinghouse review. [s. 227.14 (2g), Stats.]

The SBRRB must determine whether the rule will have a significant economic impact on a substantial number of small businesses. Unless the SBRRB determines that the rule will **not** have a significant impact on a substantial number of small businesses, the agency must also prepare a final regulatory flexibility analysis for submission to the Clearinghouse on any suggested changes.

The Governor must approve most final draft permanent rules before their submission to the Legislature for committee review, as well as final draft emergency rules.

Submission of Final Draft Rule to Governor

Following the public hearing on a proposed rule, the agency prepares a final draft rule. Before the rule may be submitted to the Legislature, the agency must submit the final draft rule to the Governor for written approval and provide notice to JCRAR of the submission. This approval requirement also applies to emergency rules, but does not apply to any proposed rules of the DPI. [s. 227.185, Stats.]

Committee Review Process

Submittal of Rule to Legislature

Once the Governor has approved a final draft rule, the agency may submit the rule, accompanied by a report, to the Chief Clerk of each house of the Legislature for referral by the presiding officer to a standing committee in each house. The report must contain a number of items, including:

- A plain language analysis of the rule.
- An explanation of the basis and purpose of the proposed rule, including how it advances relevant statutory goals or purposes.
- The fiscal estimate, the EIA, and any DOA report regarding the EIA.
- Any recommendations or other material submitted to the agency by the SBRRB and the agency's response.
- A copy of the Clearinghouse Report and a response to the Clearinghouse recommendations, including the specific reasons for rejecting any recommendation.
- A summary of public comments on the rule, the agency's response to those comments, and an explanation of modifications made to the rule as a result of public comments or testimony.
- A list of persons who appeared or registered for or against the rule at any public hearing held by the agency.
- A final regulatory flexibility analysis, unless the SBRRB determined that the rule will **not** have a significant economic impact on a substantial number of small businesses.

  [s. 227.19 (1) to (3), Stats.]

Standing Committee Review

When a rule is referred to a standing committee, the committee chair notifies the committee members of the referral and the date on which the committee's jurisdiction ends.

Generally, the standing 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 for an additional 30 days if the committee chair, within the initial 30-day period, takes either of the following actions:

A standing committee may let its jurisdiction expire without taking any action or may waive its jurisdiction over the rule during the 30-day review period. The committee may request modifications to the rule or may, for specified reasons, object to the rule.

- Requests in writing that the agency meet with the committee to review the proposed rule.
- 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.

If a committee, by majority vote of a quorum of the committee, requests modifications to a proposed rule and the agency, in writing, agrees to **consider** making modifications, the review period is extended for both standing committees for 10 days from the time the modifications are received from the agency. An agency may also submit germane modifications on its own. Modifications are accepted under passive review.

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

- Absence of statutory authority.
- Emergency relating to public health, safety, or welfare.
- Failure to comply with legislative intent.
- Conflict with state law.
- Change in circumstances since enactment of the earliest law on which the proposed rule is based.
- Arbitrariness or capriciousness, or imposition of an undue hardship.
- For a proposed rule of the Department of Safety and Professional Services establishing standards for dwelling construction, that the

All proposed permanent rules are referred to JCRAR, not just those receiving a standing committee objection. JCRAR is not required to take any action unless a rule received a standing committee objection.

rule would increase the cost of constructing or remodeling a dwelling by more than $1,000.

[s. 227.19 (4), Stats.]

JCRAR Review

When a standing committee's jurisdiction over a proposed rule ends, the rule is referred to JCRAR.

As with the initial reviewing committee, the review period for JCRAR is 30 days, but may be extended for an additional 30 days. If a proposed rule received an objection in a standing committee, JCRAR is required to meet and take executive action and may either nonconcur in the objection, object to the proposed rule, or seek modifications to the rule in the same manner as the initial reviewing committee. JCRAR may, but is not required to, take executive action with respect to any proposed rule that passed a standing committee. JCRAR may request modifications to a rule and may object to a proposed rule for the same reasons for which the initial reviewing committee may object.

JCRAR may object to a rule or part of a rule using one of two methods. Under the first method, it must meet and take executive action within 30 days regarding introduction in each house of a bill to support the objection. If either bill becomes law, the agency may not promulgate the rule, or part of the rule, that was objected to, unless a later law specifically authorizes promulgation of the rule.

Rules submitted to the Legislature after the last day of the final general business floorperiod in a biennium generally will not be considered until the next legislative session.

Alternatively, JCRAR may choose to indefinitely object to a proposed rule. Under this method, an agency may not promulgate the rule or part of the rule, unless the Legislature specifically authorizes the promulgation through enactment of new legislation.

[s. 227.19 (5), Stats.]

Late Submission of Rules to Legislature

If the Legislature receives a proposed rule for committee review after the last day of the Legislature's final general business floorperiod in the biennial session, the rule will be considered received on the first day of the next regular session of the Legislature. However, the presiding officers of both houses may direct referral of the rule before that day. In 2018, the last day of the final general business floorperiod was March 22. [s. 227.19 (2), Stats.]

Repeal of Unauthorized Rules

As an alternative to the general rulemaking process described above, an agency may use a petition process to repeal unauthorized rules. Under this process, which applies to rules

that an agency may not enforce due to repeal or amendment of law, an agency must submit a petition for repeal to JCRAR and the Clearinghouse. Following Clearinghouse review and issuance of a report to JCRAR, the committee may vote to approve the petition, allowing the agency to submit the repeal of the rule to the LRB for publication. [s, 227.26 (4), Stats.]

Emergency Rules

As noted, certain requirements that apply to permanent rules also apply to emergency rules, including the requirement for gubernatorial approval of the scope statement and of the final draft rule.

Once the Governor has approved a final draft emergency rule in writing, the agency may publish the rule in the official state newspaper, at which time the rule takes effect, unless the rule specifies another effective date. The agency must also file a certified copy of the rule with the LRB in order for the rule to be valid. On the day an agency files an emergency rule with the LRB that may have an economic impact on small business, the agency must also submit the rule to the SBRRB. Just as for proposed permanent rules, the SBRRB must determine whether the emergency rule will have a significant economic impact on a substantial number of small businesses. If it determines that the rule will have such an impact, the board may submit suggested changes to the agency to minimize the economic impact of the rule.

The Governor must approve final draft emergency rules before they may be published and filed with the LRB.

An agency must hold a public hearing on an emergency rule within 45 days after the adoption of the rule. An emergency rule remains in effect only for 150 days, unless JCRAR grants an extension for up to an additional 60 days. The total period for all extensions granted may not exceed 120 days.

[s. 227.24, Stats.]

Treatment of Rules by Legislative Initiative

During the 2017-18 Legislative Session, several bills were enacted that modified administrative rules through legislation rather than by the traditional agency-initiated process. The statutes recognize the treatment of rules by legislative initiative and reconcile this treatment with other aspects of the rulemaking process. For example, the statutes specify that rules treated by legislative initiative may be subject to future agency-initiated treatment in the same manner as other administrative rules. [s. 227.265, Stats.]

Challenges to the validity of a rule are brought in the county where the challenging party lives or establishes a principal place of business.

Review of Current Rules

Wisconsin has a number of mechanisms that provide oversight of existing rules and agency policies. These include court actions, JCRAR review, retrospective EIAs, biennial reporting by agencies, and SBRRB review.

Judicial Review of Validity of Rule

The exclusive means of judicial review of the validity of a rule is an action for declaratory judgment brought in the circuit court for the county where the party asserting the invalidity of the rule resides or establishes a principal place of business. If that party is a nonresident or does not have its principal place of business in Wisconsin, venue is in the circuit court in the county in which the dispute arose.

When a circuit court enters a final order in a declaratory judgment action on the validity of a rule, the court must notify the LRB of the court's determination as to the validity or invalidity of the rule. The LRB must publish a notice of that determination in the Administrative Register and insert an annotation of that determination in the Administrative Code.

[s. 227.40, Stats.]

JCRAR Treatment of Rules in Effect

Suspension of Existing Rules

JCRAR may suspend an existing rule for specified reasons.

JCRAR may, by a majority vote of a quorum of the committee, suspend a permanent rule or emergency rule that has been promulgated and is in effect if JCRAR has first received testimony about the rule at a public hearing and the suspension is based on one or more of the reasons a committee may cite when objecting to a proposed rule.

If JCRAR suspends a rule, it must, within 30 days, introduce a bill in each house 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.

[s. 227.26, Stats.]

Retrospective Economic Impact Analysis

JCRAR may direct an agency to prepare a retrospective EIA for any of an agency's existing rules. Requests for such an analysis may be made with respect to one or more chapters, sections or other subunits of the Administrative Code that are administered by the agency. Following a request, the agency must prepare the retrospective EIA in the same manner it would prepare an EIA on a proposed rule, described above.

Requirement to Promulgate Policy as a Rule

If JCRAR determines that an agency's statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule within 30 days of JCRAR's action. Further, by a majority vote of a quorum of the committee, JCRAR may require any agency promulgating rules to hold a public hearing with respect to general recommendations of JCRAR and to report its actions to JCRAR within a specified time. [s. 227.26 (2) (b) and (3), Stats.]

JCRAR may require agencies to promulgate their policies or statutory interpretations as emergency rules.

Agency Review of Rules and Enactments

Agencies must submit biennial reports to JCRAR that identify unauthorized, restricted, obsolete, and duplicative rules, as well as rules that are in conflict with other rules, statutes, federal statutes or regulations, or judicial rulings. In addition to identification of such rules, each agency must describe the actions taken to address the rules identified by the report. Similarly, each agency must review enactments to determine whether an enactment affects the agency's rulemaking authority and must address the consequences of such enactments and notify JCRAR of its actions on affected rules within six months of the effective date of the enactment. [s. 227.29, Stats.]

SBRRB Action on Current Rules and Guidelines

The SBRRB is authorized to review any **current** agency rule or guideline to determine whether it places an unnecessary burden on small businesses. If the board so determines, it must submit a report and recommendations regarding the rule or guideline to JCRAR. JCRAR may refer the report to the presiding officer of each house of the Legislature for referral to a committee, or JCRAR may itself undertake a review of the rule or guideline.

If JCRAR reviews the report, it must consider all of the following:

- The continued need for the rule or guideline.
- The nature of the complaints and comments received from the public regarding the rule or guideline.
- The complexity of the rule or guideline.
- The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.

The SBRRB may review all current rules and guidelines for an unnecessary burden on small business.

- The length of time since the rule or guideline has been evaluated.
- The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since it was promulgated.

[s. 227.30, Stats.]

Additional References

1. Information Memorandum 16-08, *Glossary of Rule Promulgation Documents*, at: http://www.legis.wisconsin.gov/lc. The Memo provides a glossary of the various documents and reports that must be prepared by an agency in the rulemaking process.
2. The Legislature's administrative rules website: http://docs.legis.wisconsin.gov/code. This site provides a link to the entire Administrative Code and current and past issues of the Administrative Register. It also provides a notification service and has links to emergency rules in effect and final administrative rule orders filed for publication, as well as to proposed rules, Clearinghouse Reports, and agency reports.
3. 2017 Annual Report of the Legislative Council Rules Clearinghouse, May 2018: http://www.legis.wisconsin.gov/lc. This statutorily required Annual Report to the Governor and Legislature explains the rule review functions and related responsibilities of the Rules Clearinghouse, and activities of the Clearinghouse in 2017. It also includes a sample Clearinghouse Report and rule processing instructions for agency heads.
4. Executive Order #50, relating to guidelines for the promulgation of administrative rules, Governor Scott Walker, November 2011: https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-50.pdf.

Glossary

Economic Impact Analysis (EIA): An analysis prepared by an agency during the rulemaking process that describes the policy addressed by the rule and the economic effect of the rule on business, local government, and the state economy as a whole.

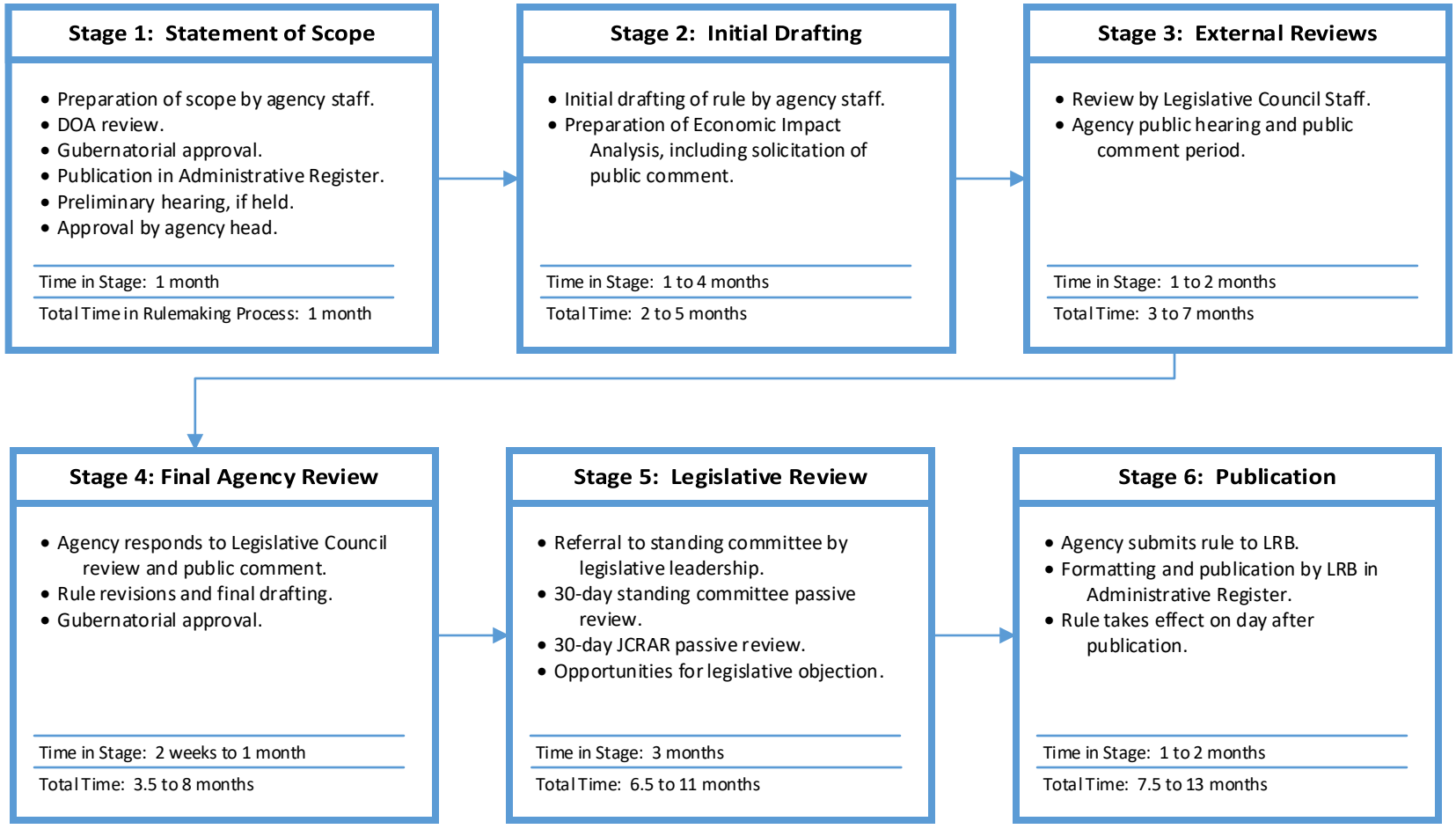
JCRAR: The Joint Committee for Review of Administrative Rules is a joint legislative committee that plays a key role in reviewing administrative rules, including emergency rules. Among other functions, JCRAR may grant extensions for emergency rules and suspend current emergency or permanent rules in specified circumstances.

Legislative Council Administrative Rules Clearinghouse: The Clearinghouse is housed at the Legislative Council and reviews all proposed permanent rules for statutory authority, clarity, and use of plain language, form, and style.

SBRRB: The Small Business Regulatory Review Board is comprised of seven representatives of small business, and a Senator and a Representative involved with legislative committees relating to small business. Agencies must refer rules that may have an economic impact on small business to the SBRRB for review. The board also has authority to review **current** agency rules to determine whether they place an unnecessary burden on small businesses.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

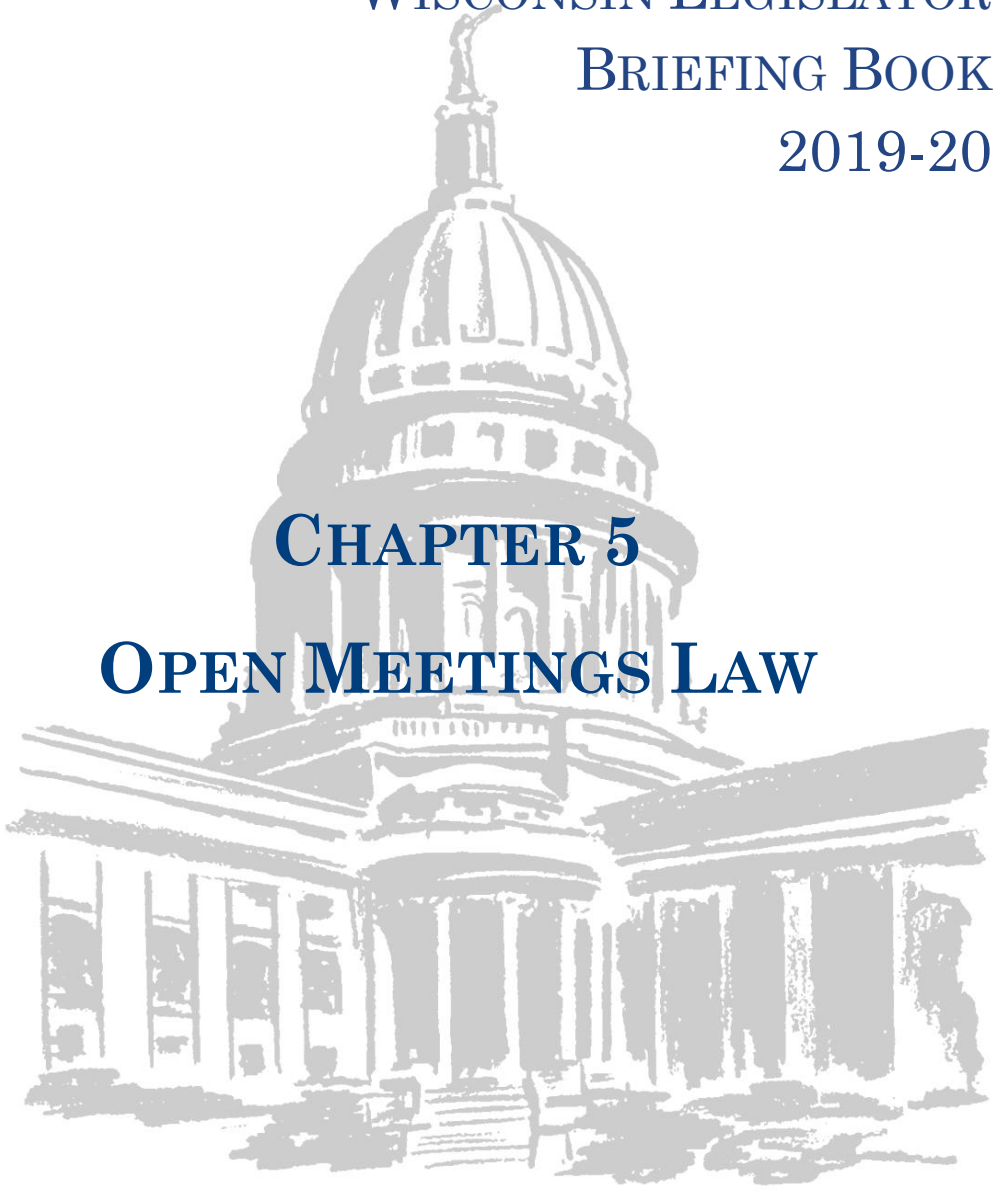
Overview of Administrative Rulemaking Process



Prepared by: Wisconsin Legislative Council, November 2018

Please note this overview describes the process for a "typical" rulemaking. Rules developed using extraordinary processes, such as citizen-initiated rulemaking or internal board approvals, may require additional time.

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 5

OPEN MEETINGS LAW

Dan Schmidt, Principal Analyst
Wisconsin Legislative Council

TABLE OF CONTENTS

INTRODUCTION

The Open Meetings Law, originally created in 1959 and revised substantially in 1976, governs meetings of governmental bodies in Wisconsin. The law generally requires that meetings of governmental bodies be conducted in open session, with specified exceptions, and be preceded by public notice. The law is set forth in ss. 19.81 to 19.98, Stats.

PURPOSE

The Open Meetings Law contains a declaration of policy, stating that:

- A representative government of the American type is dependent upon an informed electorate.
- The public is entitled to the fullest and most complete information regarding governmental affairs as is compatible with the conduct of governmental business.
- To implement and ensure this policy, 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, unless otherwise expressly provided by law.

The declaration of policy further prescribes that the Open Meetings Law is to be liberally construed in order to achieve its purposes. [s. 19.81, Stats.]

DEFINITIONS

The Open Meetings Law provides specific definitions for the terms "governmental body," "meeting," and "open session." [s. 19.82, Stats.]

Governmental Body

A governmental body is any 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 committee or subunit that is formed for or meeting for the purpose of public employee collective bargaining.

Meeting

A "meeting" is defined as 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 half 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 inspecting, observing, or supervising at the site of a public works project, although limited notice and reporting may be required.

Open Session

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

REQUIREMENTS OF THE LAW

Open Session

The Open Meetings Law generally requires every meeting of a governmental body to be held in open session. [s. 19.83, Stats.] Consequently, all discussions of a governmental body, and any action, whether formal or informal, must be initiated, deliberated upon, and acted upon only in open session, except as specifically exempted by statute.

The law presumes that if one-half or more of the members are present, the gathering is a meeting to exercise the authority and duties vested in the body.

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

Negative Quorum

The applicability of the Open Meetings Law to a gathering of less than one-half of the members of a governmental body has been addressed by the Wisconsin Supreme Court. The case 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 two-thirds vote of the commission (i.e., eight votes), and four members was a sufficient number to block adoption. Such a gathering of enough members that could be sufficient to block an action of the full body was labeled as a "negative quorum." [*State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77 (1987).]

The court provided a two-part test to determine when a gathering constitutes a negative quorum and 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.

Walking Quorum

The applicability of the Open Meetings Law to a series of informal discussions between small numbers of the body's members has been addressed by the Wisconsin courts and the state Attorney General. This is commonly referred to as a "walking quorum," and such series of small-group meetings that occur with the implied or express agreement to act uniformly in a sufficient number to reach a quorum may only be held with proper notice and accessibility.

Generally, notice must be given at least 24 hours in advance of a meeting. Shorter advance notice may be given in some circumstances, if given at least two hours before a meeting.

The essential danger identified by the courts with a walking quorum is that it may produce a predetermined outcome and render the public meeting a mere formality. According to an informal opinion by the Attorney General, use of administrative staff to individually poll members regarding how they would vote on a proposed motion is a prohibited walking quorum.

If, however, there is no implied or express agreement to act uniformly in sufficient number to reach a quorum, a series of informal exchanges among separate groups of members may occur without violating the Open Meetings Law.

Notice

Public notice of meetings must be given by the governmental body's chief presiding officer, or a designee, 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.

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. [s. 19.84, Stats.]

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 to the extent required by the Open Records Law. [s. 19.88, Stats.]

Recording Devices

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. [s. 19.90, Stats.]

Requirements for Legislative Meetings

The Wisconsin Constitution, Article IV, Section 10, provides that for legislative proceedings the "doors of each house shall be kept open except when the public welfare shall require secrecy." The statutes declare that in conformance with this constitutional provision it is the intent of the Legislature to comply to the fullest extent with the Open Meetings Law. Accordingly, the statutes provide that meetings of the Senate, the Assembly, committees, and subcommittees are subject to the Open Meetings Law, except in certain circumstances. [s. 19.87, Stats.]

Meetings called solely to schedule business before a legislative body do not have to comply with the public notice requirements of the law.

The statutes specifically provide that 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, the conflicting provision of the Open Meetings Law does not apply. On this issue, the Wisconsin Supreme Court has held that the Legislature may interpret its own rules of proceedings, and the Court will generally decline to review the validity of the procedures used by the Legislature. [*State ex. rel. Ozanne v. Fitzgerald*, 2011 WI 43 (citing *State ex. rel. La Follette v. Stitt*, 114 Wis. 2d 358 (1983)).]

Meetings called solely for the purpose of scheduling business are not subject to the notice requirements. In addition, the Open Meetings Law does not apply to a partisan caucus of the Senate or Assembly, except as provided by legislative rule. The Wisconsin Supreme Court has interpreted this to mean that the Open Meetings Law also does not apply to a partisan caucus of a legislative committee, except as may be provided by legislative rule. [*State ex. rel. Lynch v. Conta*, 71 Wis. 2d 662 (1976).]

Specific Exceptions to Open Meetings Requirements

Limited Notice Allowed

Departments and subunits of the University of Wisconsin System are exempt from the specific public notice requirements set forth above. These entities must, however, provide

notice reasonably likely to inform interested persons, as well as news media that have filed written requests for notice. [s. 19.84 (5), Stats.]

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 a separate public notice. 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. [s. 19.84 (6), Stats.]

Closed Session Allowed

A meeting of a governmental body may be convened in closed session only for specific, enumerated purposes. [s. 19.85, Stats.]
These purposes are:

A governmental body meeting for the purpose of negotiating or formulating strategy for collective bargaining may meet in closed session. However, a governmental body may not consider the final ratification or approval of a public employee collective bargaining agreement at a closed meeting.

- Deliberating about 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 a public employee or a person licensed by a board or commission, 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 person must receive actual notice of any evidentiary hearing 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 the purchasing of public properties, investing public funds, or conducting other specified public business, if competitive or bargaining reasons require a closed session.

- Deliberating in a meeting by the Unemployment Compensation Advisory Council or the Worker's Compensation Advisory Council 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 Elections Commission, the Ethics Commission, or from a local governmental ethics board.

In addition, the law requires the Ethics Commission to meet in closed session for the purpose of deliberation concerning an investigation of any violation of the law under its jurisdiction after a proper vote to convene in closed session.

Closed Session Procedure

The Department of Justice's *Open Meetings Law Compliance Guide* is available at:

https://www.doj.state.wi.us

The Open Meetings Law establishes a procedure that must be followed when a meeting of a governmental body goes into closed session. [s. 19.85, Stats.] The requirements are as follows:

- The chief presiding officer of the governmental body must announce to those present at an open meeting the nature of the business to be considered in a closed session and the specific exemption under which the closed session is 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 an open meeting, then 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.

ENFORCEMENT AND PENALTIES

Enforcement

The Open Meetings Law is enforced by the Attorney General or by a district attorney on the complaint of any person that a violation may have occurred. [s. 19.97, Stats.] Any person may request advice from the Attorney General as to how the Open Meetings Law applies under any circumstance.

The Attorney General or district attorney may commence an action, separately or in conjunction with a forfeiture action, to obtain appropriate legal or equitable relief, including mandamus, injunction, or declaratory judgment. A court may hold an 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 the person prevails. Any forfeiture imposed is paid to the state.

Penalties

A member of a governmental body who knowingly attends a meeting of the body held in violation of the Open Meetings Law, or who violates the law by some other act or omission, is subject to a nonreimbursable forfeiture of not less than $25 nor more than $300 for each violation. [s. 19.96, Stats.]

A member of a governmental body is not liable for 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 if, on any relevant motions prior to the violation, the person's votes are inconsistent with the circumstances causing the violation.

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.

GLOSSARY

Governmental business: Formal or informal action, including discussions, decision-making, and information-gathering on matters within a governmental body's realm of authority.

Negative quorum: A gathering of a number of members sufficient to affirmatively or negatively affect a governmental body's course of action, if the gathering is for the purpose of engaging in governmental business.

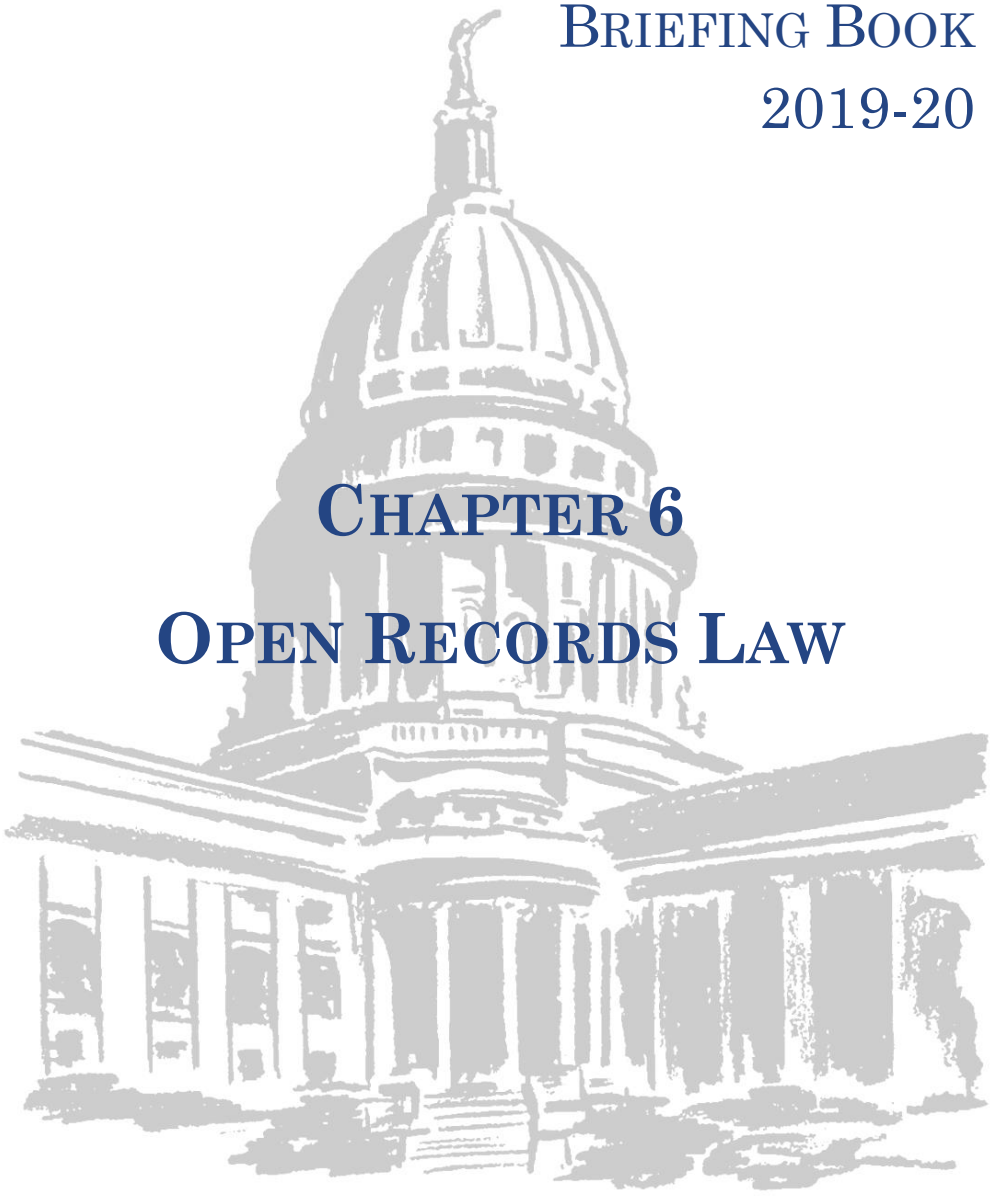
Open Meetings Law: Sections 19.81 to 19.98 of the Wisconsin statutes, which require a governmental body to open its meetings to public access.

Quorum: Usually, a majority of the current membership of a governmental body that constitutes a sufficient number for the transaction of business, unless a higher number is specifically required for certain business.

Walking quorum: A series of discussions between small numbers of a governmental body's members, with the implied or express agreement to act uniformly in a sufficient number to reach a quorum.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 6

Open Records Law

Dan Schmidt, Principal Analyst
Wisconsin Legislative Council

Table of Contents

INTRODUCTION

The Wisconsin Open Records Law governs requests for government information. The declared policy of the Open Records Law is to entitle the public to the "greatest extent possible information regarding the affairs of government and the official acts of those officers and employees who represent them" in order to ensure an informed electorate. The Open Records Law further indicates that providing the public with such information is an "essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information." [s. 19.31, Stats.] The Open Records Law is set forth in ss. 19.31 to 19.39, Stats.

The purpose of this chapter is to set forth the steps a legislator may take to respond to an open records request. Although the chapter is specific to legislators, most of the Open Records Law requirements described below also apply to other public officials and entities.

OPEN RECORDS LAW

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. 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 very limited circumstances, a legislator may redact from a letter personally identifiable information about a constituent.

Legislators are 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, as can the Wisconsin Department of Justice (DOJ). DOJ publishes a *Wisconsin Public Records Law Compliance Outline*, available at:

https://www.doj.state.wi.us

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.

A decision to deny access to a record should be made very carefully, since it may be challenged—in court, in the news media, or in partisan debate. 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. The Open Records Law is based on elements of the Wisconsin Constitution, statutes, and case law. This chapter summarizes key information from these sources and provides general advice in responding to records requests.

Responding to Open Records Requests

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

The custodian is the person in a legislator's office 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. [s. 19.33 (1), Stats.] 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 or denial 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 to a record request must be made "as soon as practicable and without delay." Simple requests should be answered within 10 working days.

A response to a record request must be made "as soon as practicable and without delay" under the law. [s. 19.35 (4) (a), Stats.] In practical terms, a custodian may need some amount of time to retrieve and inspect the record before formulating a response. The Attorney General has indicated that 10 working days is a reasonable time period for a simple request for easily identifiable records. Complex or extensive requests may take considerably longer. [See, *Wisconsin Public Records Compliance Guide*, p. 15, Wisconsin Department of Justice, Attorney General Brad Schimel, March 2018.]

The response to a request for a record is either: (1) to provide the record; or (2) to deny the request in whole or in part. If a written request is denied, the reasons for the denial must be given in writing. [s. 19.35 (4) (b), Stats.]

Respond to a Request in Kind

If a 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.

An oral request may be responded to orally. A written request must be responded to in writing.

If a request is made in writing, the response must be in writing giving the reasons for the denial. Written responses denying or redacting from 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." [s. 19.35 (4) (b), Stats.]

Demand That a Request be Reasonably Specific

A request must be honored if it "reasonably describes the requested record or the information requested." [s. 19.35 (1) (h), Stats.] However, requests to go through an office's files (sometimes referred to as a "fishing expedition") do not have to be honored.

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

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."

In addition, there is no blanket exemption for constituent mail. In most cases, constituent mail is a "record," although in certain limited circumstances a legislator may redact from a letter personally identifiable information about a constituent. For example, a legislator may be able to redact medical information or financial identifiers, as well as other items with specific statutory exemptions, like income tax return information.

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. [s. 19.35 (1) (i), Stats.]

A request may not be denied because the requester refuses to provide identification or to state the purpose of the request.

In addition, 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 one of the following applies:

- 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.
- The record is otherwise accessible to the person by law. [s. 19.32 (3), Stats.]

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 any other medium on which electronic data is stored") and which was created by 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.
- Drafts, notes, preliminary computations, and similar material prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working.
- 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.

[s. 19.32 (2), Stats.]

A "record" is any material which bears information, regardless of form, and which was created or is being kept by a custodian.

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

The "balancing test" seeks to measure harm done to the public interest by disclosure against the right of access to public records.

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 Open Records 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. [s. 19.31, Stats.] 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. The measurement of harm done to the public interest by disclosure versus access to public records is commonly called the "balancing test." [s. 19.35, Stats.]

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. [s. 19.35 (1) (b) through (f), Stats.] 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. [s. 19.34, Stats.]

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.

See sample letter #1 at the end of this chapter for an example of a letter granting an open records request.

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. [s. 19.356, Stats.]

Denial of a Request

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 the request is made. The exemptions in the Open Meetings Law are used as a guide for denial. [s. 19.85, Stats.] The applicable exemptions in that law are:

- Deliberating about 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 and taking formal action on any such matter.
- Considering employment, promotion, compensation, or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- Deliberating or negotiating purchasing of public properties, investing public funds, or conducting other specific public business, if 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, in which public discussion would likely have a substantial adverse effect on the reputation of any person referred to in such histories or data, or involved in the problems or investigations.

Legislative Council staff or the Attorney General's office can advise a legislator of the exemptions in the Open Records Law.

- 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 Elections Commission, the Ethics Commission, or from any local government ethics board.
- Considering matters related to acts by businesses under the state's Economic Adjustment Program (where a business is shutting down or laying off employees) in which public discussion could adversely affect the business, its employees, or its former employees.

[s. 19.85, Stats.]

See sample letter #2 at the end of this chapter for an example of a denial of a request.

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. [See, *Mayfair Chrysler-Plymouth, Inc. v. Baldarotta*, 162 Wis. 2d 142 (1991).] 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. [s. 19.36, Stats.] Other statutory and common law exemptions exist—a legislator can be advised of the exemptions in the Open Records Law by Legislative Council staff or the Attorney General's office.

Partial Denial

If a portion 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. [s. 19.36 (6), Stats.]

Provide Copies on Request

A fee may be charged for copies based on copying charges established by the chief clerk in each house of the Legislature.

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 of the Legislature. A search fee also may be imposed, but only if the cost of the search is $50 or more. [s. 19.35 (3), Stats.]

In 2012, the Wisconsin Supreme Court released a decision that altered the way legislative offices may respond to open records requests. [See, *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65.] Prior to this decision, Legislative Council staff advised that legislative offices could charge open records requesters for costs associated with the redaction of data determined to be closed under the Open Records Law. This recommendation was based on the lower court decision that permitted a record custodian to charge for the costs associated with the time spent redacting nonreleasable data from records. The Supreme Court reversed this decision, concluding that the City of Milwaukee, as record custodian in this case, "may not charge the Newspaper for the costs, including

staff time, of redacting information." [*Milwaukee Journal Sentinel*, 2012 WI 65, ¶ 6.] The Court further clarified that it came to its decision because redaction costs do not fit within the fees permitted to be charged under s. 19.35 (3), Stats. Therefore, it is no longer permissible for record custodians to charge for the cost of redaction.

Additional References

Wisconsin Public Records Law Compliance Guide, Wisconsin Department of Justice (March 2018), https://www.doj.state.wi.us.

Glossary

Balancing test: A test that seeks to weigh the harm done to the public interest by disclosure of records against the right of access to public records.

Custodian: The person in a legislator's office who responds to a request to inspect records.

Record: Any material which bears information, regardless of form, and which was created or is being kept by a custodian.

Sample Letters

1. Granting a Request

Dear ___ _____:

This letter is written in response to your open records request addressed to me, dated ____ __, ____, in which you request:

_____<Insert Request>_____

Your request has produced _____records. At the rate of $.15 per page for copying, the copying cost is $_____. Please make payment in the form of a check to "State of Wisconsin" and send it to:

Wisconsin State Senate
c/o Jeff Renk, Senate Chief Clerk
P.O. Box 7882
State Capitol, Room B20SE
Madison, WI 53707

You may pick up the results of your request at my office following payment. If you have any questions concerning this response, please feel free to contact me.

Sincerely,

Senator _____
___ Senate District

2. Denying a Request on the Basis of Overbreadth

Dear ___ _____:

This letter is written in response to your open records request addressed to me, dated ____ __, ____, in which you request:

> All emails received by my office.

I am denying this request on the basis of s. 19.35 (1) (h), Stats., which requires that a record request must have a "reasonable limitation as to subject matter or length of time represented by the record." Your request specifies neither of these factors and is therefore, in my estimation, overbroad.

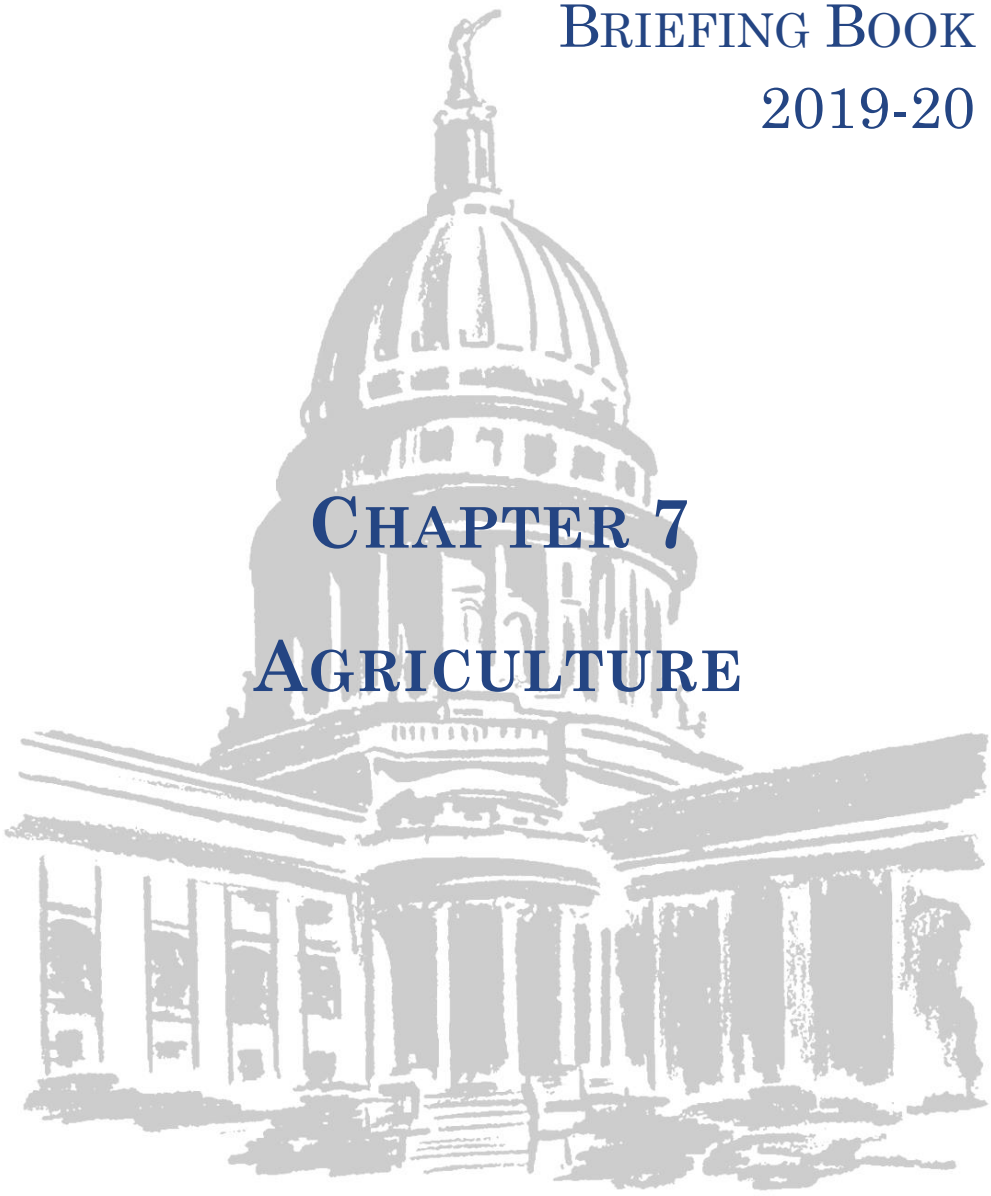
If you have any questions concerning this response, please feel free to contact me. Pursuant to s. 19.35 (4) (b), Wis. Stats., this reply is subject to review by mandamus under s. 19.37 (1), Wis. Stats., or by application to the Attorney General or a district attorney.

Sincerely,

Representative _____
___ Assembly District

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 7

Agriculture

Michael Queensland, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Introduction

Wisconsin ranks among the top states in the production of agricultural commodities such as carrots, cheese, corn for silage, cranberries, snap beans, milk, oats, and potatoes.

Agricultural economics in Wisconsin depends in part on national and international market forces. For example, the volume of agricultural exports typically increases when the U.S. dollar is weak. Nationally, the cost of agricultural inputs such as fuel and fertilizer and market prices for agricultural products are important factors.

Government at all levels also plays a role in agriculture, both in support of the industry and in its regulation. On the federal level, the U.S. Department of Agriculture (USDA) provides crop insurance to farmers, offers assistance to beginning farmers, and administers various programs relating to conservation, energy, and the development of agricultural markets.

In addition to numerous state programs, this chapter provides an overview of numerous agricultural topics, including: land use and environmental regulation; farmland preservation; taxation; food safety and disease prevention; Wisconsin's "right to farm" law; fence law; and Wisconsin's new industrial hemp law.

State Programs

The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) is the state agency with primary responsibility for administering agricultural programs. Other state entities, such as the University of Wisconsin (UW)-Extension and the Wisconsin Housing and Economic Development Authority (WHEDA), also provide assistance to farmers.

Technical and Legal Assistance

Wisconsin Farm Center

Wisconsin Farm Center's toll-free line: 1-800-942-2474.

Email: farmcenter@wisconsin.gov

The Wisconsin Farm Center, housed within DATCP, provides information on the introduction of new agricultural technologies; offers financial counseling for farm businesses; coordinates a mediation and arbitration program; assists with rewiring farms to update antiquated electrical wiring and to minimize stray voltage; and answers general legal questions relating to issues such as taxation, estate planning, leases, and credit-debtor law.

UW-Extension Programs

The UW-Extension Cooperative Extension farming website is:

http://fyi.uwex.edu/topic/farming/

UW-Extension has significant resources available to farmers and others who work in the agricultural sector. Many of the resources focus on agricultural practices. For example, UW-Extension provides tips on farm budgeting and energy use, and provides recommendations on farming during difficult financial times. In addition, UW-Extension conducts research on pest management, sustainable agriculture, general business management, and farm safety.

Marketing Assistance

DATCP Agriculture Development Division

Through its Agriculture Development Division, DATCP works to develop, grow, and diversify Wisconsin agriculture, food, and related businesses. It operates the Farm Center, described above, and provides assistance with product development, identifying new markets, developing product identities, and exporting products to other states and countries.

Collective Marketing

Some agricultural producers market products collectively, through state marketing boards.

Some of Wisconsin's agricultural producers market products collectively. One of the ways collective marketing is accomplished is through a system of agricultural marketing orders. Marketing orders are typically requested by producers of a specific commodity in a petition to DATCP. A marketing order levies a "check-off," which is an assessment on each producer, that generates revenues 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 currently seven active marketing boards in the state, including marketing boards for cherries, cranberries, corn, milk, soybeans, ginseng, and potatoes.

The Wisconsin Milk Marketing Board's website includes links to cheese recipes, maps, and more:
http://www.eatwisconsincheese.com

"Something Special from Wisconsin" Branding Campaign

DATCP authorizes specified products produced or manufactured in Wisconsin to be included in the state's trademarked "Something Special from Wisconsin" branding campaign. Approved products may bear the "Something Special from Wisconsin" logo. To

be eligible, 50% of a product's value must be attributable to Wisconsin ingredients, production, or processing activities.

Financial Assistance

WHEDA administers loan guarantee programs related to agriculture under ch. 234, Stats., including the following:

- The Credit Relief Outreach Program (CROP), which provides guarantees on agricultural production loans.
- The Farm Asset Reinvestment Management (FARM) program, which provides loan guarantees for starting, expanding, or modernizing agricultural operations.
- The Agricultural Production Disaster Assistance Program, which guarantees loans for certain extraordinary disaster-related costs.
- The Agricultural Development Program, under which guarantees can be issued for loans for capital or items to be used for processing or marketing products made from agricultural commodities produced in Wisconsin.

The Agricultural Producer Security Fund Program, administered by DATCP under ch. 126, Stats., is intended to protect agricultural producers from financial default by those purchasing the producer's products. This program affects dairy plant operators, vegetable processing plants, public warehouses, and grain dealers by providing a thorough review of the financial status of product purchasers and requiring them to provide financial assurances to protect the producers if payments are not made.

DAIRY-SPECIFIC PROGRAMS

Various state programs and initiatives provide support to the dairy industry. In addition to the programs discussed below, DATCP provides assistance to organic dairy farms, assists with diagnosing problems with animal herd health, and offers support to dairy farmers interested in incorporating grazing on their farms.

Dairy 30x20 Initiative

The Dairy 30x20 initiative, also called the "Grow Wisconsin Dairy" initiative, aims to help Wisconsin dairy farms to produce 30 billion pounds of milk annually by 2020 to meet growing demand. Under this initiative, various financial and technical benefits are available to dairy producers and processors. DATCP staff who coordinate this program may be reached at 855-WIDAIRY or GrowWisconsinDairy@wi.gov.

Wisconsin Center for Dairy Research

The Wisconsin Center for Dairy Research is located on the UW-Madison campus. It is one of the premier dairy research centers in the country. The center researches topics such as cheese making, dairy protein processing and separation, and product safety technologies.

Part of the funding for the center comes from assessments under the milk marketing order, described above.

Land Use and Environment

Like other types of entities, agricultural businesses must comply with laws regulating natural resources, land use, and the environment. The laws that apply to a given agricultural use depend on the nature of the agricultural practice and the characteristics of a given site. In addition to the laws described below, a particular agricultural operation may be subject to state or federal laws governing water use, waste management, or other environmental impacts.

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.

Livestock Facility Siting

The livestock facility siting law, s. 93.90, Stats., establishes state water quality and odor management standards to be applied to any local regulation of new or expanding livestock facilities. The law applies to livestock facilities with 500 or more animal units.[1]

The livestock siting law applies to livestock facilities with 500 or more animal units.

The livestock siting law requires **local government** regulations relating to new or expanded livestock facilities to adhere to state standards governing the local permitting process. 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.

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. Wisconsin law regulates nonpoint source pollution from farming activities.

Wisconsin law requires the Department of Natural Resources (DNR) to establish nonpoint source performance standards, and DATCP must write rules identifying practices for farmers to use to meet those standards. Specific performance standards include

[1] "Animal units" are calculated according to formulas set forth in s. NR 243.05, Wis. Adm. Code.

requirements related to nutrient management[2], erosion, tillage setbacks, phosphorus management, and manure storage and management. Cost sharing may be available to pay for the implementation of practices designed to meet these standards and, in some situations, must be provided before a farmer can be compelled to comply. [s. 281.16, Stats.]

Pesticides

Pesticides are subject to comprehensive regulation by DATCP in a state-run program based on federal mandates. Pesticide regulation is intended to protect public health, including the health of agricultural workers and nearby residents, and to protect 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. In certain cases, state law exceeds federal requirements. For example, Wisconsin has exceeded minimum federal regulations for atrazine, a herbicide that has been found in Wisconsin's groundwater. [ch. 94, Stats.; ch. ATCP 29, Wis. Adm. Code.]

Farmland Preservation

Relatively high prices for farm commodities in recent years have slowed a general trend toward selling agricultural land for non-agricultural purposes. However, market pressures have made the sale of agricultural land for non-agricultural uses attractive in some parts of the state.

Counties and other municipalities may adopt agricultural preservation plans.

Counties that would like to preserve agricultural uses of land in certain areas may adopt agricultural preservation plans, which must be certified by DATCP. Other municipalities may also adopt farmland preservation ordinances, but they must be consistent with the county's certified plan. [ch. 91, Stats.] Farms certified for farmland preservation zoning may be eligible for the farmland preservation tax credit, discussed below.

Taxation

Property Taxation

Use-value taxation reduces farmers' property tax burden.

In Wisconsin, for purposes of determining property taxes, agricultural land is assessed at its value for use as agricultural land, rather than at its market

[2] "Nutrient management" is a method whereby farmers adopt a plan for managing all sources of nutrients particularly (nitrogen and phosphorous) that are applied to the land. The plan covers nutrients deposited by application of fertilizer, growing legumes, and manure spreading. Nutrient management often reduces the costs of fertilizer application for farmers and is intended to reduce the amount of nutrients that can be washed away from the fields during rainfall and carried into surface waters and groundwater.

value. Market value may reflect other considerations, such as the capacity to develop the property for nonfarm uses. This approach, commonly referred to as "use-value assessment," has resulted in a major reduction in the amount of property taxes paid by Wisconsin farmers, with the intent of reducing the property tax burden on farmers so that land may be maintained in agricultural use.

Agricultural forest land, defined as land that either is producing or is capable of producing commercial forest products and that meets one of several conditions, is likewise assessed below market value for purposes of property taxes. This land is assessed at 50% of its fair market value. [s. 70.32 (2r), Stats.; ch. Tax V, Wis. Adm. Code.]

Farmland Preservation Tax Credit

Through the Farmland Preservation Tax Credit, the state provides an income tax credit to owners of land that is subject to certain agricultural use restrictions. The credits vary from $5 to $10 per acre. To be eligible, the land must be under a farmland preservation agreement and either in an area certified for farmland preservation zoning or in a designated agricultural enterprise area. [s. 71.57 et. seq., Stats.]

Income Tax Credit for Agricultural Production Activities

2013 Wisconsin Act 32, the 2013-15 Biennial Budget Act, created a nonrefundable tax credit for qualified manufacturing and agricultural production activities. The credit effectively reduces manufacturers' and agricultural producers' state income tax liability to zero for income resulting from business operations.

2015 Wisconsin Act 55, the 2015-17 Biennial Budget Act, expanded the scope of eligible activities when calculating a tax credit. Eligible activities are qualified domestic production activities that are derived from property located in Wisconsin and assessed as agriculture, undeveloped, agricultural forest, productive forest land, or "other."

The amount of the credit was phased-in over a several-year period. For tax years beginning in 2016, and in subsequent years, the credit equals 7.5% of qualified production activities.

[ss. 71.07 (5n) and 71.28 (5n), Stats.]

Food Safety and Disease Prevention

Agriculture is subject to a wide variety of state and federal regulations intended to protect public health and safety. In general, food safety regulations apply to agriculture in the same manner as to any other industry.

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.

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 rules specify identification standards for each species. Animals entering Wisconsin require a certificate of veterinary inspection, and some may require a permit. Some livestock moved within the state must also be tested, and reporting requirements apply to certain animal diseases when discovered. [ch. 95, Stats.; chs. ATCP 10 and 12, Wis. Adm. Code.]

Animals entering the state must have a certificate of veterinary inspection.

Livestock 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 program provides a database of information that is used to track the source and spread of animal diseases. Information provided by a premises owner is confidential, unless release of the information is necessary to control disease. Premises registration is not the same as individual animal identification. [s. 95.51, Stats.]

Deer Farm Registration

In general, every person who keeps farm-raised deer in Wisconsin must register with DATCP. Keepers of farm-raised deer also must comply with requirements governing disease testing, fencing, and other requirements. [ch. 169, Stats.]

Raw Milk

The sale of unpasteurized (i.e., "raw") milk is generally prohibited in Wisconsin. However, farmers may make incidental sales of raw milk, provided that the milk is delivered directly to the consumer on the farm where the milk is produced; is consumed by the consumer or the consumer's family or nonpaying guests; and the farm does not advertise the sale of milk or sell the milk in the regular course of business. [s. 97.24, Stats.; ch. ATCP 60, Wis. Adm. Code.]

Right to Farm

Wisconsin's "right to farm" law is set forth in s. 823.08, Stats. Despite its name, the law does not explicitly create a "right" to farm. Instead, the law directs courts to favor agricultural uses in certain legal disputes.

The law applies to civil suits in which a plaintiff alleges that a farm's activities are a nuisance, meaning that the activities substantially and unreasonably harm the plaintiff's use and enjoyment of his or her property. If the farm's activities are not a substantial

threat to public health or safety, the law generally prevents a plaintiff from successfully curtailing the farm's activities under such a claim.

Fence Law

Wisconsin's fence law is set forth in ch. 90, Stats. When one or both of two neighboring properties is used for farming or grazing, both neighbors are equally responsible for maintaining a fence along the boundaries between the properties. Unless the neighbors agree to an alternate arrangement, the general rule is that each owner is responsible for the half of the fence that he or she views on the right when looking toward the property line from his or her property. If one of the property owners refuses to construct or maintain the portion of the fence for which the owner is responsible, "fence viewers" may be called upon to observe the situation and determine whether repairs are necessary. Town supervisors (or village board or city council members) typically serve as fence viewers.

Neighbors share the responsibility for maintaining fences along agricultural land.

Industrial Hemp

The DATCP industrial hemp website is:
https://datcp.wi.gov/Pages/Programs_Services/IndustrialHemp.aspx

Wisconsin's industrial hemp law, which took effect December 2, 2017, creates a state industrial hemp program to be administered by DATCP. Generally, under the industrial hemp law, a person may plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import, and export industrial hemp to the greatest extent authorized under federal law and subject to regulations promulgated by DATCP. [s. 94.55 (2), Stats.] Such rules must regulate the authorized activities to the extent required under federal law, and in a manner that gives the greatest opportunity to engage in these activities.

Definition of "Industrial Hemp"

Wisconsin law defines "industrial hemp" as the plant Cannabis sativa, or any part of the plant including seeds, having a THC concentration of 0.3% or less, although this allowable percentage may be raised up to a maximum concentration of 1% THC if, in the future, federal law allows a higher percentage. The state industrial hemp law excludes from the definition a substance, material, or product that is not designated as a controlled substance under the state Uniform Controlled Substances Act, or the federal Controlled Substances Act, or both. [s. 94.55 (2), Stats.]

DATCP Emergency Rules

Effective March 2, 2018, DATCP promulgated an emergency rule that created program requirements for a pilot program to study the growth, cultivation, and marketing of industrial hemp. This emergency rule may remain in effect until July 1, 2020, or the date on which permanent rules take effect, whichever is sooner. [ch. ATCP 22, Wis. Adm. Code.]

Prosecution for Controlled Substances Violations

Wisconsin's industrial hemp law creates safe harbor protections for a person acting in accordance with DATCP rules. Such persons are exempt from criminal prosecution under the state Uniform Controlled Substances Act and exempt from municipal prosecution for engaging in certain activities. The industrial hemp law also provides that a person who engages in certain activities related to industrial hemp in violation of a DATCP rule may not be prosecuted for violations of the statutes or rules governing the industrial hemp program or violations of the state's Uniform Controlled Substances Act unless DATCP refers the person for prosecution. [s. 961.32 (3), Stats.]

Additional References

1. Legislative Council Information Memoranda, available at http://lc.legis.wisconsin.gov/:
    - IM 2016-09, *Wisconsin's Right to Farm Law*.
    - IM 2016-10, *Wisconsin Pollutant Discharge Elimination System (WPDES) Permits for Large Livestock Facilities*.
    - IM 2017-04, *Law of Adverse Possession*.
2. USDA, National Agricultural Statistics Service, Wisconsin Statistics, https://www.nass.usda.gov/Statistics_by_State/Wisconsin/index.php.
3. Legislative Audit Bureau audit reports, available at http://www.legis.wisconsin.gov/lab:
    - Letter Report, *Use Value Assessment of Agricultural Land* (July 2010).
    - Audit Report 08-6, *Food and Dairy Safety Program*.
4. UW-Extension publications:
    - *Fact Sheet No. 13, Fences in Agricultural Areas*, http://lgc.uwex.edu/program/pdf/FactSheets/fs13FencesAgricultural.pdf.
    - *Status of Wisconsin Agriculture 2014*, http://www.aae.wisc.edu/pubs/status/docs/status2014.pdf.
    - Deller, Steven C., *Contributors of Agriculture to the Wisconsin Economy* (2014), http://anre.uwex.edu/economicimpact.

GLOSSARY

Farmland preservation area: An area that is planned primarily for agricultural use or agriculture-related use, or both, and that is either: (a) identified as an agricultural preservation area or transition area in a farmland preservation plan; or (b) identified under in a farmland preservation plan.

Farmland preservation plan: A plan for the preservation of farmland in a county.

Farmland preservation zoning district: An area zoned for exclusive agricultural use under an ordinance or a farmland preservation zoning district designated by ordinance.

Farming: Defined broadly to mean not only planting and harvesting crops and raising livestock or other animals, but also activities such as processing, drying, packing, packaging, freezing, grading, or storing agricultural products.

Fertilizer: Any substance, containing one or more plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, marl, liming material, sewage sludge other than finished sewage sludge products, and wood ashes. “Fertilizer" includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, nonagricultural fertilizers and all other fertilizers or mixtures of fertilizers, regardless of type or form.

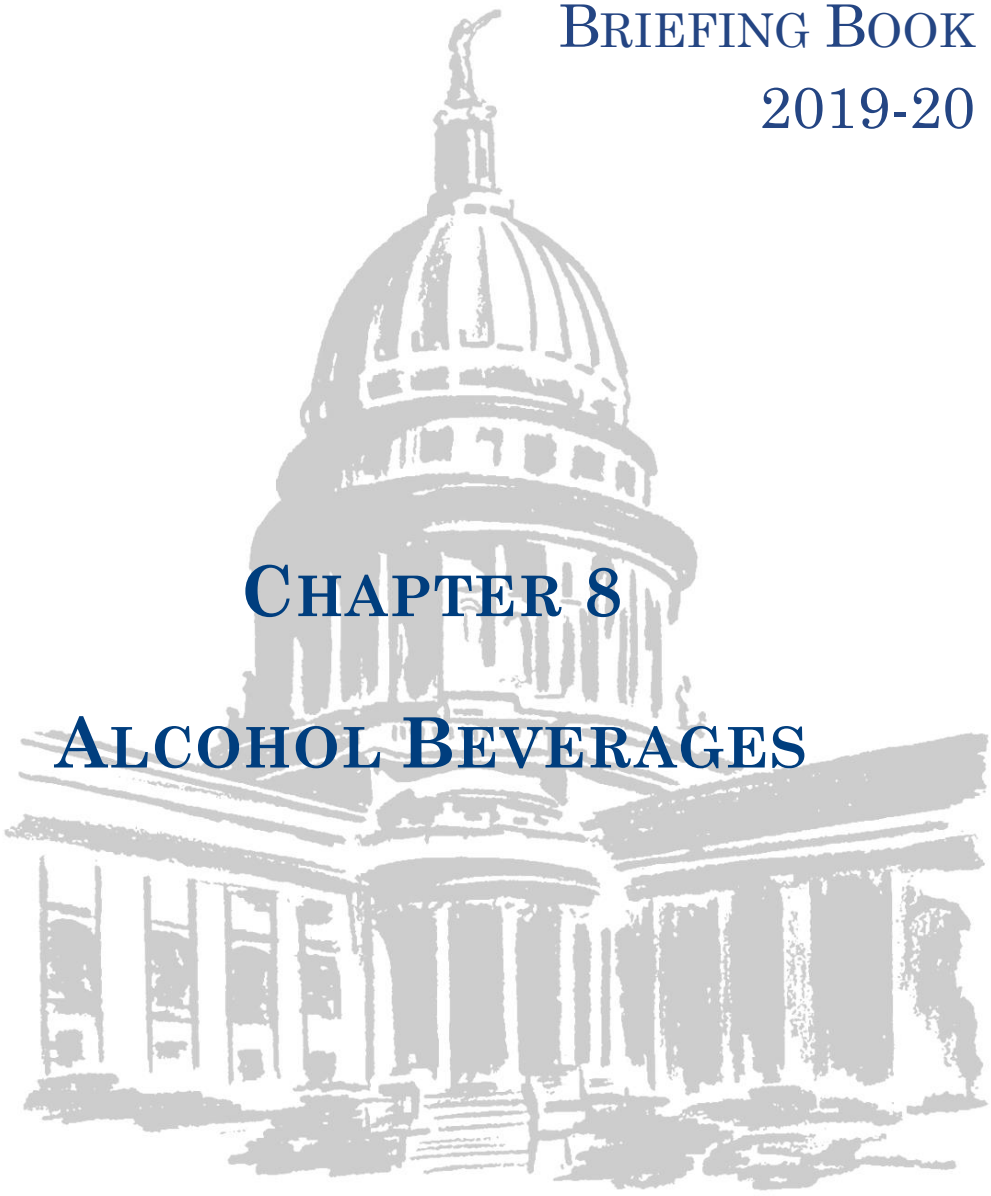
Nonpoint source pollution: Water pollution that does not have a single, well-defined point of origin. Runoff from agricultural land is a common form of nonpoint source pollution.

Pesticide: Any substance or mixture of substances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.

Use-value taxation: For property tax purposes, land in agricultural use in Wisconsin is assessed based on its value for agricultural production rather than its market value.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 8

Alcohol Beverages

Melissa Schmidt, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

Wisconsin's system for regulating the alcohol beverages industry is commonly referred to as the "three-tier system." The three tiers, or categories, of regulated entities are: (1) manufacturers; (2) wholesalers (or distributors), and (3) retailers. Unless a specific exception applies, all sales of alcohol beverages must occur through the three-tier system, from manufacturers to wholesalers to retailers to consumers. Chapter 125, Stats., Wisconsin's Alcohol Beverages Chapter, sets forth the state's system of regulating these three tiers.

The three-tiers of the alcohol beverages industry are: (1) manufacturers; (2) wholesalers (or distributors); and (3) retailers.

There are also three main types of alcohol beverages: (1) fermented malt beverages (beer); (2) distilled spirits; and (3) wine. In Wisconsin, both distilled spirits and wine are regulated as intoxicating liquors (liquor). The requirements placed upon manufacturers, wholesalers, and retailers vary depending upon what type of alcohol beverage is involved.

This briefing book chapter is intended to provide general information on Wisconsin's three-tier system of regulating the manufacture, distribution, and sale of alcohol beverages. It is not a complete description of such regulations, nor is it an exhaustive discussion of every regulation included in the Alcohol Beverages Chapter.

OVERVIEW OF THE THREE-TIER SYSTEM

The Legislature has articulated its intent to regulate alcohol beverages though a three-tier regulatory system, as well as policy reasons for doing so, in the statutes:

> [The Alcohol Beverages Chapter] shall be construed as an enactment of the legislature's support for the 3-tier system for alcohol beverages production, distribution, and sale that, through uniform statewide regulation, provides this state regulatory authority over the production, storage, distribution, transportation, sale, and consumption of alcohol beverages by and to its citizens, for the benefit of the public health and welfare and this state's economic stability. Without the 3-tier system, the effective statewide regulation and collection of state taxes on alcohol beverages sales would be seriously jeopardized. It is further the intent of the legislature that without a specific statutory exception, all sales of alcohol beverages shall occur through the 3-tier system, from manufacturers to wholesalers holding a permit to retailers to consumers. Face-to-face retail sales at licensed premises directly advance the state's interest in preventing alcohol sales to underage or

intoxicated persons and the state's interest in efficient and effective collection of tax. [s. 125.01, Stats.]

Unless a specific exception applies, a person must obtain the applicable permit or license in order to manufacture, distribute, or retail sell alcohol beverages. It is a crime to engage in one of these three activities without the appropriate permit or license.

Under a strict three-tier system, consumers would buy alcohol only from a retailer. A manufacturer would only manufacture alcohol beverages and would have no authority to distribute or sell alcohol at the retail level to consumers. While the three-tier system is the general rule in Wisconsin, there are many exceptions provided by statute.

Q: What is the penalty for manufacturing, distributing, or retail selling alcohol beverages without the appropriate permit or license to do so?

A: A fine of not more than $10,000, imprisonment of not more than nine months, or both (an unclassified misdemeanor). [s. 125.04 (13), Stats.]

Federal, State, and Local Alcohol Beverages Regulatory Authorities

The production, distribution, and sale of alcohol beverages are highly regulated activates. In Wisconsin, manufacturers and wholesalers are generally regulated under both federal and state law and retailers are generally regulated by state and local laws.

Federal Administration and Enforcement

The Federal Alcohol Administration Act, the Alcohol Beverages Labeling Act, and the Internal Revenue Code, 26 U.S.C. ch. 51, impose specific regulations upon the manufacture and distribution of alcohol. The Alcohol and Tobacco Tax and Trade Bureau (TTB), a bureau within the U.S. Department of Treasury, is responsible for administering and enforcing these federal laws. For example, a manufacturer, importer, or wholesaler of alcohol beverages must obtain a permit from TTB in order to engage in business in the United States. Another example is that TTB must approve labels used on alcohol beverages products. TTB ensures that manufacturers of both beer and liquor are properly bonded and pay federal taxes in compliance with federal tax laws. Also in Wisconsin, TTB enforces federal advertising laws placed upon manufacturers and wholesalers of liquor, but not apply to beer manufacturers and wholesalers.

For more information on the U.S. FDA's regulation on food safety:

https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/default.htm#2018

Federal law also requires all alcohol beverages manufacturers and wholesalers (including foreign producers importing alcohol beverages into the United States) to register with the U.S. Food and Drug Administration (FDA). Any person engaged in manufacturing, processing, packing, or holding food for consumption in the United States must register with the FDA. This is because the definition of "food" is broadly defined to include "articles for drinking." [21 U.S.C. s. 350d (a) (1) and (b).]

State Administration and Enforcement

DOR's website is:
https://www.revenue.wi.gov/

DATCP's website is:
https://datcp.wi.gov/

The Department of Revenue (DOR) is the agency responsible for enforcing the Alcohol Beverages Chapter and ch. 139, Stats., the Alcohol Beverages Tax Chapter, and it has the authority to promulgate rules consistent with these laws. [s. 125.03, Stats.] DOR also issues permits to manufacture and distribute alcohol beverages. Examples of permits include brewers permits, brewpub permits, winery permits, liquor manufacturer or rectifier permits, fermented malt beverages ("beer") wholesaler permits, intoxicating liquor (distilled spirits and wine, or "liquor") wholesaler permits, and small winery cooperative wholesalers permits.

With respect to retailers, the authority to retail sell alcohol beverages is primarily authorized at the local level through the issuance of retail licenses by municipalities. However, DOR is authorized to issue permits to retail sell alcohol beverages under specific instances where it is expressly authorized by the statutes to do so. State law also places specific requirements upon DOR to assist in the licensure of alcohol beverages retailers. For example, DOR must create the retail licenses application and renewal forms used by municipalities as well as a concise, easy-to-read booklet explaining the statutes and rules relating to the retail sale of alcohol beverages. DOR also maintains a list of retail licensees located throughout the state, as municipalities are statutorily required to annually mail DOR a list of persons to whom they issued a retail license, including the name, address, trade name, type of license, and if the person is a corporation or LLC, the name of the appointed agent. [ss. 125.04 (3) (a) and (b), (4), 125.045, 125.27, and 125.51 (5), Stats.]

Municipalities may enact regulations incorporating any part of the Alcohol Beverages Chapter and prescribe additional regulations of the sale of alcohol beverages that are not in conflict with the Alcohol Beverages Chapter.

Alcohol beverages manufacturers, as well as many retailers, are also subject to the Food Safety code, which is enforced by the Department of Agriculture, Trade, and Consumer Protection (DATCP). Manufacturers must hold the proper food processing permit. For example, manufacturers must hold the proper food processing permit from DATCP.

Another example is that if manufacturers and retailers sell food or hazardous liquid items, such as ice or milk that must be refrigerated, they will need to comply with DATCP rules and regulations related to retail food establishments and hold the applicable retail food establishment license. [See ss. 97.12, 97.30, 97.33, and 100.33 (2), Stats.]

Local Administration and Enforcement

Cities, villages, and towns (municipalities) are authorized under state law to issue licenses to retail sell alcohol beverages. This includes the authority to revoke, suspend, or refuse to renew a retail license. Municipalities also have the authority to issue operator's (bartender's) licenses and manager's licenses. In limited circumstances, counties may authorize the sale of alcohol beverages, such as the authority to authorize the sale of beer in a county park. The statutes provide immunity to municipalities and counties (and other local units of government, such as school districts and technical college districts) and their officers and employees, for any of the following: (1) issuing a license to sell alcohol beverages; (2) allowing the licensee or permittee to sell, dispense, or give away alcohol beverages on property owned or leased by the municipality; or (3) failing to monitor or supervise the activities of the licensee or permittee. [ss. 125.25, 125.26, and 125.51, Stats.]

Municipalities may enact regulations incorporating any part of the Alcohol Beverages Chapter and prescribe additional regulations of the sale of alcohol beverages that are not in conflict with the Alcohol Beverages Chapter. The municipality may also prescribe forfeitures or license suspension or revocation for violations of its regulations that have been adopted by ordinance. [s. 125.10 (1), Stats.]

MANUFACTURERS

In general, a person must obtain the applicable permit from DOR in order to manufacture alcohol beverages. Exceptions include making beer or wine at home or at a supply store, when done so in compliance with the Alcohol Beverages Chapter.

In Wisconsin, beer manufacturers include breweries and brewpubs; liquor manufacturers include wineries and intoxicating liquor manufacturers or rectifiers.

There are a number of different manufacturing permits issued by DOR. The most common permits issued to manufacture beer are brewery permits and brewpub permits. The most common permits issued to manufacture liquor are winery permits, intoxicating liquor manufacturer permits, and rectifier permits. Other manufacturing permits include manufacturing permits for making industrial beer, medicinal alcohol, industrial alcohol, and industrial wine.

Brewers

A brewer's permit authorizes the manufacturing of beer. This includes activities such as bottling, packaging, possessing, and storing beer on the brewer's permitted premises. The brewer's permit also authorizes a brewer to engage in certain retail activities, where the brewer may retail sell alcohol beverages directly to consumers. For example, the brewer's permit authorizes a brewer to sell its own beer and other brewers' beer directly to consumers at the brewery's premises or the brewer's off-site retail outlet. A brewer may act as a retailer directly under its brewer's permit (without obtaining a retail license) and sell beer for consumption either at the brewery or retail outlet (on-premises consumption), or away from the brewery or retail outlet (off- premises consumption.)

A brewer may act as a beer retailer by owning, maintaining, or operating a place that sells beer at the State Fair Park or on any county fairgrounds located in Wisconsin. Brewers may also provide free taste samples as provided by statute on the brewery's premises, its off-site retail outlet, or at a Class "A" beer retail premises with the authorization of the Class "A" beer retail license holder.

Q: What is a "craft brewer?"

A: While there is no statutory definition, in Wisconsin, a craft brewer generally refers to a brewer that manufactures 300,000 or fewer barrels of beer in a calendar year.

State law specifies when a brewer may act as a wholesaler directly under its brewer's permit and self-distribute its own beer. For example, a brewer that manufactures 300,000 or fewer barrels of beer in a calendar year may self-distribute its own beer. Brewers that meet this qualification for self-distribution are often referred to as "craft brewers." [s. 125.29, Stats.]

Brewpubs

Very generally, a brewpub permit is designed for a person who brews not more than 10,000 barrels of beer in a calendar year if there is a restaurant on the brewpub's premises. A brewpub may have up to six locations; each location must have a separate permit. A brewpub with more than one location is referred to as a "brewpub group." A brewpub permit authorizes the brewpub to manufacture not more than 10,000 barrels of beer in a calendar year, as long as the entire manufacturing process occurs on the brewpub's premises.

A brewpub permit is designed for a person who brews no more than 10,000 barrels of beer in a calendar year if there is a restaurant on the brewpub's premises.

In order to obtain a brewpub permit, a person must also hold a Class "B" beer retail license for the restaurant. The brewpub must retail sell its own beer, as well as beer manufactured by at least one other brewer at the brewpub's restaurant. It may also hold either a "Class B" liquor retail license or a "Class C" wine-only retail license. A brewpub also has the express authority to sell its beer in refillable containers that exceed 24 oz. in volume, or "growlers," at the brewpub.

The statutes specify that a winery may be issued either one "Class A" liquor retail license or one "Class B" liquor retail license for the winery premises or other real estate owned or leased by the winery.

The statutes specify when a brewpub may also act as a beer wholesaler and self-distribute its own beer directly under its brewpub permit. For example, a brewpub may self-distribute its own beer in original unopened packages or containers that have been manufactured on the brewpub's premises or on other brewpub premises of the brewpub. However, a brewpub is limited to self-distributing at wholesale not more than 1,000 barrels of its own beer in a calendar year. [s. 125.295, Stats.]

Wineries

A winery permit authorizes a person to manufacture and bottle wine on the premises covered by the permit for sale to intoxicating liquor wholesalers. This includes the authority to possess and mix or blend liquor to produce wine.

The statutes authorize a winery to engage in certain retail activities. For example, the statutes expressly authorize a winery to sell wine at one location if it also obtains a liquor retail license to do so. The statutes specify that a winery may be issued either one "Class A" liquor retail license or one "Class B" liquor retail license for the winery premises or other real estate owned or leased by the winery. However, in order to obtain a "Class B" liquor retail license, a winery must be capable of producing at least 5,000 gallons of wine per year in no more than two locations. A "Class B" liquor retail license issued to a winery is not counted under a municipality's liquor license quota and only authorizes the retail sale of wine.

A winery may also make retail sales and provide taste samples as provided by law on county or district fairgrounds, but this wine sold or provided as taste samples must be purchased from an intoxicating liquor wholesaler. [ss. 125.51 (1) (a), (3) (am), and 125.53, Stats.]

State law also authorizes a winery to act as both a wholesaler and a retailer by shipping its own wine as provided by a direct wine shipper's permit. Under this permit, the winery may directly ship wine that it manufactured or bottled directly to a person who is 21 years of age or older, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery. Direct wine shippers permits may be issued to wineries located in other

states, as well as to Wisconsin manufacturers or rectifiers that make and bottle wine. [See, s. 125.535, Stats.]

Manufacturers and Rectifiers

DOR issues manufacturers and rectifiers permits, which authorize the manufacture or rectification of liquor on the premises covered by the permit. As previously mentioned in the beginning of this chapter, in Wisconsin, liquor includes both distilled spirits and wine. A manufacturer ferments, manufactures, or distills liquor. A rectifier may rectify, purify, or refine distilled spirits or wine or may blend liquor. A person holding a manufacturers' or rectifiers' permit does not need to obtain a winery permit to manufacture and bottle wine if the wine is made pursuant to the terms of the permit. DOR may also issue a combination manufacturer's and rectifier's permit. [ss. 125.02 (10) and (16), and 125.55 (1), Stats.]

A person who holds a manufacturer's or rectifier's permit, or combination thereof, may sell liquor to liquor wholesalers, wineries, and other manufacturers and rectifiers from the premises described in the permit.

The statutes also specify when a person holding a manufacturer's or rectifier's permit, or a combination thereof, may act as a retailer. For example, a person holding one of these permits may sell liquor that is manufactured or rectified on its premises for consumption on or off the premises. A manufacturer or rectifier may also provide free taste samples of liquor that it produced for consumption on the premises as provided by law. Also, a manufacturer or rectifier may obtain a direct wine shippers' permit to ship wine it produces and bottles directly to a person who is 21 years of age or older, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery. [ss. 125.52 and 125.535, Stats.]

WHOLESALERS

As previously discussed, alcohol beverages generally must pass through a wholesaler for distribution before a retailer may sell them to a consumer. Alcohol beverages distributed by a wholesaler must have been purchased from either a manufacturer, another wholesaler, or an exclusive agent for the manufacturer. There are separate permits for beer wholesalers and liquor wholesalers. Under certain circumstances, wine may also be distributed by a small winery cooperative wholesaler that holds a liquor wholesaler permit. Wholesalers permits are issued by DOR.

A beer wholesaler must annually sell and deliver beer to at least 25 retail licensees or other beer wholesalers that do not have any direct or indirect interest in each other or in the wholesaler.

Beer Wholesalers

A beer wholesalers permit authorizes a person to sell beer in original packages or containers to retailers or other wholesalers. The various requirements placed upon a beer wholesaler include the requirement that a wholesaler's premises described in the permit be capable of warehousing beer. Another requirement is that any beer sold by the beer wholesaler must be physically unloaded at the premises described in the wholesaler's permit or at a warehouse for which the wholesaler also holds both a wholesaler's permit and an alcohol warehouse permit prior to being delivered to a retailer or another wholesaler. Under DOR rule, beer wholesaler premises must be at least 1,000 square feet of floor space and must be located in a free-standing building that is not part of or connected to premises covered by a beer retail license or permit. DOR may waive that 1,000 square foot minimum space requirement when doing so would be fair and equitable.

A beer wholesaler must also annually sell and deliver beer to at least 25 retail licensees or other beer wholesalers that do not have any direct or indirect interest in each other or in the wholesaler. [s. 125.28, Stats., and s. Tax 7.23 (5) (a) and (b), Wis. Adm. Code.]

Liquor Wholesalers

A person holding a liquor wholesaler's permit may sell liquor from its premises to retailers that are licensed to sell liquor and other liquor wholesalers, as well as to liquor manufacturers, rectifiers, and wineries for production purposes. State law prohibits a liquor wholesaler from acting like a manufacturer by bottling, packaging, or repackaging liquor. An intoxicating liquor wholesaler is also prohibited from acting like a retailer by selling liquor for consumption on its premises.

Similar to beer wholesalers, the various requirements placed upon a liquor wholesaler include the requirement that any liquor sold by the liquor wholesaler be physically unloaded at the premises described in the wholesaler's permit or at a warehouse for which the wholesaler holds an alcohol warehouse permit prior to being delivered to a retailer or another wholesaler. DOR rule also requires that the liquor wholesaler premises be at least 1,000 square feet of floor space, which must be located in a freestanding building that is not part of or connected to a premises covered by a liquor retail license. DOR may waive the 1,000 square foot minimum space requirement when doing so would be fair and equitable.

A liquor wholesaler must annually sell and deliver intoxicating liquor to at least 10 retailers that do not have any direct or indirect interest in each other or in the wholesaler and may hold not more than two liquor wholesaler permits.

Liquor wholesalers also differ from beer wholesalers in a couple of ways. For example, a liquor wholesaler must annually sell and deliver liquor to at least 10 retailers that do not have any direct or indirect interest in each other or in the wholesaler and may not hold

more than two liquor wholesaler permits. The liquor wholesalers permit does not authorize the sale of liquor, so any liquor wholesaler employee who solicits liquor sales for future distribution of the liquor must hold a separate liquor wholesaler salesperson permit to do so. [ss. 125.54 and 12.65, Stats.; and s. Tax 8.63 (1) and (1m), Wis. Adm. Code.]

Small Winery Cooperative Wholesalers

Between October 1, 2008, and December 1, 2008, DOR was authorized to issue liquor wholesalers' permits to no more than six small winery cooperative wholesalers. Two small winery cooperatives applied for and were granted wholesalers' permits during this time, and currently exist today. A "small winery" is a winery that produces and bottles less than 25,000 gallons of wine in a calendar year. A small winery may become part of a small winery cooperative wholesaler if it holds a direct wine shipper's permit and is certified by DOR as a small winery. Very generally, a small winery cooperative wholesaler may purchase wine on consignment from its small winery members and distribute it to liquor retailers and other liquor wholesalers. [s. 125.545, Stats.]

Retailers

Retail licenses authorize a person to sell alcohol beverages to consumers (someone other than a manufacturer, wholesaler, or retailer of alcohol beverages). Retail licenses are issued by municipalities (cities, villages, and towns). In limited circumstances, DOR may generally issue a permit authorizing the retail sale of beer or liquor. Retail licenses (or permits, if issued by DOR) are issued for a specific geographic area that is described in the retail application, referred to as the "licensed premises," or "permitted premises" if issued by DOR. Retail sales must generally occur face-to-face on the licensed or permitted premises.

There are numerous types of alcohol beverages retail licenses that vary by both of the following: (1) the kind of alcohol beverage that may be sold under the license; and (2) where the alcohol may be consumed. Separate retail licenses are needed to sell beer and liquor (spirits and wine).

Retailers are subject to numerous requirements under the Alcohol Beverages Chapter, including requirements relating to hours of operation and selling alcohol beverages to underage or intoxicated persons. The section below does not address every restriction applicable to alcohol beverages retailers. More thorough discussions may be found in two publications prepared by DOR: (1) *Publication 302: Wisconsin Alcohol Beverage and Tobacco Laws for Retailers*; and (2) *Informational Pamphlet: Licensing for Alcohol Beverages*.

Class "A" and Class "B" Beer Retail Licenses

A **Class "A" beer retail license** authorizes the sale of beer for consumption off the premises where sold ("off-premises" consumption), and in the original sealed package, container, or bottle. Class "A" beer retailers may also provide to persons who have attained

the legal drinking age (21 years of age) not more than two free taste samples of beer per day that do not exceed three fluid ounces each between 11:00 a.m. and 7:00 p.m. A Class "A" beer retail license is most commonly used by a package store or grocery store, given that the beer may be consumed only off the licensed premises. [s. 125.25, Stats.]

A **Class "B" beer retail license** authorizes the sale of beer for either consumption on the premises where sold ("on-premises consumption") or off-premises consumption. A Class "B" beer retail license is most commonly used by a bar, tavern, or restaurant. Current law is also interpreted by DOR to authorize the filling of growlers at a customer's request and while the customer is waiting. [s. 125.26, Stats.]

"Class A" and "Class B" Liquor Retail Licenses

A **"Class A" liquor retail license** authorizes the sale of liquor for off-premises consumption and in original packages and containers. A "Class A" liquor retail license holder may also provide to persons 21 years of age not more than two free taste samples of wine per day that do not exceed three fluid ounces each, and may provide not more than one free taste sample of distilled spirits per day that does not exceed 0.5 fluid ounce. The taste samples may be provided between the hours of 11:00 a.m. and 7:00 p.m. [ss. 125.06 (13) and 125.51 (2), Stats.]

Municipalities may also issue a "Class A" cider-only retail license, which only authorizes the sale of cider. In order to obtain this type of license, the applicant must first have been issued a Class "A" beer retail license. Also, a person holding a "Class A" cider-only retail licensee may provide taste samples only of cider. Cider is regulated as a type of wine, therefore a "Class A" cider-only retail licensee must comply with the taste sample requirements applicable to wine. [s. 125.51 (2) (e), Stats.]

A **"Class B" liquor retail license** authorizes the sale of liquor for on-premises consumption by the glass and not in the original package or container. Wine may also be sold in ay quantity for off-premise consumption in the original package or container. In addition, a municipality may enact an ordinance authorizing "Class B" liquor retail licensees to do either of the following: (1) sell liquor to be consumed by the glass only for on-premises consumption; or (2) sell distilled spirits in the original package or container, in multiples not to exceed four liters at any one time, for off-premises consumption.

A "Class B" liquor retail license issued to a winery only authorizes the sale of wine. Under the license, the winery may sell the wine for on-premises consumption either by the glass or in opened containers. The winery may also sell the wine in the original, sealed package or container for off-premises consumption.

Among the various requirements applicable to "Class B" liquor retail licenses, an applicant for a "Class B" liquor retail license must first have been issued a Class "B" beer retail license. This requirement does not apply to a temporary "Class B" liquor retail license discussed below. As discussed below, state law also places a quota on the number of "Class B" liquor retail licenses that a municipality may issue. [s. 125.51 (3) and (4), Stats.]

"Class C" Wine-Only Retail Licenses

A "Class C" wine-only license authorizes the sale of wine by the glass or in an opened original container for consumption on the premises where sold. This type of license may be issued only to a restaurant where the sale of alcohol beverages accounts for less than 50% of gross receipts and, if the licensee has a barroom, the licensee does not sell distilled spirits in the barroom. [s. 125.51 (3m), Stats.]

Temporary Beer and Wine Retail Licenses

Temporary retail licenses, commonly referred to as "picnic licenses," may be issued only to bona fide clubs and chambers of commerce, to county or local fair associations or agricultural societies, to churches, lodges, or societies that have been in existence for at least six months before the date of application, and to posts of veterans organizations. Temporary licenses may be issued to either authorize the organization to sell beer or wine at a picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. Temporary licenses may also be issued for "beer walks" and "wine walks." [ss. 125.26 (6) and 125.51 (10), Stats.] There are a number of restrictions placed upon temporary licenses, which are described in the application form for temporary licenses, prepared by DOR.

Quota for "Class B" Liquor Retail Licenses

State law restricts the number of "Class B" liquor retail licenses that a municipality may issue through a system commonly referred to as the "quota system." The quota system limits only the number of "Class B" liquor retail licenses that a municipality may issue. It does not apply to the number of any other type of retail license that may be issued. A "Class B" liquor retail license issued to a winery is not subject to the quota.

Very generally, a municipality's quota is based upon the sum of the following: (1) the number of "Class B" liquor retail licenses granted or issued in good faith by the municipality and in force on December 1, 1997; and (2) the number of additional reserve "Class B" liquor retail licenses issued after December 1, 1997. [s. 125.51 (4) (b), Stats.]

Q: What is the quota system?

A: The quota system is a way of limiting the number of "Class B" retail liquor licenses a municipality may issue. A municipality's quota is based upon the sum of the following: (1) the number of "Class B" liquor retail licenses granted or issued in good faith by the municipality and in force on December 1, 1997; and (2) the number of additional reserve "Class B" liquor retail licenses issued after December 1, 1997.

A municipality's number of reserve "Class B" liquor licenses is the number of "Class B" liquor retail licenses first issued after December 1, 1997. An applicant for a reserve "Class B" license must pay a $10,000 initial license fee to the municipality; this initial license fee does not apply to non-reserve "Class B" licenses. The number of reserve licenses available to a municipality increases by one every time the municipality's population increases by 500, as determined by the Department of Administration for purposes of revenue sharing. A municipality's number of reserve "Class B" liquor licenses may also increase through annexation or if a neighboring municipality that is either contiguous to, or within a two-mile radius of, transfers a reserve "Class B" liquor license to the municipality. This transfer process also has the effect of decreasing the number of reserve "Class B" liquor licenses available to the transferring municipality. Not more than three unused reserve "Class B" liquor licenses may be transferred through this process. [s. 125.51 (4) (bm) to (g), Stats.]

There are a number of specific exceptions that allow a municipality to grant or issue a "Class B" liquor retail license outside of the quota system. Some of these exceptions are considered "above-quota," because the exceptions allow a municipality to grant or issue a "Class B" liquor retail license only after the municipality has granted or issued a number of licenses equal to or in excess of its quota. Other exceptions to the quota allow a municipality to grant or issue a "Class B" liquor retail license regardless of whether the municipality is at or exceeding its quota. [s. 125.51 (u) to (x), Stats.]

Select Restrctions on Relationships Between Manufacturers, Wholesalers, and Retailers

The Alcohol Beverages Chapter maintains a three-tier system through numerous regulations that specify or restrict how manufacturers, wholesalers, and retailers may interact with one another. This section discusses some examples of these regulations.

Direct or Indirect Interest

One way that Wisconsin's Alcohol Beverages Chapter maintains a three-tier system is through various restrictions that are placed upon the relationships between a manufacturer, wholesaler, and retailer. One restriction involves whether a manufacturer or wholesaler may hold a license to retail sell beer or liquor, or have a direct or indirect interest in a retail

Q: Does state law provide examples of what constitutes a manufacturer or wholesaler having direct or indirect interest in a retail establishment?

A: Yes. Section Tax 8.87, Wis. Adm. Code, provides a list of examples of what constitutes a manufacturer or wholesaler having a direct or indirect interest in a retail establishment.

establishment. For example, a retailer licensed to sell beer may not be issued to a person holding a beer wholesaler's permit, or to a person who has a direct or indirect ownership interest in a beer wholesaler's permit. Similarly, a liquor manufacturer, rectifier, winery, or wholesaler is generally prohibited from holding any direct or indirect interest in a liquor retail establishment.

There are exceptions to these general prohibitions, however. For example, see the previous sections about brewers and wineries.

Tied-House Laws

A "tied-house" generally refers to a bar, pub, tavern, or restaurant licensed to sell beer that is owned or controlled by a beer manufacturer (i.e., brewer or brewpub). Both state and federal law contains restrictions on tied-houses, referred to as "tied-house laws." Tied-house laws attempt to create free competition among brewers and prevent monopolistic sales practices that were common prior to the ratification of U.S. Const. amend. XXVIII, which took effect on January 16, 1920, and began a 13-year period where the manufacture, distribution, and sale of alcohol beverages was prohibited, commonly referred to as "prohibition."

Q: What is a "tied-house"?

A: A "tied-house" generally refers to a bar, pub, tavern, or restaurant licensed to sell beer that is owned or controlled by a beer manufacturer (i.e., brewer or brewpub). Prior to the ratification of U.S. Const. amen. XXVIII, which took effect on January 16, 1920, tied-houses were common. To increase beer sales, brewers engaged in monopolistic practices, which led to intemperate drinking.

While the federal tied-house law applies to both beer and liquor manufacturers and wholesalers (in the course of interstate or foreign commerce), Wisconsin's tied-house law applies only to beer manufacturers and wholesalers. The state law generally prohibits a brewer, brewpub, or beer wholesaler from furnishing, giving, lending, leasing, or selling anything of value to a Class "B" beer retailer. There are numerous exceptions to this, however, such as giving to a Class "B" beer retailer signs, clocks, and menu boards with an aggregate value of not more than $2,500 for placement inside of the retail premises. [21 U.S.C. s. 205 (b) and s. 125.33 (1) (a), and (2), Stats.]

Exclusive Sales

Both federal and state law contain restrictions on the ability of a manufacturer or wholesaler to require a retailer to exclusively sell alcohol that is produced by one manufacturer. Federal law prohibits any contract or agreement that requires a retailer to purchase beer or liquor exclusively, in whole or in part, from one manufacturer or wholesaler (if the requirement is made in the course of interstate or foreign commerce). [21 U.S.C. s. 205 (a).]

Under the state's Alcohol Beverages Chapter, a beer wholesaler is prohibited from selling or offering to sell a brand of fermented malt beverages exclusively to one Class "A" beer retailer or to a group of Class "A" beer retailers affiliated through common ownership, management, or control, unless the brand of beer is produced by a brewer that produces fewer than 300,000 barrels of beer in a calendar year (i.e., a "craft brewer") or by a brewpub. [s. 125.33 (8), Stats.]

State law also prohibits a brewer, brewpub, or beer wholesaler from requiring a Class "B" beer retailer to purchase the beer of any brewer or brewpub to the exclusion of those manufactured by other brewers or brewpubs. Contracts that require such exclusive sales are prohibited. [s. 125.33 (1) (b), Stats.]

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers, relating to state programs and local government issues, including alcohol and tobacco taxation. These Informational Papers are available at: http://legis.wisconsin.gov/lfb.

2. DOR has prepared a number of forms, publications, tax reports, and frequently asked questions applicable to alcohol beverages retailers and permitees:

   - Forms related to retail licenses may be found at: https://www.revenue.wi.gov/Pages/Form/alcohol-Home.aspx.
   - Information regarding alcohol beverages laws applicable to retailers may be found in: *Wisconsin Alcohol Beverage and Tobacco Laws for Retailers*, DOR Publication 302 (updated 12/16): https://www.revenue.wi.gov/DOR%20Publications/pb302.pdf.
   - Answers to common questions regarding alcohol beverages laws for retailers are available at: https://www.revenue.wi.gov/Pages/FAQS/home.aspx.
   - Forms, tax reports, and other information related to alcohol beverages permits are available at: https://www.revenue.wi.gov/Pages/Businesses/Liquor.aspx.
   - *Alcohol Beverage Tax Information*, DOR Publication 303 (updated 01/16): https://www.revenue.wi.gov/DOR%20Publications/pb303.pdf.
   - Answers to common questions regarding beer and liquor taxation are available at: https://www.revenue.wi.gov/Pages/FAQS/home.aspx.

3. Department of Agriculture, Trade, and Consumer Protection (DATCP) Food Licensing Consultants: https://datcp.wi.gov/Pages/Licenses_Permits/FoodLicenses.aspx.

4. Alcohol and Tobacco Tax and Trade Bureau, U.S. Department of Treasury: https://www.ttb.gov/alcohol/bev-alc.shtml.

5. The U.S. Food and Drug Administration has prepared a number of compliance guidance documents, applicable to alcohol beverages permittees, available at:

   - https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/default.htm.
   - https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/default.htm.

6. League of Wisconsin Municipalities (LWM), *Municipal Licensing and Regulation of Alcohol Beverages* (2016). LWM also prepares advisory legal opinions for municipalities on alcohol beverages licensing questions: http://www.lwm-info.org/.

7. Town's Association: http://wisctowns.com/home.

8. Aaron R. Gary, *Alcohol Beverages Regulation in Wisconsin* (State Bar of Wisconsin, PINNACLE 2012).

9. Raymond B. Fosdick and Albert L. Scott, *Toward Liquor Control* (Center for Alcohol Policy, https://www.centerforalcoholpolicy.org/, 2011). This study of alcohol control policy options was originally commissioned by John D. Rockefeller and published in 1933, during the ratification of the 21st Amendment to repeal prohibition.

GLOSSARY

Alcohol beverages: Fermented malt beverages (beer) and intoxicating liquor (distilled spirits, wine).

Alcohol Beverages Chapter: Chapter 125, Stats., which contains the statutory requirements regulating the manufacture, distribution, and sale of alcohol beverages (the three tiers) in Wisconsin.

Alcohol and Tobacco Tax and Trade Bureau (TTB): The federal bureau housed within the U.S. Treasury Department that is responsible for enforcing federal alcohol beverages laws.

Brewer: Any person who manufactures fermented malt beverages for sale or transportation, except that "brewer" does not include a brewpub permittee.

Brewpub: A permittee holding a brewpub permit.

Craft brewer: While there is no definition in state law, "craft brewer" generally refers to a brewer who produces less than 300,000 barrels of fermented malt beverages in a calendar year

Department of Agriculture, Trade and Consumer Protection: The state agency that has enforcement authority over bottling establishments, food products, and labels on plastic containers to facilitate recycling.

Department of Revenue: The state agency that has enforcement authority over ch. 125, Stats., the Alcohol Beverages Chapter, and ch. 139, Stats., the Alcohol Beverages Tax Chapter.

Fermented malt beverages (beer): Any beverage made by the alcohol fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.

Intoxicating liquor (distilled spirits, wine): All ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include beer.

License: An authorization to sell alcohol beverages issued by a municipal governing body under the Alcohol Beverages Chapter.

Manufacturer: A person, other than a rectifier, that ferments, manufactures, or distills intoxicating liquor.

Permit: Any permit issued by DOR under the Alcohol Beverages Chapter.

Premises: The area described in a license or permit issued under the Alcohol Beverages Chapter.

Quota: The number of "Class B" liquor retail licenses that a municipality may issue, which is calculated by the sum of the following: (1) the number of "Class B" liquor retail licenses granted or issued in good faith by the municipality and in force on December 1, 1997; and (2) the number of additional reserve "Class B" liquor retail licenses issued after December 1, 1997.

Rectifier: Any one of the following:

- A person that rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash through continuous closed vessels or pipes until the manufacture thereof is complete.
- A person who, possesses any still or leach tub or keeps any other apparatus for refining distilled spirits.
- A person who, after rectifying and purifying distilled spirits by mixing such spirits with any materials, manufactures any spurious, imitation, or compound liquors for sale.
- A distiller or any person under substantially the same control as a distiller who, without rectifying, purifying or refining distilled spirits by mixing such spirits with any materials, manufactures any spurious, imitation, or compound liquors for sale under the name of "whiskey," "brandy," "gin," "rum," "spirits," "cordials," or any other name.
- A person who places intoxicating liquor in bottles or other containers.

Retailer: Any person who sells, or offers for sale, any alcohol beverages to any person other than a person holding an alcohol beverages permit or a license under the Alcohol Beverages Chapter.

Sell, **sold**, **sale**, or **selling**: Any transfer of alcohol beverages with consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, device, scheme, or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale for future delivery of, alcohol beverages.

Three-tier system: A method of regulating the production and sale of alcohol beverages by dividing the alcohol beverages industry into three levels. In Wisconsin, these three tiers, or levels, are: (1) manufactures (producers); (2) wholesalers (distributors); and (3) retailers.

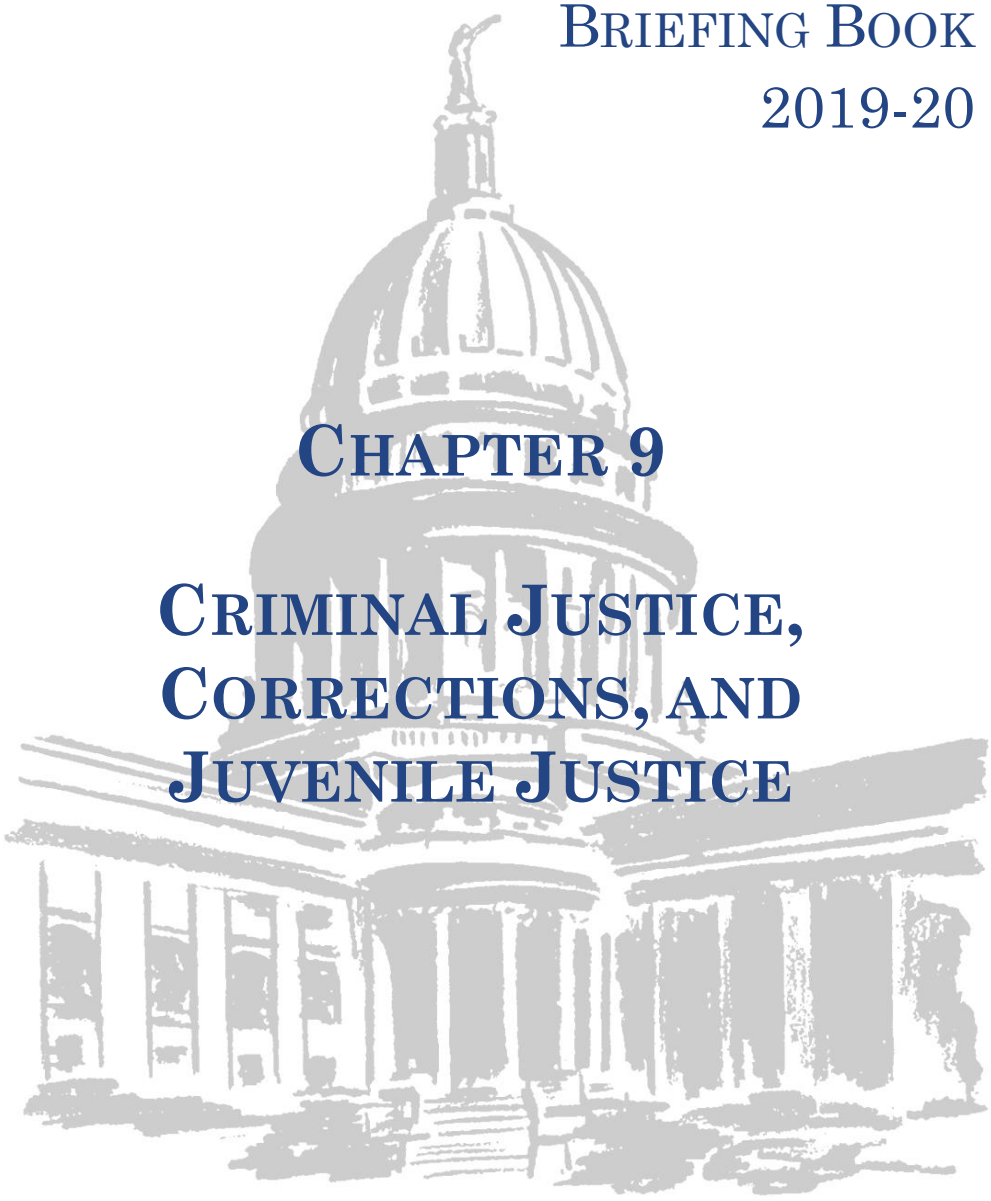
Tied-House: A bar, pub, tavern, or restaurant licensed to sell beer that is owned or controlled by a beer manufacturer (i.e., brewer or brewpub).

Wholesaler: A person, other than a brewer, brewpub, manufacturer, or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit to sell alcohol beverages at wholesale.

Wine: Products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain not less than 0.5% nor more than 21% of alcohol by volume.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 9

CRIMINAL JUSTICE, CORRECTIONS, AND JUVENILE JUSTICE

Melissa Schmidt and Mike Queensland, Senior Staff Attorneys
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

In the United States, criminal justice, corrections, and juvenile justice are generally under the jurisdiction of the states. Each state determines what constitutes a crime in that state, determines the penalties for each crime, provides protections and rights to crime victims, and operates prisons and facilities to house individuals who have committed criminal offenses in that state. Each state also develops its own juvenile justice system and determines if a minor who commits a criminal offense is treated as a child or as an adult for purposes of prosecution and punishment. This chapter provides an overview of Wisconsin's criminal justice, corrections, and juvenile justice systems.

CRIMINAL JUSTICE

Criminal justice is a system of practices and institutions primarily directed at controlling crime in order to protect the public. The system attempts to achieve public safety through deterrence, incapacitation, rehabilitation, and reinforcement of norms. The criminal justice system also serves to impose punishment for the violation of laws.

Jurisdiction

In the United States, the criminal justice system is comprised of several jurisdictions overlapping at the national, state, and local levels. The federal government and state governments have authority to criminalize behaviors and to make legal decisions and impose punishment through their individual court systems. Most violations that are commonly characterized as "crimes" are violations of federal or state criminal laws. In Wisconsin, towns, villages, and cities may, by ordinance, also prohibit certain conduct that is criminalized under state law. Criminal violations of federal law are prosecuted in the federal courts and criminal violations of state law are prosecuted in the state courts; violations of local ordinances are prosecuted in either municipal or state courts as civil offenses, also known as "forfeitures." An individual whose act violates both state law and federal law, or the laws of multiple states, can be separately charged and tried in each jurisdiction. The remainder of this chapter focuses on Wisconsin's state criminal justice system. [ss. 66.0107, 753.03, 778.10, and 939.60, Stats.]

Criminal Procedure

The criminal justice system enforces laws and punishes violations through a series of proceedings, sometimes referred to as criminal procedure. The process generally begins with the investigation and prosecution of a crime. The primary actors responsible for investigating criminal acts in Wisconsin are local police departments, county sheriffs, and various state agencies (e.g. the Department of Justice (DOJ), the Wisconsin State Patrol, the Department of Agriculture, Trade and Consumer Protection, and the Department of Natural Resources). Following an investigation by one of these investigating authorities, a case may be referred to a county district attorney or DOJ for prosecution. The prosecuting authority generally has discretion to either file formal charges against the alleged offender

(defendant) or choose not to proceed with the case. Once criminal charges have been filed, the case advances through a number of court proceedings in which the defendant is informed of the charges, allowed to present a defense, and adjudicated by a court or jury.

The charts on pages 3 and 4 provide an overview of the process that felony and misdemeanor criminal cases follow in Wisconsin.

Classes of Crimes

Violations of Wisconsin law are categorized as felonies, misdemeanors, or forfeiture offenses. A felony is a crime punishable by imprisonment of one year or more, whereas a misdemeanor is a crime punishable by less than one year of imprisonment. The criminal penalties for felony and misdemeanor offenses include fines, imprisonment, or a combination of the two. A forfeiture offense is not defined as a "crime," because it is only punishable by a monetary forfeiture. These types of violations are sometimes referred to as "civil offenses." [s. 939.60, Stats.]

Wisconsin has enacted several major revisions of its system for categorizing and punishing crimes. In 1978, legislation went into effect that placed crimes and forfeiture offenses appearing in the Wisconsin Criminal Code into uniform penalty classes. This law created five classes of felonies, three classes of misdemeanors, and four classes of forfeitures.

In 1997, another major revision of the state's crime classification system was enacted and implemented as part of the system referred to as "Truth-in-Sentencing." The system increased penalties for all felonies by 50%, or one year, whichever was greater. The provisions of the 1997 law apply to offenses committed on or after December 31, 1999, but before February 1, 2003.

The "Truth-in-Sentencing" system was revised in 2001. This revision provided that crimes committed on or after February 1, 2003, are subject to a revised felony classification system that includes nine classes of felonies. One result of the multiple revisions over time is that the applicable penalties for a crime vary, depending upon the date a particular crime was committed.

The classes of misdemeanors[1] and their penalties within the Criminal Code 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

[1] Nearly all of the misdemeanors located within the Criminal Code—chs. 939 to 951, Stats.— and all felonies in the statutes (with the exception of three offenses) are "classified." That is, each offense is assigned to a class that corresponds to a penalty range. Misdemeanors that are codified in the portions of the Wisconsin statutes outside the Criminal Code are not classified. For unclassified offenses, penalties are established separately for each offense.

Felony Cases

CRIMINAL COMPLAINT FILED
The state brings an action against the defendant by filing a criminal complaint in circuit court stating the essential facts of the offense.

WARRANT ISSUED
If the defendant has not been arrested, the judge or court commissioner issues a warrant for arrest.

INITIAL APPEARANCE
The defendant is brought before a judge or court commissioner and informed of the charges and the right to be represented by a lawyer. Bail (either a cash amount or a signature bond) may be set at this time to assure the defendant's appearance at future proceedings.

PRELIMINARY EXAMINATION AND ARRAIGNMENT
The defendant has a right to a preliminary examination. This is a hearing to determine whether the state has probable cause to charge the individual. If the court finds probable cause or if the preliminary examination is waived, an arraignment is held. At the arraignment, the defendant enters a plea of guilty, not guilty, no contest, or not guilty by reason of mental disease or defect.

PLEA AGREEMENT OR DECISION TO GO TO TRIAL
Most criminal cases are decided before trial, typically by a plea agreement. However, if the defendant decides to take the case to trial, the case is heard in circuit court in front of a judge or a jury (unless both parties waive the right to a jury trial).

JURY TRIAL OR BENCH TRIAL
The jury considers evidence presented and determines whether that evidence supports a verdict of guilty or not guilty. The state carries the burden to prove each element of the crime being charged beyond a reasonable doubt. If both parties waive the right to a jury trial, the judge determines whether the state has met its burden of proof. This is known as a bench trial.

ACQUITTAL OR CONVICTION
If a defendant is found not guilty, the defendant is cleared of the charges against him or her. This is known as being "acquitted." If a defendant is determined to be guilty, either through a plea or trial verdict, the court enters a judgment of conviction and determines the penalty (sentence) for the crime.

Misdemeanor Cases

CRIMINAL COMPLAINT FILED
The state brings an action against the defendant by filing a criminal complaint in circuit court stating the essential facts of the offense.

A SUMMONS TO APPEAR IS ISSUED

INITIAL APPEARANCE
The defendant is brought before a judge or court commissioner, and informed of the charges and the right to be represented by a lawyer. Bail (either a cash amount or a signature bond) may be set at this time to assure the defendant's appearance at future proceedings.

PLEA ENTERED
The defendant is asked to enter a plea of guilty, not guilty, no contest, or not guilty by reason of mental disease or defect. If a plea of not guilty is entered, a trial date is set.

PLEA AGREEMENT OR DECISISION TO GO TO TRIAL
Most criminal cases are decided before trial, typically by a plea agreement. However, if the defendant decides to take the case to trial, the case is heard in circuit court in front of a judge or jury (unless both parties waive the right to a jury trial).

JURY TRIAL OR BENCH TRIAL
The jury considers evidence presented and determines whether that evidence supports a verdict of guilty or not guilty. The state carries the burden to prove each element of the crime being charged beyond a reasonable doubt. If both parties waive the right to a jury trial, the judge determines whether the state has met its burden of proof. This is known as a bench trial.

ACQUITTAL OR CONVICTION
If a defendant is found not guilty, the defendant is cleared of the charges against him or her. This is known as being “acquitted.” If a defendant is determined to be guilty, either through a plea or trial verdict, the court enters a judgment of conviction and determines the penalty (sentence) for the crime.

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	60 years	40 years
Class D	25 years	Class BC	30 years	20 years
Class E	15 years			
Class F	12.5 years	Class C	15 years	10 years
Class G	10 years			
Class H	6 years	Class D	10 years	5 years
Class I	3.5 years	Class E	5 years	2 years

[s. 939.50, Stats.; and s. 939.50, 1997 and 2001, Stats.]

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

[s. 939.50, Stats.; and s. 939.50, 2001 Stats.]

Sentencing

A court can only sentence a person to imprisonment in the Wisconsin state prison system if the sentence requires a portion of confinement that lasts one year or longer. [s. 973.02, Stats.] An offender serves either an indeterminate sentence or a determinate sentence, depending upon the date on which the offender committed the offense. A person who committed an offense prior to December 31, 1999 received an indeterminate sentence from the court; an offender who commits an offense on or after December 31, 1999, receives a determinate sentence. [s. 973.01, Stats.]

Other than those persons serving a sentence of life in prison, a person serving an indeterminate sentence in a state prison is usually released from confinement in one of the following ways:

- **Discretionary parole after 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. After release, an offender is placed on parole supervision for the remainder of his or her sentence. [s. 304.06, Stats.]
- **Mandatory release**. Unless subject to additional time for misconduct, and subject to the exceptions described below, an offender is required to be released after serving two-thirds of his or her sentence. This is termed the offender's mandatory release, or MR, date. After release, an offender is placed on parole supervision. [s. 302.11, Stats.]

Forms of Release Under Supervision

Extended Supervision – Release of an offender as part of a bifurcated sentence or release of an offender sentenced to life imprisonment to the community under Department of Corrections (DOC) supervision.

Mandatory Release – Release from prison to parole supervision after serving 2/3rds of an indeterminate sentence established by the court for offenses committed before December 31, 1999.

Parole – Release of an offender sentenced under an indeterminate sentence to the community under DOC's supervision. DOC may discharge a person from parole prior to the person serving the maximum sentence imposed by the court.

Probation – Release of an offender under DOC supervision without first serving time in a state prison. An offender placed on probation is subject to conditions imposed by the court and/or DOC.

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

Felony Class	Eligible for Parole	Mandatory Release
Class A	Set by sentencing court	N.A.
Class B	10 years	26.6 years
Class B/C	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

Offenders who have committed serious felonies[2] may be subject to different parole eligibility provisions than are outlined above. A person that has committed a serious felony may have his or her parole eligibility date changed in the following ways:

- **Later discretionary parole date**. 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 two-thirds of the sentence. [s. 973.0135, Stats.]

- **No automatic release on MR date**. Certain 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. [s. 302.11 (1g), Stats.]

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 in confinement, less time calculated under the MR formula, before the person is eligible for release on parole. However, a person's eligibility could be extended due to violation of prison rules, or if the court sets the parole eligibility date later than the usual parole eligibility date (e.g., 35, 75, or 100 years). Alternatively, a sentencing court may declare a person ineligible for parole. [s. 973.014 (1), Stats.]

Determinate sentences apply to offenders who commit offenses on or after December 31, 1999. The sentences are bifurcated between a period of confinement and a period of

[2] Serious felonies include 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. [s. 973.0135 (1) (b), Stats.]

extended supervision (ES). This system of sentencing is often referred to as "Truth-in-Sentencing," mentioned in the previous discussion on classes of crimes.

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

Maximum Confinement in Prison for a Maximum Sentence

Felony Class	Release to ES for Crimes Committed 2/1/03 and After	Felony 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[3]
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

[s. 973.01, Stats.]

Additional information on the crime victim and witness rights, and services available, may be found on the DOJ's Office of Crime Victim Services website at:

https://www.doj.state.wi.us/ocvs

Wisconsin Victim Helpline: (800) 446-6564; TTY: (800) 947-3529

Rights of Victims and Witnesses

The Wisconsin Constitution grants crime victims certain rights and provides remedies for violations of those rights, as established by the Legislature. [Wis. Const. art. I, s. 9m.] In addition, the Wisconsin Statutes set forth the basic bill of rights for victims and witnesses, and provide numerous rights to victims and witnesses that are to be honored by law enforcement, prosecutors, and judges. Those rights were created in recognition of the fact

[3] 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.

that victims and witnesses of a crime have a civic and moral duty to fully and voluntarily cooperate with law enforcement and district attorneys (DAs), and the importance of their cooperation with state and local law enforcement efforts. However, in order for a victim to be eligible for services afforded under the basic bill of rights for victims and witnesses, the crime must be reported to law enforcement authorities. [s. 950.03, Stats.]

There are over 40 rights provided to victims in the basic bill of rights for victims and witnesses. One example is the right to be treated with fairness, dignity, and respect for privacy. Another is the right to be notified of certain information, including the time, date, and place of upcoming court proceedings if requested. A victim also has the right to be notified about the decisions related to the case, such as a decision not to prosecute if an arrest was made or a decision to dismiss charges. Victim rights also include the right to a speedy disposition of the criminal case; the right to attend court proceedings in the case; and the right to provide a written or oral victim impact statement concerning the economic, physical and psychological effect of the crime on the victim to be considered by the court at sentencing. [s. 950.04 (1v), Stats.]

Wisconsin Constitution, Article 1, Section 9m, requires that crime victims be treated with fairness, dignity, and respect for their privacy, and provides crime victims with enumerated constitutional privileges and protections.

The basic bill of rights also confers nine rights specific to witnesses. For example, a witness has the right to request information from the DA about the final disposition of the case. A witness also has the right to receive protection from harm and threats of harm arising out of his or her cooperation with law enforcement and prosecution efforts. Further, a witness has the right to certain information such as financial assistance and other social services available as a result of being a witness, including information on how to apply for the assistance and services. A witness also has the right to be notified that a court proceeding to which the witness has been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court. [s. 950.04 (2w), Stats.]

In the 2017 Legislative Session, the Legislature passed 2017 Senate Joint Resolution 53 (SJR 53), a proposal to amend the Wisconsin Constitution (on first consideration), relating to the rights of crime victims. SJR 53 has commonly been referred to as "Marsy's Law." Broadly speaking, SJR 53 defines "victim" in the Constitution, provides victims rights that vest at the time of victimization and are generally "self-executing," and imposes obligations on courts to enforce victims rights. To become law, SJR 53 must be passed by both the Assembly and the Senate in the 2019 Legislative Session and then be ratified by the people in a statewide referendum. [Wis. Const. art. XII, s. 1.]

Treatment of Past Convictions

Individuals who meet specific criteria may have their records expunged and individuals who apply to the Governor may be pardoned for their crimes. Expunction of criminal records and pardons, the focus of this section, are actions applicable to individuals who have already completed their sentences. There are other executive actions that may be taken related to convictions, such as reprieves and commutations.

Expunction of a criminal record is only available in very limited circumstances. Many offenders are not eligible to have their records expunged.

Expunction

A person's criminal conviction may be removed from his or her court record under certain circumstances, through a process known as expunction. The criteria for expunction vary depending upon whether the individual was an adult or a juvenile at the time of conviction.

An adult'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 when he or she committed the offense.
- The offense for which the person was found guilty has a maximum penalty of six years or fewer (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 the expungement.
- 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.

[s. 973.015, Stats.]

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.

[s. 973.015 (1m) (a) 3. a., Stats.]

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

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

[s. 973.015 (1m) (a) 3. b., Stats.]

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 while under the age of 18, the court must order that the person's record be expunged upon successful completion of his or her sentence.

A court may expunge a juvenile's adjudication record if the juvenile petitions the court after turning 17 years old and if the court makes certain findings. A court **may** expunge a juvenile's record if it finds that: (1) the juvenile has satisfactorily complied with the conditions of his or her dispositional order; (2) the juvenile will benefit from the expunction; and (3) society will not be harmed by the expunction. [s. 938.355 (4m), Stats.]

There are certain circumstances under which a court must order an expunction of a juvenile's record. A court **must** expunge a juvenile's record if: (1) the adjudication was for an invasion of privacy offense; (2) the adjudication was the juvenile's first invasion of privacy offense; and (3) the juvenile has satisfactorily complied with the conditions of his or her dispositional order. [s. 973.015 (1m) (a) 2., Stats.]

Pardons

A pardon is official forgiveness for a crime and restores rights that were lost due to a conviction. For instance, a person who receives a pardon will generally regain his or her ability to possess a firearm, hold public office, and obtain various licenses.

Only the Governor has the power to issue a pardon for conviction of a state crime in Wisconsin. Under Wis. Const. Art. V, s. 6, the Governor has the power to grant a pardon after a person's conviction for any crime, except treason and cases of impeachment. The Governor possesses nearly unlimited discretion to grant or deny pardons, and may also grant conditional pardons that impose limitations or restrictions on the individual.

The Governor may choose to accept applications for pardon and may choose to appoint a Pardon Advisory Board to evaluate applications and make recommendations. Applications for felony pardons must be accompanied by specified documents, including court records, written statements by the judge and district attorney who tried the case (if obtainable), and a certificate from the prison where the applicant was confined that establishes good behavior.

A pardon restores an individual's rights but does not expunge or erase that individual's criminal record.

CORRECTIONS

The DOC legislative liaison can be reached at (608) 240-5056.

In Wisconsin, the Department of Corrections (DOC) is responsible for the care and treatment of adult offenders placed under state supervision by the courts. As of January 2018, DOC was responsible for more than 23,000 incarcerated adults and more than 66,000 adults under supervision in the community.

Correctional Facilities

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

Adult males sentenced to state prison 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 security level, which is the degree of security risk he presents.

Male inmates who are classified as maximum security level may be placed at the following institutions:

- Dodge.
- Waupun.
- Columbia.
- Green Bay.
- Wisconsin Secure Program Facility.

Male inmates classified as medium security level may be placed at the following institutions:

- Oshkosh.
- Kettle Moraine.
- Fox Lake.
- New Lisbon.
- Redgranite.
- Jackson.
- Prairie du Chien.
- Stanley.
- Racine.
- Milwaukee Secure Detention Facility.

A medium security inmate who is between the ages of 15 and 24 years may also be placed in the Racine Youthful Offender Correctional Facility.

Male inmates who are classified as minimum security level may be placed in the following facilities:

- Oakhill Correctional Institution.
- Chippewa Valley Correctional Treatment Facility.
- Sturtevant Transitional Facility.
- One of the 14 male minimum security correctional centers.

DOC also operates the Wisconsin Secure Program Facility, the state's most secure facility, which is located in Boscobel. Male inmates may be transferred there if they demonstrate serious behavioral problems.

Adult females sentenced to state prison are received at Taycheedah Correctional Institution for assessment and evaluation. Female inmates classified as maximum or medium security level are placed in the Taycheedah Correctional Institution. Female inmates who are classified as minimum security level may be placed at the Milwaukee Women's Center, the Robert E. Ellsworth Correctional Center in Union Grove, or the St. Croix Correctional Center in New Richmond.

In addition to the state prisons and correctional centers, DOC utilizes the following facilities:

- **Milwaukee Secure Detention Facility**. In addition to housing medium-security inmates, the Milwaukee Secure Detention Facility is a holding facility for probation and parole violators and accepts offenders 24 hours per day.
- **County facilities**. DOC contracts with Wisconsin counties to house inmates, except for those inmates in the Inmate Retention Program. As of April 23, 2018, there were 461 state inmates being held in county jails.
- **Interstate Corrections Compacts**. As of April 23, 2018, DOC contracts with the federal government and other state agencies to house approximately 30 Wisconsin-sentenced inmates in various federal and state prisons. Another 29 inmates serving a sentence from another state or the federal government and housed in Wisconsin.
- **Wisconsin Resource Center**. DOC contracts with the Department of Health Services (DHS) to house inmates with mental health needs at the Wisconsin Resource Center in Winnebago. As of April 27, 2018, there were 265 inmates being held at the Wisconsin Resource Center.

Q: Can DOC lease space to private businesses?

A: 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. Currently, DOC does not lease space to any private businesses.

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

Prison Work and Study Assignments

Inmates in correctional institutions are typically provided a work or study assignment. For work assignments in a prison, other than those employed by the Bureau of Correctional Enterprises (BCE), an inmate may earn $0.12 to $0.42 per hour. Inmates who have been assigned to schools, 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, which is an involuntary unassigned compensation rate applied to inmates who are eligible, available, and waiting for placement in approved work or program assignments where such work or program assignments exist, but are not currently available.

Inmates who refuse to work or are negatively removed from a work or full-time paid program assignment will be placed on voluntary unassigned status for a minimum of 90 days and will not be compensated. A warden or superintendent can waive the 90-day requirement for an inmate negatively removed from a work assignment if a full-time paid program assignment becomes available to the inmate in those 90 days of voluntary unassigned status.

Bureau of Correctional Enterprises

The Division of Adult Institution's Bureau of Correctional Enterprises (BCE) employs an average of 429 inmates. A nine-member Governor-appointed Prison Industry Board oversees all operations of prison industries. There are four components to the bureau: Badger State Industries (BSI), Correctional Farms, Badger State Logistics (BSL), and Transition. These components are described in more detail below:

- BSI is DOC's manufacturing enterprise. BSI operates 12 industries in 11 different correctional facilities, providing vocational training and work skills development to a willing prison population. Listed below are the locations and type of products produced by BSI:

Institution	Industry	Product Examples
Green Bay	Textile manufacturing and embroidery.	Clothing, bedding, mattresses, pillows, and towels.
Jackson, Stanley, and New Lisbon	Signage.	Manufacturing signs, road signs, hydrostripping.
Fox Lake	Wood furniture.	Desks, tables, bookcases, and credenzas.
Oakhill	Upholstery.	Chairs.
Waupun	Metal stamping and fabrication.	License plates, tables, bookcases, and office systems..
Columbia	Printing.	Copies, books, and pamphlets
Oshkosh	Laundry.	Laundry services, linen rentals.
Taycheedah	Inventory management and warehouse production.	Canteen orders for inmates.

Source: Wisconsin DOC.

- BCE has three correctional dairy farms located at Waupun/Fox Lake and Oregon.
- BSL is comprised of the Industries Distribution Center (IDC) and the commodities warehouse located in Waupun. IDC is the central hub for transportation and storage for BSI while the commodities warehouse is the central distribution point for products (toilet paper, can liners, etc.) sold to state agencies and other governmental units.
- The BCE Transition Program connects inmates employed at BSI and the correctional farms with employment opportunities once they are released from prison.

The hourly wages for inmates working with BCE 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 $1.02 to $1.31.

Community Corrections: Probation, Parole, and Extended Supervision

The Division of Community Corrections in the DOC provides community supervision for offenders on probation, parole, and ES. In addition to supervising offenders in the community, probation and parole agents provide investigative services to the courts, the Division of Adult Institutions, and the Parole Commission to aid in sentencing and community reentry planning. On February 18, 2018, the DOC was responsible for supervising 65,625 offenders on probation, parole, or ES.

Sex Offenders

Sex Offender Registry

DOC maintains a registry of convicted sex offenders residing in the state. The agency provides public Internet access to certain information contained in the registry, including the names and addresses of registered sex offenders and the qualifying crimes committed by each offender.

Sex Offender Registry:
http://offender.doc.state.wi.us/public

In general, a person must register as a sex offender if he or she was convicted of a "sex offense," or if he or she is subject to a court order requiring registration:

- **Sex offense**. A person must register as a sex offender if he or she is convicted, adjudicated, or found not guilty by reason of a mental disease or defect of a "sex offense." The statutes enumerate 28 offenses in the definition of "sex offense," including crimes such as incest, child enticement, and first degree sexual assault.
- **Court order**. A person must also register as a sex offender if a court orders the person to register, even if he or she did not commit a "sex offense." A court may order a person to register if the court finds that the person's conduct was sexually motivated, meaning that the conduct was done for the person's sexual arousal or gratification.

[s. 301.45, Stats.]

The registry contains the following information regarding each registered sex offender:

- **Name**. The person's name and any aliases.

- **Identifying information**. Information sufficient to identify the person, including birth date, gender, race, height, weight, and hair and eye color.
- **Offense**. The statute the person violated, date of conviction, county of conviction, or state of conviction if convicted outside of Wisconsin.
- **Dismissed sex offenses**. Any sex offense that was dismissed as part of a plea agreement if the sentencing court (or adjudication court if the offender is a juvenile) ordered that the offender (or juvenile) be subject to the sex offender registry requirements.
- **Date of registration**. Date the person was required to register.
- **Address**. All addresses where the person is or will be residing.
- **Supervising agency**. The name of the agency supervising the person, the name of the office responsible for supervision, and the office telephone number.
- **Internet and social media accounts**. The name of every email account, Internet user name, Internet profile, and website the person creates or maintains.
- **Employment**. The name and address of the person's place of employment.
- **School location**. The name and location of any school where the person is enrolled.
- **Treatment during sexually violent person commitment**. A notation regarding treatment the person has received for his or her mental disorder.
- **Date of last update**. The most recent date on which the information was updated.

Not all information contained in the sex offender registry is publicly accessible. DOC maintains a website where the public may access limited information about sex offenders by entering a zip code or by entering the name of a registrant.

There are two exceptions to the sex offender registration requirement for certain young offenders who are close in age with their victims. The first exception authorizes a court, upon finding that it is not necessary, in the interest of public protection, to require an offender to register as a sex offender, to exempt the offender from registration if he or she was 18 years old or younger at the time of the offense, and if the victim is no more than four years younger or older than the offender. The exemption only applies to certain offenses, and does **not** apply to an offender whose crime involved force or violence or whose victim was less than 12 years old.

The second exception was created by 2017 Wisconsin Act 174. This exception authorizes a court, upon finding that it is not necessary, in the interest of public protection, to require an offender to register as a sex offender, to exempt the offender from registration if he or she was 18 years old or younger at the time of the offense, the victim was 15 years old at the time of the offense, and the offense involved having sexual intercourse without consent, in violation of third-degree sexual assault.

In addition to these two exceptions, Act 174 provides that a person who was age 18 years or younger at the time of the violation may no longer be convicted of the felony crime of second-degree sexual assault of a child and forced to register as a sex offender, for having

sexual contact or sexual intercourse with a child who was 15 years old at the time of the violation. Rather, a person may instead be convicted of the new misdemeanor crime of underage sexual activity, which was created by the Act, and is not required to register as a as a sex offender.

[ss. 301.45 (1m) (a), 948.02 (2), and 948.09, Stats.]

In general, a person must register as a sex offender for either 15 years after being discharged from supervision, or for the person's lifetime.

Lifetime sex offender registration applies to a person who has been: (1) convicted of a sex offense on two or more separate occasions; (2) convicted of certain sexual assault crimes; (3) committed as a sexually violent person under ch. 980, Stats.; or (4) ordered by the court to comply for life.

A registered sex offender who fails to report or update required registry information is subject to penalties. In general, a sex offender who intentionally fails to provide or update registry information is guilty of a Class H felony and faces penalties of imprisonment for six years or less, a fine of $10,000 or less, or both.

A registered sex offender who uses an alias or moves to a different residence without permission is also subject to penalties. State law prohibits a sex offender from changing his or her name or identifying by a name not used by DOC. State law further prohibits a sex offender from establishing or changing his or her residence unless certain conditions have been met. In general, a sex offender who intentionally violates these prohibitions is guilty of a Class H felony and faces penalties of imprisonment of six years or less, a fine of $10,000 or less, or both. [ss. 301.45 and 301.47, Stats.]

Sex Offender Placement

DOC must comply with state and local laws when the agency places a sex offender who is released into the community on probation, parole, or ES. State statutes and municipal ordinances impose limitations and requirements regarding the locations where DOC may initially place a sex offender.

Different statutes impose restrictions and requirements on where DHS may place a sexually violent person (SVP) under ch. 980, Stats., who is on supervised release. These statutes impose distance restrictions, provide for limited preemption of local sex offender residency ordinances, require DHS to search for known victims and consult local law enforcement, and prohibit placement of an SVP outside his or her home county.

Wisconsin law requires DOC to place a sex offender in one of three locations upon release to parole or supervised release: (1) the county where the person resided when he or she committed the sex offense; (2) the county where the person was convicted; or (3) a sex offender treatment facility. However, DOC cannot parole serious sex offenders in any county that contains a prison that offers a specialized sex offender treatment program, unless the county is the offender's county of residence.

Municipal and county ordinances also limit the locations where sex offenders may be placed within a community. Such ordinances typically prohibit a sex offender from living within a specified distance from locations such as parks and schools. However, the statutes prohibit local sex offender residency restriction ordinances from being enforced against an SVP who is on supervised release, or against a person who provides housing to the SVP, provided that the SVP is residing in the location ordered by the court and is in compliance with the court's orders. [s. 980.135, Stats.]

GPS Tracking by DOC

Offenders who commit certain child sex offenses or violate a temporary restraining order (TRO) or injunction issued for domestic abuse or harassment may be subject to global positioning system (GPS) tracking. DOC manages the GPS tracking system to actively monitor and identify an offender's location in real time. An offender wears specialized tracking equipment that uses wireless-based communications and geo-positioning satellites to actively track and timely report and record the offender's presence in an "exclusion zone," an area the particular offender is prohibited from entering, or in an "inclusion zone," an area the particular offender is prohibited from leaving.

Q: Is an offender on lifetime GPS or PPS tracking charged a fee for the cost of tracking?

A: Yes. The offender bears as much of the cost for tracking as the offender is able, based on the offender's financial resources; present and future earning ability; needs and earning ability of the offender's dependents; any other costs the offender is required to pay in conjunction with his or her supervision by DOC or DHS; and any other factors that DOC considers appropriate.

Tracking of Sex Offenders

An offender who is convicted or found guilty by reason of mental disease or defect of a serious child sex offense or who is found to be an SVP is subject to lifetime GPS tracking. DOC creates individualized exclusion and inclusion zones for these offenders, if necessary to protect public safety. The exclusion zones must focus on areas where children congregate and areas where the offender is prohibited from going as a condition of probation, parole, ES, conditional release, or supervised release. [s. 301.48, Stats.]

For some offenders who are subject to lifetime GPS tracking, DOC may alternatively use passive positioning system (PPS) tracking to passively track the offender with GPS tracking.

Once the offender who is subject to lifetime GPS tracking completes his or her sentence, including any probation, parole, or ES, DOC may decide to passively track the location of

the offender through PPS tracking. With PPS tracking, the offender's location information is monitored, identified, and recorded, but not necessarily in real time as is done with active GPS tracking.

Tracking of Restraining Order Violators

An offender who is convicted for violating a TRO or injunction issued for either domestic abuse or harassment may be subject to GPS tracking for a limited period of time. A court may order GPS tracking if the court finds it more likely than not that the offender will cause serious bodily harm to the person who petitioned for the TRO or injunction. However, if the court determines that another alternative, including imprisonment, is more likely to protect the petitioner, the court may not order GPS tracking. If the court orders GPS tracking, DOC must then create exclusion zones for the offender, as necessary to protect the petitioner, and the GPS system must alert DOC if the offender enters an exclusion zone. An offender is subject to GPS tracking for the duration of his or her probation, or for the period ordered by the court, if tracking is a condition of the offender's ES. [s. 301.49, Stats.]

Q: Who is a "juvenile in need of protection or services"?

A: A juvenile who is found to be uncontrollable, habitually truant from school, a school dropout, or a habitual runaway; who is determined to be not responsible for a delinquent act by reason of mental disease or defect; or who is under 10 years of age who commits a delinquent act. [s. 938.13, Stats.]

JUVENILE JUSTICE

Juvenile offenders are generally subject to the juvenile justice system, rather than the adult criminal justice system. The Juvenile Justice Code, ch. 938, Stats., governs delinquent juveniles and juveniles in need of protection or services (also known as "JIPS"). A person 17 years of age or older who commits a crime is prosecuted in the adult criminal justice system. [ss. 938.02 and 938.12, Stats.]

Juvenile Justice Code

The Juvenile Justice Code creates procedures and consequences for violations of the law that specifically apply to juveniles who commit offenses. These procedures and consequences differ from those contained within the criminal chapters of the Wisconsin statutes and employ a different vocabulary. The following terms have specific meanings in the context of the juvenile justice system.

Juvenile. A "juvenile" for purposes of criminal prosecution is a person who is 16 years old or younger and who has violated a criminal law, civil law, or municipal ordinance. A

"juvenile" for all other purposes under the Juvenile Justice Code is a person who is 17 years old or younger.

Adjudicated. A juvenile is "adjudicated" under the Juvenile Justice Code, rather than convicted. Adjudicated means that the juvenile is "found to" have committed or not to have committed a violation.

Delinquent. A juvenile who is 10 years of age or older, and under 17 years of age, and who violates a criminal law is adjudicated "delinquent," rather than being found guilty and convicted.

Disposition. The Juvenile Justice Code provides "dispositions," which are consequences for violations of the law that are imposed upon juvenile offenders, rather than sentences. The purpose of a disposition is to respond to the care and treatment of the juvenile's best interest and protection of the public, while being consistent with the prevention of delinquency.

Adult Court vs. Juvenile Court

Although juvenile courts customarily have jurisdiction over juvenile cases, these cases may proceed in adult criminal courts under certain circumstances. Juvenile cases are most frequently addressed in adult court when they involve the commission of a serious offense, such as armed robbery or homicide.

A juvenile's case may proceed to the adult criminal court system. A juvenile's case may begin in adult court, which occurs when the adult court has "original jurisdiction" over the juvenile. [s. 938.183, Stats.] Alternatively, the case may begin in juvenile court and then be transferred to adult court because the juvenile court waived its jurisdiction to hear the case. [s. 938.18, Stats.] When this happens, the juvenile is "waived" to adult court.

Original Adult Court Jurisdiction – Juveniles Whose Cases Begin in Adult Court

A juvenile case **begins** in adult court when the juvenile meets certain criteria. The following types of juveniles may have their cases addressed in adult court based on the court's original jurisdiction:

- **Juveniles who commit battery and have a prior adjudication**. A juvenile who was previously adjudicated delinquent and is alleged to have committed battery or assault while placed in a secured correctional facility, secured detention facility, or secured residential care center for children and youth, or is alleged to have committed battery to a probation and parole agent or aftercare agent.
- **Juveniles aged 10 or older who attempt or commit first-degree intentional homicide or who commit any other homicide**. A juvenile

Q: Who is considered to be a "delinquent juvenile"?

A: A juvenile who is 10 years of age or older, and under 17 years of age, and has violated any state or federal law.

[s. 938.12, Stats.]

who is alleged to have attempted or committed first-degree intentional homicide, or a juvenile who is alleged to have committed first-degree reckless homicide or second-degree intentional homicide on or after the juvenile's 10th birthday.

- **Juveniles with a prior adult court case**. A juvenile who is alleged to have committed a crime and who has been previously convicted in adult court or has a case pending in adult court.

A juvenile whose case begins in adult court may be "reverse waived" back into juvenile court if the adult court waives its original jurisdiction to hear the case.

Occasionally, a juvenile whose case begins in adult court may have his or her case "reverse waived" back into the juvenile court. This happens when the adult court waives its original jurisdiction to hear the case. A juvenile must prove the following before a court may reverse waive the juvenile's case: (1) that the juvenile could not receive adequate treatment in the criminal justice system; (2) that transferring the juvenile would not depreciate the seriousness of the offense; and (3) that it is not necessary to keep the case in adult court in order to deter juveniles from committing a similar violation. [s. 970.032 (2), Stats.]

Waiver of Juveniles to Adult Court – Juveniles Whose Cases Begin in Juvenile Court

A juvenile court case may begin in juvenile court and then be waived into adult court when the juvenile meets certain conditions. The following are circumstances under which a court may waive a juvenile case to adult court:

- **Commission of specific crimes after age 14**. The juvenile is alleged to have committed certain serious violent offenses, drug offenses, or gang-related offenses on or after the juvenile's 14th birthday.
- **Commission of any crime after age 15**. The juvenile is alleged to have violated any state criminal law on or after the juvenile's 15th birthday.

[s. 938.18 (1), Stats.]

The court has discretion regarding waiver of a juvenile's case to adult court. However, the statutes specify the criteria upon which a court may base its decision. These criteria include: personality of the juvenile; prior record of the juvenile; type and seriousness of the offense; adequacy and suitability of facilities and services within the juvenile justice system; and ongoing proceedings in adult court against the juvenile's associates.

[s. 938.18 (5), Stats.]

Dispositions for Juvenile Offenders

A juvenile adjudicated delinquent for violating a criminal law faces a variety of potential dispositions. These dispositions include the following, among others:

- Counseling.

- Supervision by DOC, another state agency, or a suitable adult.
- Participation in the teen court or Serious Juvenile Offender Program.
- Placement in a relative's home, a group home, or a residential treatment center.
- Placement in a juvenile detention facility.
- Electronic monitoring.
- Payment of restitution or forfeiture.
- Community service.
- Special treatment or care, such as medical or psychological treatment.
- Alcohol or drug treatment.
- Drug testing.
- Vocational training or participation in an education program.
- Restriction on driving privileges.
- Compliance with sex offender reporting requirements.

[s. 938.34, Stats.]

A juvenile who is tried and convicted in adult court is subject to adult criminal procedures and the criminal penalties provided for the crime he or she committed.

Juvenile Correctional Facilities

A juvenile may be held in secure custody in a Type 1 juvenile correctional facility if the juvenile is adjudicated delinquent and receives certain dispositions. At the time 2017 Wisconsin Act 185 was enacted, the only Type 1 juvenile correctional facilities were the Lincoln Hills and Copper Lakes Schools (hereinafter, collectively referred to as "Lincoln Hills"), operated by DOC, and the Mendota Juvenile Treatment Center, operated by DHS. A juvenile may be placed in a Type 1 juvenile correctional facility if a court gives the juvenile a Serious Juvenile Offender Program (SJOP) disposition or a correctional placement disposition. A juvenile may receive one of these dispositions only if the juvenile commits certain offenses and the court makes specific findings. A juvenile may also be held in secure custody in a Type 1 juvenile correctional facility if the juvenile is convicted in adult court, is under the age of 18, and receives an adult sentence.

A juvenile may be held in secure custody in a juvenile detention facility if the juvenile is adjudicated delinquent and receives a disposition designating that facility for placement. Juvenile detention facilities are locked facilities approved by DOC for the secure, temporary holding of juveniles and are operated by counties.

The Legislature recently passed 2017 Wisconsin Act 185, relating to juvenile correctional facilities. Some of the key changes made by Act 185 include requiring the closure of the Lincoln Hills, establishing new DOC Type 1 juvenile correctional facilities and new county residential care centers for children and youth (SRCCCYs), and authorizing $80 million in state bonding for constructing and expanding juvenile facilities.

Act 185 also makes changes relating to authorization for DOC to operate Lincoln Hills as an adult institution, establishment of one or more new Type 1 juvenile facilities, and expansion of the Mendota Juvenile Treatment Center. The Act allows for establishment of SRCCCYs and creates a grant program to provide funding for these facilities, and makes changes related to juvenile placements in juvenile detention facilities.

Act 185 also creates two study committees to administer the SRCCCY grant program and to recommend rules governing programming and services in SRCCCYs and a location for a new DOC Type 1 juvenile correctional facility or facilities. Additionally, Act 185 makes changes to supervision of juveniles, transfers of juveniles between facilities, and youth aids funding for counties. Finally, the Act provides hiring preferences for employees currently working at Lincoln Hills. The Act Memo for Act 185 explains these changes in greater detail: https://docs.legis.wisconsin.gov/2017/related/lcactmemo/act185.pdf.

Additional References

1. Memoranda prepared by the Legislative Council staff located at http://legis.wisconsin.gov/lc:
    - Amendment Memo, 2017 Senate Joint Resolution 53 (Marsey's Law).
    - Act Memo, 2017 Wisconsin Act 185.
2. The state DOC website is: http://www.doc.wi.gov.
3. The Sex Offender Registry, which may be searched by name or zip code: http://offender.doc.state.wi.us/public.
4. The state DOJ website contains information for victims of crime and information on crime prevention, background checks, and criminal investigations: http://www.doj.state.wi.us/.
5. Information and applications relating to expunction and pardons may be found on the Wisconsin State Law Library website: http://wilawlibrary.gov/topics/justice/crimlaw/pardons.php.
6. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau prepares Informational Papers on various criminal justice and corrections topics. The Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
7. Legislative Audit Bureau report, *17 Year-Old Offenders in the Adult Criminal Justice System* (Audit Report 08-3), is available at: http://legis.wisconsin.gov/lab.
8. Information regarding law enforcement in Indian Country may be found in Information Memoranda on the Wisconsin Legislative Council website: http://legis.wisconsin.gov/lc.
9. The Legislative Audit Bureau report, *Inmate Mental Health Care* (Audit Report 09-4) is available at: http://www.legis.wisconsin.gov/lab.
10. DOC provides victim advocacy and support, and notifies enrolled victims of inmate release, parole, and other offender status changes. More information regarding DOC victim services and notification is available at the department's crime victim website https://www.wivictimsvoice.org.

11. DOC, in cooperation with Wisconsin county sheriffs, provides information, registration, and notification regarding offenders/defendants in the Wisconsin county jails online at: http://www.vinelink.com or by calling 1-888-944-8463.

GLOSSARY

Acquittal: A defendant is found not guilty by a circuit court or jury and released without any further prosecution for the previously charged act.

Arraignment: A formal reading of the criminal complaint to the defendant following the probable cause hearing in felony cases. In response to the charges, the defendant enters a plea.

Bail/bond: A monetary or other form of security given in exchange for release from jail or prison; meant to ensure the appearance of the defendant at further proceedings.

Bench trial: A trial held before a trial judge sitting without a jury.

Burden of proof: The duty placed upon a party to prove or disprove a disputed fact. In a criminal case, the accused is presumed to be innocent, so the state bears the burden to prove each element of the offense charged beyond a reasonable doubt.

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

Criminal complaint: A document that sets forth the charges against the defendant and the facts that support the charges.

Defendant: A person charged with having committed a crime.

District attorney: An elected officer with the duty to charge and prosecute those accused of committing crimes in his or her jurisdiction.

Felony: A criminal offense punishable by imprisonment of one year or longer.

Guilty: Being responsible for the commission of an offense. A defendant can either plead guilty to the commission of a crime or be found guilty by a court or jury.

Initial appearance: The first court appearance in a criminal case, at which the judge or court commissioner will set bail for the defendant to ensure the defendant's appearance at future court appearances. Defendants in misdemeanor cases at the initial appearance, in addition to having bail set, will be asked to enter a plea of not guilty, guilty, or no contest.

Judgment: The determination of a court upon matters submitted to it; the final decision in a case.

Jury: A sworn body of people responsible for reaching a verdict based on the evidence presented at trial.

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.

No contest: A plea with which the defendant does not admit guilt, but concedes that the state can prove him or her guilty.

Plea: An answer to a claim made by an adversary. A defendant may plead guilty, no contest, not guilty, or not guilty by reason of insanity.

Probable cause hearing/preliminary hearing: A hearing at which the State is required to show to a judge that the defendant committed a crime in a felony case. It is not unusual for a defendant to waive his or her right to this hearing.

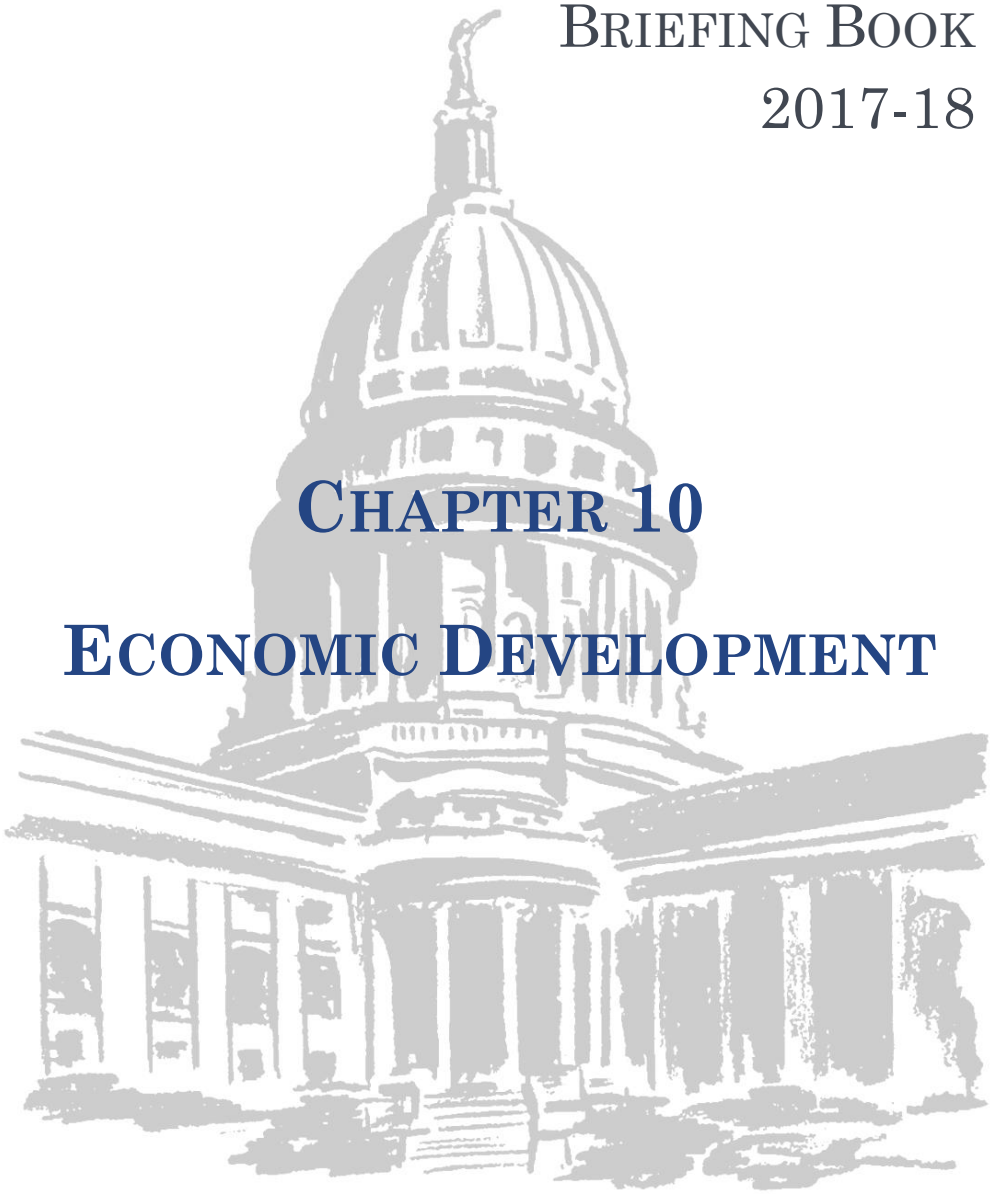
Summons: A notice issued by the court, calling on a person to appear in court.

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.

Verdict: The finding or decision of a jury on a matter submitted to it in trial.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2017-18



CHAPTER 10

ECONOMIC DEVELOPMENT

Julia Norsetter, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.wisconsin.gov/lc

Introduction

Economic development was a key focus of legislative activity at the state level during the past several legislative sessions. Members of both major political parties have emphasized the importance of job creation, worker training, and access to capital.

The board concept of "economic development" encompasses myriad approaches to spurring economic growth. This chapter provides an overview of certain state and regional economic development programs, including various tax credit programs, grant and loan programs, and incentives designed to encourage investment in new and growing businesses. This discussion includes an overview of the role of the state agencies with primary responsibility for economic development, including the Wisconsin Economic Development Corporation (WEDC) and the Department of Workforce Development (DWD). In addition to the state tax incentives and programs discussed in this chapter, the federal government, local governments, and regional organizations contribute significant resources to economic development.

Wisconsin Economic Development Corporation

WEDC, a semi-public corporate entity, is the state entity primarily responsible for economic development in the state.

WEDC is the state entity with primary responsibility for economic development.

WEDC is governed by a 14-member board comprised of state officials and private sector representatives. State law directs the board to develop and implement economic programs to provide business support and expertise and financial assistance to companies that are investing and creating jobs in Wisconsin and to support new business start-ups and business expansion and growth in the state.

WEDC's website is:
http://www.inwisconsin.com

For each economic development program that it develops, the board must establish certain policies and benchmarks, establish methods for evaluating projected results, verify the accuracy of information submitted by grant and loan recipients, and report certain information to the Legislature. The board also has statutory responsibilities relating to the administration of certain tax credit and grant programs. [ss. 238.02 to 238.07, Stats.]

Tax Incentives for Businesses

Several state tax credit programs offer incentives to businesses for activities such as job creation, business relocation or expansion, capital investment, and production. Each of the tax credit programs is structured differently. For example, some tax credits are awarded

based on a claimant's activity within a specified "zone," while others apply regardless of location.

For some tax credit programs, an individual or business must be certified as fulfilling specified criteria for eligibility to receive a tax credit before the Department of Revenue (DOR) will award the credit. WEDC is authorized to administer such certifications for many of the state's economic development-related tax credit programs.

Business Development Tax Credits

Business development tax credits are available to employers who increase net employment in Wisconsin.

The business development tax credit program was created in 2015 Wisconsin Act 55, the 2015-17 Biennial Budget Act. Business development tax credits are refundable, meaning that if a credit exceeds a claimant's tax liability, the claimant may receive a check from the state. The program replaces two tax credit programs that expired at the end of 2015: the jobs tax credit program and the economic development tax credit program. Many provisions of the new business development tax credit program mirror similar provisions from the expiring jobs tax credit program. The statutes allow WEDC to allocate $22 million in tax benefits under this program each year.[1] Any unused allocation may be carried forward.

Criteria for Certification

WEDC may certify a person to receive business development tax credits if the person: (1) operates or intends to operate a business in this state; and (2) enters into a contract with WEDC. A certification may remain in effect for no more than 10 cumulative years.

A person who has been certified may receive business development tax credits only for years in which the person increased net employment in Wisconsin, as compared to the net employment in this state in the year before the person was certified to receive tax credits, as determined by WEDC under WEDC's policies and procedures.

Available Credits

WEDC may award the following types and amounts of tax credits to a person certified under the program:

- **Wages.** Up to 10% of wages paid to full-time[2] employees.

---

[1] The statutes allow WEDC to exceed this limit by up to $10 million if certain circumstances apply, including approval by the Joint Committee on Finance.

[2] In general, for purposes of the business development tax credit, a job is considered "full-time" if it requires an individual, as a condition of employment, to work at least 2,080 hours per year, including paid leave and holidays, and if the individual receives pay equal to at least 150% of the federal minimum wage and benefits by federal or state law. However, WEDC may grant exceptions to those requirements in certain situations in which annual pay exceeds 2,080 times 150% of the federal minimum wage and an individual is offered retirement, health, and other benefits that are equivalent to the retirement,

- **Wages paid in economically distressed areas.** An additional amount, up to 5%, of wages paid to full-time employees employed in an economically distressed area, as determined by WEDC.
- **Training costs.** Up to 50% of certain training costs incurred to undertake activities to enhance full-time employees' general knowledge, employability, and flexibility in the workplace; to develop skills unique to the person's workplace or equipment; or to develop skills that will increase the quality of the person's product.
- **Certain investments.** Up to 3% of a personal property investment, and up to 5% of a real property investment, in certain capital investment projects.[3]
- **Wages paid to employees at corporate headquarters.** An amount, determined by WEDC, equal to a percentage of the amount of wages paid to full-time employees in jobs that were created or retained as part of the location or retention of corporate headquarters in Wisconsin and that involve the performance of corporate headquarters functions.

[s. 238.308, Stats.]

Enterprise Zone Tax Credits

WEDC may designate up to 30 enterprise zones.

The Enterprise Zone Program was first authorized by 2005 Wisconsin Act 361 and has expanded over time. WEDC may designate no more than 30 enterprise zones, each of which may remain in effect for no more than 12 years. WEDC may designate a new enterprise zone if it cancels the designation of another enterprise zone or if a designation expires. Five enterprise zones must be in areas comprising political subdivisions with populations of less than 5,000 people, and two enterprise zones must be in areas comprising political subdivisions with populations of at least 5,000 but fewer than 30,000 people.

Designation of an Enterprise Zone

Except with respect to the five enterprise zones subject to population restrictions, WEDC must consider all of the following criteria when determining whether to designate an area as an enterprise zone:

- Indicators of the area's economic need, which may include data regarding household income, average wages, the condition of property, housing values, population decline, job losses, infrastructure and energy support, the rate of business development, and the existing resources available to the area.

---

health, and other benefits offered to an individual who is required to work at least 2,080 hours per year. [s. 238.30 (2m), Stats.]

[3] The capital investment must be either $1 million or more or equal to at least $10,000 per full-time employee employed on the project.

- The effect of designation on other initiatives and programs to promote economic and community development in the area, including job retention, job creation, job training, and creating high-paying jobs.

In addition, WEDC is generally required to give preference, to the extent possible, to the greatest economic need when making such designations. [s. 238.399 (3), Stats.]

Although they are named "zones," enterprise zones are typically designated for individual, large-scale business ventures. Examples of business enterprises that have been designated as enterprise zones include Mercury Marine in Fond du Lac, Bucyrus International, Inc., and Quad/Graphics in the Milwaukee area, and Fiserv in Brookfield.

Available Credits

Businesses located within an enterprise zone may be certified to receive enterprise zone tax credits if they take certain actions, such as beginning or expanding operations in the zone, relocating to an enterprise zone from outside the state, retaining jobs within the zone, purchasing specified products or services from Wisconsin vendors, or making a significant capital expenditure within the zone.

Several types of refundable tax credits are available to certified businesses. These include:

- **New jobs.** A credit for a percentage, determined by WEDC but no more than 7%, of certain wages paid to new, full-time employees hired to work within the enterprise zone.
- **Job retention.** A credit for a percentage, determined by WEDC but no more than 7%, of wages for full-time employees within the zone who earned certain minimum wages (depending on the county or municipal classification), if the number of employees within the zone is equal to or greater than the number of people employed within the zone during the previous taxable year.
- **Training.** A credit for a percentage, determined by WEDC but no more than 100%, of expenses related to training full-time employees within the zone on the use of job-related new technologies, or to provide job-related training to any full-time employee whose employment represents the employee's first full-time job.
- **Significant capital expenditures.** A credit for up to 10% of significant capital expenditures, as determined by WEDC.
- **Purchases from Wisconsin suppliers.** A credit for up to 1% of expenditures for qualified goods or services purchased from Wisconsin suppliers.

[ss. 71.07 (3w), 71.28 (3w), and 71.47 (3w), Stats.]

Development Opportunity Zone Tax Credits

Development opportunity zones are designated by statute. Three development opportunity zones – located in the Cities of Beloit, Janesville, and Kenosha—are in effect as of the publication of this chapter. Each of those zones was authorized for an initial five years and extended by WEDC for an additional five years.

Any person who conducts or intends to conduct economic activity in a development opportunity zone is entitled to receive specified tax benefits relating to environmental

remediation, jobs, and capital investment. The tax credits can help reduce a person's state income tax liability to potentially enhance its cash flow. A person is entitled to receive benefits if the person submits a qualified project plan in conjunction with the local governing body of the city in which the development opportunity zone is located. Project plans must include various components, including the amount the person proposes to invest, the number of full-time jobs that will be created, and other information required by WEDC or DOR.

[s. 238.395, Stats.]

Electronics and Information Technology Manufacturing Zone Tax Credits

2017 Wisconsin Act 58 authorized WEDC to designate a new type of zone called an electronics and information technology manufacturing (EITM) zone. The statutes provide that only one such zone may be designated. The creation of an EITM zone implements an agreement negotiated between the Governor and the Foxconn company for the creation of a new fabrication facility in Wisconsin.

A business within the zone may be certified by WEDC to receive up to $2.85 billion in refundable tax credits, over a 15-year period, for qualified wages paid and for certain significant capital expenditures.[4] The statute also authorizes a sales tax exemption for certain purchases within the zone, including certain building materials, supplies, and equipment for the construction or development of facilities located in the EITM zone.

WEDC must revoke the general certification of a business to receive tax credits under certain circumstances, including if the business supplies false or misleading information or leaves the EITM zone to conduct substantially the same business outside of the zone.

[s. 238.396 (1m), (3m), and (4) (a), Stats.]

Manufacturing and Agriculture Tax Credits

2013 Wisconsin Act 32, the 2013-15 Biennial Budget Act, created a nonrefundable tax credit for qualified manufacturing and agricultural production activities. The credit effectively reduces manufacturers' and agricultural producers' state income tax liability to zero for income resulting from business operations.

Manufacturing and agricultural production tax credits effectively eliminate manufacturers' and agricultural producers' state income tax liability arising from business operations.

[4] The statutes require WEDC to adopt policies and procedures defining "significant capital expenditures." [s. 238.396 (4) (f), Stats.]

2015 Wisconsin Act 55, the 2015-17 Biennial Budget Act, expanded the scope of eligible activities when calculating a tax credit. Eligible activities are qualified domestic production activities that are derived from property located in Wisconsin and assessed as agriculture, undeveloped, agricultural forest, productive forest land, or "other."

The amount of the credit was phased-in over a several-year period. For tax years beginning in 2016, and in subsequent years, the credit equals 7.5% of qualified production activities.

[ss. 71.07 (5n) and 71.28 (5n), Stats.]

Angel Investment and Early Stage Seed Investment Tax Credit Programs

Wisconsin's Angel Investment and Early Stage Seed Investment tax credit programs are intended to encourage venture capital investments in new and expanding businesses throughout the state. Through the programs, venture capital investors receive tax credits for investing capital, either individually or through a fund manager, in businesses that participate in the programs. To participate, among other statutory criteria, a business must show that it has the potential for increasing jobs in this state, increasing capital investment in the state, or both.

The Angel Investment and Early Stage Seed Investment programs are intended to encourage venture capital investments in Wisconsin business ventures.

Businesses first applying to participate in the programs must have fewer than 100 employees and have been in operation in Wisconsin for fewer than 10 years, among other qualifications. Angel investment tax credits equal 25% of an individual claimant's bona fide angel investment in a qualified new business venture. Early stage seed investment tax credits equal 25% of a claimant's investment paid to a fund manager that the fund manager, in turn, invests in a certified business. [s. 238.15, Stats.]

Grant and Loan Programs Administered by WEDC

As noted above, WEDC has a role in many of the tax credit programs discussed above since eligible businesses may require certification by WEDC in order to receive a tax credit. In addition to its role in tax credit programs, WEDC administers a number of additional economic development programs.

WEDC has established various grant and loan programs pursuant to its statutory directive to provide support to companies seeking to expand or increase operational efficiency in the state. For example, it offers loans to small businesses in certain sectors that may have limited access to standard types of debt or financing, particularly in rural areas of the state. Loan funds may be used for certain activities including the acquisition of real property and equipment, long-term leasehold improvements, and working capital.

Prior to 2017 Wisconsin Act 59, a number of loans administered by WEDC were forgivable under certain circumstances. However, Act 59 provides that the corporation may not originate any loan that is forgivable in whole or in part upon the loan recipient's achievement of one or more conditions or goals. In addition, Act 59 requires WEDC to adhere as closely as practicable to commonly accepted commercial lending practices in each new lending program that it implements or administers. [s. 238.124, Stats.]

WEDC also administers the Capital Catalyst program, a grant program through which WEDC provides seed funding to organizations and communities that are able to provide matching funds. To participate, organizations and communities must demonstrate that they have programs in place to spur the development of new high-growth businesses. Examples of grant recipients include regional economic development organizations, such as the Innovation Fund of Western Wisconsin, and community development organizations, such as the Whitewater Community Development Authority. More information about the Capital Catalyst program is available at: https://wedc.org/programs-and-resources/capital-catalyst/.

Venture Capital

Partly because of the geographic location of investors, that Wisconsin businesses generally receive a disproportionately small proportion of the venture capital funds invested nationally. Over the last few decades, the Legislature has debated the optimal role for the state in providing better access to venture capital in Wisconsin. The Legislature enacted the angel investment and early state seed investment tax credit programs, discussed above, in 2003. During the late 1990s and again during the 2013-14 Legislative Session, it also created programs that involve the investment of state funds.

2013 Wisconsin Act 41 created a venture capital investment program with an initial investment of $25 million in state funds.

For example, 2013 Wisconsin Act 41 created a fund-of-funds venture capital investment program ("Badger Fund of Funds I").

The Act required the Department of Administration (DOA) to form a committee to select an investment manager for the program and to provide an initial $25 million in state investment for the program. Sun Mountain Kegonsa Partnership, LLC was chosen. It must invest capital in at least four venture capital funds. Contracts with the selected venture capital funds must include specified requirements. For example, within four years, each participating venture capital fund must make new investments in an amount equal to the capital it receives through the program in one or more businesses headquartered in Wisconsin.

The investment manager must hold gross proceeds from such investments in an escrow account until it has repaid the state's original $25 million investment in the program. After

that amount has been repaid, the investment manager must pay 90% of its gross proceeds from the program to the state for deposit into the state's general fund.

The Act required DOA to submit progress reports regarding the program to the Joint Committee on Finance in 2015 and 2018. The reports contain comprehensive assessments of the program's performance and certain recommendations for improving the program.

[s. 16.295, Stats.]

A report submitted to the Joint Committee on Finance on March 1, 2018 detailed progress in the creation of the "Badger Fund of Funds I" program, including information regarding funds that have received commitments or contingent commitments for capital investments from the Badger Fund of Funds I program.

Workforce Training

The Wisconsin Fast Forward program provides grants for employer-led training programs.

The need for a skilled, trained workforce has been a key focus of economic development efforts in recent years, particularly as employers report that job applicants lack the necessary skills for jobs in growing sectors such as advanced manufacturing. In response to that concern, 2013 Wisconsin Act 9 created a workforce development program, referred to as "Wisconsin Fast Forward," that provides grants for employer-led worker training, including training of unemployed and underemployed workers. DWD implements the program in consultation with WEDC and the Wisconsin Technical College System Board. [s. 106.27 (2m), Stats.]

Act 9 also requires DWD to develop and maintain a Labor Market Information System to collect, analyze, and disseminate information on employment opportunities in this state and other appropriate information relating to labor market dynamics. DWD must make that information available to educational institutions and the public. [s. 106.27 (1m), Stats.]

Other State Programs and Initiatives

For more information on WHEDA programs, see
http://www.wheda.com

Several state agencies play a role in economic development in addition to WEDC and DWD. For example, the Wisconsin Housing and Economic Development Authority (WHEDA) provides loan guarantees for small business, agricultural, and multi-family housing financing products.

In addition, the University of Wisconsin (UW)-Extension's Division of Business and Entrepreneurship facilitates expert assistance for entrepreneurs, businesses, and economic development professionals. The division operates Small Business Development Centers,

which are funded in part through the U.S. Small Business Administration and provide low- and no-cost assistance to entrepreneurs. Small Business Development Center experts can be reached via the Wisconsin Business Answer Line at 800-940-7232. More information is available at https://www.wisconsinbdc.org/.

Tax Incremental Financing

Tax incremental financing (TIF) is an important economic development tool for Wisconsin municipalities. A municipality may designate a tax incremental district to rehabilitate a particularly blighted area or to encourage economic development where it might not otherwise occur. That designation freezes the taxable value of the district at its current "base value." Public expenditures in the district are then financed by taxes on the "increment" of property value that exceeds the base value while the district is in effect.

Project costs for which a municipality may utilize TIF include, for example, costs for the construction of public works, costs for the removal of environmental contaminants, and costs for certain infrastructure improvements. Project costs generally may not include cash grants for developers, unless a cash grant is authorized by a development agreement.

[s. 66.1105, Stats.]

Regional Economic Development Organizations

A map and links for the regional organizations are available at:

http://www.forwardwi.com/map.php

Nine regional economic development organizations, each covering a multiple-county area, promote economic development and represent local economic development organizations throughout the state. The regional organizations are generally structured as nonprofit organizations, but some have formed through collaborations with public entities, such as technical colleges. In addition, the regional organizations often serve as partners in state or local government economic development initiatives. Among other activities, the organizations develop brand identities for their regions; provide information regarding available commercial sites and facilities located within their regions; and actively recruit businesses in certain industry clusters.

Evaluating State Economic Development Programs

Efforts to measure the effectiveness of economic development programs face an ongoing challenge: in some cases, it is difficult to determine whether a particular tax incentive or other government program **caused** a specific new job, business expansion, or investment. Nevertheless, detailed reports compiled by WEDC provide useful information regarding jobs created by recipients of state tax credits, grants, and loans.

Audits of Economic Development Programs

The Legislative Audit Bureau (LAB) completed audits of all state economic development programs in 2006 and 2012.

The LAB audited Wisconsin's economic development programs in 2006 and 2012.

For purposes of reporting and audits, Wisconsin law defines an "economic development program" as a program or activity having the primary purpose of encouraging the establishment and growth of business in the state, including the creation and retention of jobs, and that does both of the following:

- Receives funding from the state or federal government that is allocated through an appropriation under ch. 20, Stats.
- Provides financial assistance, tax benefits, or direct services to specific industries, businesses, local governments, or organizations.

Using that definition, the 2006 audit identified 152 economic development programs in the state. The 2012 audit identified 196 programs that had been authorized or operational at some point during the 2007-09 and 2010-11 biennia.[5] However, a number of the 196 programs were consolidated or eliminated during that period, and several other programs were sunsetted in the 2013-15 Biennial Budget Act.

The 2012 audit estimated that state expenditures on economic development programs totaled $226.5 million during the 2009-11 fiscal biennium. That amount does not include foregone revenue from economic development tax incentives.

Beginning in 2013, the LAB is required to conduct biennial audits of WEDC's financial management and the programs WEDC administers. LAB completed such biennial audits in September 2014, May 2015, and May 2017.

Reporting Requirements

The 2006 audit recommended improved coordination and accountability for the state's economic development programs. 2007 Wisconsin Act 125 ("Act 125") was the product of a working group established in response to the 2006 audit. In addition to eliminating and consolidating programs, the Act created new reporting requirements, which currently apply to WEDC and seven other state agencies.[6]

Under Act 125, as modified by subsequent legislation, each agency must establish clear and measurable goals tied to a program's statutory policy objectives and establish at least one quantifiable benchmark for each goal. The agencies also must establish a method for

[5] In some cases, the agencies disagreed with the characterization of particular programs as economic development programs.

[6] The agencies are the Department of Agriculture, Trade, and Consumer Protection; the Department of Natural Resources; the Department of Tourism; the Department of Transportation; the UW System; WHEDA; and the Wisconsin Technical College System.

evaluating the projected results of each program with actual outcomes. State agencies must consult with WEDC when developing goals and accountability measures for economic development programs.

The WEDC board must also submit annual reports to the Legislature. The reports must include all of the following information regarding each economic development program:

- A description of the program.
- An accounting of the location, by municipality, of each job created or retained in the state in the previous fiscal year as a result of the program.
- An accounting of the industry classification, by municipality, of each job created or retained in the state as a result of the program.
- A comparison of expected and actual program outcomes.
- The number of grants made under the program.
- The number of loans made under the program.
- The total amount of tax benefits allocated, and the total amount of tax benefits verified to DOR, under the program.
- The amount of each grant and loan made under the program.
- The recipient of each grant or loan made under the program.
- An identification of each recipient of a tax benefit allocated, and each recipient of a tax benefit that was verified to DOR, under the program.
- The sum total of all grants and loans awarded to and received by each recipient under the program.
- Any recommended changes to the program.

[s. 238.07 (2), Stats.]

Additional References

1. Legislative Audit Bureau audit reports, available at http://www.legis.wisconsin.gov/lab:
    - Audit Report 17-9, *Wisconsin Economic Development Corporation*.
    - Audit Report 15-3, *Wisconsin Economic Development Corporation*.
    - Audit Report 14-11, *Wisconsin Economic Development Corporation*.
    - Audit Report 13-7, *Wisconsin Economic Development Corporation*.
    - Audit Report 12-11, *State Economic Development Programs*.
    - Audit Report 06-9, *State Economic Development Programs*.
2. Wisconsin Economic Development Corporation, *Wisconsin's FY 17 Annual Report on Economic Development*, http://www.wedc.org/inside-wedc/program-outcomes/.

3. Wisconsin Department of Revenue:
    - *Fact Sheet: Business Development Tax Credit*, http://www.revenue.wi.gov/taxpro/fact/1120busdevcr.pdf.
    - *Fact Sheet: Wisconsin Manufacturing and Agriculture Credit*, http://www.revenue.wi.gov/taxpro/fact/manufandagr.pdf.

GLOSSARY

Economic development: Efforts by government and private entities to promote business development and spur economic growth. For purposes of state auditing and reporting, a more specific definition of "economic development program" is set forth in the statutes.

Loan guarantees: Assurances that a debt obligation will be satisfied. Their purpose is to increase private lending activity by lowering the risk assumed by lenders.

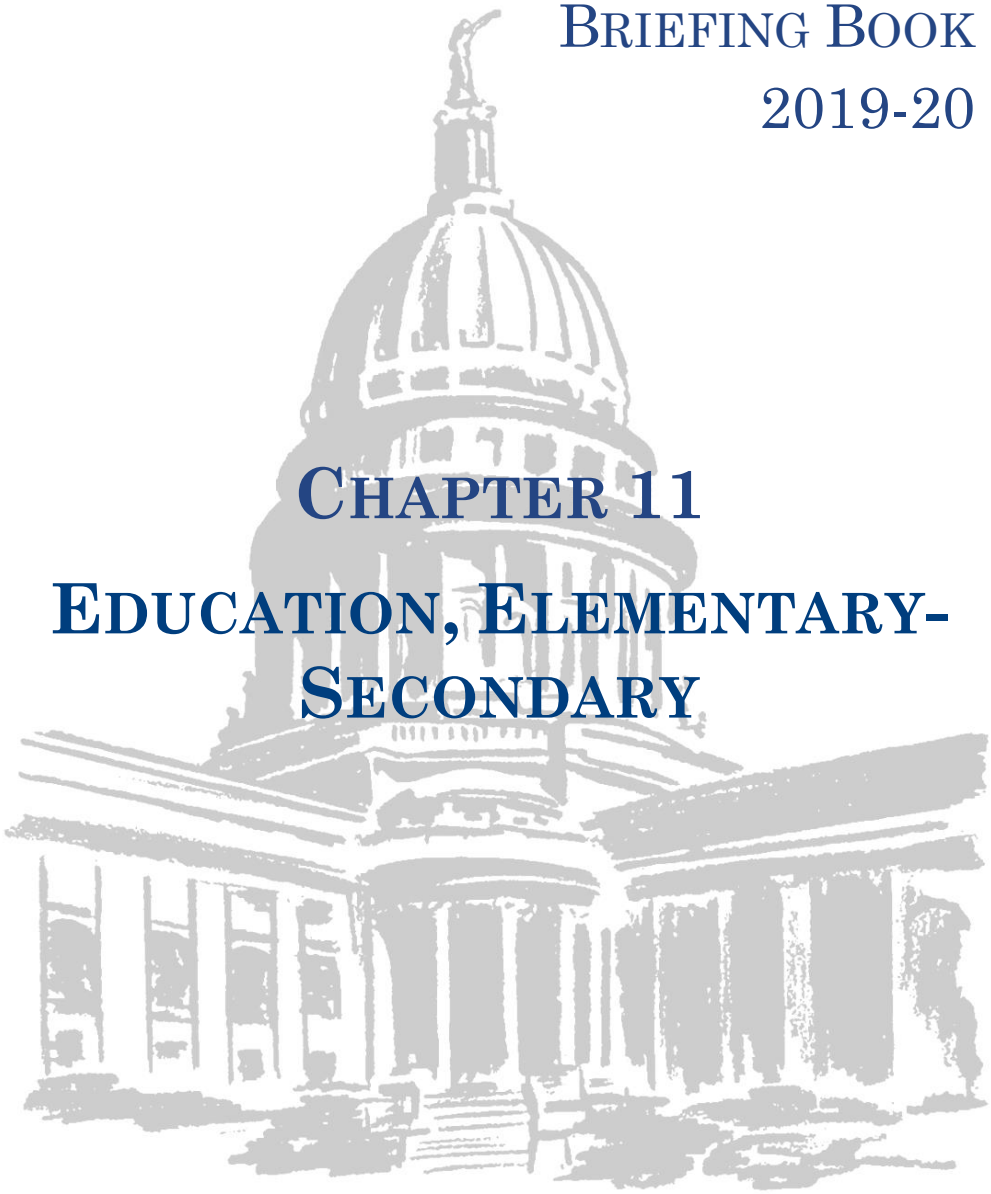
Tax credit: Money deducted from a claimant's tax liability. Most tax credits are nonrefundable, meaning that they are not awarded as cash in the event that the credit exceeds tax liability in a given year.

Tax incremental financing: A tool by which local governments finance the cost of new infrastructure and other improvements related to economic development projects. In general, the costs are financed with increased tax revenues in a tax incremental financing district over a given time period.

Venture capital: Money invested in start-up companies or companies preparing for significant expansion. Venture capital investments are considered relatively high-risk but are perceived as vital to economic growth.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 11

EDUCATION, ELEMENTARY-SECONDARY

Katie Bender-Olson and Jessica Ozalp, Senior Staff Attorneys
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.wisconsin.gov/lc

Introduction

The Wisconsin Constitution guarantees all Wisconsin children, from 4 to 20 years old, access to a sound basic education. Since the adoption of this guarantee, the Wisconsin public education system for K-12 students has grown to a comprehensive and complex array of schools, districts, and state programs.

Constitutional Basis

The Wisconsin Constitution requires all children to receive a free education that is as nearly uniform as possible.

The Constitution requires the state Legislature to establish district schools which are to be "as nearly uniform as practicable" and "free and without charge for tuition to all children." [Wis. Const. art. X, s. 3.] The supervision of public instruction is vested in 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 leads the Department of Public Instruction (DPI) in implementing policies and promulgating administrative rules. As a constitutional officer, the State Superintendent's powers can only be altered in certain ways by the Legislature. Courts have held that the Constitution prohibits granting authority over public instruction to other officers who are not subordinate to the State Superintendent. [*Coyne v. Walker*, 2016 WI 38; *Thompson v. Craney*, 199 Wis.2d 674 (1996).]

School District Characteristics and Enrollment

Local school districts, through their elected boards, administer K-12 education. DPI provides oversight, technical assistance, and funding to the districts.

Wisconsin currently has 422 public school districts. All territory in the state is required to be in a school district. In the 2017-18 school year, there were 860,138 public school students in pre-kindergarten through 12th grade programs, a slight decrease from the previous year. The Department of Administration has projected Wisconsin's school-age population to increase slightly between 2010 (the date of the last Census) and 2035.

DPI provides direction, resources, and technical assistance for K-12 public 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, advises on curriculum and school operations, ensures education for children with disabilities, offers professional guidance and counseling, and develops school and public library resources, among other responsibilities. [See generally, ch. 115, Stats.]

The state currently relies on local school districts through their elected boards to administer its K-12 programs. In addition, 12 cooperative educational service agencies (CESAs) furnish support services to the local districts on a regional basis.

Demographics of Pupils

Approximately 30.1% of the 2017-18 public school pupils in Wisconsin can be classified as minority pupils. Current public school enrollment is approximately 4% Asian, 0.1% Pacific Islander, 9.1% Black, 12% Hispanic, 1.1% American Indian/Alaskan Native, and 3.8% with two or more races or ethnicities.

In the 2017-18 school year, approximately 38.3% of pupils were classified as economically disadvantaged.

Wisconsin public schools provided services to 118,546 special education pupils, or 13.8% of the public school enrollment, in 2017-18. Schools also provided services to 50,848 English language learners (ELL), or 5.9% of the public school enrollment, in the 2017-18 school year.

Financing

The Wisconsin Constitution establishes two fundamental aspects of school finance: creation of a common school fund; and designated minimum local tax contributions to qualify for such funds. [Wis. Const. art. X, ss. 2 and 4.] The remainder of the school finance system is a creature of statute. [See generally, ch. 121, Stats.]

The state provides financial assistance to school districts to achieve two basic policy goals: (1) to reduce reliance on the local property tax as a source of revenue for educational programs; and (2) to guarantee that a basic educational opportunity is available to all pupils regardless of the local fiscal capacity of the district in which they reside.

For a complete description of the state equalization formula, see the Legislative Fiscal Bureau's (LFB) 2017 Informational Paper, *State Aid to School Districts*, at: http://www.legis.wisconsin.gov/lfb.

The 422 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 fiscal year 2015-16, state aid represented approximately 45.4% of public school revenue while federal aid contributed approximately 7.1% of revenue. The remainder of school revenue came from property tax and other local revenue.

State aid is provided in a sum-certain appropriation and the funding level is determined through the budget process, similar to most other state appropriations. For the 2016-17 school year, the Legislature appropriated over $5.4 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 represents approximately 32% of the state's total general fund budget for the 2015-17 biennium.

Methods of State Support

The state funds K-12 education through three different methods: (1) general school aids; (2) categorical aids; and (3) the school levy tax credit.

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 is known as both the "general school aid formula" and 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 offsets specific program costs such as special education, class size reduction, and pupil transportation. 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.

Also, school district costs that are not reimbursed through a particular categorical aid program are included as shared costs under the equalization formula. This means the state shares in unreimbursed costs only to the extent to which a school district is supported under the equalization formula.

General or Equalization Aids

The current school aid formula 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.

Categorical Aids

Categorical aids, including aid for special education, can be formula driven for specific students or functions or can be provided as grants.

The state also finances K-12 education through targeted-purpose aids outside the revenue limit, known as categorical aids. There are two types of categorical aids: (1) programs which automatically provide funds to school districts based on formulas; and (2) grant programs in which districts must submit a request in order to receive the funds. Unlike equalization aid, categorical aid programs are distributed without regard to the relative size of a school district's property tax base. In addition, most of the programs are funded on a sum certain dollar basis, which may not match school district expenditures. For these programs, if the appropriated amount in a particular year is insufficient to fully fund a categorical formula, aid payments are prorated.

The major categorical aid program in Wisconsin is the special education program, which accounts for nearly half of categorical aid funding. State and federal law require that local school districts provide special education and related services to children with disabilities ages 3 through 21 who reside in the school district. The state reimburses a portion of the costs for educating and transporting pupils enrolled in special education. The total appropriation for special education programs in the state for 2016-17 was approximately $369 million and is estimated to cover 26.2% of eligible costs.

The second largest proportion of categorical aid funds are allocated to per-pupil aid. This appropriation currently provides every school district a $250 per pupil payment each year. Per pupil funding is outside of the revenue limits.

The state also provides categorical funding for the Achievement Gap Reduction (AGR) program, which awards five-year grants to certain schools to reduce class sizes or implement specified interventions in grades K-3. Each participating school receives state aid of approximately $2,000 for each eligible low-income K-3 pupil.

Additional categorical aids include the Common School Fund (library aid), pupil transportation, and supplemental aid for school districts with large areas (sparsity aid).

State School Levy Tax Credit

The school levy tax credit and the first dollar credit are mechanisms for accomplishing one of the main objectives of state support for schools: relieving the burden of the property tax. The school levy tax credit is distributed based on each municipality's three-year share of statewide levies for school purposes, multiplied by the annual amount appropriated for the credit, and allocated proportionately to reduce individual owners' property tax bills. Further information on this credit and the first dollar credit can be found in the LFB's 2017 Informational Paper, *State Property Tax Credits*.

Federal Funding and Programs

The federal government provides funds to help support numerous educational programs in Wisconsin. DPI reports that federal funds provide approximately 7% of the funds expended on public K-12 schools in the state. The two major programs of the federal government are those under the Elementary and Secondary Education Act (ESEA), and the special education program, the Individuals with Disabilities Education Act (IDEA).

Current law limits the annual amount of revenue per pupil that each district can raise through the combination of general school aids, computer aid, and property taxes. This limit is commonly referred to as the "revenue cap."

ESEA has been reauthorized several times since it was originally enacted. The 2002 version is referred to as the "No Child Left Behind Act" (NCLB) and the 2015 reauthorization is titled the "Every Student Succeeds Act" (ESSA). This federal legislation includes testing and accountability measures and standards that states, school districts, and individual schools are required to meet. In July 2012, Wisconsin was granted a waiver from certain NCLB requirements to allow the state more flexibility under ESEA in exchange for the implementation of various accountability measures. The NCLB waiver expired in August 2016 and Wisconsin began implementing ESSA in the 2017-18 school year.

More information on federal education law and Wisconsin's ESSA plan is available at: http://dpi.wi.gov/esea.

School District Governance

Types of Districts

Wisconsin school districts are organized in different forms. Districts may be classified as one of the following:

- Common school districts. (Most school districts are common school districts.)
- Unified school districts. (Unified school districts are generally in urban areas.)
- Kindergarten through grade eight (K-8) districts.
- Union high school districts.

School boards have broad authority to supervise and manage the school district and the power to tax for the maintenance of school and school district programs.

- First-class city districts (only Milwaukee).

School districts are governed by elected school boards. The statutes specify the number of school board members based on the type of school district structure and provide a means to change the number of school board members or plan of apportionment for school board members. The elections are generally held at the nonpartisan spring election for a term of three years. [s. 120.06 (1), Stats.]

Management of Districts

The statutes assign the management of the school district to the school board, and empower the board 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 establishment, provision, and improvement 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 establish the duties of the school district president, treasurer, and clerk. [s. 120.12, Stats.]

Q: How many credits are required for high school graduation?

A: The number required is determined by the school board. Wisconsin law requires 15 credits but encourages school boards to require an additional 8.5 credits. [s. 118.33, Stats.]

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. [ss. 120.08 to 120.11, Stats.]

State Laws on School Operations

Wisconsin law provides that public education is a fundamental responsibility of this state and the statutes contain broad educational goals and expectations for the public schools. These goals cover broad areas under academic skills and knowledge, vocational skills, personal development, and citizenship. [s. 118.01, Stats.] The statutes also create requirements relating to who attends school, what they learn, how learning is measured, and many other aspects of school operations.

Some examples of statutory requirements pertaining to schools include:

- Compulsory attendance and truancy. [ss. 118.15 to 118.163, Stats.]
- Transportation to school. [s. 121.54, Stats.]
- Provision of educational services to deaf, blind, special needs, ELL, gifted and talented, and other student subgroups. [ch. 115, Stats.; s. 118.35, Stats.]
- Building safety and maintenance. [ss. 115.33 and 120.12, Stats.]
- Nutrition programs. [ss. 115.34 to 115.347, Stats.]
- Health and social service programs. [ss. 115.345 to 115.368, Stats.]
- Teacher preparation and licensing. [s. 115.28, Stats.]
- Privacy of student records. [s. 118.125, Stats.]
- Hours of instruction. [s. 121.02 (1) (f), Stats.]
- Graduation standards. [s. 118.33, Stats.]

Wisconsin's school and school district accountability system is also found in the statutes, including the following components:

- Academic standards. [s. 118.30, Stats.]
- State standardized assessments. [s. 118.30, Stats.]
- School report cards. [s. 115.385, Stats.]
- Interventions for low performing schools and school districts. [s. 118.42, Stats.]
- Educator evaluations. [s. 115.415, Stats.]

Role of Department of Public Instruction

DPI oversees the operation of all public K-12 schools in the state. DPI administers educator licensing and certification, and provides schools with resources relating to curriculum and standards. DPI runs state and federal grant programs, federal nutrition programs such as free and reduced-price lunch, and school and public library systems. It also operates CTE and career readiness programs such as apprenticeships.

One of DPI's main duties is managing the student information system, data reporting, state assessments, and educator evaluations that make up the state school and school district accountability system. The accountability system is a mechanism for fulfilling requirements mandated under both federal and state law. Accountability requirements aim to reduce the achievement gap in the academic performance of subgroups of students. The accountability system disaggregates test scores by income, race, disability, and other categories to track how these subgroups achieve compared to their peers. The objective of equalizing opportunities for academic achievement underpins the federal laws described above, and DPI carries out Wisconsin's implementation of this initiative.

School Accountability

To measure achievement and growth, state and federal law require statewide assessments for students in public schools. Assessment scores are a major component of Wisconsin's school accountability system, developed to comply with federal law. Historically, the federal No Child Left Behind Act (NCLB) required all states to implement standardized tests based on academic standards. Starting in 2012, Wisconsin's NCLB waiver conditions required annual testing of students in grades three through eight and once in high school. Although NCLB ended with the 2015 reauthorization of ESEA, the yearly testing requirement continues under ESSA.

A number of assessments are used in Wisconsin to fulfill federal requirements through the state accountability system. [s. 118.30, Stats.] State statutes also require additional testing beyond federal minimums, such as science and social studies tests. Together, all the required tests make up the Wisconsin Student Assessment System. Student performance on these assessments is reported in proficiency categories and used to produce school "report cards." For more information about the assessments used in Wisconsin public schools, see http://dpi.wi.gov/assessment.

Low-Performing Schools

Federal education law requires states to establish a system to identify public schools that need improvement. Wisconsin's ESSA plan for federal accountability is meant to augment the primary system (state report cards). State law requires DPI to take specific steps to identify and improve low-performing schools. [s. 118.42, Stats.]

General Provisions

Under state law, 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 State Superintendent may direct additional measures in consultation with the school board, school superintendent, and collective bargaining units.

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 a 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. In addition, 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.

Under Wisconsin law, there are consequences for low-performing public schools and for low-performing school districts.

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, the school board must seek input from school district staff, parents, and community leaders on implementing the directive.

[s. 118.42, Stats.]

Milwaukee Public Schools

State law contains provisions that apply specifically to the Milwaukee Public Schools (MPS), as follows:

1. The MPS school board must evaluate all school buildings in the school district 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. MPS must annually prepare a budget for each school in the school district.

3. MPS must 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 birth through postsecondary education.

4. MPS must provide alternative methods of attaining a high school diploma for those pupils who are unlikely to graduate in the 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. If MPS determines that sufficient state or federal aid or private funding 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 DPI, MPS, and the Legislature.

6. MPS must conduct an annual survey of parents of pupils enrolled in the school district 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. MPS must report assessment scores and achievement data for students in Opportunity Schools and Partnership Program[1] schools in its annual report to DPI.

[s. 119.16, Stats.]

Compulsory School Attendance

State law requires a parent, guardian, or other person caring for a child to make that child attend school on a regular basis. Children between 6 and 18 years old must generally attend school until the end of the school term, quarter, or semester in which the child turns 18. A child is not required to be enrolled in kindergarten, but if the child is enrolled in kindergarten, then he or she must attend regularly. The attendance requirements do not apply to a child who has already graduated from high school and do not apply on religious holidays.

A student may comply with the attendance requirements by attending a public school, attending a private school, or being homeschooled. A parent or guardian who chooses to homeschool a child (referred to in the statutes as conducting a "home-based private educational program") must file a form with DPI each year.

Children between the ages of six and 18 are required to attend school. A child who is enrolled in five-year old kindergarten must also attend school regularly.

State law excuses a child from attending school under certain circumstances. Attendance requirements do not apply to a child who is excused by a parent or guardian prior to an absence; however, the excused absences are limited to 10 days. A school board may excuse a child who is temporarily unable to attend because of a physical or mental condition, but who is expected to return. A school board may also excuse an eligible child who is serving as a poll worker.

[ss. 115.30 (3), and 118.15 (1), (3), and (4), Stats.]

[1] An OSPP school is one transferred to an Opportunity Schools and Partnership Program created in the 2015-17 Budget. [s. 119.33, Stats.]

Parental Choice Programs

Parental choice programs ("choice programs") allow eligible, low-income students to attend private schools using state-funded tuition vouchers. Wisconsin has four choice programs, commonly referred to as: (1) the Milwaukee Parental Choice Program (MPCP); (2) the Racine Parental Choice Program (RPCP); (3) the Statewide Parental Choice Program ("Statewide Program"); and (4) the Special Needs Scholarship Program.

Parental choice programs allow eligible families to send their children to a participating private school at no charge.

Milwaukee, Racine, and Statewide Programs

The MPCP was the first choice program in Wisconsin and began accepting low-income students in the City of Milwaukee in 1990. Only nonsectarian (nonreligious) schools were originally eligible to participate in the MPCP, but the program was expanded to include sectarian schools in 1995. The MPCP is the largest choice program, enrolling 28,702 students in 126 participating private schools in the 2017-18 school year.

The RPCP became the second choice program in the state when it was created in 2011. The program serves eligible students who reside within the Racine Unified School District. The RPCP enrolled 3,007 students in 23 private schools in the 2017-18 school year.

The Statewide Program was created in 2013 to serve eligible students who live outside of the City of Milwaukee or the Racine Unified School District. The Statewide Program enrolled 4,540 students in 154 private schools in 2017-18.

[ss. 118.60 and 119.23, Stats.]

Q: Who is eligible for school choice?

A: Children who meet requirements relating to family income and residency. A child already attending private school may only enter the RPCP or statewide program at certain grade levels.

Special Needs Scholarship Program

The Special Needs Scholarship Program was created in the 2015-17 Biennial Budget. Students with disabilities are eligible for this program if they have an IEP (individualized education plan) and they were denied open enrollment to another school district. In 2017-18, the state payment for these scholarships was $12,207 per full-time equivalent (FTE) pupil to participating private schools. The program enrolled 244.2 FTE pupils in 27 participating private schools in the 2017-18 school year.

[s. 115.7915, Stats.]

State Funding for Choice Schools

Private schools receive a payment from the state for each eligible student attending the school under a choice program. During the 2017-18 school year, the state paid private schools $7,530 for each eligible K-8 student, and $8,176 for each eligible 9th to 12th grade student. Payments made to schools participating in the MPCP are funded by a combination of state general program revenue (GPR) (80.8% in 2017-18) and a reduction in the amount of general school aids received by the Milwaukee Public Schools (MPS) (19.2%). However, MPS can levy to make up for reductions in its school aids through property tax revenue.

Payments made to schools participating in the RPCP and Statewide Program were originally funded entirely by GPR, but a funding distinction now exists based on whether a student entered the choice program before or after the 2015-16 school year. Students who started participating in the RPCP or Statewide Program in 2014-15 or earlier are still funded entirely by GPR, while students who entered the program in 2015-16 or later are now funded by a reduction in state aid to school districts. Districts receive a revenue limit adjustment equal to this aid reduction, and can include pupils who entered the programs in 2015-16 or later in their count for general aid purposes.

Requirements for Choice Schools

A private school must comply with statutory requirements to participate in a choice program. These requirements include:

- Administering statewide assessments to choice students.
- Securing accreditation.
- Adopting academic standards.
- Requiring teachers and administrators to possess specified credentials, such as a bachelor's degree or license issued by DPI.
- Providing at least 1,050 hours of direct pupil instruction in grades 1 to 6 and at least 1,127 hours of direct pupil instruction in grades 7 to 12.
- Complying with health and safety and nondiscrimination laws.

[ss. 118.30 (1s) to (2), 118.301 (3), 118.33 (1m), 118.60 (2) and (7), 119.23 (2) and (7), Stats.]

Open Enrollment

Additional information on the open enrollment program can be found on the DPI website at:
http://www.dpi.wi.gov/open-enrollment

Wisconsin has both full-time and part-time open enrollment. The full-time open enrollment program allows parents to apply for their children to attend school in a school district other than the one in which they reside, if certain conditions are met.

The part-time open enrollment program allows a high school student to take up to two courses in a nonresident district.

The major open enrollment application process requires applications to be submitted between the first Monday in February and the last weekday in April.

A parent may open enroll his or her child in a school in another district if there is room in the district and if an application is submitted within a certain window of time. In specified circumstances, an application may be submitted at any time.

A student may use an alternate application process at any time if any of the following special circumstances apply:

- The student has been the victim of a violent criminal offense.
- The student is or has been homeless in the current or prior school year.
- The student has been the victim of repeated bullying or harassment, which has continued despite being reported to the school board.
- The student's residence changed because of military orders.
- The student moved into the state.
- The student's residence changed because of a court order, custody agreement, or placement in or removal from a foster home or the home of a non-parent.
- The student's parent, the resident school district, and the nonresident school board agree that open enrolling into the nonresident school district is in the student's best interests.
- The student's parent and the nonresident school board agree that open enrolling is in the best interests of the child, and denial by the resident school board is overturned by DPI.

A school district may only deny an open enrollment application for specified reasons. A district may deny a regular education student applying for open enrollment only if: (1) there is insufficient space in a school, program, class, or grade; (2) the student was expelled from another district within the last three years for certain dangerous conduct or there is a pending disciplinary proceeding for such conduct; or (3) the student was previously identified by the school district as habitually truant in the current or prior school year.

[ss. 118.51 to 118.52, Stats.]

Special Education and Open Enrollment

A school district may deny a special education student application for open enrollment for two additional reasons, beyond those previously mentioned. A district may deny a special education student's application if services required under the student's Individualized

Education Plan (IEP) are unavailable or if there is insufficient space to accommodate the services needed by the student. A district may also deny a special education student's application if the student was identified as potentially having a disability, but has not yet been evaluated by an IEP team.

[s. 118.51 (3), (3m), (5), and (8), Stats.]

Charter Schools

Charter schools are public schools that operate under a "charter," or authorizing contract, and are exempt from many state laws that apply to traditional public schools. Exemption from requirements allows charter schools autonomy to experiment with instruction methods, curriculum, or other policies. Wisconsin passed the first charter school legislation in 1993, which limited charters to 20 schools statewide. The limit was later removed, and 234 charter schools were operating in Wisconsin as of the 2017-18 school year.

A school district may create a charter school. In addition, several specified entities, such as the City of Milwaukee, are authorized to establish charter schools.

School Board Charters vs. Independent Charters

A charter school may be authorized either by a school board ("school board charter schools") or by one of a list of entities named in the statutes ("independent charter schools"). Only school boards were authorized to create charter schools when charter legislation was originally enacted. Since that time, the Legislature has authorized additional entities to create charter schools.

School Board Charter Schools

A school board may create a charter school on its own initiative or after receiving a petition from teachers in the district. If the school board acts on its own initiative, the board contracts with an entity of its choice to operate the charter school. If the school board receives a teacher petition, it must hold a public hearing and may either grant or deny the request to create a charter school. Denial of a petition by the MPS Board can be appealed to DPI. If a charter school is established by petition, the school board must contract with the entity named in the petition.

A school board charter school is either an "instrumentality" or a "non-instrumentality" of the school district. In an "instrumentality" school, the charter school personnel are employees of the school district. In a "non-instrumentality" school, the district does not directly employ the personnel. Generally, school boards determine whether or not a school board charter school is an instrumentality of the district.

[s. 118.40 (1m) to (2m), (3) (a), and (7) (a), Stats.]

Independent Charter Schools

State law names specific entities that are authorized to create independent charter schools. In 1997, the Legislature authorized four entities to create independent charter schools: (1) the City of Milwaukee; (2) the University of Wisconsin (UW) – Milwaukee; (3) UW-Parkside; and (4) Milwaukee Area Technical College (MATC). The Legislature has since expanded the list, which now includes: (1) any technical college district board; (2) any UW institution; (3) Gateway Technical College; (4) the Waukesha County Executive; (5) the College of Menominee Nation; (6) Lac Courte Oreilles Ojibwa Community College; and (7) the Office of Educational Opportunity in the UW System.

[s. 118.40 (1m) and (2m) to (2x), Stats.]

The 2015-17 Biennial Budget (2015 Wisconsin Act 55) also created a mechanism for conversion of certain eligible schools in Milwaukee County into a new form of charter through the Opportunity Schools and Partnership Program. [s. 119.33, Stats.]

State Funding for Charter Schools

State funding for a charter school depends upon whether it is a school board charter school or independent charter school, and if the school is an independent charter school, on what entity authorized the school. State funding for school board charter schools is received by the school district and distributed according to the terms of each charter school's particular contract. The amount a school district receives for each charter school student is generally calculated under the school aid formula. Charter school students are counted in the school district's membership for purposes of revenue limits and equalization aid, and the contract costs are eligible for cost-sharing under the equalization aid formula.

While independent charter schools receive per pupil funding in a similar manner, their effect on the school finance system depends on which entity authorized the school. An independent charter school created by one of the original authorizers—the City of Milwaukee, UW-Milwaukee, UW-Parkside, or MATC—received payments of $8,612 per student in the 2017-18 school year. To provide the state funding for these charter school students, the general school aid available to traditional public schools is reduced statewide. School districts can levy property taxes to make up for the reduced funding.

An independent charter school created by a technical college district board, a UW institution other than UW Milwaukee or UW Parkside, the Waukesha County Executive, or the Office of Educational Opportunity receives per pupil payments in the same amount as those received by other independent charter schools. A charter school created by the College of Menominee Nation or Lac Courte Oreilles Ojibwa Community College receives different per student payment amounts, which are based on federal payment amounts from the Bureau of Indian Education. Unlike students who attend a charter school created by one of the original independent charter school authorizers, students attending a school created by other charter authorizers can be counted for revenue limit and general aid

purposes by the resident school district. To provide funding for these students, the general school aid available to a particular school district will be reduced based on students who live within the district but attend one of these independent charter schools. A school district's general aid payment will be reduced by the same amount that is paid to the independent charter schools. School districts are not allowed to increase tax levies to make up for the reduced funding.

[s. 118.40 (2r) (e) to (g) and (2x) (e) and (f), Stats.]

Requirements for Charter Schools

Charter schools are generally exempt from requirements in chs. 115 to 121, Stats., unless the language of a particular provision specifically applies to such schools. The statutes prohibit charter schools from charging tuition and from discriminating in admissions or program participation on the basis of sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation, or disability. Charter schools or their authorizing board or entity are subject to certain statutory requirements, including:

- Complying with health and safety requirements applicable to traditional public schools.
- Requiring teachers to hold a DPI-issued license or permit.
- Administering statewide assessments to students.
- Approving only high-quality charter school applications that meet identified educational needs and promote a diversity of educational choices.
- Giving preference in charter contracts to charter schools serving children-at-risk.

Q: Must a charter school comply with state school laws?

A: Charter schools are generally exempt from school laws but are, instead, regulated by their charters.

State law limits charter school contracts to five-year terms, which can be renewed, and identifies bases for a school board or authorizing entity to revoke a school's charter. The bases include violation of the contract, failure of charter students to make sufficient progress attaining educational goals, or failure to comply with generally accepted accounting standards of fiscal management.

[ss. 118.30 (1m) and (1r), and 118.40 (2r) (b) and (d), (3) (b), (3m), (4) (ar) and (b), (5), and (7) (b), Stats.]

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on education topics, such as state aid to school districts, local government expenditure and revenue limits, the open enrollment program, and

pupil assessment. These Informational Papers may be found at: http://www.legis.wisconsin.gov/lfb.

2. The Legislative Audit Bureau has prepared the following reports that relate to elementary and secondary education, available at http://www.legis.wisconsin.gov/lab:
   - *Special Needs Scholarship Program* (July 2018).
   - *Opportunity Schools and Partnership Program* (August 2017).
   - *Read to Lead Development Fund* (November 2017).
   - *Governor's Read to Lead Development Fund* (September 2013).
   - *Test Scores for Pupils in the Milwaukee Parental Choice Program (Report 5 of 5)* (August 2012).
   - *Open Enrollment Program Transfer Amount Alternatives (December 2011).*
   - *Milwaukee Parental Choice Program (Letter Report, August 2010).*
   - *Virtual Charter Schools* (February 2010).

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 U.S. Department of Education maintains a website that has information on all federal education programs, including the "Every Student Succeeds Act." The website is: http://www.ed.gov.

GLOSSARY

ACP/ ILP: Academic and Career Plans, also known as ILP, Individualized Learning Plans. All students enrolled in grades 6 through 12 in a public school district are participating in ACP since fall 2017.

AGR: Achievement Gap Reduction program replacing SAGE (see definition below), which phased out at the end of the 2017-18 school year. Only prior SAGE schools became eligible to participate in the new AGR program.

CESAs: Cooperative educational service agencies. Twelve CESAs provide support activities to local school districts on a regional basis. They are governed by ch. 116, Stats., and their services vary based upon the districts they serve.

CTE: Career and Technical Education. In Wisconsin, this includes apprenticeship programs, career centers, technical preparation programs (Tech-Prep), options to take courses at postsecondary, at-risk youth programs in Milwaukee, and opportunities to receive industry certifications.

DPI: Department of Public Instruction.

ELL: English Language Learner.

ESSA: Every Student Succeeds Act of 2015, updating No Child Left Behind.

IDEA: Individuals with Disabilities Education Act. The term used to refer to the federal law relating to special education.

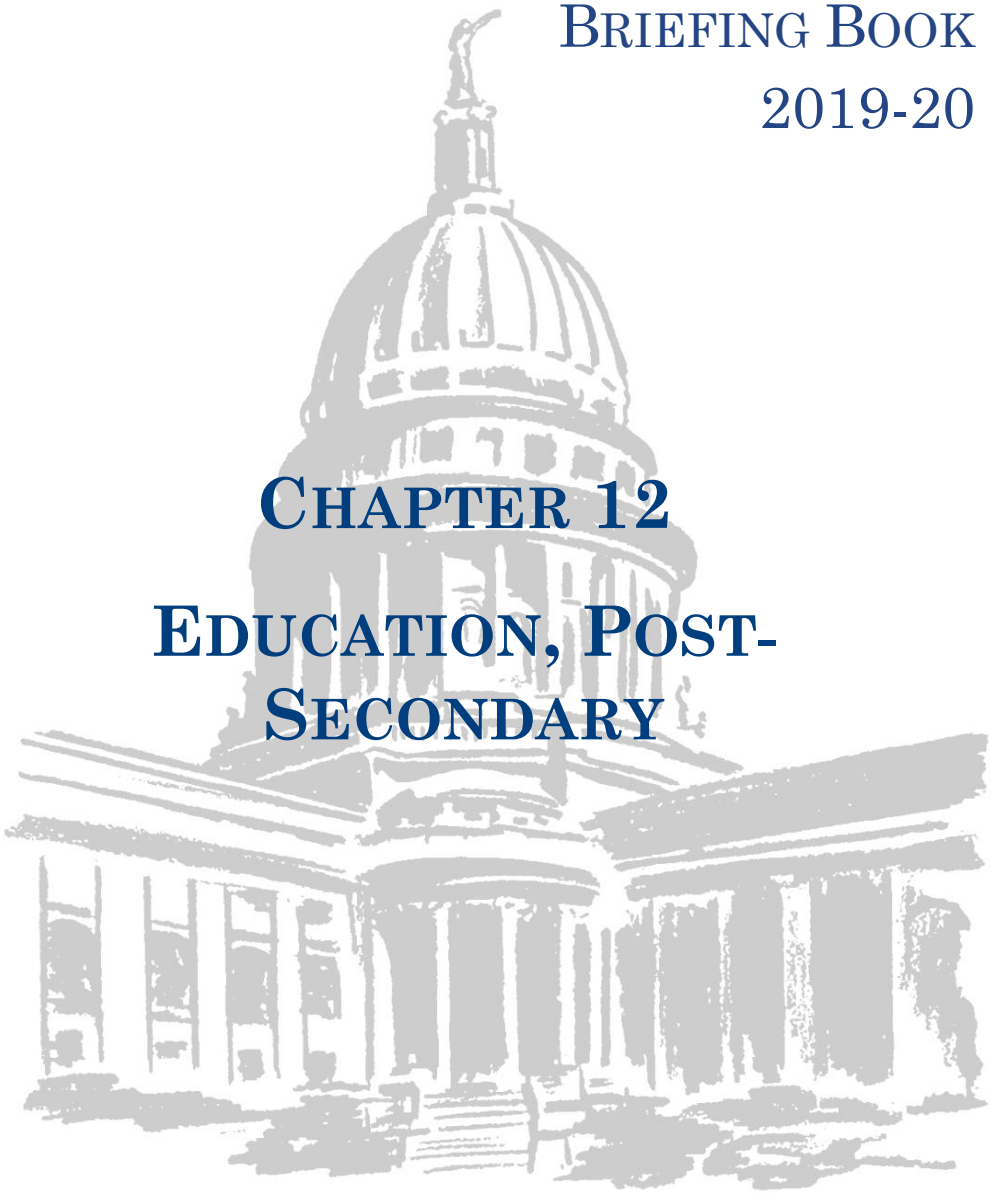
IEP: Individualized Education Plan created for a student with a disability.

NCLB: Federal No Child Left Behind Act of 2001. A reauthorization of the Elementary and Secondary Education Act (ESEA), designed to improve gains in student achievement and to hold states accountable for students' progress. NCLB was replaced by ESSA, the newest reauthorization of ESEA.

SAGE: Student Achievement Guarantee in Education. A state categorical aid program focused on reduced class sizes at the kindergarten to third grade level. SAGE was replaced by the AGR program.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 12

EDUCATION, POST-SECONDARY

Rachel E. Snyder and Julia Norsetter, Staff Attorneys
Wisconsin Legislative Council

TABLE OF CONTENTS

INTRODUCTION

Wisconsin has a rich history in higher education and offers a broad array of educational options. The University of Wisconsin System (UW System) and the Wisconsin Technical College System (WTCS) are the two statewide public higher education systems. Wisconsin is also home to over 20 private, nonprofit colleges and universities, two tribal colleges, and over 200 for-profit, post-secondary schools. In support of these educational offerings, Wisconsin provides a variety of financial aid opportunities and tax benefits.

UNIVERSITY OF WISCONSIN SYSTEM

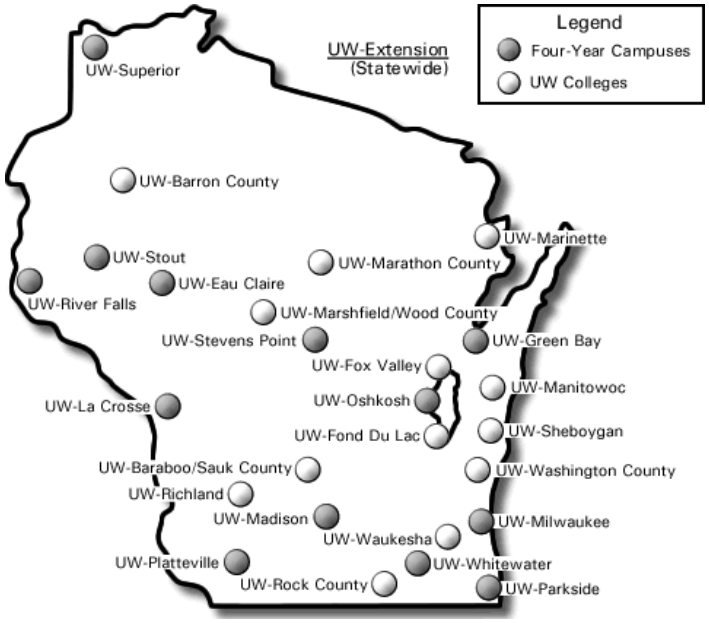
The UW System consists of 13 degree-granting universities, 13 two-year colleges, and the statewide University of Wisconsin (UW)-Extension programs. The overall mission of the system includes the development of human resources and the discovery and dissemination of knowledge through teaching, research, 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 Governor (and U.S. Senator) Robert M. La Follette, Sr. 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. [s. 36.01, Stats.; Jack Stark, *The Wisconsin Idea: The University's Service to the State*, in State of Wisconsin Blue Book 101 (1995-1996).]

The statutory requirements applicable to the UW System are set forth in ch. 36, Stats., which grants broad authority and responsibility to the UW Board of Regents (BOR) to operate the UW System. In addition, ch. 36, Stats., contains provisions relating to faculty and student governance; eligibility for in-state tuition; faculty and academic staff layoffs and termination; numerous special programs which the UW System must offer; and tuition remission programs.

Campuses

The UW System has 13 four-year campuses and 13 two-year campuses, referred to as "UW Colleges," as shown on the map below.



The total enrollment at each four-year campus in the Fall 2017 semester was:

- UW-Madison: 43,450
- UW-Milwaukee: 25,381
- UW-Eau Claire: 10,825
- UW-Green Bay: 7,178
- UW-La Crosse: 10,534
- UW-Oshkosh: 13,935
- UW-Parkside: 4,308
- UW-Platteville: 8,558
- UW-River Falls: 6,110
- UW-Stevens Point: 8,208
- UW-Stout: 9,401
- UW-Superior: 2,590
- UW-Whitewater: 12,430

[*Headcount Enrollment by Institution*, Fall 2017-18, available at: https://www.wisconsin.edu/education-reports-statistics/student-statistics/.]

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 11 other four-year campuses are known as "comprehensive campuses." They generally offer associate, bachelor's, and select graduate programs.

The UW System two-year campuses are known as the "UW Colleges." They generally offer associate degrees, but some campuses offer select bachelor's degrees in collaboration with the comprehensive campuses. The UW Colleges are generally located in areas of the state that are not near a four-year campus. The colleges, and their locations, are as follows:

- UW-Barron County (Rice Lake)
- UW-Marinette County (Marinette)
- UW-Marathon County (Wausau)
- UW-Marshfield/Wood County
- UW-Fox Valley (Menasha)
- UW-Manitowoc
- UW-Fond du Lac
- UW-Sheboygan
- UW-Baraboo/Sauk County
- UW-Washington County (West Bend)
- UW-Waukesha
- UW-Rock County (Janesville)
- UW-Richland (Richland Center)

The total enrollment of all UW Colleges campuses in the Fall 2017 semester was 11,608. [*Headcount Enrollment by Institution*, Fall 2017-18, available at: https://www.wisconsin.edu/education-reports-statistics/student-statistics/.]

As discussed below, effective July 1, 2018, the UW Colleges are subject to a restructuring plan and will become branch campuses of the four-year institutions.

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 System institutions, the Wisconsin counties, and tribal governments, 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 four UW-Extension divisions: Cooperative Extension; Continuing Education, Outreach and E-Learning; Broadcasting and Media Innovations; and Business and Entrepreneurship.

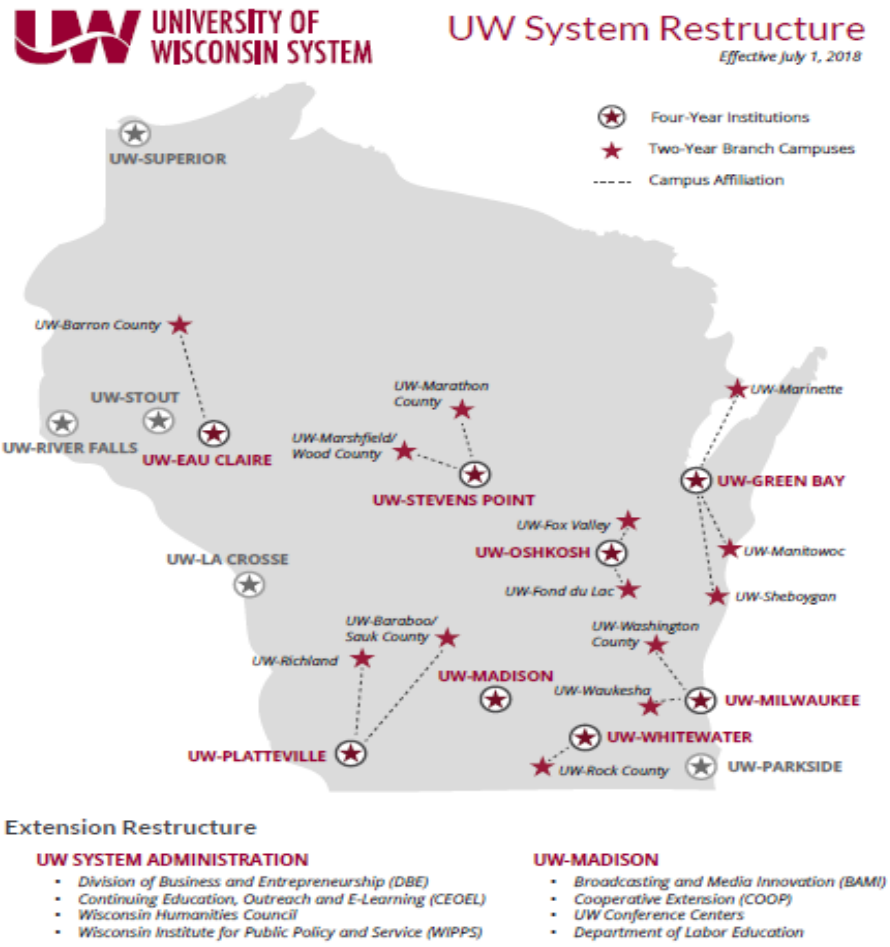
Wisconsin residents participate in UW-Extension programs through various delivery methods, including workshops, one-on-one counseling, interactive networks, and correspondence study.

As discussed below, effective July 1, 2018, the UW-Extension is subject to a restructuring plan and will be divided between UW-Madison and the UW System Administration.

Restructuring

In October 2017, UW System President Ray Cross proposed to restructure the UW System by merging its 13 two-year institutions with nearby four-year universities. The plan would also assign UW-Extension divisions to UW-Madison and UW System Administration. The plan was approved by the BOR in November 2017 and by the Higher Learning Commission on June 28, 2018. The restructuring plan is expected to take place in two phases, from July

1, 2018 to June 30, 2019, and from July 1, 2019, to June 30, 2020. A map of the UW System as restructured is shown below:



Governance of the UW System

The UW System is governed by the BOR, which consists of 18 members: 14 citizen members appointed by the Governor and confirmed by the Senate for seven-year staggered terms; two students at UW System institutions who serve two-year terms, also appointed by the Governor; and the State Superintendent of Public Instruction and the President of the WTCS Board, or by his or her designation, another member of the WTCS Board. At least one of the 14 citizen members of the BOR must be appointed from each of Wisconsin's eight Congressional districts. [s. 15.91, Stats.]

Biographies of current BOR members may be found at:
https://www.wisconsin.edu/regents/about-the-regents/

BOR policy documents may be found at:
https://www.wisconsin.edu/regents/policies/

The BOR is directed by law to: enact policies and promulgate rules for governing the UW System; plan for the future needs of the state for university education; ensure the diversity of quality undergraduate programs while preserving the strength of the state's graduate training and research centers; and promote the widest degree of institutional autonomy within the UW System. Some of the specific powers of the BOR 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 by the UW System.
- Determining admission policies.
- Granting degrees.

The president and chancellors of the UW System are charged with the implementation of BOR policies and the administration of the institutions. [ss. 36.09 and 36.11, Stats.] Under statutory "shared governance," the faculty, academic staff, and students of each institution play a role in the governance of the UW System.

Specifically, faculty, academic staff, and students of each institution may organize themselves as they determine and may select representatives to participate in institutional governance. Each group is primarily responsible for advising the chancellor at that institution regarding the policies and procedures that concern its respective membership. The responsibilities and powers of the faculty, academic staff, and students are subordinate to the responsibilities and powers of the BOR, the president, and the chancellor. [s. 36.09 (3m) to (5), Stats.]

The online application to all UW System institutions may be found at:
https://apply.wisconsin.edu

Profiles of admitted freshman showing average class ranks and tests scores for students admitted at each campus can be found at:
http://uwhelp.wisconsin.edu/admissions/freshman/guidelines.aspx

Admission

Specific admission policies for each UW institution are developed by the individual campuses, taking into account that campus's mission and resources and guidance from the BOR. However, in order to qualify for admission to any 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. As an alternative, a student who attended a high school that has a non-traditional curriculum may submit a UW System Competency-Based Admission profile. Applicants must also submit ACT or SAT scores. Individual institutions have discretion to waive one or more of the minimum requirements for particular applicants when appropriate.

According to BOR policy, applicants are given a comprehensive review to determine whether they are prepared to satisfactorily complete academic work and whether they will benefit from and enrich the educational environment and enhance the quality of the institution. Review is based on academics, standardized test scores, and other factors including student experiences, leadership qualities, special talents, and whether the applicant is a veteran, is socio-economically disadvantaged, or is a member of a historically underrepresented racial or ethnic group. [Regent Policy Document 7-3.]

Tuition Rates

Under Wisconsin law, the BOR may generally establish differing tuition and fees for different classes of students, such as undergraduates, graduate students, and nonresident students. The BOR may also establish special tuition rates and fees, known as "differential tuition" for particular studies or courses of instruction. [s. 36.27 (1) (a), Stats.]

Tuition for resident undergraduate students has been frozen since 2013. 2015 Wisconsin Act 55 extended the tuition freeze originally established by 2013 Wisconsin Act 20, specifying that during the 2015-16 and 2016-17 academic years, the BOR may not charge resident undergraduates at any UW institution or UW colleges campus tuition that is more than the tuition charged to resident undergraduates in the 2014-15 academic year at the same institution or campus. [2015 Wis. Act 55 SEC. 9148 (4) and (4d).] 2017 Act 59 extended the tuition freeze in the 2017-18 and 2018-19 academic years. [2017 Wis. Act 59 SEC. 9148 (3t).]

Tuition and segregated fee rates per semester for undergraduate students at UW System institutions for the 2017-18 academic year are set forth in the table below. The term "segregated fees" refers to charges in addition to instructional fees assessed to all students for services, programs, and facilities that support the primary mission of the university.

2017-18 UW System Full-Time Undergraduate Tuition and Fees Per Academic Year

Campus	Resident	Nonresident	Minnesota Reciprocity
UW Colleges	$5,186	$12,743	$5,186
UW-Eau Claire	$8,816	$16,736	$8,816
UW-Green Bay	$7,878	$15,728	$8,879
UW-La Crosse	$9,096	$17,766	$9,096
UW-Madison	$10,534	$34,783	$14,060
UW-Milwaukee	$9,565	$20,845	$13,490
UW-Oshkosh	$7,588	$15,161	$8,464
UW-Parkside	$7,389	$15,378	$8,389

Campus	Resident	Nonresident	Minnesota Reciprocity
UW-Platteville	$7,536	$15,386	$8,416
UW-River Falls	$8,014	$15,587	$8,884
UW-Stevens Point	$8,209	$16,476	$8,810
UW-Stout	$9,457	$17,424	$10,104
UW-Superior	$8,110	$15,682	$8,873
UW-Whitewater	$7,662	$16,235	$8,442

For more information regarding the tuition rates above, see http://www.uwhelp.wisconsin.edu/paying/systemcosts.aspx.

Residency

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. [Regent Policy Documents 32-1 and 32-2; ch. UWS 20, Wis. Adm. Code.]

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 refugees, among others. [s. 36.27 (2), Stats.; ch. UWS 20, Wis. Adm. Code.]

Subject to certain exceptions, nonresidents must pay the nonresident tuition rate. Nonresident students are charged tuition in excess of instructional costs, thus subsidizing resident students. The amount charged for nonresident tuition is not subject to any statutory limits.

Fee Remissions

There are several opportunities for full or partial resident and nonresident tuition and fee remission, including those listed below.

Tuition remission is available, under certain circumstances, for the children and surviving spouse of an ambulance driver, correctional officer, fire fighter, emergency medical services technician, or law enforcement officer who was killed in the line of duty or as the result of a duty disability in Wisconsin. [s. 36.27 (3m), Stats.]

Tuition and segregated fees remission is available for veterans who satisfy certain residency and service requirements. Likewise, tuition and segregated fees remission is available, under certain circumstances, for the children and surviving spouse of a veteran who, while a resident of this state, died on active duty, died as the result of a service-connected disability, died in the line of duty while on active or inactive duty for training

purposes or was awarded at least a 30% service-connected disability rating under federal law. [s. 36.27 (3n) and (3p), Stats.; 20 U.S.C. s. 1015d.]

Reciprocity

The Minnesota-Wisconsin reciprocity agreement may be found at:

http://www.heab.state.wi.us/docs/board/1516/rep1601.pdf

The Minnesota-Wisconsin reciprocity agreement allows residents of each state to attend public post-secondary institutions in the other state without having to pay nonresident tuition. Participating students pay a reciprocal fee that cannot exceed the higher of the two states' resident tuition rates. Under the agreement, a student generally pays the higher of the resident tuition charged by the institution attended or by its comparable institution in the other state. The reciprocity agreement is negotiated and administered jointly by the Higher Educational Aids Board 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. [s. 39.47, Stats.]

There are also reciprocal tuition agreements for residents of Wisconsin and Michigan enrolled in specific institutions in those states. For more information, see http://heab.state.wi.us/programs.html.

Return to Wisconsin

Nonresidents may receive a 25% waiver of nonresident tuition under the "Return to Wisconsin" program. To be eligible, a parent, grandparent, or legal guardian must have graduated from the institution where the student will enroll. Participating UW campuses are UW-Eau Claire, UW-Green Bay, UW-La Crosse, UW-Oshkosh, UW-Parkside, UW-River Falls, UW-Stevens Point, UW-Stout, and UW-Whitewater.

Midwest Student Exchange Program

Currently, 12 two- and four-year UW System campuses participate in the Midwest Student Exchange Program (MSEP), which allows students from a participating state to attend public colleges or universities in other participating states at a tuition of no more than 150% of resident tuition. Wisconsin joined MSEP in 2005. UW campuses individually determine whether they will participate and identify factors for admission of students through the MSEP.

General Principles Governing Transfer Admissions and Transfer of Credits

Admission of students to UW System institutions from other institutions of higher education is based on comprehensive, individualized admission review, consistent with the

process for freshman admission. In awarding transfer credit, UW System institutions consider the quality and comparability of the transfer student's coursework, and the applicability of that work to the receiving institution's degree requirements. In determining transfer credit, the BOR directs UW System institutions to provide transfer students the same opportunities as continuing students to demonstrate their competence through the use of internally or externally developed tests, portfolio assessment procedures, and other competency-based alternatives.

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:

http://www.wisconsin.edu/transfer/

In addition, students who transfer to a UW System four-year institution with an associate degree from a UW System two-year institution are considered to have satisfied university, college, or school general education requirements at the transfer campus.

Most UW System institutions require all students to complete a specific number of credits at that institution to obtain a degree. Transfer students are responsible for fulfilling these credit requirements.

Upon being admitted to an institution, transfer students receive a credit evaluation showing how transferred courses equate to courses at their new campus. Students have the right to appeal credit evaluations. [Regent Policy Document 7-1; Academic Information Series 6.0.]

A student who begins as a freshman at a UW College two-year campus is guaranteed admission to a four-year campus as a junior under the "guaranteed transfer" program.

UW Colleges Guaranteed Transfer

The 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) (3.20 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.

More information is available at: http://uwc.edu/admissions/transfer/guaranteed-transfer.

UW System - WTCS Universal Credit Transfer Agreement

Wisconsin law requires the BOR and the WTCS Board to enter into and implement an agreement that identifies 30 credits of core general education courses that will be transferable between and within each institution participating in the agreement. The

credits must be transferable without loss of credit towards graduation or toward completion of a specific course of study. [s. 36.31 (2m), Stats.] More information about the agreement may be viewed here: http://www.wisconsin.edu/transfer/universal-transfer/.

Flexible Option

The UW Flexible Option program, a partnership between UW System institutions and UW-Extension, allows students to earn credits and degrees without attending traditional classes. Students are assigned academic coaches and earn credits by passing assessments. Students may learn the material online or by using textbooks and may also earn credit for knowledge gained through experience if they can show through an assessment that they have mastered a subject area.

Students enroll in Flexible Option for three-month "subscription periods" during which they can access learning materials, receive academic support, and complete competency tests.

For many programs, students can choose between an "all-you-can-learn" option for $2,250, in which they try to master as many skill sets, and pass as many assessments, as they can, or a "single competency-set" option for $900, which allows a student to master one skill set.

The Flexible Option program is accredited by the Higher Learning Commission. More information on the program can be found at:

http://flex.wisconsin.edu/faqs/

Flexible Option programs are currently offered through UW-Madison, UW-Milwaukee, UW-Parkside, UW-Extension, and the UW Colleges.

Distance Education

The UW System also provides distance learning courses via online, videoconference, print, and other media. Most UW System institutions offer distance learning programs. A student may be able to receive an undergraduate degree, a graduate degree, or a certificate through distance learning programs.

Information about distance learning courses and programs at the UW System can be found at: https://uwhelp.wisconsin.edu/resources/distance-learning-opportunities. The UW Colleges offer an Associate of Arts and Sciences degree that is delivered online through http://www.online.uwc.edu.

Auditing Courses

Wisconsin statutes require the BOR to allow individuals aged 60 or older to audit courses free of charge. BOR policy 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. The right to audit a class is subject to general conditions, including approval of the instructor and sufficient classroom space. [s. 36.27 (1) (b), Stats.; Regent Policy Document 4-10.]

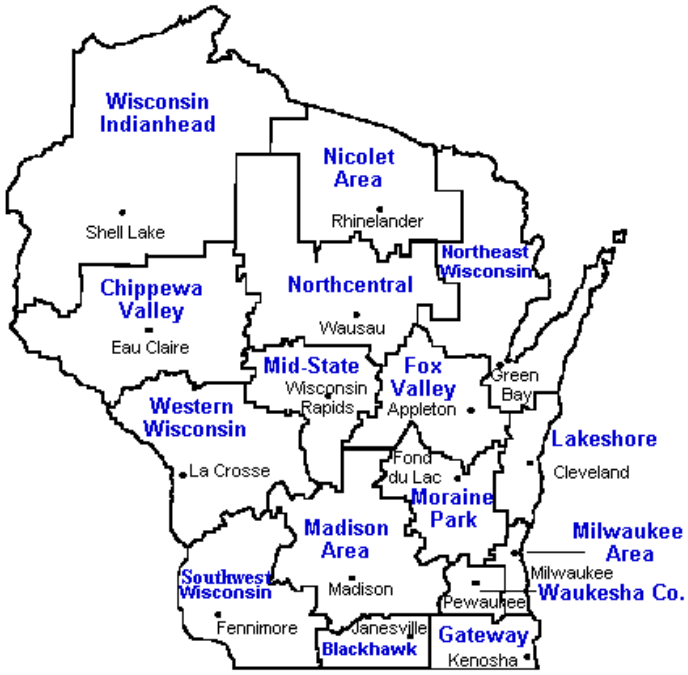
WISCONSIN TECHNICAL COLLEGE SYSTEM

In 1911, Wisconsin became the first state to establish a system of state aid and support for industrial education. The current system consists of 16 technical college districts which encompass every area of the state, with 48 main and satellite campuses that serve approximately 307,000 people annually.[1]

State law establishes the principal purpose of the WTCS as providing occupational education and 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 include providing: educational opportunities for high school age students; a collegiate transfer program; and community services and vocational or self-enrichment activities. [s. 38.001, Stats.]

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.

[1] See Wisconsin Technical College Fact Book 2016-17, Wisconsin Technical College System, 2018. [http://wtcsystem.edu/about-us/resources-publications.]

WTCS State Board

The **WTCS State Board** is the coordinating agency for the WTCS. 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 BOR or a designee from among the Regents; six public members; and one technical college student.

The WTCS Board establishes statewide policies and standards for the educational programs and services provided by the 16 technical college districts that cover the state. The WTCS 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. The WTCS Board 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. [s. 38.04, Stats.]

District Boards

Each technical college district, other than Milwaukee Area Technical College, is headed by a local technical college 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. [ss. 38.08 and 38.10, Stats.]

The makeup of the Milwaukee Area Technical College District Board differs from the other district boards. It consists of:

- Five persons representing employers: three of which represent employers with 15 or more employees; two of which represent employers with 100 or more employees; and at least two who represent employers who are manufacturing businesses. A person representing an employer must have at least two years of experience managing a business entity, nonprofit organization, credit union, or cooperative association with at least 15 employees or at least two years of experience managing the finances or the hiring of personnel of a business entity, nonprofit organization, credit union, or cooperative association with at least 100 employees.
- One elected official.
- One school district administrator.
- Two additional members.

[s. 38.08 (1) (a) 1g., Stats.]

The Milwaukee County Executive and the chairpersons of the Milwaukee, Ozaukee, and Washington County boards of supervisors constitute the appointment committee for the Milwaukee Area Technical College Board. [s. 38.10 (1) (d), Stats.]

The district boards are responsible for the direct operation of their respective schools and programs. They are empowered to levy property taxes (within certain statutory limits) and develop an annual budget; provide for facilities and equipment; hire a district director, staff, and teachers; determine programs to be offered (with WTCS Board approval); admit students; and provide financial aid, guidance, and job placement services. [ss. 38.12 through 38.16, Stats.]

Programs and Degrees

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 requires a minimum of 60 credit hours and provides the first two years of a four-year baccalaureate college education. Sixty to seventy of the credits earned may transfer to UW System four-year campuses. The liberal arts program is available at Milwaukee Area Technical College, Madison Area Technical College, Nicolet Area Technical College, Chippewa Valley Technical College, and Western Technical College.

WTCS Website:
http://www.wtcsystem.edu

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 in two to five years. There are hundreds of apprenticeship programs available in construction, service, and industrial occupations.

Advanced technical certificates respond to employers' needs for highly skilled employees, and are 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 (grades 9-12) for adults. 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 training is offered in partnership with employers. The training is delivered in various formats and training can be customized into any of the following:

- A quick-start training session on equipment or methods.
- A focused seminar format.
- An upgrade of employees' basic skills in math, reading, or communications.
- Long-term training to retain a quality workforce.
- Training in high-demand areas, such as technical skills training, computer-assisted applications, workplace assessment, quality processes, or supervisory development.
- Training to resolve specific technical problems, analyze workflow procedures, or evaluate employee performance.

The WTCS also offers part-time programs that are comprised of vocational, adult, basic skills education, and district and community services, which include vocational 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. [s. 38.22, Stats.]

The 2018-19 tuition costs are the same for each of the 16 technical colleges. For Wisconsin residents, degree, diploma, and certificate programs cost $134.20 per credit and collegiate transfer programs are $181.50 per credit. For out-of-state residents, degree, diploma, and certificate programs are $201.30 per credit and liberal arts transfer programs are $272.25 per credit.

The fee remissions discussed above that are available to certain UW System students who are veterans, survivors of veterans, and survivors of certain emergency personnel are also available to WTCS students. [s. 38.24 (5), (7), and (8), Stats.]

Transfer of WTCS Credits to UW System

Students attending the WTCS Collegiate Transfer program at Madison, Milwaukee, Chippewa Valley, Western Wisconsin, or Nicolet Area Technical College may generally transfer up to 72 credits to any UW System campus. Many of the technical colleges have articulation (transfer) agreements with four-year private colleges and universities in the UW System. These agreements may contain course-to-course equivalencies, while others provide for a total program transfer. There are nearly 1,100 program-to-program transfer agreements between the technical colleges and the UW System four-year universities.

In addition, the agreement between WTCS and UW System, mentioned above, is reviewed and updated biannually. In 2016, the agreement was amended and increased the guaranteed transfer from 11 to 13 core general education course subjects, which increased the sum of transferrable credits by six, bringing the total to 40-54 transferable credits.

Private Nonprofit Colleges and Universities

Wisconsin has over 20 private, nonprofit, accredited degree-granting colleges and universities, a majority of which are members of the Wisconsin Association of Independent Colleges and Universities (WAICU) as shown on the map below:

Source: WAICU.

The following WAICU institutions are located in the Milwaukee area:

- Alverno College
- Cardinal Stritch University
- Columbia College of Nursing
- Marquette University
- Medical College of Wisconsin
- Milwaukee Institute of Art & Design
- Milwaukee School of Engineering
- Mount Mary University
- Wisconsin Lutheran College

The remainder of the WAICU institutions are located around the state as follows:

- Bellin College, Green Bay
- Beloit College, Beloit
- Carroll University, Waukesha
- Carthage College, Kenosha
- Concordia University Wisconsin, Mequon
- Edgewood College, Madison
- Lakeland University, Plymouth
- Nashotah House Theological Seminary, Nashotah
- Lawrence University, Appleton
- Marian University, Fond du Lac
- Northland College, Ashland
- Ripon College, Ripon
- St. Norbert College, De Pere
- Silver Lake College, Manitowoc
- Viterbo University, La Crosse

Each institution has a distinct mission, emphasis, and approach to teaching and learning. Some of the institutions are religiously affiliated but, except for Nashotah House Theological Seminary, all 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://www.wisconsinsprivatecolleges.org/colleges.

Private colleges and universities receive no direct operating funding from the state. They are governed by private boards of trustees. All private colleges and universities in Wisconsin are recognized by the U.S. Department of Education and accredited by the North Central Association of Colleges and Schools, except for Nashotah House, which is accredited by the Commission on Accrediting of the Association of Theological Schools in the United States and Canada.

Admission, Enrollment, and Costs

The 24 WAICU-member private colleges and universities in Wisconsin together enroll approximately 55,000 students. They typically award about 24% of the bachelor's degrees in the state, including 27% of engineering degrees, 51% of nursing degrees, and 27% of business degrees. They also typically award about 35% of all the state's graduate degrees, including 41% of business degrees, 100% of dental degrees, 63% of medical doctor degrees, 51% of education degrees, 57% of nursing degrees, and 55% of physician assistant degrees.

The average price for tuition and fees at a WAICU-member private college or university during the 2015-16 academic year was $30,920. However, 99% of the first-time full-time undergraduates at private colleges in Wisconsin received financial aid, the majority of which was provided by the institutions themselves. Over 78% of the average private aid package consisted of grants, which do not have to be repaid. The average financial aid package provided to a freshman for the 2015-16 academic year was $25,420, leaving an average net tuition cost of $5,500. The costs for room and board at the private institutions are roughly comparable to room and board costs at the public institutions. [*WAICU Facts*, available at: http://www.waicu.org/research/waicu-facts.]

In 2017-18, the Wisconsin Grant program provided $27.9 million in need-based financial aid for low-income Wisconsin students who attend Wisconsin private nonprofit colleges.

Grant awards ranged from a minimum of $1,000 to a maximum of $3,150. The Higher Educational Aids Board establishes the minimum and maximum grant awards each year, except that, by statute, the minimum grant may not be less than $250. [s. 39.30, Stats.; 2017 Wisconsin Act 59; *2017-18 Wisconsin Grant and Continuing TIP Formulas*, available at: http://www.heab.state.wi.us/finadmin/index.html.]

Each private institution sets its own admission policies. 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.

Wisconsin Association of Independent Colleges and Universities

WAICU is designated by state statute as the official representative of Wisconsin's private colleges and universities and, therefore, acts on behalf of both WAICU-member and nonmember institutions in some circumstances. The college and university presidents of WAICU member institutions serve as WAICU's Board of Directors.

The president of WAICU or his or her designee, along with the president of the UW System and the president of the WTCS, is a member of the Educational Communications Board, the Wisconsin Technology Council, the College Savings Program Board (EdVest), the Distance Learning Authorization Board, and the Council on Workforce Investment. [ss. 15.185 (5), 15.57, and 15.675, Stats.; 29 U.S.C. s. 3111.]

Tribal Colleges

There are two tribal colleges in Wisconsin -- the College of Menominee Nation (CMN), and the Lac Courte Oreilles Ojibwa Community College (LCOOCC). The main CMN campus is located in Keshena, and there is also a campus in Green Bay.

LCOOCC has a main campus in Hayward and three Outreach Sites operating on four nearby Ojibwe reservations: Bad River, Lac du Flambeau, Red Cliff, and St. Croix. LCOOCC also provides research, education, and community outreach through its Community College Extension at the Hayward campus.

The LCOOCC Extension is made up of three programs: the Increased Capacity Program, the Youth Development Program, and the Water Quality Program. The Extension also partners with the Wisconsin Nutrition Education Program. Extension operations are funded with grants from the USDA Extension Program.

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. CMN also offers bachelor's degrees in select programs. The colleges have an open enrollment policy meaning nontribal members may enroll. Both tribal colleges are accredited by the Higher Learning Commission.

In Fall of 2016, the total enrollment at CMN was 395, 78% of whom were Native American. The programs with the largest enrollments were business administration, liberal studies, technical education, nursing, and education.

The total enrollment at the LCOOCC in Fall of 2016 was 202, 75% of whom were Native American. Popular areas of study at the college included ethnic and cultural studies, health professions and related clinical sciences, business, and liberal arts. This and more information about the tribal colleges is available on their websites: http://www.menominee.edu/ and https://www.lco.edu/.

Private Trade, Correspondence, Business, and Technical Schools

There are over 200 private schools in Wisconsin which train people in a wide variety of occupations. The majority of the schools are for-profit businesses owned by an individual or a corporation. The schools vary greatly in size but most provide small classes and individualized instruction.

Some of these private 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.

State Regulation

A directory of EAP-approved schools is available at: https://www.dspseap.wi.gov/

Private post-secondary schools, including for-profit post-secondary schools (except those regulated by other state agencies, such as cosmetology schools) and in-state nonprofit post-secondary institutions incorporated after January 1992 are regulated under the Educational Approval Program (EAP). Under 2017 Wisconsin Act 59, the Educational Approval Board (EAB) was eliminated and responsibility for operating the EAP was transferred from the EAB to the Department of Safety and Professional Services (DSPS).

Most private post-secondary schools serving Wisconsin students, whether they are located within or outside the state, are required to obtain EAP approval prior to advertising or providing training. Training which leads to employment or ongoing education is generally approved. Approval must be renewed annually.

The following kinds of training are exempt from EAP oversight:

- Religious or strictly sectarian training.
- Professional development.
- Training provided for a business with limited access to nonemployees.
- Employers training their own employees.

Under Wisconsin law, if a private post-secondary school serves a Wisconsin resident, even if only via online programming, it must be EAP-approved unless the school is exempt. However, many schools offering programs and degrees via the Internet do not seek EAP approval. To protect themselves, consumers may contact DSPS before enrolling in schools offering distance learning programs.

The DSPS website contains information about submitting complaints regarding a school and what to do if an EAP-approved school closes. Some EAP-approved 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. [s. 440.52, Stats.; *Frequently Asked Questions*, available at: https://dsps.wi.gov/Pages/Programs/EducationalApproval/About.aspx.]

Accreditation

The State of Wisconsin does not accredit schools. Accreditation is not the same as, nor is it necessarily required for, EAP approval. Accreditation is obtained through 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." [EAP Approval Versus Accreditation, available at: https://dsps.wi.gov/Pages/Programs/EducationalApproval/About.aspx.]

Financing the Costs of Higher Education

For more information about financial aid available to post-secondary students in Wisconsin, consult the Higher Education Aids Board's website located at: http://www.heab.state.wi.us/

Wisconsin provides numerous forms of financial aid for higher education, including scholarships, grant programs, loan programs, and tax policies. Eligibility criteria for these financial aid programs are set by statute. The Higher Educational Aids Board has primary responsibility for administration of Wisconsin financial aid programs.

This chapter discusses only state-funded financial aid programs. Other financial aid may be available from the federal government, individual higher educational institutions, or private organizations.

Generally, a student must satisfy certain requirements in order to qualify for any of the Wisconsin state financial aid programs. With certain exceptions, a student must:

- Qualify as a resident of Wisconsin.
- Possess a high school diploma, GED, or equivalent.
- Enroll in a degree or certificate program.
- Attend a nonprofit college or university located in Wisconsin.

The FAFSA form may be filed online at: https://fafsa.ed.gov

- File the Free Application for Federal Student Aid (FAFSA). Paper applications are available from high school guidance offices or college financial aid offices. Students may file the FAFSA beginning on January 1, for the upcoming academic year.
- Register with the Selective Service, if required to register.
- Not appear on the statewide child support lien docket.

[subch. III, ch. 39, Stats.]

Scholarships

The Higher Educational Aids Board administers the following scholarship programs on behalf of the state:

- The **Academic Excellence Scholarship Program**, which provides scholarships of up to $2,250 per year to the seniors with the highest grade points average (GPA) from each high school in Wisconsin, including the Wisconsin Center for the Blind and Visually Impaired and the school operated by the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, who enroll in a Wisconsin public or private institution of higher education. [s. 39.41, Stats.; ch. HEA 9, Wis. Adm. Code.]
- The **Technical Excellence Higher Education Scholarship Program**, which provides scholarship of up to $2,250 to Wisconsin high school seniors with the highest demonstrated level of proficiency in technical education subjects who enroll in a WTCS institution. [s. 39.415, Stats.]
- The **Governor's Dairy Scholarship**, which offers up to $2,500 to Wisconsin students who have demonstrated an involvement in the state's dairy industry and who intend to continue in or return to dairying after a period of vocational study in dairy science and dairy issues at a WTCS or UW System institution.

Grants

The state provides for a number of higher education-related grant programs, including the following the Higher Educational Aids Board-administered programs:

- The **Talent Incentive Program (TIP) Grant** program, which provides grants of $250 to $1,800 to the most financially needy and educationally disadvantaged resident students enrolled in Wisconsin public or private nonprofit colleges and universities. [s. 39.435 (2), Stats.; ss. HEA 5.04 and 5.05, Wis. Adm. Code.]
- The **Wisconsin Grant** program, which provides grants of at least $250, based on financial need, to undergraduate residents enrolled at least half-time in degree or certificate programs at UW System, WTCS, tribal institutions, or private nonprofit colleges or universities in Wisconsin. [ss. 39.30 and 39.435 (1), Stats.; chs. HEA 4 and 5, Wis. Adm. Code.]
- The **Hearing and Visually Handicapped Student Grant** program, which provides grants of $250 to $1,800 to residents enrolled at least half-time at in-state or eligible out-of-state public or independent institutions who show financial need and have severe

or profound hearing or visual impairments. [s. 39.435 (5), Stats.; s. HEA 5.06, Wis. Adm. Code.]

- The **Indian Student Assistance Grant**, which provides grants of $250 to $2,200 per year to eligible residents who are at least 25% Native American or are recognized as a member of a tribe by the appropriate tribal government. [s. 39.38, Stats.; ch. HEA 6, Wis. Adm. Code.]
- The **Minority Undergraduate Retention Grant** program, which provides grants from $250 to $2,500 to eligible, resident minority undergraduates enrolled at least half-time in private nonprofit institutions, WTCS, or tribal institutions. [s. 39.44, Stats.; ch. HEA 12, Wis. Adm. Code.]
- The **Contract for Dental Education** program, which provides $8,753 in tuition subsidization to a finite number of Wisconsin residents for the purpose of attending the Marquette University School of Dentistry. [s. 39.46, Stats.]
- The **Medical College of Wisconsin Capitation Program**, which provides tuition assistance to Wisconsin residents enrolled full-time in the Doctor of Medicine (M.D.) program at the Medical College of Wisconsin. [s. 39.155, Stats.]

Loans

The Higher Educational Aids Board also administers the following state-funded higher education loan programs that incentivize students to work in certain fields or in certain locations in order to obtain varying levels of loan forgiveness:

- The **Minority Teacher Loan** program provides loans to resident minority undergraduates, up to $30,000 each, who are enrolled in Wisconsin programs leading to teacher licensure. For each year of teaching in a high demand area of discipline in City of Milwaukee schools, 25% of the loan and interest is forgiven. [s. 39.40, Stats.; ch. HEA 11, Wis. Adm. Code.]
- The **Nursing Student Loan** program provides loans to resident students enrolled in Wisconsin programs to become registered nurses (RNs), licensed practical nurses (LPNs), or nurse educators, up to $15,000 each. For each of the first two years that the recipient works as a nurse or nurse educator in Wisconsin, 25% of the loan is forgiven. [s. 39.393, Stats.]
- The **Teacher Loan** program provides loans to eligible undergraduates enrolled in programs of study leading to a teacher's license in an area of discipline identified as a teacher shortage, up to $30,000 each. For each year of teaching in a high demand area related to the student's discipline in a public or private elementary or secondary school in the City of Milwaukee or in a rural Wisconsin county, 25% of the loan and interest is forgiven. [s. 39.399, Stats.]
- The **Teacher of the Visually Impaired Loan** program provides loans to resident students enrolled in a program that prepares them to be licensed as teachers of the visually impaired or as orientation and mobility instructors, up to $40,000 each. For each of the first two years that a loan recipient teaches and meets certain eligibility criteria, 25% of the loan is forgiven. For the third year, 50% is forgiven. [s. 39.398, Stats.; ch. HEA 14, Wis. Adm. Code.]

- The **School Leadership Loan** program provides loans to eligible students enrolled in a school leadership program at a UW System institution. For each year that the recipient is employed in a school leadership position in a Wisconsin elementary or secondary school and receives a rating of proficient or distinguished on the educator effectiveness system or equivalent, 25% of the loan and interest is forgiven. [s. 39.397, Stats.]

EdVest

For more information on the EdVest program, consult:

https://www.edvest.com/ **and** http://529.wi.gov/

The EdVest College Savings Program is one of two Wisconsin "529 Plans" administered by the College Savings Program Board, which is attached to the Department of Financial Institutions. (The second plan, called Tomorrow's Scholar, offers similar options and benefits as EdVest, but it is only available through financial advisors and fee-only planners). A "529 Plan" is an education savings plan operated by a state or educational institution that offers certain tax advantages and is named after Section 529 of the Internal Revenue Code, which authorizes these types of savings plans. EdVest is managed by TIAA-CREF, a private financial services firm, and is designed to encourage parents and others to save money for a child's future post-secondary education expenses.

Through 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 are not subject to federal and state income tax in Wisconsin, and may also be exempt from state income tax in other states. The funds may then be used to pay for qualified education expenses at any eligible school—including two- and four-year colleges, technical, vocational, and graduate schools.

Qualified withdrawals from EdVest are not subject to federal income tax. Wisconsin residents also owe no state income tax on qualified withdrawals. In 2018, a qualified taxpayer may deduct from his or her state taxable income up to $3,100 per year per beneficiary for contributions paid into an EdVest account that remain in the account for at least 365 days. (The base maximum contribution deduction of $3,200 is increased on an annual basis to reflect changes in the U.S. Consumer Price Index). Under certain circumstances, excess contributions may be carried forward to reduce state taxable income in subsequent tax years. [26 U.S.C. s. 529; ss. 71.05 (6) (a) 26. and (b) 31. and 32. and 224.50, Stats.; ch. DFI-CSP 1, Wis. Adm. Code.]

Tax Treatment

A Wisconsin taxpayer may deduct from his or her state taxable income certain higher education expenses for tuition expenses incurred by the taxpayer or the taxpayer's dependent. Allowable expenses include tuition paid to any university, college, technical college, or school approved by the EAP that is located in Wisconsin. The maximum amount

of the deduction decreases as income increases and is eliminated when income exceeds a certain amount. The income phase-out levels are generally increased each year based on the increase in the U.S. Consumer Price Index. [s. 71.05 (6) (b) 28., Stats.]

A Wisconsin taxpayer may also be eligible for various federal tax benefits, including deductions for tuition and interest paid on student loans and tax credits. For more information regarding the options for education tax benefits, see IRS Publication 970 at: https://www.irs.gov/pub/irs-pdf/p970.pdf or search for "college tuition" at https://www.revenue.wi.gov/.

Wisconsin GI Bill

For information regarding tuition benefits under the Wisconsin GI Bill, see Chapter 28, "Veterans and Military Affairs."

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs and agencies, including the WTCS, and the UW System. The Informational Papers are available at: https://www.legis.wisconsin.gov/lfb.

2. The following Legislative Audit Bureau audit report is available at: https://www.legis.wisconsin.gov/lab:

    - *University of Wisconsin System* (Reports 17-6 and 18-2).

Glossary

BOR: University of Wisconsin System Board of Regents**.**

CMN: College of the Menominee Nation.

DSPS: Wisconsin Department of Safety and Professional Services.

EAB: Educational Approval Board.

EAP: Educational Approval Program.

FAFSA: Free Application for Federal Student Aid.

HEAB: Wisconsin Higher Educational Aids Board.

LCOOCC: Lac Courte Oreilles Ojibwa Community College.

Post-secondary education: Education at an institution of higher education occurring after the completion of high school, including undergraduate, graduate, and professional education.

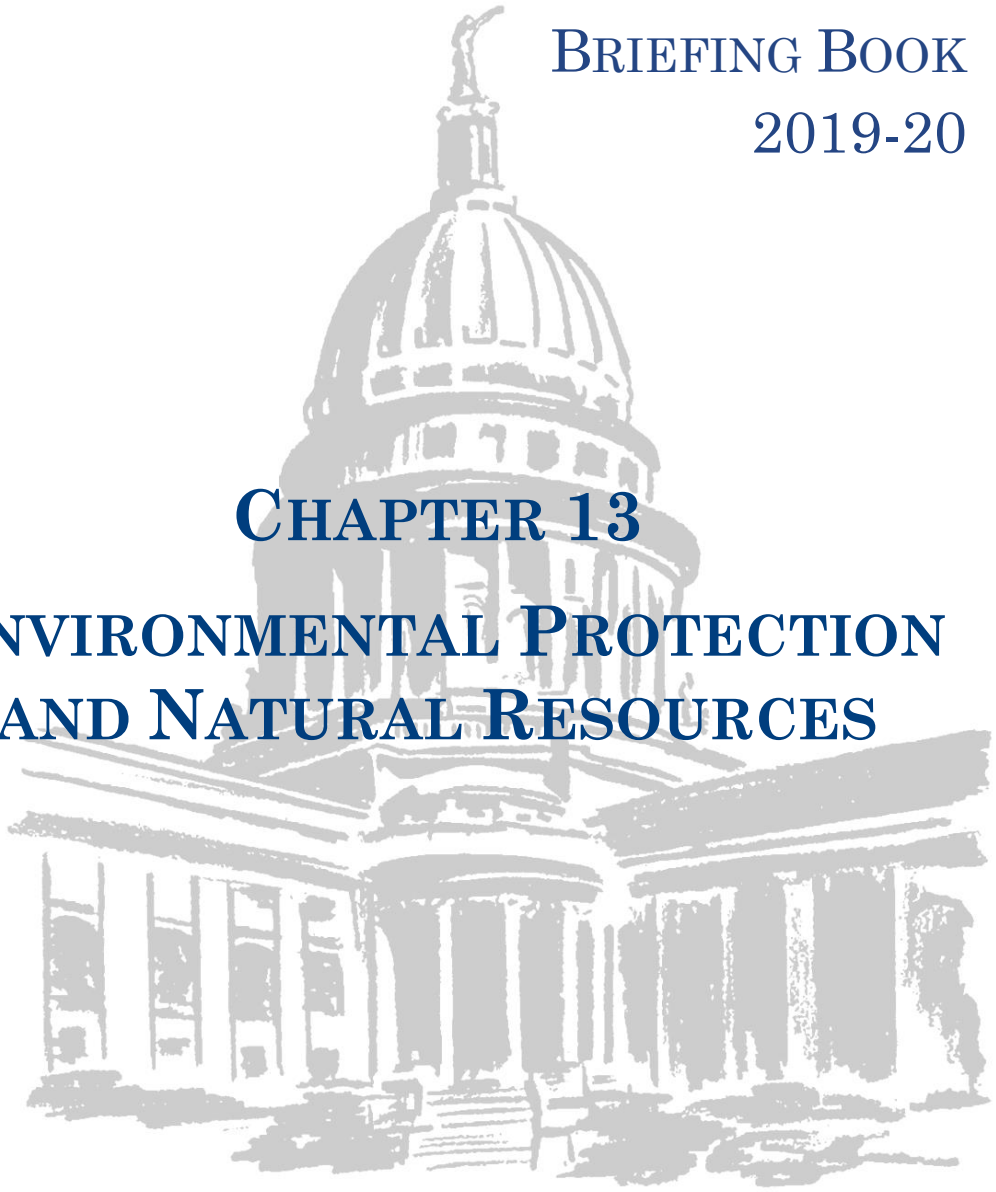
UW System: University of Wisconsin System.

WAICU: Wisconsin Association of Independent Colleges and Universities.

WTCS: Wisconsin Technical College System.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 13
ENVIRONMENTAL PROTECTION AND NATURAL RESOURCES

Rachel Letzing, Principal Attorney, and Anna Henning, Senior Staff Attorney
Wisconsin Legislative Council

TABLE OF CONTENTS

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Introduction

Natural resources law, derived from a combination of statutes and common law, allocates rights and access to natural resources such as metallic and nonmetallic mineral deposits, wildlife, and water. Depending on the context, the Legislature may weigh one set of private landowners' interests against another or balance a certain business development goal with a desire to preserve an area's ecology or character.

Environmental statutes closely relate to natural resources law and generally aim to protect both public natural resources and public health in the state. Some environmental standards are established by federal law, whereas others are determined at the state (or, less commonly, the local) level. The state also administers certain federal laws, including the Clean Air Act and the Clean Water Act, in Wisconsin.

This chapter summarizes key laws and regulations governing navigable waters and wetlands, air pollution, solid waste and recycling, groundwater and water supply, mining, state lands, forest law tax programs, invasive species, and wildlife management.

Navigable Water and Wetlands

A complex set of laws govern the ownership and use rights of Wisconsin's lakes, streams, and wetlands.

The Public Trust Doctrine

The public trust doctrine provides that the state holds title to navigable waters in trust for the public.

State public trust doctrines have origins in English common law and are recognized in federal law and state constitutions. As interpreted and evolved over time by the Wisconsin Supreme Court, Wisconsin's public trust doctrine provides that navigable waters are held in trust by the state for the benefit of the public. The doctrine has been interpreted to require the Wisconsin Legislature to serve as trustee for the citizens' rights to navigate and enjoy recreational activities in the waters of the state. Interpreting the state's public trust doctrine and early U.S. Supreme Court decisions, the Wisconsin Supreme Court has also held that the title to the beds of all navigable lakes, ponds, and rivers is vested in the state to be held in trust for the public.[1] The Legislature is viewed as having generally delegated its trustee obligations to the Department of Natural Resources (DNR), except where statutes state otherwise. The Wisconsin Supreme Court has interpreted the public trust doctrine to encompass a broad

[1] *Illinois Steel Co. v. Bilot*, 84 N.W. 855 (Wis. 1901).

range of public rights, including commercial and recreational navigation, water quality, fishing and hunting, other recreational uses, and enjoyment of natural scenic beauty.[2]

The existence of public rights in a lake or stream depends upon whether the water body is "navigable." A water body is considered to be navigable if it is capable of floating any boat for recreational purposes. Furthermore, the water body does not need to be continually navigable, but needs to be navigable only on a regularly recurring basis, such as during spring runoff periods.

The state owns the beds of natural navigable lakes up to the ordinary high-water mark. The ordinary high-water mark is the point on the bank or shore where the water, by its presence, wave action or flow, leaves a distinct mark on the bank or shore. Riparian owners—people who own property adjacent to a navigable water body—hold title to stream beds to the center of the stream. Riparian rights include the use of the shoreline, the reasonable use of the water, and the right to build piers for navigation. When conflicts arise between riparian rights and public rights, riparian rights are secondary to the public interest.

Navigable Water Regulations

To ensure that both public rights and riparian rights are protected, the Legislature has delegated to the DNR the authority to issue permits for various activities in and near navigable waters. Under subch. II of ch. 30, Stats., a person generally must obtain a permit from the DNR before conducting any of the following activities relating to navigable waters:

Information about the various types of, and application procedures for, ch. 30 permits is available on the DNR website at: http://dnr.wi.gov

- Placing a structure or deposit, including a pier, in a navigable water. [s. 30.12, Stats.]
- Constructing a bridge or culvert. [s. 30.123, Stats.]
- Withdrawing water from a lake or stream. [s. 30.18, Stats.]
- Enlarging or protecting a waterway. [s. 30.19, Stats.]
- Changing a stream course. [s. 30.195, Stats.]
- Removing material from the bed of a navigable water body. [s. 30.20, Stats.]

Certain activities may be authorized by a general permit (a permit that applies statewide to any person authorized to engage in the specific activity covered by the permit). Each of the statutory sections cited above directs the DNR to promulgate rules regarding implementation and includes numerous exemptions for specific purposes. If an activity is not authorized under a general permit or explicitly exempted from regulation under state

[2] *Muench v. Public Service Commission*, 53 N.W.2d 514 (Wis. 1952).

statute, an individual permit typically must be obtained. Each individual ch. 30 permit has specific requirements. Most require that the applicant demonstrate that the activity will not materially impair navigation or be detrimental to the public interest or public rights. Many ch. 30 permits may be granted only to riparian owners. Prescribed timelines apply to the issuance of permits.

State statutes control the size and configuration of piers that may be placed by riparian owners without a permit. The statutes also address piers that were placed prior to the enactment of the existing exemption, and allow an owner to seek a permit for a larger pier. [s. 30.12 (1g) and (1k), Stats.]

Dredging or filling a wetland must be authorized by a general permit, individual permit, or a statutory exemption.

Wetlands Regulation and Mitigation

Wisconsin law requires a person to obtain an individual wetland permit or to be authorized under a wetland general permit before conducting an activity that will result in a discharge of dredged material or fill material into state wetlands (also referred to as "nonfederal wetlands") unless the activity is exempt from this requirement. [s. 281.36 (3b) and (3g), Stats.] The DNR may not issue either type of wetland permit unless it determines that the discharge authorized pursuant to the wetland permit will comply with all applicable water quality standards. Water quality standards for wetlands are narrative standards that describe "beneficial uses" or "functional values" of a wetland such as flood water retention, groundwater recharge or discharge, and fish and wildlife habitat. If the wetland is a "federal wetland" that is subject to federal jurisdiction under the Clean Water Act, the applicant must also obtain a permit from the U.S. Army Corps of Engineers (ACE), or qualify for an exemption.

If no general permit or exemption applies to dredging or filling a wetland, a person seeking to conduct that activity must apply to the DNR for an individual permit to discharge material into a wetland. State law provides a process for a person to apply for an individual permit. The DNR is required to hold a meeting with a prospective applicant prior to application to discuss the details of the proposed discharge, the application requirements, and the requirements for delineating the wetland. An application must be accompanied by the applicable fee and must include an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences. The DNR must review the practicable alternatives analysis and is directed to limit its review according to factors set forth in the statutes. [s. 281.36 (3m) (a), (b), and (3n), Stats.]

State law generally requires the DNR to require mitigation for wetland individual permits through its mitigation program. Mitigation may be accomplished by any of the following methods:

- Purchasing or applying credits from a mitigation bank in this state. The DNR is required to establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state.
- Participating in an in lieu fee subprogram, under which payments are made to the DNR or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features.
- Completing mitigation within the same watershed or within one-half mile of the site of the discharge.

Under state statutes, purchasing credits from a mitigation bank and participation in the in lieu fee subprogram are the preferred types of mitigation. The DNR is required to establish mitigation ratios that are consistent with the federal regulations that apply to mitigation and mitigation banks, but the minimum ratio must generally be at least 1.2 acres for each acre affected by a discharge. [s. 281.36 (3n) (d) and (3r), Stats.]

2017 Wisconsin Act 183 created new exemptions for several categories of wetland impacts.

In addition to these required general permits, DNR is authorized to issue wetland general permits to regulate other types of discharges that affect wetlands. Activities conducted under wetland general permits must comply with all applicable water quality standards, and each general permit must include requirements, conditions, and exceptions to ensure that all of the discharges that will occur under each general permit will cause only minimal adverse environmental effects. [s. 281.36 (3b) (b), and (3g) (a) to (d), Stats.]

Wisconsin law also provides exemptions from state wetland permitting requirements for several types of activities. As amended by 2017 Wisconsin Act 183, state law exempts impacts to:

(1) Up to one acre of state wetlands per parcel located within one-hour of a mile of an incorporated area. Wetland impacts of over 10,000 square feet per parcel must be mitigated.

(2) Up to three acres of state wetlands per parcel located outside an urban area for impacts for a structure with an agricultural purpose. If more than 1.5 acres of wetland are impacted, mitigation is required for the portion of the affected wetland that exceeds 1.5 acres.

(3) Certain types of artificial wetlands, for which the DNR has no definitive evidence showing prior wetland or stream history that existed before August 1, 1991. No mitigation is required for impacts to artificial wetlands.

[s. 281.36 (3n) (d) 1., (3r) (a), (am), and (4n), Stats.]

State law, as amended by 2017 Wisconsin Act 58, also provides an exemption for impacts to certain wetlands within an electronics and manufacturing zone designated by the Wisconsin Economic Development Corporation (commonly referred to as the Foxconn project). Examples of other exempt activities include construction of farm ponds, maintenance of drainage ditches, and maintenance of storm water detention basins. [s. 281.36 (4), (4m), and (4r) Stats.]

A county shoreland zoning ordinance must not regulate a matter more stringently than state standards.

Shoreland Zoning

State shoreland zoning laws regulate certain activities within shorelands, generally 1,000 feet from a lake, pond, or flowage and 300 feet from a river or stream. The statutes direct counties to zone by ordinance all shorelands in unincorporated areas.[3] The DNR's shoreland zoning standards for counties are set forth in ch. NR 115, Wis. Adm. Code. State law, as affected by 2015 Wisconsin Act 55, requires the DNR's shoreland zoning standards under ch. NR 115, Wis. Adm. Code, and county shoreland zoning ordinances to satisfy certain parameters and further specifies that county shoreland zoning ordinances may not regulate a matter more restrictively than the matter is regulated under a shoreland zoning standard in ch. NR 115, Wis. Adm. Code. That limitation does not prohibit a county from enacting a shoreland zoning ordinance that regulates a matter that is not regulated by a shoreland zoning standard under ch. NR 115, Wis. Adm. Code. [s. 59.692 (1d), Stats.]

Included among the specific items that county shoreland zoning ordinances may not require are the establishment of vegetative buffer zones in certain circumstances, residential outdoor lighting, and the inspection or upgrade of a structure before its sale or transfer. In addition, county ordinances may not prohibit the maintenance, repair, replacement, restoration, rebuilding, or remodeling of a nonconforming structure (a structure that existed before the current shoreland zoning ordinance took effect) if the activity does not expand the structure's footprint; or prohibit or regulate, with certain exceptions, the vertical expansion of a nonconforming structure if the expansion would result in the structure being not more than 35 feet above grade. If county shoreland zoning ordinances contain impervious surfaces standards, surfaces must be defined as pervious if the runoff from the surface is treated by a device or system, or is discharged to an internally drained pervious area, that retains the runoff on or off the parcel to allow infiltration into the soil. Additional provisions regarding setback averaging rules—using the distance between existing structures and the shore to determine where new structures can be built—may apply to a particular project. [s. 59.692 (1f), (1k), and (1n), Stats.]

[3] Cities and villages must also enact shoreland zoning ordinances. [ss. 61.353 and 62.233, Stats.]

Water Pollution Discharge Permits

Under the federal Clean Water Act, the discharge of pollutants from a point source into a navigable water is prohibited without a permit. In Wisconsin, discharges from a point source must be authorized by a Wisconsin Pollutant Discharge Elimination System (WPDES) permit. Through the WPDES permit program, the DNR regulates stormwater and wastewater discharged by industries and municipalities and discharges from large animal feeding operations. The types of pollutants covered by the permits include total suspended solids (particles suspended in water), phosphorus, oil, and grease. Each permit contains monitoring, reporting, and operational requirements. The DNR determines whether a particular facility is appropriately covered by a general or individual permit. [subch. IV, ch. 283, Stats.]

Administrative rules regulating the discharge of phosphorus became effective in 2010.

DNR administrative rules regulate the discharge of phosphorus from point sources. Any WPDES permittee may request a variance from a water quality-based effluent (pollutant) limitation, including phosphorus. A permittee may also request authorization from the DNR to implement adaptive management, an approach which allows a permittee to reduce phosphorus discharges from other sources, including nonpoint sources, if doing so is more cost-effective than reducing its own discharge. [chs. NR 102 and 217, Wis. Adm. Code.]

Pursuant to legislation enacted in 2013, the DNR submitted a request to the Environmental Protection Agency (EPA) on March 30, 2016, for approval of a multi-discharger variance from these phosphorus limits for point sources that cannot comply with them without incurring costs that would cause a substantial and widespread social and economic impact on a statewide basis. [s. 283.16, Stats.] The EPA approved Wisconsin's phosphorus multi-discharger variance on February 6, 2017. Very generally, under the multi-discharger variance, if applicants satisfy certain eligibility requirements, an applicant's WPDES permit may be modified to include extended timelines by which to comply with phosphorus limits in exchange for implementing watershed projects to reduce nonpoint sources of phosphorus.

For more information on nonpoint source water pollution abatement programs, see the Legislative Fiscal Bureau's (LFB) 2017 Informational Paper 69, *Nonpoint Source Water Pollution*, at: http://www.legis.wisconsin.gov/lfb

Nonpoint Source Water Pollution

Nonpoint sources of water pollution are sources that are diffuse in nature without a single, well-defined point of origin. Pollutants include fertilizers, nutrients, oil, and sediment from agricultural, urban, and residential areas. Wisconsin has numerous water bodies that are not meeting water quality standards and are therefore considered to be "impaired" as a

result of nonpoint source pollution impacts. As required by the federal Clean Water Act, the DNR has established total maximum daily loads (TMDLs) for impaired water bodies. A TMDL is generally the amount of pollutant that the water body can assimilate and not exceed water quality standards. Once a TMDL is developed and approved by both EPA and the DNR, federal and state laws require that the TMDLs not be exceeded. [ss. 281.15 and 281.16, Stats.]

Wisconsin implements TMDLs by regulating both point sources and nonpoint sources. The state regulates nonpoint discharges through agriculture performance standards and manure management requirements in ch. NR 151, Wis. Adm. Code, and nonagricultural performance standards in both chs. NR 151 and 216, Wis. Adm. Code, the stormwater discharge permit rule. Under their respective authorities, the DNR and the Department of Agriculture Trade and Consumer Protection (DATCP) offer technical assistance and cost-sharing grants to local governments to control nonpoint source pollution. [ss. 92.14 and 281.65, Stats.]

Air Pollution Control

Much of the state's air pollution program under ch. 285, Stats., is designed to implement the federal Clean Air Act. The 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 air quality monitoring data collected by the state. These areas are called "nonattainment areas." When a county is identified as not meeting a federal air quality standard based on monitored values of the outside air, it is designated by the EPA as a "nonattainment" area and given a target date to meet the standard. A state must then prepare a "state implementation plan," or SIP, that includes regulations for controls on emissions that are needed to reduce the air pollution and meet the standard. If, at any time, monitored values show that the air quality has improved and the county meets the standard, the DNR may request redesignation of the county. [s. 285.14, Stats.]

Air permits limit the amount of air pollution a facility is allowed to emit and identify the regulatory requirements that facilities must meet. There are two major permit programs for stationary sources in Wisconsin: construction permits for new or modified sources, and operation permits for new, modified, or existing sources. Construction permits ensure that proposed projects meet air pollution standards before they are constructed. Operation permits set emission limits and establish monitoring, record-keeping, and reporting requirements. Operation permits are generally divided into two categories: major source permits and minor source permits. Major source permits are issued to sources that have the potential to emit pollutants above certain levels. Minor source permits are issued to sources that do not have the potential to emit above these levels. Permit conditions may be revised as facilities expand, replace equipment, or change operations. Certain facilities

with lower emissions may be exempt from construction or operation permit requirements. [ss. 285.60 (1) and (2), 285.61, 285.62, and 285.63, Stats.]

The DNR also issues registration permits, which have a more streamlined application process and flexible permit terms for smaller facilities that have lower emissions, and general permits for specific types of industry, such as rock crushing plants. [s. 285.60 (2g) and (3), Stats.]

Solid Waste and Recycling

Solid Waste Disposal

Chapter 289, Stats., contains extensive licensing requirements and other regulations governing solid waste disposal facilities, which include traditional solid waste facilities such as incinerators and landfills. Wisconsin law also includes licensing requirements for solid waste treatment facilities, storage facilities, and transportation services.

Lists of electronics collection sites and registered electronics recyclers around the state may be found at: http://dnr.wi.gov

State law prohibits the disposal or incineration of specified materials in a solid waste disposal facility. Materials banned from solid waste disposal facilities include lead acid batteries, major appliances, waste oil, yard waste, and aluminum containers; corrugated paper or other container board; glass containers; newspapers and used automotive oil filters and oil absorbent materials that contain waste oil. In addition, the disposal of electronic devices such as computers, televisions, video cassette recorders, digital video disc players, and cell phones in a landfill is prohibited. [s. 287.07, Stats.]

Recycling

State law requires each responsible unit of local government to operate, or contract with another entity to operate, a recycling program that manages solid waste generated within its jurisdiction in compliance with the landfill disposal restrictions that ban certain materials from landfills. A responsible unit may be a municipality, county, tribe, solid waste management system, or other unit of local government responsible for planning, operating, and funding a recycling program. [s. 287.09, Stats.]

Responsible units must be approved by the DNR as operating an effective recycling program in order to apply for a grant under the Municipal and County Recycling Grant Program, which provides financial assistance to responsible units of local government for a portion of eligible recycling costs. A responsible unit's effective recycling program must include several specific components, including an ordinance to require recycling of the materials subject to the landfill bans and curbside collection of certain recyclable materials

in municipalities with a population of 5,000 or greater and a population density of greater than 70 persons per square mile. [s. 287.23, Stats.]

Under Wisconsin's electronics recycling program, manufacturers of certain electronic devices, including televisions, computers, and desktop printers, must register with the DNR the brands they sell to households and schools in Wisconsin, and recycle a target weight of electronics each year based on their sales. [s. 287.17, Stats.]

Groundwater Law and Public Water Supply

Groundwater Quantity

High-Capacity Wells

State law sets standards and conditions for approval of high-capacity wells by the DNR. A high-capacity well is defined as a well that, together with all other wells on the same property, has a capacity of more than 100,000 gallons per day. A high-capacity well generally may not be constructed or operated without DNR approval. [s. 281.34 (1) (b) and (2), Stats.]

State law sets forth three specific situations in which the DNR is required to conduct a formal environmental review prior to approving construction of a high-capacity well:

- The well is located in a "groundwater protection area" (an area within 1,200 feet of a water body designated as an outstanding or exceptional resource water or a trout stream).
- More than 95% of the amount of water withdrawn by the well would be lost from the water basin in which the well is to be located.
- The well may have a significant environmental impact on a spring.

State law also authorizes the DNR to impose certain conditions on proposed wells in the categories described above and on proposed wells that may impair a public utility's water supply. The DNR may approve wells in those categories only if conditions will ensure that a well will not cause significant environmental impact or impair a public water supply. [s. 281.34 (4) and (5), Stats.]

For background information about Wisconsin law relating to groundwater withdrawals, see Legislative Council Information Memorandum 2016-2, available at the Legislative Council website at: http://lc.legis.wisconsin.gov

A circuit court case and a formal Attorney General's Opinion have interpreted 2011 Wisconsin Act 21, commonly referred to as "Act 21," to limit the DNR's authority to impose certain conditions in permits for high-capacity wells to those that are

explicitly allowed in statute or rule. Following the publication of this opinion, the DNR announced that it will conduct environmental review only for applications for high-capacity wells that are one of the three specific types of wells described above or that adversely impact a public water supply.

If applicable conditions are met, state law, as amended by 2017 Wisconsin Act 10, authorizes the owner of a previously approved high capacity well to repair, replace, reconstruct, or transfer ownership of the well without obtaining an additional approval from and without having to pay any fee to the DNR. The conditions in the original well approval generally continue to apply to the repaired, replaced, reconstructed, or transferred well. [s. 281.34 (2g), Stats.]

State law also requires the DNR to evaluate and model the hydrology of three specified lakes and allows the DNR to evaluate the hydrology of other streams and lakes in a specified designated study area. As specified in the statutes, the purpose of this evaluation is to determine whether existing and potential groundwater withdrawals are causing or are likely to cause a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels. If the DNR concludes such impacts are or will be occurring, the DNR is required to propose any special measures related to groundwater withdrawal that it recommends that the Legislature implement to rectify those impacts. [s. 281.34 (7m), Stats.]

Great Lakes Compact

The Great Lakes Compact took effect when it was ratified by Wisconsin and by the other seven Great Lakes states through legislation, consented to by Congress, and signed by President Bush, in 2008.

The Great Lakes Compact ("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) regulating large withdrawals and consumptive uses of water within the basin. Under the Compact, "water" includes groundwater and surface water. 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. [ss. 281.343 and 281.346, Stats.]

For purposes of the Compact, any person who withdraws water at an average of 100,000 gallons per day or more in any 30-day period from the basin for use within the basin must register with the DNR, report specified information about the withdrawal, and receive a water use permit. With a few exceptions, new or increased diversions of water from the basin are prohibited under the Compact. Most proposals for diversions are likely to be from communities seeking a public water supply consisting of water from the Great Lakes basin.

More information about specific diversion applications is available on the DNR website at: http://dnr.wi.gov

Pursuant to the process provided in the Compact, the City of Waukesha's application to divert water from Lake Michigan was approved by the Great Lakes-St. Lawrence River Basin Water Resources Council, comprised of the Governors of each of the eight Great Lakes States, on June 21, 2016. The City of Waukesha is in the process of obtaining all required federal, state and local permits and approvals for diverting Lake Michigan water. The DNR will issue a final diversion approval once all required permits are issued.

On April 25, 2018, after determining that Compact requirements were satisfied, the DNR approved the City of Racine's application to divert water from Lake Michigan to the Village of Mount Pleasant, an area in which the future site of the Foxconn facility will be located.

Groundwater Quality

The state groundwater protection law requires the establishment of numerical standards for substances in groundwater to be used in all state regulatory programs that affect, or may affect, groundwater, and the creation of enforcement standards for identified substances.

Under state law, each "regulatory agency," i.e., an agency that regulates activities that could affect groundwater quality, is required to submit to the DNR a list of substances which have been detected in, or have a reasonable probability of entering, groundwater and which are related to activities it regulates. The DNR then sets enforcement standards for each substance identified as a public health concern, using recommendations from the Department of Health Services, and for each substance the DNR identifies as a public welfare concern. Federal standards must generally be used to establish state enforcement standards. When a substance is detected in groundwater in concentrations equal to or greater than its enforcement standard, a violation has occurred and is subject to immediate enforcement action. The DNR also establishes a preventative action limit (PAL) for each substance, which is expressed as a percentage of the enforcement standard. When a preventive action limit is attained or exceeded, a regulatory response may be necessary. After the enforcement standards and preventive action limits are established, they must be used by all state agencies in their regulatory programs that may affect groundwater.

Private well owners are responsible for testing the quality of their water supply.

The groundwater protection law also includes a range of enforcement responses a state agency must consider in response to exceedances of PALs and enforcement standards, establishes a groundwater monitoring

program, and creates the Groundwater Coordinating Council. [See, generally, ch. 160, Stats.; and ch. NR 140, Wis. Adm. Code.]

Public Water Supply

The federal Safe Drinking Water Act establishes maximum contaminant levels for all drinking water supplied from public water systems. The EPA sets national standards for drinking water, which establish enforceable maximum contaminant levels for particular contaminants in drinking water. In Wisconsin, the DNR is authorized to establish, administer, and maintain a safe drinking water program no less stringent than the requirements of the federal Safe Drinking Water Act. Under this authority, the DNR is required to: (1) prescribe, publish, and enforce minimum reasonable standards and methods to be pursued in obtaining pure drinking water for human consumption; and (2) establish all safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption. State law sets forth requirements for all types of public water systems, including requirements for general operation; sampling, testing, and treatment; and reporting. [ss. 280.11 and 281.17 (8), Stats.; ch. NR 809, Wis. Adm. Code.] Before a new public water system may be built or an existing public water system may be expanded, those plans must be reviewed and approved by the DNR. [s. 281.41, Stats.] Under the Wellhead Protection Program, DNR approval is required for new wells serving public water systems in order to prevent contaminants from entering the system through the area surrounding the well. [ch. NR 811, Wis. Adm. Code.]

The DNR and the Department of Administration jointly administer the Safe Drinking Water Loan Program, which provides loans to local governments and special purpose districts for projects to plan, design, construct, or modify public water systems. [s. 281.61, Stats.] These two agencies also administer the Clean Water Fund Program, which provides financial assistance to local governments for wastewater treatment facilities and urban stormwater runoff projects. [s. 281.58, Stats.]

Private Water Supply

Private wells, which are generally defined as wells that have fewer than 15 connections and serve fewer than 25 people, are not regulated as part of the public water supply. State law provides standards for the construction and reconstruction of private wells and the installation of pumps in those wells, and state requirements also apply to the sealing and filling of private wells. Private well drillers and pump installers must be licensed by the DNR. Unlike public water supply systems, private wells are generally not required to be tested or inspected by the DNR. [See, generally, ch. 280, Stats.; and ch. NR 812, Wis. Adm. Code.]

The DNR administers the well compensation program, which provides financial assistance to cover a percentage of eligible costs to replace, reconstruct, or treat contaminated residential or livestock water supplies. [s. 281.75, Stats.; and ch. NR 123, Wis. Adm. Code.]

Metallic Mining

The state's metallic mining law has been a subject of legislative interest during the past several legislative sessions. As amended by 2013 Wisconsin Act 1 and 2017 Wisconsin Act 134, the process for metallic mining differs for ferrous (i.e., iron) and other metallic minerals.

For both ferrous and non-ferrous metallic mining, DNR authorization is required before a person may commence a mining operation. [ss. 293.37 (1) (a) and 295.47 (1) (a), Stats.] For both types of metallic mining, an environmental impact statement must be prepared and public hearings must be held. In addition, both types of metallic mining are subject to detailed reclamation and financial assurance requirements.

However, as compared with other metallic mining, ferrous mining is subject to a more expedited process. In addition, certain special exemptions relating to navigable waters and wetlands impacts apply to ferrous mining, whereas generally applicable permitting standards apply to non-ferrous metallic mining. In addition, different financial assurance requirements apply to each type of metallic mining.

In addition to state permitting requirements, a metallic mining operator must satisfy any applicable local zoning requirements. Counties, cities, villages, towns, and tribal governments that require an approval or permit under a zoning or land use ordinance may negotiate local agreements with mining operators to satisfy ordinance requirements. [ss. 293.41 and 295.443, Stats.]

2017 Wisconsin Act 134 repealed a requirement under which applicants for a non-ferrous mining permit were required to provide information showing that a sulfide mining operation in the United States or Canada has operated for at least 10 years without polluting surface water or groundwater and that a sulfide mining operation in the United States or Canada has been closed for at least 10 years without polluting surface water or groundwater. That requirement was sometimes referred to as the "sulfide mining moratorium." During the time the requirement was in effect, the DNR approved one metallic mining project, the Flambeau Mine located in Rusk County.

Nonmetallic Mining

Nonmetallic mining is the extraction of stone, sand, rock, or similar materials from natural deposits. State law does not require a person seeking to begin nonmetallic mining to obtain a state permit before mining, unless the proposed operation involves environmental

impacts that are independently regulated, such as air pollution, wastewater, or stormwater runoff.

State law establishes standards for nonmetallic mining reclamation, defined to mean the rehabilitation of a nonmetallic mining site to achieve a land use in an approved nonmetallic mining reclamation plan. The DNR is required to promulgate rules regarding nonmetallic mining site reclamation requirements, but delegates the responsibility for adopting and administering such reclamation to local governments. All counties must, and towns, villages, and cities may, enact nonmetallic mining reclamation ordinances. Each ordinance must comply with the minimum reclamation standards in DNR rule. In general, no person may engage in nonmetallic mining or in nonmetallic mining reclamation without first obtaining a nonmetallic mining reclamation permit under the applicable local ordinance. [ss. 295.11 (4), 295.12 to 295.15, Stats.; ch. NR 135, Wis. Adm. Code.] Local governments also regulate nonmetallic mining through zoning ordinances and ordinances enacted pursuant to general police powers to regulate public health, safety, and welfare.

Management and Acquisition of State Public Lands

Public lands programs designed for the protection and management of the state's natural resources and scenic areas are administered by the DNR pursuant to ch. 23, Stats. Under this general authority, as well as specific statutes related to each type of property, the DNR supervises various types of land designated for conservation or recreation. These lands include state natural areas, state parks, state forests, state recreation areas, wildlife and game refuses, and the Ice Age Trail.

The LFB 2017 Informational Paper 61, *Warren Knowles-Gaylord Nelson Stewardship Program*, provides extensive information about this program, at:
http://www.legis.wisconsin.gov/lfb

The primary public land acquisition program in Wisconsin is the Warren Knowles-Gaylord Nelson Stewardship Program. Under the program, the DNR acquires land and provides grants or state aid to local units of government and nonprofit conservation organizations for land acquisition and property development activities. The state generally issues 20-year, tax-exempt general obligation bonds to support the program. State law specifies that the DNR may not obligate more than $33,250,000 in each year from fiscal years 2015-16 through 2019-20. [s. 23.0915, Stats.]

State law provides public access requirements related to nature-based outdoor activities for certain property acquired at least in part with funding from the Stewardship Program. For purposes of these requirements, "nature-based outdoor activity" means hunting, fishing, trapping, hiking, cross-country skiing, and other nature-based outdoor activity designated by rule by the DNR. For specified categories of property, public access for one or more of the listed types of nature-based recreation may be prohibited only if the Natural Resources

Board determines that it is necessary to do so to protect public safety, protect a unique animal or plant community, or accommodate usership patterns. [s. 23.0916, Stats.]

Forest Tax Law Programs

Wisconsin's forest tax laws encourage sustainable forest management on private lands by providing a property tax incentive to landowners. The two forest tax law programs are the Managed Forest Land Program (MFL) and the Forest Crop Law (FCL). [subchs. I and VI, ch. 77, Stats.] The MFL program was enacted in 1985 and replaced the FCL; however, forest land continues to be enrolled in FCL since the designation lasts for 25 or 50 years. Both programs encourage management of woodlands in their purposes and policies, as well as through a written management plan for a landowner's property. In exchange for following a written management plan and program rules, landowners pay forest tax law program rates in lieu of regular property taxes.

State law sets forth MFL program eligibility requirements, management plan components, and program rates. Landowners enrolled in the MFL program have the option to close up to 320 acres in each municipality to public access in exchange for paying a higher rate. State statutes specify certain procedures and requirements to withdraw land from the MFL program, and withdrawal taxes may be assessed on withdrawn lands.

Invasive Species

Certain prolific, nonnative types of plants, insects, animals, or other living things, referred to as invasive species, often lack natural controls, like predators, and may be able to out-compete native species for food, habitat, and other resources.

State law requires the DNR to establish a statewide invasive species control program in order to cut, remove, destroy, suppress, or prevent the introduction of nonindigenous species that are likely to cause economic or environmental harm or harm human health. [s. 23.22, Stats.] The DNR has promulgated an administrative rule, ch. NR 40, Wis. Adm. Code, that classifies and identifies invasive species. In addition, the rule generally prohibits the transport, possession, transfer, and introduction of prohibited species. With landowner permission or a judicial inspection warrant, the DNR may inspect for, sample, and control prohibited species. The rule also contains preventive measures including requirements to remove aquatic plants and animals and drain water from boats and trailers upon removal from the water and to remove aquatic plants and animals from any vehicle, boat, trailer, or equipment before placing it in any navigable water or transporting it on a highway.

Endangered Species

The federal Endangered Species Act (ESA), enacted in 1973, has a stated purpose of conserving species identified as endangered or threatened with extinction, and conserving ecosystems on which they depend. It is administered by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Under the ESA, species of plants and animals may be listed as either endangered or threatened according to assessments of the risk of their extinction and a person may not "take" a listed animal without a federal permit. The ESA encourages states to develop and maintain conservation programs for threatened and endangered species. Federal funding is available to promote state participation. [16 U.S.C. ss.1531-1544.]

State law directs the DNR to establish by administrative rule an endangered and threatened species list consisting of federally listed wild animals and plants and endangered and threatened Wisconsin species of wild animals and plants. The list is provided in ch. NR 27, Wis. Adm. Code. Similar to the ESA, state law prohibits the taking, transport, possession, processing, or selling of any listed wild animal, including their parts and products, except under a scientific or incidental take permit issued by the DNR under specified conditions. Similar prohibitions, and the availability of specific permits, regarding wild plants are also included in state statute. [s. 29.604, Stats.; ch. NR 27, Wis. Adm. Code.]

Legal, economic, and social disputes have resulted from actions taken under the ESA. One example particularly relevant to Wisconsin is the treatment of the gray wolf. The gray wolf was removed from the state threatened species list in 2004 and from the federal endangered species list on January 27, 2012. Subsequent to the federal delisting of gray wolves, Wisconsin enacted legislation establishing an annual wolf harvesting season. Three wolf hunting and trapping seasons were subsequently held. However, a federal court decision in December 2014 directed that the gray wolf be relisted as a federally endangered species in the western Great Lakes region, which includes Wisconsin. Therefore, as of the date this chapter was published, Wisconsin is not authorized to implement a wolf harvest and landowners may not lethally remove wolves from their property.

Information on the hunting season structure for game species including deer, bear, and wild turkey is available at:
http://dnr.wi.gov

Wildlife Management

The legal framework for fish and game regulation is primarily found in ch. 29, Stats., and ch. NR 10, Wis. Adm. Code. Chapter 29, Stats., governs the regulations applicable to hunting, trapping, and fishing, and the licenses or approvals required for those activities. State law also regulates commercial activities regarding fish and game, such as commercial fishing, hunter education, and stocking of fish and game. One key statutory provision is s.

29.014, Stats., which is the broad grant of authority to the DNR to establish open and closed seasons and to adopt regulations regarding the taking of fish and game.

DNR wardens enforce regulations regarding hunting, fishing, and trapping based on a citation system similar to that used for traffic law violations. The penalty for a citation is a civil forfeiture. Some more serious fish and game law violations have criminal penalties.

Hunting and trapping statutes and regulations are continually evolving. Some of the many statutory changes that have occurred recently include the creation of a hunter and trapper mentoring programs; expansion of crossbow hunting opportunities; the reduction of resident license fees for certain first-time hunting, fishing, or trapping approvals; the general requirement that state parks be open to hunting, fishing, and trapping; and the elimination of the back-tag requirement.

The DNR 15-year Chronic Wasting Disease Response Plan is available at: http://dnr.wi.gov/topic/wildlifehabitat/documents/executive_summary.pdf

Chronic wasting disease (CWD) was confirmed in Wisconsin in 2002 and continues to be an issue in the state. State efforts to control CWD include placing restrictions on baiting and feeding deer in CWD-affected counties, creating limitations on deer carcass movement, and increasing the availability of antlerless deer permits in CWD-affected counties. [ss. 29.063 and 29.336 (2), Stats.] In addition, both DNR and DATCP have certain regulatory authority over registration, inspection, and fencing on captive deer farms, as well as movement of farm-raised deer. [ss. 90.21 (6) and 95.55, Stats.]

In 2010, the DNR developed a 15-year Chronic Wasting Disease Response Plan, which outlines management, monitoring, and public awareness goals and objectives regarding the disease. In May 2018, Governor Walker directed DNR and DATCP to develop emergency rules to enhance fencing on captive deer farms, and to prohibit movement of deer carcasses and live deer from captive deer farms in CWD-affected counties.

Wildlife Damage

Wildlife damage claim payments and wildlife damage abatement assistance are funded by fees collected from hunters. Payments are available under these programs for damage caused by deer, bear, geese, turkey, and cougar. Land for which wildlife damage payments are made may be required to be open to hunting. State law also authorizes wildlife damage payments for sandhill cranes or elk, if hunting of either species is authorized by the DNR in the future. [s. 29.889, Stats.]

Additional References

1. At the beginning of each biennial legislative session, the LFB publishes Informational Papers on a variety of environmental and natural resources topics. The Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
2. The DNR website contains useful information about environmental protection programs, natural resources management, hunting, fishing and trapping seasons, as well as information about Natural Resources Board meetings. The DNR website is: http://dnr.wi.gov/.
3. The DATCP website includes information regarding nonpoint source pollution and nutrient management plans. This information may be found at: http://datcp.wi.gov.
4. The federal EPA maintains a website that has information on all federal environmental laws. The EPA website is: https://www.epa.gov/.
5. The U.S. Fish and Wildlife Service, a bureau of the Department of Interior, maintains a website that includes information on hunting, fishing, conservation, and endangered species programs. The website is: http://www.fws.gov/.
6. The ACE website includes information regarding permit requirements for activities in or near navigable waters and wetlands. The ACE website is: http://www.usace.army.mil.

Glossary

Nonattainment area: A nonattainment area is an area identified under the Federal Clean Air Act: (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.

Nonfederal wetland: Under Wisconsin law, a wetland is identified as a nonfederal wetland if it is determined to be a nonnavigable, intrastate, and isolated wetland by ACE or by a court of competent jurisdiction. These wetlands are not subject to Federal Clean Water Act permit requirements.

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.

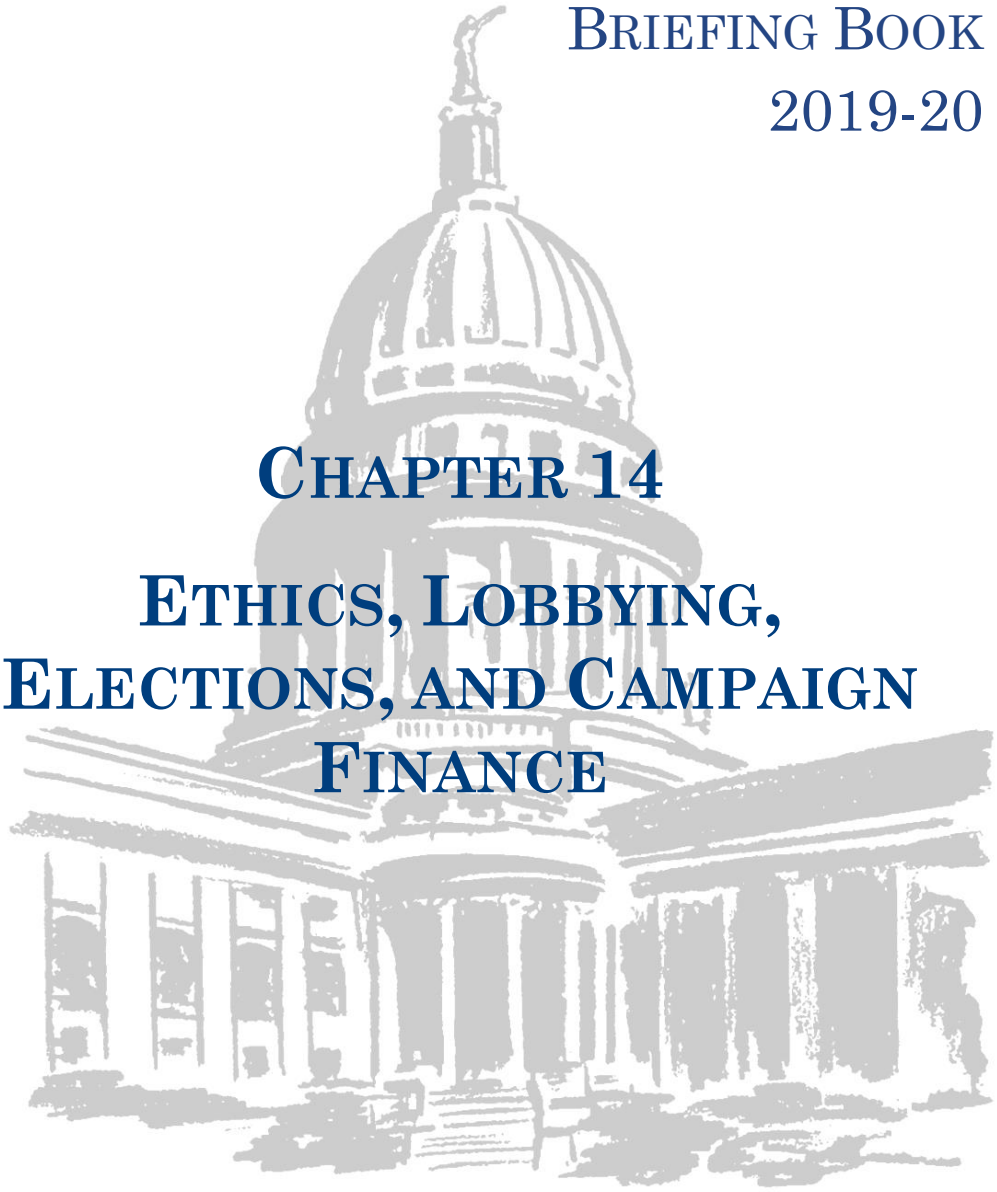
State Implementation Plan (SIP): These plans are required by the federal Clean Air Act. They set forth in detail the regulations and related programs that a state will use to meet its responsibilities under this Act; they are reviewed and approved by the EPA.

Total Maximum Daily Load (TMDL): The amount of a pollutant that a water body can assimilate and not exceed water quality standards. A TMDL is generally established for each pollutant.

WPDES: Wisconsin Pollution Discharge Elimination System. A discharge of water containing certain pollutants from a point source is generally prohibited without a WPDES permit from the DNR.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 14

ETHICS, LOBBYING, ELECTIONS, AND CAMPAIGN FINANCE

Jessica Karls-Ruplinger, Acting Director, and Katie Bender-Olson, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

The Elections Commission administers and enforces Wisconsin's election laws and the Ethics Commission administers and enforces Wisconsin's campaign finance, ethics, and lobbying laws. This chapter describes the Ethics Code and lobbying law requirements, particularly as they relate to legislators, and summarizes election and campaign finance laws. In addition, this chapter discusses the role of the Elections Commission and the Ethics Commission in providing advisory opinions on the application of ethics, lobbying, elections, and campaign finance laws.

ETHICS CODE

Wisconsin legislators, as well as other state public officials, are subject to the Ethics Code set forth in subch. III of ch. 19, Stats. The Ethics Code contains financial disclosure requirements, standards of conduct, enforcement procedures, and penalties for violations.

Ethics Commission guidelines that relate to ethics are available at:

https://ethics.wi.gov

The Ethics Commission administers and enforces the Ethics Code. [s. 19.49, Stats.] The standards of conduct under the Code are stated in the form of general principles, rather than as specific, detailed regulations. Consequently, predicting 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 section should be viewed only as a general description of, and guide to, the statutory provisions. The pertinent statutes and administrative rules and the Ethics Commission should be consulted when questions arise.

The key provisions of the lobbying law that relate to legislators are described later in this chapter. Similar conduct is addressed by both the Ethics Code and the lobbying law.

Disclosure of Financial Interests

The Ethics Code requires legislators and certain other state officials to disclose annually the following information regarding financial interests relating to themselves and, in most cases, their immediate families:

- 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.
- Names of creditors to whom $5,000 or more is owed, categorized by whether the amount owed is less or greater than $50,000.

- Interests in real property holdings in Wisconsin, other than a principal residence.
- Identity of direct sources of income of $1,000 or more and certain indirect sources of income of $10,000 or more.
- Identity of donors (nonrelatives) of gifts having a value over $50.
- Lodging, transportation, money, or other items, having a value over $50, that are received for a published work, presentation of a talk, or participation in a meeting. (See, also, the discussion of transportation and lodging below.)

Legislators must annually file a Statement of Economic Interests, which discloses certain financial interests of the legislator.

Financial interests that must be disclosed under the Ethics Code are set forth in a form called the "Statement of Economic Interests." The Ethics Commission provides forms and instructions to incumbent legislators annually for updates and provides on its website or by mail forms and instructions for potential candidates.

Additional information on disclosure of financial interests can be found at:

https://ethics.wi.gov/Pages/Ethics/StatementsOfEconomicInterests.aspx

A Statement of Economic Interests is retained by the commission until three years after a person ceases to be a state public official; the commission then destroys all of its copies of the filer's statements. The statement is open for public inspection at the commission offices while on file. The commission must notify the person who filed the statement of the full name and address of any person who inspects the filer's statement.

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 no later than April 30. [ss. 19.43, 19.44, and 19.48, Stats.]

Prohibited Conduct

Summarized below are the general categories of conduct prohibited under the Ethics Code. The Ethics Code also separately addresses conflicts of interest, discussed later in this chapter.

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; and from soliciting or receiving anything of value if it could reasonably be expected to influence or reward official actions.

Use of Office for Private Benefit

A legislator is prohibited from using his or her public position or office 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. [s. 19.45 (2), Stats.]

"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; fees 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. [s. 19.42 (1), Stats.] "Anything of '**substantial**' value" is not defined under the Code.

Additional information on prohibited conduct can be found at:

https://ethics.wi.gov/Resources/1201-StatePublicOfficialConduct.pdf

Improper Influence or Reward for Official's Actions

A legislator is prohibited from soliciting or receiving anything of value if it could reasonably be expected to influence or reward official actions. [s. 19.45 (3), Stats.]

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 certain committees or persons.

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, any committee registered under state campaign finance law, or any person making certain candidate-related communications. [s. 19.45 (13), Stats.]

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. [s. 19.45 (4), Stats.]

Use of Office for Unlawful Benefits, Advantages, or Privileges

A legislator is prohibited from using his or her public position to influence or gain unlawful benefits, advantages, or privileges for the legislator or others. [s. 19.45 (5), Stats.]

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 certain written disclosure is made to the Ethics Commission 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. [s. 19.45 (6), Stats.]

Representation of Persons Before State Agencies

A legislator is generally prohibited from representing persons before state agencies in an unofficial capacity and for compensation. However, such representation is allowed under any of the following circumstances:

- In contested cases (as defined in ch. 227, Stats., Administrative Procedure and Review) 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.
- 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). [s. 19.45 (7), Stats.]

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 Ethics Code. [s. 19.45 (3m), Stats.]

Conflicts of Interest

The Ethics Code also contains prohibitions on conflicts of interest. Under the Code, except in accordance with the Ethics Commission'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

A legislator may not take any official action substantially affecting a matter in which the legislator has a substantial financial interest; and may not use his or her office to produce a substantial benefit for the legislator.

the legislator is associated, has a substantial financial interest.

Additional information on conflicts of interest can be found at:

https://ethics.wi.gov/Resources/1232-PrivateInterestOfficial.pdf

- 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.

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 administrative rules (e.g., voting).

[s. 19.46, Stats.]

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 Ethics Commission takes the position that the Ethics Code may nonetheless prevent a legislator from taking official action, including voting, under certain circumstances.

In support of this position, the commission 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 is associated. The latter prohibition appears independently of the conflict of interests prohibitions. Under the commission'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 all of the following apply:

- 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.
- The effect of the legislator's actions on the legislator's private interests is neither significantly greater nor less than on 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 Ethics Commission and legislative leadership is recommended. The commission's advice on potential conflicts of interests can be obtained by seeking an advisory opinion of the commission.

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 when evaluating how the Ethics Code might apply 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 immediate 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, any committee registered under state campaign finance law, or any person making certain candidate-related communications?
- 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?

Who Can Answer Questions Concerning Application of the Code

If questions concerning the 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 Ethics Commission. If there is no sponsor or if the sponsor has not cleared the event with the commission, the commission itself should be consulted directly.

Relationship of the Ethics Code to the Lobbying Law

The lobbying law is generally concerned with who is involved in an activity (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 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. [s. 13.625, Stats.]

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.

LOBBYING LAW

Wisconsin legislators are directly and indirectly affected by the lobbying law, which is set forth in subch. III of ch. 13, Stats. The Ethics Commission is responsible for administering the state lobbying law. [s. 19.49, 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). [s. 13.625, Stats.]

Ethics Commission guidelines that relate to lobbying are available at:

https://ethics.wi.gov

Legislators are indirectly affected by the regulatory features of the law (registration, licensing, and reporting) because constituents may be subject to these requirements if they attempt to influence the legislative process.

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. [s. 13.61, Stats.]

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; appearances at meetings or public hearings; and service on a committee in which such preparation or communication occurs. [s. 13.62 (10), Stats.]

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 an individual who either is employed by a principal or 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 the

individual makes lobbying communications on each of at least five days within a six-month reporting period. (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.

The law requires all lobbyists to be licensed by the Ethics Commission. Principals must be registered and must file semi-annual lobbying expense reports with the commission.

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.

[ss. 13.62 (11), (12), and (12r), 13.621, 13.63, 13.64, 13.68, and 13.695, Stats.]

Prohibited Conduct

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: (1) legislators; (2) private lobbyists and principals; and (3) state agency lobbyists. There are certain exceptions to these prohibitions, which are set forth later in this chapter.

Actions of Legislators Prohibited or Restricted

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.

A legislator generally may not solicit or accept anything of value from lobbyists or

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 Ethics Commission.

Actions of Private Lobbyists and Principals Prohibited or Restricted

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.

[s. 13.625 (1) (b) and (2), Stats.]

Actions of State Agency Lobbyists Prohibited

Each state agency must file a semi-annual statement with the Ethics Commission 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.

[ss. 13.621 (1) (c) and 13.695, Stats.]

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 that 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 state campaign finance law (ch. 11, Stats.), and the time limitations of the lobbying law. Under the lobbying law, a lobbyist may make a campaign contribution from his or her personal funds, and a candidate for legislative office may accept such contribution, in the year of the election between April 15 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. A lobbyist may deliver or convey a contribution on behalf of another organization or person, and a candidate for legislative office may accept such contribution, at any time. 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, the section 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 resides 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. [s. 13.625, Stats.]

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 addressed by 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 not do any act in violation of a lawful duty.

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 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.

[s. 13.621 (6), Stats.]

If a constituent is unsure whether or not his or her lobbying activities or employment status makes him or her subject to regulation as a lobbyist, a legislator should advise the constituent to contact the Ethics Commission.

The Ethics Commission can advise an individual on whether the individual is subject to regulation under the lobbying law.

Election Law

State election laws are administered and enforced by the Elections Commission. [s. 5.05, Stats.] This section highlights some of the significant state election laws relating to candidates, eligible voters, voting, and post-election activities.

Federal law also impacts the administration and conduct of registration and elections. A full discussion of federal election law is beyond the scope of this chapter.

Candidates

To qualify as a candidate for an elected office, an individual must file nomination papers. A caucus procedure may be used to nominate candidates for town or village office, instead of nomination papers, in some cases. The number of signatures required on nomination papers is determined by the office that the candidate is seeking 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.

An individual generally must file nomination papers and a declaration of candidacy to become a candidate for an elected office.

For the Spring Election, 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). For the partisan primary, nomination papers may be circulated beginning on April 15 preceding the election and generally must be filed by 5 p.m. on June 1 preceding the partisan primary.

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 Ethics Commission by 4:30 p.m. on the third day after nomination papers are due. [ss. 8.05, 8.10, and 8.15, Stats.]

Voter Qualifications and Disqualifications

To be eligible to vote, state statutes require an individual to be a U.S. citizen at least 18 years old and reside in an election district or ward for 10 days[1] prior to the election in which the individual will vote. An individual is disqualified from voting if the individual was convicted of a felony, treason, or bribery or was adjudicated incompetent. An individual who is disqualified from voting by reason of a felony, treason, or bribery conviction will have his or her right to vote restored after receiving a pardon or after completing the sentence. [ss. 6.02, 6.03, and 304.078 (3), Stats.]

An individual must be a U.S. citizen at least 18 years old and must reside in an election district or ward for a specified number of days prior to an election in order to be eligible to vote in the election.

Voter Registration

An individual generally must register before voting in an election. However, the registration requirement does not apply to the following individuals:

- 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. In addition, an individual may register online if the individual holds a current and valid Wisconsin driver's license or ID card.

When an individual registers to vote, he or she must provide proof of residence unless the individual is a military or overseas elector or the individual registers online. Table 1 lists the documents that are considered proof of residence if they contain a current and complete name and residential address, except that a university, college, or technical college ID card is not required to contain a residential address. [ss. 6.15, 6.18, 6.22, 6.27, 6.30, and 6.34, Stats.]

[1] The United States District Court for the Western District of Wisconsin found a statutory increase of the durational residency requirement from 10 days (under prior law) to 28 consecutive days (under current state statutes) to be unconstitutional in *One Wisconsin Institute, Inc., v. Thomsen*, case 15-CV-324 (W.D. Wis. July 29, 2016). As of the date of publication, the 28-day residency requirement is not in effect, and the 10-day residency requirement is in effect.

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, subject to s. 66.0438, Stats., which places limitations on ID cards issued by counties, cities, villages, and towns.
• ID license or card issued by an employer in the normal course of business, excluding a business card, that contains a photograph of the elector.
• Real estate tax bill or receipt for the current or previous year.
• Residential lease (except for electors registering online or by mail).
• University, college, or technical college ID card that includes a photograph of the elector, accompanied by certain other documentation.
• 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.
• Contract or intake document prepared by a residential care facility that specifies that the elector currently resides in the facility.
• Wisconsin tribal ID card.

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. However, an individual may register in person after the close of registration until the Friday before an election at the municipal clerk's office. [ss. 6.28 (1), 6.29 (2) (a), and 6.30 (1), Stats.]

An individual may register to vote online, in person, or by mail prior to Election Day or at the polling place on Election Day.

Registrations by mail must be delivered to the municipal clerk's office or postmarked on or before the third Wednesday prior to the election. Online registration closes at 11:59 p.m. on the third Wednesday prior to the election. [ss. 6.28 (1) and 6.30 (4) and (5), Stats.]

An individual may obtain a registration form from the municipal clerk or can visit:

https://myvote.wi.gov/en-us

An individual may register to vote at the polling place on Election Day. The individual must fill out a registration form and an election inspector must sign the form, indicating that the registration form has been accepted.
[s. 6.55, Stats.]

Absentee Voting

Any qualified elector who is registered to vote may vote by absentee ballot. 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, or 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 for an absentee ballot in person, the application must be made prior to the Monday preceding the election.[2]

Any qualified elector who is registered to vote may vote by absentee ballot.

An elector who applies for an absentee ballot must provide proof of identification (also known as "Voter ID") with the application, unless the elector is exempt from the proof of identification requirement. Table 2 lists the documents that qualify as proof of identification, if the documents satisfy certain requirements.

Table 2: Proof of Identification ("Voter ID")
• Wisconsin driver's license.
• Wisconsin ID card.
• U.S. uniformed service identification card.
• U.S. passport.
• Certificate of U.S. naturalization.
• Driving receipt.
• Wisconsin ID card receipt.
• Wisconsin tribal ID card.
• University or college ID card.
• Veteran ID card.

Upon receipt of an application for an absentee ballot, the municipal clerk must verify that the name on the proof of identification conforms to the name on the application and, if the elector applies in person, the clerk must verify that any photograph on the proof of identification reasonably resembles the elector. If the application is complete, the clerk must mail or deliver the absentee ballot to the elector.

[2] Under state statutes, if an elector applies in person, the application must be made no earlier than the third Monday preceding the election and no later than 7 p.m. on the Friday preceding the election. An in-person application may only be received Monday to Friday between 8 a.m. and 7 p.m. and cannot be received on a legal holiday. If an elector applies for an absentee ballot in person, the application must be made prior to the Monday preceding the election. However, the U.S. District Court found that the limits on the time for in-person absentee voting, except the prohibition on voting the Monday before Election Day, to be unconstitutional in *One Wisconsin Institute*, Case 15-CV-324 (W.D. Wis. July 29, 2016). As of the date of this publication, these limitations on in-person absentee voting times are not in effect.

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 absentee ballot must be returned by 8 p.m. on Election Day.

At the polling place on Election Day, the election inspectors open the ballot envelopes and announce the name of each absentee 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. The inspectors note on the poll list 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.

Some of the absentee voting procedures for military and overseas electors and for residents of certain residential care facilities and retirement homes differ from the procedure described above. [ss. 5.02 (6m) and (16c), 6.20, 6.22, 6.24, and 6.86 to 6.88, Stats.]

Voting on Election Day

An elector must vote at the polling place for the elector's residence. 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.

Polling places are open from 7 a.m. to 8 p.m. on Election Day.

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 in 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. In addition, an elector must present proof of identification, unless the elector is exempt from the proof of identification requirement. The election officials must verify that the name on the proof of identification conforms to the name on the poll list and that any photograph on the proof of identification reasonably resembles the elector. Then, the elector must sign the poll list, unless exempt from the signature requirement due to physical disability.

The officials 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. 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. 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.

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. [ss. 6.77 to 6.80, Stats.]

Election Days

The **spring primary** is held on the third Tuesday in February to nominate nonpartisan candidates for the spring election. The **spring election** is held on the first Tuesday in April to elect judicial, municipal, and educational officers, nonpartisan county officers, and sewerage commissioners and to express preferences for presidential candidates.

The **partisan primary** is held on the second Tuesday in August to nominate candidates for the general election. The **general 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. [s. 5.02 (5), (12s), (21), and (22), Stats.]

Canvass

A canvass is conducted after an election to certify the official results of the election. The canvass process may consist of a municipal, county, state, or school district canvass, or a combination thereof, depending on the offices that are elected at the election. A board of canvassers conducts any municipal, county, or school district canvass. For a municipal canvass, the board of canvassers must meet no later than 9 a.m. on the Monday following the election. For a county or school district canvass, the board of canvassers must meet no later than 9 a.m. on the Tuesday following the election. For a state canvass, the Elections Commission chairperson, or the chairperson's designee, must canvass the returns on or before the 2nd Tuesday following a spring primary, May 15th following a spring election, the 3rd Wednesday following a partisan primary, or December 1 following a general election.

A recount cannot be requested until the canvass is completed. If a recount is not requested for an office, the certificate of election for that office is issued to the declared winner immediately after the expiration of the time allowed to file a recount petition. If a recount is requested, the certification of election is not issued until the recount has been completed and the time allowed for filing an appeal has passed, or, if appealed, until the appeal is decided. [subch. II of ch. 7, Stats.]

Recount

Additional information on recount procedures can be found at:

http://elections.wi.gov/manuals/recount

The recount procedure is the exclusive remedy to test the results of an election against an alleged defect, irregularity, or mistake. A candidate who is an "aggrieved party" or an elector who voted on a referendum question may petition for a recount. An "aggrieved party" means any of the following: (1) for an election at which 4,000 or fewer votes are cast for the office that the candidate seeks, a candidate who trails the leading candidate by no more than 40 votes; or (2) for an election at which more than 4,000 votes are cast for the office that the candidate seeks, a candidate who trails the leading candidate by no more than 1% of the total votes cast for that office.

A recount petition must be filed by 5 p.m. on the third business day after the last meeting of the board of canvassers that determines the election for that office or on that referendum question, except that for an election for president, a petitioner must file a recount petition by 5 p.m. on the first business day following the day on which the Elections Commission receives the last statement from a county board of canvassers for the election. The petition must state all of the following:

- The petitioner is an aggrieved party or voted on a referendum question at the election.
- The petitioner believes that a mistake or fraud has 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. The recount determination may be appealed to the circuit court. [s. 9.01, Stats.]

Campaign Finance Law

State campaign finance law (ch. 11, Stats.) is administered and enforced by the Ethics Commission. [s. 19.49, Stats.] 2015 Wisconsin Act 117 repealed ch. 11, Stats., in its entirety and replaced it with a new statutory chapter as of January 1, 2016. This section highlights campaign finance laws relating to registration and reporting, contribution limits, and coordination.

In general, state campaign finance law applies to candidates for state or local office. Federal campaign finance law applies to candidates for national office, such as U.S. Congress. A discussion of federal campaign finance law is beyond the scope of this chapter.

Registration and Reporting

Committee Registration and Reporting

State law generally requires the following types of committees to file a registration statement and to report campaign finance activity relating to contributions, disbursements,

and obligations on an ongoing basis: (1) candidate committees; (2) legislative campaign committees; (3) political parties; (4) political action committees (PACs); (5) independent expenditure committees (IECs); (6) recall committees; and (7) referendum committees. Similar registration and reporting requirements also apply to conduits.

The registration requirement is triggered under certain circumstances. A candidate committee must register when the individual qualifies as a candidate. A legislative campaign committee, political party, or conduit must register upon inception of the committee or conduit. A PAC, IEC, recall committee, or referendum committee must register when the committee exceeds a certain monetary threshold in contributions, disbursements, or obligations.

For a list of all information that a registered committee must report, refer to ss. 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, and 11.0904, Stats.

A registered committee is subject to ongoing reporting requirements. The committee must file preprimary reports, preelection reports, and twice-yearly reports (in January and July) with information relating to contributions, disbursements, and obligations. For example, the reports must include contributions received, contributions made, contributor occupation, contribution totals, disbursements made, and disbursement totals.

[subchs. II to IX of ch. 11, Stats.]

Specific Express Advocacy Reporting

In addition to ongoing reporting, the law contains an "event-based" reporting structure for certain express advocacy made within 60 days of an election. This reporting requirement applies to any person, including corporations, spending a total of $2,500 or more on express advocacy that is made during the 60 days prior to a primary or election involving an identified candidate.

A PAC or IEC that engages in such express advocacy must comply with the "event-based" reporting requirements, as well as the ongoing reporting requirements, described above. However, the "event-based" reporting requirements do not apply to candidate committees, legislative campaign committees, political parties, referendum committees, or recall committees, even if they engage in qualifying express advocacy in the 60 days prior to an election.

A person whose activity triggers the reporting requirement must provide specified information to the Ethics Commission within 72 hours after making the disbursements for express advocacy. For example, the report must include the date, recipients, purpose, and amount of the disbursements and the name of any candidate affected by the disbursements.

[ss. 11.0505, 11.0605, and 11.1001, Stats.]

Contribution Limits

State campaign finance law imposes limits on the amount that: (1) an individual, PAC, or other person may contribute to a candidate committee; (2) one candidate committee may contribute to another candidate committee; and (3) a PAC or other person may contribute to a legislative campaign committee or political party. In addition, the law generally prohibits contributions from an IEC, corporation, labor union, or American Indian tribe to most committees, but allows contributions to a limited range of recipient committees.

State law limits the amount that an individual, PAC, candidate committee, or other person may contribute to a candidate for state or local office.

Contributions to State Candidates

State law places the following limits on contributions to candidates for state office:

	INDIVIDUAL	CANDIDATE COMMITTEE	POLITICAL ACTION COMMITTEE	OTHER PERSON
GOVERNOR	$20,000	$20,000	$86,000	$86,000
LT. GOVERNOR	$20,000	$20,000	$26,000	$26,000
SECRETARY OF STATE	$20,000	$20,000	$18,000	$18,000
STATE TREASURER	$20,000	$20,000	$18,000	$18,000
ATTORNEY GENERAL	$20,000	$20,000	$44,000	$44,000
STATE SUPERINTENDENT	$20,000	$20,000	$18,000	$18,000
SUPREME COURT JUSTICE	$20,000	$20,000	$18,000	$18,000
STATE SENATOR	$2,000	$2,000	$2,000	$2,000
ASSEMBLY REPRESENTATIVE	$1,000	$1,000	$1,000	$1,000
COURT OF APPEALS JUDGE (DISTRICT I)	$6,000	$6,000	$6,000	$6,000
COURT OF APPEALS JUDGE (DISTRICTS II, III, & IV)	$5,000	$5,000	$5,000	$5,000
CIRCUIT COURT JUDGE (MILWAUKEE, DANE, & WAUKESHA COUNTIES)	$6,000	$6,000	$6,000	$6,000
CIRCUIT COURT JUDGE (OTHER COUNTIES)	$2,000	$2,000	$2,000	$2,000
DISTRICT ATTORNEY (MILWAUKEE, DANE, & WAUKESHA COUNTIES)	$6,000	$6,000	$6,000	$6,000
DISTRICT ATTORNEY (OTHER COUNTIES)	$2,000	$2,000	$2,000	$2,000

[s. 11.1101, Stats.]

Contributions to Local Candidates

The law places the following limits on contributions to candidates for local office:

- **Contributions from an Individual or Candidate Committee**: An individual or candidate committee may contribute the greater of: (1) $500; or (2) $0.02 times the number of inhabitants of the jurisdiction or district, not exceeding $6,000.
- **Contributions from a PAC or Other Person**: A PAC or other person may contribute the greater of: (1) $400; or (2) $0.02 times the number of inhabitants of the jurisdiction or district, not exceeding $5,000.

[s. 11.1101, Stats.]

Contributions to Legislative Campaign Committees and Political Parties

The law allows legislative campaign committees and political parties to receive unlimited contributions from most contributors, but restricts contributions from PACs, other persons subject to contribution limits, corporations, labor unions, and American Indian tribes, as follows:

- **Contributions from a PAC or "Other Person"**: A PAC, or other person subject to contribution limits, may contribute no more than $12,000 in a calendar year to any of the following: (1) a legislative campaign committee; (2) a political party; or (3) a segregated fund established and administered by a political party or legislative campaign committee for purposes other than making contributions to a candidate committee or making disbursements for express advocacy.
- **Contributions from a Corporation, Labor Union, or Tribe**: A corporation, labor union, or American Indian tribe may contribute to a segregated fund of a legislative campaign committee or political party, described above, in amounts not to exceed $12,000 in the aggregate in a calendar year.

[ss. 11.1104 and 11.1112, Stats.]

Prohibited Contributions

The law prohibits IECs, corporations, labor unions, and American Indian tribes from making any contributions to committees, as follows:

- **Contributions from an IEC**: An IEC may not make contributions to a candidate committee, legislative campaign committee, political party, PAC, or recall committee. However, an IEC may make contributions to referendum committees and other IECs in unlimited amounts.
- **Contributions from a Corporation, Labor Union, or Tribe**: A corporation, labor union, or American Indian tribe may not make contributions to a candidate committee, legislative campaign committee, political party, PAC, or recall committee. However,

they may make contributions to a referendum committee or IEC in unlimited amounts and to a legislative campaign committee's or political party's segregated fund up to $12,000, as described above.

[ss. 11.0601 and 11.1112, Stats.]

Coordination

The law prohibits individuals, PACs, IECs, and others required to report express advocacy made within 60 days of an election, as described above, from coordinating with a candidate, legislative campaign committee, or political party on express advocacy that exceeds a particular dollar threshold or that violates source restrictions. An expenditure for express advocacy is "coordinated" if either of the following applies:

- The candidate, candidate's agent, legislative campaign committee of the candidate's political party, or the candidate's political party communicates directly with the PAC, IEC, other person, or individual making the expenditure to specifically request the expenditure benefiting the candidate; and the PAC, IEC, other person, or individual explicitly assents to the request before making the expenditure.
- The candidate, candidate's agent, legislative campaign committee of the candidate's political party, or the candidate's political party exercises control over the expenditure or the content, timing, location, form, intended audience, number, or frequency of the communication.

[s. 11.1203, Stats.]

Advisory Opinions

A legislator may seek an advisory opinion from the Elections Commission on the application of election laws or from the Ethics Commission on the application of campaign finance, ethics, or lobbying laws.

In addition to administering and enforcing relevant laws, the Elections Commission provides advisory opinions on the application of election laws and the Ethics Commission provides advisory opinions on the application of campaign finance, ethics, and lobbying laws. Any person may request a formal or informal advisory opinion from the Elections Commission or the Ethics Commission regarding the application of election, campaign finance, ethics, or lobbying laws to any matter to which the person is or may become a party. A person who acts on an advisory opinion in good faith is not subject to civil or criminal prosecution, if the material facts are as stated in the opinion request.

If a person requests a formal opinion, the commission must review the request and may decide whether or not to issue an opinion. If the commission declines to issue a formal opinion, it may refer the matter to the Attorney General or the standing legislative oversight committees. If a person requests an informal opinion, the commission's designee

must provide one of the following to the person: (1) a written response; (2) a written reference to an applicable statute or law; or (3) a written reference to a formal advisory opinion of the commission. Alternatively, the designee may refer the request to the commission for review and the issuance of a formal advisory opinion.

All formal and informal advisory opinions of the Elections Commission, including the identity of a requester, must be made public. All formal advisory opinions of the Ethics Commission must also be made public, except that the identity of a requester is confidential and, if the requester is an organization or governmental body, is replaced with generic, descriptive terms. All informal advisory opinions of the Ethics Commission are confidential unless the requester consents or waives confidentiality by making a portion of the opinion public.

[ss. 5.05 (5s) (f) and (6a), 19.46 (2), and 19.55 (4), Stats.]

Additional References

1. The Elections Commission has various manuals and forms relating to election law available at: http://www.elections.wi.gov.
2. The Ethics Commission has various manuals and forms relating to campaign finance, ethics, and lobbying laws available at: http://www.ethics.gov.
3. The U.S. Federal Election Commission has information on federal campaign finance laws available at: http://www.fec.gov.
4. The Legislative Reference Bureau prepares publications on election law. Those publications may be found at: http://www.legis.wisconsin.gov/lrb/.
5. The Legislative Audit Bureau prepares audits of various state programs. For examples, see *Complaints Considered by the Government Accountability Board* (Audit Report 15-13), *Government Accountability Board* (Audit Report 14-14), *Compliance with Election Laws* (Audit Report 07-16), and *Voter Registration* (Audit Report 05-12), at: http://www.legis.wisconsin.gov/lab.
6. The National Conference of State Legislatures has information on election and campaign finance laws in other states available at: http://www.ncsl.org/research/elections-and-campaigns.aspx.

Glossary

Canvass: The process conducted after an election to certify the official results of the election.

Ethics Code: The state law that governs the conduct of state and local officials and contains financial disclosure requirements, standards of conduct, enforcement procedures, and penalties for violations.

Elections Commission: The state agency that administers and enforces state election laws.

Ethics Commission: The state agency that administers and enforces state campaign finance, ethics, and lobbying laws.

General election: The election 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.

Lobbying law: The state law that regulates the activities of persons who are hired to influence legislative and executive actions.

Partisan primary: The election held on the second Tuesday in August to nominate candidates for the general election.

Recount: The exclusive remedy to test the results of an election against an alleged defect, irregularity, or mistake.

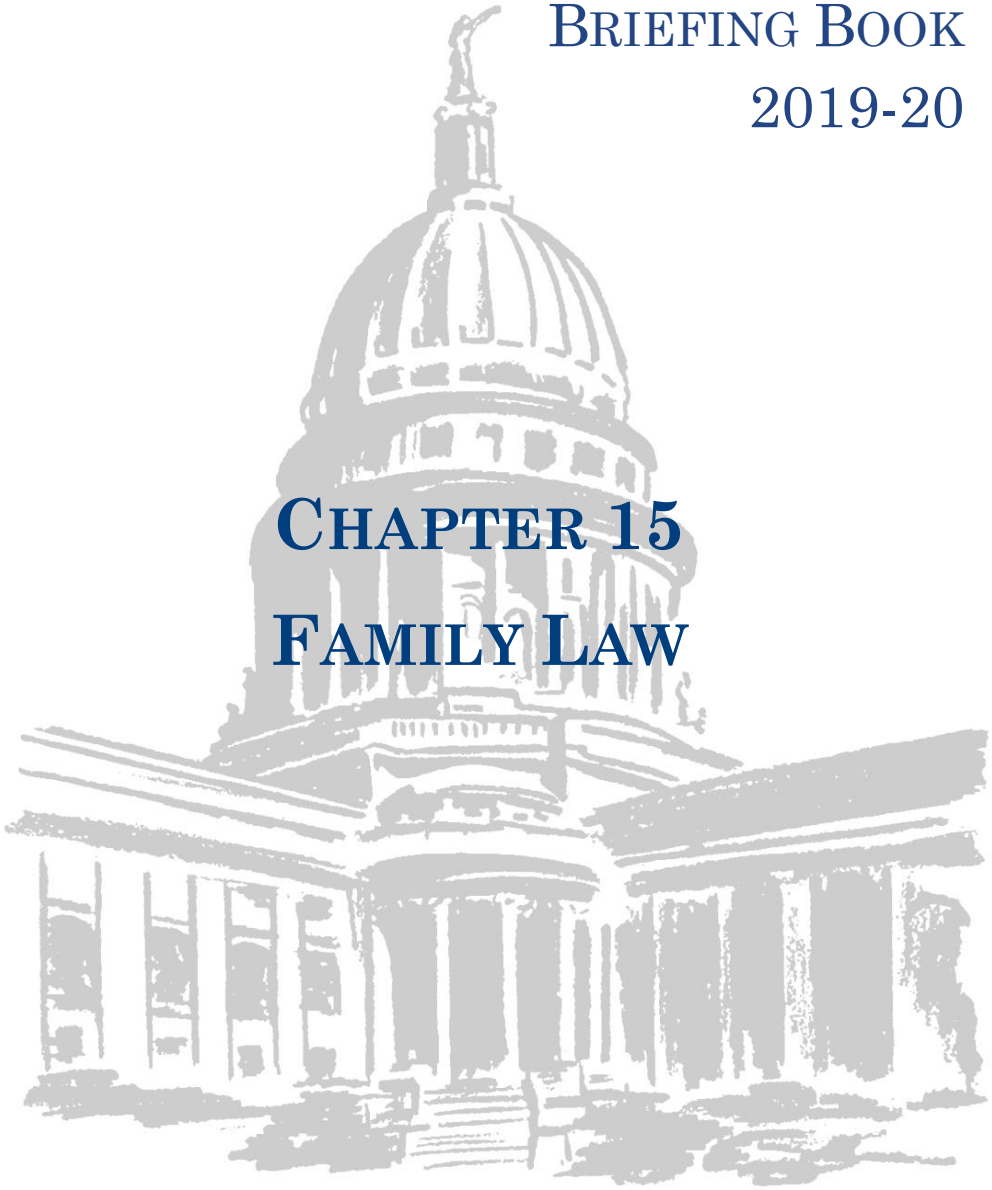
Spring Election: The election held on the first Tuesday in April to elect judicial, municipal, and educational officers, nonpartisan county officers, and sewerage commissioners and to express preferences for presidential candidates.

Spring Primary: The election held on the third Tuesday in February to nominate nonpartisan candidates for the spring election.

Statement of Economic Interests: A statement that must be filed annually by state officials that contains information regarding the financial interests of an official.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR BRIEFING BOOK 2019-20



CHAPTER 15

FAMILY LAW

Rachel E. Snyder and Amber Otis, Staff Attorneys
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Introduction

Family law encompasses all areas of family relationships, including marriage, domestic partnerships, marital property, divorce, legal custody, physical placement, child support, third-party visitation, paternity, and adoption.

The legal rights and obligations of couples, as to each other, are addressed in the areas of marriage, domestic partnerships, marital property, divorce, legal separation, property division, and spousal maintenance.

Wisconsin law addresses the legal rights and obligations of parents and other caregivers toward children in the areas of legal custody, physical placement, child support, paternity, adoption, and third-party visitation. Note that the issues of custody, placement, and child support are decided in any type of family law proceeding in which minor children are involved. If the parents were married, then such issues would be decided in a divorce or legal separation proceeding; if the parents were not married, generally those issues would be resolved in the context of a paternity case.

Marriage

In Wisconsin, marriage is a civil contract between spouses that creates a legal status governing certain rights and responsibilities to each other and to others. [s. 765.01, Stats.]

Parties

In order to marry without parent or guardian consent, a person must be at least 18 years of age. If a person is age 16 or 17, the person may marry with the written consent of a parent, guardian, or custodian. [s. 765.02, Stats.]

"Common law" marriage is not recognized as a legal marital status in Wisconsin. In some states, common law marriage is a status where a couple living together in a marital-like relationship for an established period of time are treated as legally married.

Some individuals are not allowed to marry under Wisconsin law. Specifically, persons who are nearer of kin than second cousins (unless sterile); a person who is already married to someone else; a person who is incapable of assenting to marriage due to a "want of understanding"; and a person who has been divorced less than six months may not marry. [s. 765.03, Stats.]

License and Ceremony

A marriage license may be obtained in any county where at least one party has resided for 30 days before applying for the license. If both parties are nonresidents of the state, a

marriage license may be obtained in the county where the marriage ceremony will be performed. Generally, a county clerk may not issue a license within five days of the parties' application. However, at the county clerk's discretion, and upon receiving an additional fee, the five-day waiting period may be waived. [ss. 765.05 and 765.08, Stats.]

With the completed application, a couple must submit a fee, exhibit certified copies of their birth certificates, provide documentary proof of identity and residence, submit a copy of a judgment or death certificate affecting prior marital status, and swear to or affirm the application before the county clerk. Once the license has been issued, the couple may marry in any county in the state within 30 days of its issuance, except, when both parties are nonresidents of the state, the ceremony must be performed in the county in which the marriage license was issued. [ss. 765.09, 765.12, and 765.15, Stats.]

The statutes provide a procedure for family members, the district attorney, or a circuit court commissioner to object to a marriage. The person objecting may file a petition with the clerk of probate court explaining that the application is false or insufficient, or that the applicants are not legally allowed to marry. If the court determines the objections have merit, it must order the marriage applicants to appear at a hearing, and show why the objections are not valid. [s. 765.11, Stats.]

The marriage ceremony must involve the mutual declarations of the two parties that they take each other as spouses. The declarations must be made before an authorized efficient, and at least two competent adult witnesses. Authorized officiants include 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. The officiant, or for ceremonies without an officiant, one of the parties, must return a completed marriage document (which consists of the license and a license worksheet) to the Register of Deeds of the county in which the marriage was performed within three days after the marriage date. [ss. 765.16 and 767.19, Stats.]

Recognition of Valid Marriages

Generally, under the Full Faith and Credit Clause of the U.S. Constitution, a marriage contracted in another state that satisfies the legal requirements of that state will be recognized in Wisconsin. However, courts have acknowledged an exception for when a marriage violates Wisconsin's strong public policy and Wisconsin had the most significant relationship to the spouses at the time of the marriage. Additionally, state law provides that if a Wisconsin couple enters into a marriage outside of this state when the couple is ineligible or is prohibited from marrying under state law, the marriage is void, and each party is subject to a penalty of up to nine months in jail and up to a $10,000 fine, or both. [See *Nevada v. Hall*, 440 U.S. 410, 422 (1979); ss. 765.04 and 765.30, Stats.]

Same-Sex Marriages

Same-sex marriages are legal under both state and federal law. Valid same-sex marriages must be recognized in every state, and any same-sex marriage prohibitions have been deemed unconstitutional. Thus, states must issue a marriage license to same-sex couples to the same extent that they are issued to opposite-sex couples. Wisconsin statutes that refer to a "husband" and "wife" apply instead to a "spouse," regardless of whether the spouse is of the same or opposite sex, if the statute governs a right or obligation that is conferred by virtue of the marital status. [*Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014); *Wolf v. Walker, cert. denied,* U.S. Oct. 6, 2014).]

Wisconsin law recognizes domestic partnerships and related rights and benefits in limited circumstances. 2017 Wisconsin Act 59 closed the domestic partnership registry under ch. 770, Stats., in that no new declarations of domestic partnerships are being issued after April 1, 2018. Also, Act 59 generally discontinued certain benefits for domestic partners of public employees of the state and local governmental units.

Marital Property

Wisconsin's marital property law took effect on January 1, 1986, making Wisconsin what is commonly referred to as a "community property" state. The law governs spousal property interests during marriage as it relates to creditors and at death. It generally does not govern property rights at dissolution of marriage by divorce, annulment, or legal separation. [ss. 766.001 (2), 766.03 (2), and 766.75, Stats.]

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, which gives a present, undivided, one-half interest in all property.

Under the marital property law, all property owned by spouses is presumed to be marital 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; the substantial appreciation value of individual property that is attributable to the substantial effort of either spouse; and any property not classified as something other than marital property. [ss. 766.31 and 766.63, Stats.]

A spouse may nevertheless have individual property that is excluded from marital rights in the following circumstances: 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; market 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

properly executed "unilateral statement"; and certain portions of personal injury awards. [s. 766.31, Stats.]

Special classification rules apply to homestead property, certain retirement, pension and deferred compensation plans, and life insurance policies. For example, a home titled in both spouses' names together is automatically classified as survivorship marital property, with all ownership passing to a surviving spouse, unless explicitly classified otherwise. [ss. 766.605, 766.61, and 766.62, Stats.]

In general, spouses must act together to manage and control marital property held in the names of both spouses in the conjunctive (e.g., John *and* Mary). Otherwise, a spouse acting alone may manage and control the person's own individual property and marital property held in the alternative (e.g., John *or* Mary). Special management and control rules apply in some circumstances, such as creating a mortgage interest on a home, managing business property, and making gifts. [ss. 766.51, 766.53, and 766.70 (3), Stats.]

Marital property agreements are commonly known as prenuptial agreements, or pre-nups, though in Wisconsin such agreements may be executed either before or during marriage.

One aspect of the marital property law is equal access to the extension of credit. In evaluating a spouse's creditworthiness, the law requires a creditor to consider all marital property available to satisfy the obligation. If credit is extended, a creditor must give written notice to the nonapplicant spouse of the extension of credit before any payment is due. The type of obligation determines when marital property may be used to satisfy the obligation. For example, an obligation incurred prior to the marriage is generally satisfied from the incurring spouse's individual property. An obligation incurred by a spouse during the marriage is 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. [ss. 766.55, 766.555, 766.56, and 766.565, Stats.]

Marital Property Agreement

Spouses may enter into a marital property agreement regarding the classification of marital or individual property and the rights to control the property. Persons intending to marry may enter into a marital property agreement, but the agreement becomes effective only upon their marriage. Any agreement must be in writing and signed by both parties. To be enforceable, spouses must enter into the agreement voluntarily and after receiving notice and disclosure of the other spouse's property and financial obligations. An agreement cannot affect certain obligations, such as child support. Generally, an agreement may be amended or revoked only by a subsequent marital property agreement. [s. 766.58, Stats.]

In order for a reclassification of property to be effective against a creditor, the creditor must have actual knowledge of the relevant provision in the marital property agreement prior to the granting of credit. [s. 766.55 (4m), Stats.]

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 to classify all property as either individual or marital. These agreements may be terminated by one spouse unilaterally and they have no impact upon property division at divorce. [ss. 766.588 and 766.589, Stats.]

A spouse or a person intending to marry may also unilaterally classify the income generated by his or her individual property as individual property by executing a written statement to that effect. The executing spouse must provide the other spouse with a written copy of the statement within five days after it is signed. The executing spouse may revoke the statement in writing at any time, but must notify the other spouse in writing upon revocation. [s. 766.59, Stats.]

Wills

A spouse may dispose of half of the couple's marital property and all of the spouse's individual property, if any, by will. The surviving spouse retains a one-half share in the marital property, and that share is not subject to probate. "Deferred marital property" rules apply to property acquired during the marriage, but prior to 1986, would have been marital property had the marital property law applied when the property was acquired. This property is also called "unclassified property." Under certain circumstances, a surviving spouse may elect to retain or receive a portion of the deferred marital property. [ss. 766.589, 851.055, and 861.02, Stats.]

Taxation

Certain tax credits are available only to couples filing joint returns, not those married filing separately.

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. [s. 71.03 (2) (d), Stats.; 26 U.S.C. s. 6103.] However, 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. [s. 71.10 (6), Stats.; 26 U.S.C. s. 6015.]

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. In order to resolve questions that might arise regarding access of a spouse to the other spouse's tax return if separate returns are filed, Wisconsin tax law permits the

spouse or former spouse to examine tax returns or claims of the other spouse in the following circumstances: (1) the spouse or former spouse may be liable; (2) the Department of Revenue (DOR) issued an assessment or notice of claim to the spouse or former spouse; or (3) 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 obtained, the extended due date, and the date on which the return or claim was filed. [See Rev. Rul. 87-13, 1987-1 C.B. 20; 26 C.F.R. s. 1.66-1; ss. 71.78 (4) (k) and (4m) and 766.31, Stats.]

Legal separation is a legal status that is distinct from physical separation. Any couple may physically separate at any time without affecting their legal marital status.

DIVORCE

In Wisconsin, actions for divorce and legal separation generally use the same procedures. A judgment of legal separation differs in that it allows the parties to maintain the legal status of marriage (sometimes used to continue family coverage for health insurance, or for other personal reasons), though the judgment must still addres all financial and child-related matters, similar to divorce. This discussion generally focuses on divorce proceedings.

Circuit court forms for family actions can be found at:

https://www.wicourts.gov/

General Requirements and Procedures

In order to initiate a divorce action, one spouse 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 of court collect a fee when a party commences a divorce or any other action affecting the family. [ss. 767.301, 814.61, and 814.75, Stats.]

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 or otherwise under oath that the marriage is irretrievably broken, or by the parties voluntarily living apart continuously for 12 months or more immediately prior to filing the divorce petition and one party has stated that the marriage is irretrievably broken. If only one party has stated that the marriage is irretrievably broken and the parties have not voluntarily lived apart for 12 months, the court may find that the marriage is irretrievably broken by determining that there is no reasonable prospect of reconciliation. [s. 767.315, Stats.]

Wisconsin requires a waiting period before a judgment of divorce may be granted. When the parties have filed a joint petition for divorce, 120 days must pass from the filing date before the action may be brought to trial or to a final hearing for approval of a settlement

agreement. When one party has filed the petition, the 120-day waiting period begins when the other party is served with the petition. [s. 767.335, Stats.]

Pendency of Divorce Action

A circuit court judge or court commissioner may make just and reasonable temporary orders during the pendency of an action. Temporary orders may concern legal custody and periods of physical placement of a minor child, removal of a child from the court's jurisdiction, payment for child support and spousal maintenance, payment of debts, disposal of assets, and counseling for one or both parties, among other issues. [s. 767.225, Stats.]

Each party's financial disclosure statement in a divorce action is sealed by the court and generally cannot be disclosed to any person outside the action.

Reconciliation may be attempted, if stipulated by the parties in writing, during the pendency of a divorce action. A suspension of the proceedings to effect reconciliation may be granted for up to 90 days. Suspension does not affect the parties' rights in the divorce action. During the suspension period, the parties' 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 do not reconcile, the action will proceed as though no reconciliation period was attempted. [s. 767.323, Stats.]

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 and other procedural consequences for incomplete disclosures. All financial and asset information that is disclosed is confidential and sealed by the court. [s. 767.127, Stats.]

The statutes contain various requirements for the parties to attend counseling or educational programs. Most of the programs focus on educating parents about the effect of divorce or parental separation on children and how to lessen any detrimental effects. Specific provisions relate to child custody mediation where it appears that legal custody or physical placement is contested, as discussed later in this chapter. [ss. 767.401 and 767.405, Stats.]

Reaching a Judgment

The primary issues decided in a judgment of divorce are: property division; child support and spousal maintenance; legal custody of 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 certain limitations. For example, child support must be determined in a

manner that is consistent with the state's child support standards. Also, a stipulation cannot leave one party in need of assistance from the state. [ss. 767.34 and 767.35, Stats.]

Property Division

Property division in a divorce action is not governed by the marital property law, but, rather, by the marital dissolution laws. Generally, in a divorce, all property acquired before or during the marriage, owned by either or both spouses, is subject to division. This includes assets such as pension plans, retirement accounts, vehicles, and real estate. Property acquired by gift or inheritance by one party is generally not subject to division, unless the court finds that refusal to divide the property would result in a hardship on the other spouse or the children, if any. [s. 767.61 (2) and (3), Stats.]

After determining all assets and debts of the parties, the court must presume that each party should be awarded an equal value of the total divisible property, but the application of several statutory factors may alter this presumption. One factor for consideration is the existence of a written agreement by the parties concerning any arrangement for property distribution, which is binding on the court if equitable. Other factors include the length of the marriage, the property brought to the marriage by each party, and the tax consequences to each party. For example, in dissolving a marriage of short duration, where the parties had a large difference in the property brought to the marriage, a court may consider an unequal division of property. [s. 767.61 (3), Stats.]

Debts incurred during the marriage are also assigned, but can be collected from either party regardless of how responsibility for debts is divided between the parties in their judgment of divorce. A divorce judgment assigning a debt is not binding on creditors, because a creditor is not a party in the divorce action. To avoid possible problems with the collection of debts after a divorce, parties may take actions such as consolidating and refinancing in the name of the spouse who is assigned those debts. [ss. 766.55 and 767.61, Stats.; *Sokaogon Gaming Enterprise Corp. v. Curda-Derickson*, 2003 WI App 167.]

Maintenance

As part of a 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. [s. 767.56, Stats.]

A maintenance award must meet the dual objectives of supporting the recipient in accordance with the parties' needs and earning capacities, while ensuring a fair and

equitable financial arrangement between them. There is no statutory presumption of an equal division of earnings in awarding maintenance, but courts have stated that a reasonable starting point for a maintenance evaluation in a long-term marriage is that the dependent spouse may be entitled to one-half of the total combined earnings of both parties. [*Hefty v. Hefty*, 172 Wis. 2d 124 (1992); *Johnson v. Johnson*, 225 Wis. 2d 513 (Ct. App. 1999).]

The application form for child support case management services can be found at: https://dcf.wisconsin.gov/cs/apply

If no maintenance is awarded in the judgment, maintenance is generally waived, unless specifically held open, and cannot later be ordered by a court. If maintenance is awarded, a court may consider revising the amount or duration if it first finds that there has been a substantial change in the parties' financial circumstances. [s. 767.59, Stats.; *Grace v. Grace*, 195 Wis. 2d 153 (Ct. App. 1995).]

For judgments entered before January 1, 2019, the IRS allows a payer to deduct the amount of maintenance payments from reported gross income on a tax return, if certain requirements are met. However, the IRS disallows deductions for any portion of spousal support that is intended for child support. [26 U.S.C. ss. 71 and 215.]

Under the new federal tax law, maintenance payments are no longer deductible for the payer, nor are such payments considered taxable income to the recipient. These new rules apply to any judgment of divorce or legal separation entered after December 31, 2018, and to any judgment of divorce or legal separation entered before that date, but modified after December 31, 2018, if the modification expressly provides that the new law applies to the modification. [Tax Cuts and Jobs Act, Pub. L. No. 115-97, s. 11051, 131 Stat. 2054 (2017).]

PATERNITY

A child born to a married couple is generally presumed by law, to be the child of both spouses. Paternity issues arise when unmarried couples have children. Depending on the circumstances, a paternity action may be filed, in which the court addresses not only paternity, but issues related to the child, similar to the way these issues are addressed in a divorce.

A child born to a married couple is generally presumed, by law, to be the child of both spouses.

Ways to Establish Paternity

If parents are not married when a child is born, legal fatherhood can be established in three different ways:

- **Voluntary paternity acknowledgment.** If both the mother and the man are certain that the man is the father, the easiest way to establish fatherhood is with the Voluntary

Paternity Acknowledgment form, which the father and the mother may sign together before a notary. The Acknowledgement may be signed at any time, and is commonly provided after birth, by a hospital or midwife. Local child support agencies can also help with the form. [ss. 767.805 and 891.405, Stats.; 42 U.S.C. s. 666 (a) (5) (D).]

- **Court ruling.** If a man is named as the possible father in a petition for paternity and does not agree, or, if a man states that 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 may attend. These procedures are explained in more detail below.
- **Acknowledgment of marital child (legitimation).** If a mother and the father marry after their child is born, the parents may sign a form for an Acknowledgment of Marital Child to establish paternity. Local child support agencies can help with the form, which is then filed with the state Vital Records Office. [s. 767.803, Stats.]

An action to establish paternity cannot be brought after the child turns 19.

Several persons are eligible to commence a paternity action under Wisconsin law. Eligible persons include the child, the child's mother, or the state. Likewise, a man alleging himself to be the child's father may bring an action to determine paternity. In addition, the husband of the mother, who is presumed to be the child's father, or a man legally acknowledged as the child's father at birth, may bring an action to refute paternity. [s. 767.80, Stats.]

Court Procedure

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.

The person filing the action must generally serve the filed documents on the other parent or alleged parent within 90 days of filing with the clerk of court. A guardian ad litem (GAL) is appointed for a minor parent, and may be appointed 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 deemed indigent. [ss. 767.813, 767.815 to 767.83, 801.02 (1), and 801.11, Stats.]

The court proceeding generally has three stages: the first appearance, the pretrial hearing, and the trial. All three stages are closed to the public. 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

Liability for past child support payments is limited to the period after filing unless the action was delayed because of duress, threats, promises, or evasion.

admit paternity subject to confirming tests. [ss. 767.853, 767.863, 767.88, and 767.883, Stats.]

At the first appearance, the court must inform the parties of several things, including the rights and obligations established by a paternity judgment; that any party may request genetic tests; and that defenses to paternity include sterility or impotence at the time of conception, lack of intercourse with the mother during the preconceptive period, or that another man had intercourse with the mother during that period. [ss. 767.86 to 767.863 and 767.813 (5g), Stats.]

At the pretrial hearing, the court must evaluate the probability of determining paternity at trial. At this point, witnesses and other evidence may be presented. The court may, at the conclusion of the evidence, make a recommendation to the parties regarding the paternity action including dismissal or settlement. [ss. 767.853 and 767.88, Stats.]

If no settlement is reached at the pretrial stage, a paternity trial is held in two parts: first, to make the determination of paternity and second, to make a determination of child support, legal custody, periods of physical placement, and any related issues, if necessary. [s. 767.883, Stats.]

Evidence Used to Establish Paternity

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 rebuttably 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. [ss. 767.84 and 767.87, Stats.]

Judgment of Paternity

Once the trial is completed, the court enters a judgment of paternity. The judgment contains an adjudication of the child's paternity, an order requiring either parent to pay child support, an order for the child's legal custody and physical placement, an order regarding 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. [s. 767.89, Stats.]

Legal Custody and Physical Placement

In actions for divorce, legal separation, annulment, or paternity, a court must assign legal custody and physical placement for a child. Custody and placement involve different aspects of a child's upbringing.

"Legal custody" means the right and responsibility to make major decisions concerning a child. Major decisions include 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 either party.

"Physical placement" is the time a child is physically placed in a parent's care. A parent must make routine daily decisions while the child is physically with that parent, consistent with the major decisions made by either or both parents having legal custody. [ss. 767.001 (2), (2m) and (5) and 767.41 (6), Stats.]

In determining legal custody and physical placement, a court must consider all facts relevant to the best interest of the child. A court may not prefer a parent on the basis of sex or race.

Statutory Factors

In assigning 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. [s. 767.41 (5), Stats.]

Legal Custody

The court must presume that joint legal custody is in the child's best interest. However, a court may award sole legal custody if the parties agree to it and the court finds that sole legal custody is in the child's best interest. Absent party agreement, the court may award sole legal custody if the court finds that: (1) one party is not capable of performing parental duties or does not wish to be active in raising the child; (2) conditions exist that substantially interfere with the exercise of joint legal custody; or (3) the parties will not be able to cooperate in future decision-making.

If there is evidence of a pattern or serious incident of domestic abuse by one parent against the other parent, the presumption for joint legal custody does not apply. Rather, under such circumstances, the court presumes that joint legal custody is detrimental to the child and contrary to the child's best interest.

However, the "spousal abuse" presumption may be rebutted 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 that it is in the best interest of the child that the abusive party be given joint or sole legal custody after considering the specified custody and placement factors.

If both parties have engaged in a pattern or serious incident of domestic 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. [s. 767.41 (2), Stats.]

Physical Placement

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. In determining physical placement, a court must consider all facts relevant to the child's best interest, including the same statutory factors that apply to legal custody determinations.

Wisconsin statutes provide that a placement schedule should allow a child to have regularly occurring, meaningful periods of physical placement with each parent. The schedule must maximize the amount of time a child spends with each parent, considering geographic separation and accommodations for different households. According to Wisconsin court decisions, the requirement to maximize time with both parents is not synonymous with a presumption for equal physical placement, but requires a consideration of the child's best interest and the amount of time a child has with both parents within an overall placement schedule.

A court must set a placement schedule that: (a) allows the child to have regularly occurring, meaningful periods of physical placement with each parent; and (b) maximizes the amount of time the child may spend with each parent.

A court may not deny a parent physical placement based on the parent's failure to make child support or maintenance payments. [s. 767.41 (4), Stats.; *Keller v. Keller*, 2002 WI App. 161, ¶ 12.]

Guardian Ad Litem

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 GAL for the child. A GAL's responsibility is to advocate for the best interest of the child and to make

recommendations to the court regarding paternity, custody, physical placement, and support. A GAL must consider, but is not bound by, a child's wishes. A GAL must be a licensed attorney in the State of Wisconsin who meets the GAL special training requirements. Generally, both parents are required to contribute to the payment of the GAL's fees. [s. 767.407, Stats.; SCR 35.015 (2015-16).]

Mediation

Every county must make mediation services available to help the parties resolve their disputes about the best interests of a child. With exceptions for undue hardship or endangerment to one of the parties, an initial session of mediation is required in any action 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 county's family court 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. [s. 767.405, Stats.]

Modification of Custody and Placement Order

A court generally 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. This is meant to provide a period of finality and stability while the child is adjusting to the new family situation.

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.

After the two-year period, the court may modify the legal custody or placement order if it first finds that: (1) it is in the best interest of the child to do so; and (2) a substantial change of circumstances has occurred that affects custody or placement. In considering a request to modify a custody or placement order, the court presumes that continuing the underlying physical placement arrangement is in the best interest of the child.

If the parties have substantially equal periods of placement, the court may modify an order for physical placement at any time if it is in the best interest of the child, but only if circumstances make it impractical to continue the equal placement arrangement.

2017 Wisconsin Act 263 created a new procedure that applies when a parent seeks to relocate a child. Generally, under the new law, if a court granted physical placement rights to both parents and a parent later plans to relocate and reside with the child 100 miles or more from the other parent, the moving parent must file a motion with the court seeking permission to relocate, except in circumstances in which the parents already live more than 100 miles apart. The motion must contain specific information, including notice to the

nonmoving parent regarding how to object to the relocation, and must be served on the nonmoving parent by mail. The statutes provide a procedure for the nonmoving party to object and provides standards for when relocation must or may be allowed. A court must hold an initial hearing on the motion to relocate within 30 days after the motion is filed. If there is an objection, the court will generally refer the parties to mediation, appoint a GAL if mediation fails, and set a final hearing to be held within 60 days.

Additional information on child support in Wisconsin can be found at:

https://dcf.wisconsin.gov/cs/home

At any time, a court may deny a parent's physical placement rights if it finds that the placement rights endanger the child's physical, mental, or emotional health. [ss. 767.451 and 767.481, Stats.]

Enforcement of Custody and Placement Order

Methods for enforcing rights to legal custody and physical placement include contempt of court sanctions and criminal sanctions relating to interference with the custody of a child. Additionally, statutory remedies require a court to grant periods of physical placement to replace those denied or interfered with by the other parent and to order the uncooperative parent to pay costs and attorney fees for maintaining the enforcement action. [ss. 767.471 and 948.31, Stats.]

Wisconsin courts may also enforce or modify custody and placement orders from tribal courts, other states, or other countries under the procedures set forth by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and the Hague Convention on the Civil Aspects of International Child Abduction. [ch. 822, Stats.]

Child Support

As part of a divorce judgment, paternity judgment, or cases where a child's parents may live apart, the parties are responsible for supporting a child under 18, or under 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent. 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). [s. 767.511, Stats.]

The administrative code provides the child support standards that are to be applied to a person's income in determining the appropriate level of child support. Child support amounts are based on a percentage of the parent's gross income. The percentage-of-income standards when one parent has primary physical placement 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.

When both parents have court-ordered periods of physical placement of a child for at least 25% of the year (92 overnights) each, the percentage standard is calculated for both parents and offset under a specific formula.

[ss. DCF 150.03 and 150.04 (2), Wis. Adm. Code.]

The amount of child support is determined from the obligated parent's gross monthly income. Gross income includes all salary and wages before taxes and other deductions are taken out, income from assets, workers' compensation, unemployment income, and Social Security disability benefits. Income does not include public welfare assistance. [s. DCF 150.02 (13), Wis. Adm. Code.]

In most cases, child support is automatically withheld from the income paid by an obligated parent's employer. This is known as income assignment.

The court is also permitted to set child support based on a payer's ability to earn, or "imputed income," beyond actual earnings in situations where a parent's income is less than the parent's earning capacity or is unknown. 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. [s. 150.03 (3), Wis. Adm. Code.]

Special rules govern the application of the percentage standards to the following types of payers:

- A serial family payer, who has an existing child support obligation and incurs an additional child support obligation in a subsequent family.
- A split-placement payer, who has physical placement of at least one but not all of the children.

In cases of teenage parents, both sets of grandparents also have a child support obligation.

- A low-income payer, who has an income below 150% of the federal poverty level.
- A high-income payer who has an income above $84,000 per year. A further reduced percentage rate applies to income in excess of $150,000. [s. DCF 150.04, Wis. Adm. Code.]

A court may deviate from the standards only if the court finds that the use of the applicable 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 and the reasons for deviation must be written or stated on the record. [s. 767.511 (1j), (1m), and (1n), Stats.; s. DCF 150.03 (11), Wis. Adm. Code.]

Although the child support amount is calculated based on a percentage standard, current law provides that the child support order must be given as a fixed sum. The order may be expressed as a percentage only in limited circumstances. [s. 767.511 (1) (a), Stats.]

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. [s. 767.513, Stats.; s. DCF 150.05, Wis. Adm. Code.]

The Wisconsin Child Support Lien Docket is a registry containing the names of any person with an obligation for past-due child support. The amount owed equals a lien against the person's real and titled personal property.

The searchable child support lien docket is available at:

https://liendocket.wisconsin.gov

Child support must generally be withheld from employment income and is paid to the Wisconsin Support Collection Trust Fund. Child support payments are then paid out by direct deposit or added to a debit card. [s. 767.75, Stats.]

Modification of Child Support Order

Generally, a court may not modify a child support order except when there has been a substantial change in the circumstances of the parties or the children since the entry of the order. A court may presume that there has been a substantial change in circumstances in response to certain events, including: 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. A court may also find that any of the following constitute a substantial change in circumstances: a change in the payer's income or earning capacity; a change in the child's needs; or any other condition the court determines is relevant in a particular case. If a court determines that there has been a substantial change in circumstances, then the court may, but is not required to, modify the order by applying the child support standards to the current circumstances. [s. 767.59, Stats.]

Enforcement of Child Support Order

There are several tools available for enforcement of support orders. The 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 or fines, imprisonment, or both; ineligibility for W-2 benefits; suspension of driver's licenses; data sharing between DCF and

state financial institutions; liens on property; seizure of assets; suspension of recreational licenses and professional licenses and credentials; denial of passports; denial of college or business loans; and seizure of bank accounts. State and federal criminal penalties may also apply. [subch. VIII, ch.767, Stats.]

Wisconsin courts may also enforce or modify child support orders from other states under the procedures set forth in ch. 769, Stats., the Uniform Interstate Family Support Act (UIFSA).

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 in which $500 or more is received in support. [s. 767.57, Stats.; 42 U.S.C. s. 654 (6) (B).]

Additional information on adoption in Wisconsin can be found at:

https://dcf.wisconsin.gov/adoption

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) hearing on the adoption. All hearings concerning termination of parental rights and adoption must be closed to the public. [s. 48.837 (2) to (8), Stats.]

Agency adoptions involve the placement of a child with adoptive parents by a public agency, including the Bureau of Milwaukee Child Welfare or any other county department of human or social services, or by a licensed private agency. Public child welfare 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. [ss. 48.833 and 48.834, Stats.]

An independent adoption refers to situations where the biological and adoptive parents find each other without the help of an agency, often through friends or acquaintances. In Wisconsin, these families must still work with an agency for the home study and birth parent counseling services. [ss. 48.837 and 48.84, Stats.]

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 by a court.

Similarly, 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 grandparent adoptions, but could also include adoption by a brother, sister, first or second cousin, uncle, or aunt. [s. 48.835, Stats.]

It is also common for a stepparent to adopt the child of his or her spouse under the same general procedures. Wisconsin does not allow adoption by the domestic partner of a birth parent under the stepparent adoption procedures. [s. 48.82 (1) (a), Stats.]

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, birthing classes, 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), counseling, and a gift to the mother (not to exceed $100 in value). [s. 48.913, Stats.]

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, under an expedited appeals process. [ss. 48.41, 48.46 (2), 48.63 (3) (b) 5., and 48.837 (1r) (e), Stats.]

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. [s. 48.028, Stats.]

Third Party Visitation

Wisconsin statutes provide for the visitation of children by certain nonparents, including grandparents, stepparents, and domestic partners, in several situations. However, unlike a parent with physical placement, a person granted visitation with a child does not have any other parental rights or obligations towards the child.

In Actions Affecting the Family

A grandparent, great-grandparent, or stepparent may petition the court for visitation with a child subsequent to, or during, an action affecting the family (such as divorce, annulment, and legal separation actions). The court may grant reasonable visitation rights to the grandparent, great-grandparent, or stepparent if: (1) the parents have notice of the hearing; and (2) the court determines that visitation is in the best interest of the child. As part of its best interest determination, the court must first find that the child's family is not intact. Whenever possible, in making its determination, the court must also consider the wishes of the child. [s. 767.43 (1) and (2), Stats.; *Cox v. Williams*, 177 Wis. 2d 433 (1993).]

In a recent decision, the Wisconsin Supreme Court clarified that grandparents, great-grandparents, and stepparents do not need to prove a parent-like relationship with a child in order to qualify for visitation. [*S.A.M. v. Meister (In re Meister)*, 2016 WI 22, ¶ 22.]

Person With a Parent-Like Relationship

First, in the context of an existing action affecting the family, persons other than grandparents, great-grandparents, and stepparents who have maintained a relationship similar to a parental relationship with a 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 interests of the child. [s. 767.43 (1), Stats.]

Wisconsin courts also recognize an independent action for a third party petitioner, other than a grandparent, who is seeking visitation rights with a minor child if the petitioner 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 the 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. [*Custody of H.S.H.-K.*, 193 Wis. 2d 649 (1995).]

Grandparents of a Nonmarital Child

Grandparents of a child whose parents are not married may petition for, and be granted, visitation rights in an independent action for visitation or in an underlying action affecting the family that affects the child. The child's parents must have notice of the hearing and the court must find that: (1) the parents have not married each other after the birth of the child; (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. [s. 767.43 (3), Stats.]

After Adoption

Other relatives may apply for visitation after adoption when the child has been adopted by a stepparent or by another relative. In these cases, even though the parental relationship has been legally extinguished with one or both birth parents, other relatives (listed in the statutes) may petition for visitation if they have maintained parent-like relationships with the child within the two years before filing the petition. Reasonable visitation may be granted if the court determines that it would be in the best interest of the child, the relative will not undermine the legal parents' relationship with the child, and the relative will not act in a manner contrary to the parenting decisions of the legal parents. [ss. 48.02 (15) and 48.925, Stats.]

After Death of One or Both Parents

Grandparents and stepparents of a child may request and be granted visitation with the child if one or both parents of the child are deceased and the child is in the custody of the surviving parent or any other person. Visitation may be granted if the person with custody of the child has notice of the hearing and if the court determines that visitation is in the child's best interest. The petition may be filed in an underlying guardianship action or as an independent action. [s. 54.56, Stats.]

Additional References

1. Legislative Council Information Memoranda (IM), available at http://www.legis.wisconsin.gov/lc:
    - IM-2012-09, *Legal Custody, Physical Placement, and Child Support*.
    - IM-2016-05, *Visitation by Grandparents and Other Third Parties*.
2. Wisconsin Department of Revenue publications, available at https://revenue.wi.gov/pages/HTML/taxpubs.aspx:
    - Publication 109, *Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2017* (March 2018).
    - Publication 113, *Federal and Wisconsin Income Tax Reporting Under the Marital Property Act* (January 2018).
3. Wisconsin State Law Library:
    - A compilation of various court forms is available at: http://wilawlibrary.gov/topics/wiforms.php.
    - Information about specific legal topics—such as marriage, marital property, divorce, child custody, child support, domestic partnerships, and grandparent rights—is available at: http://wilawlibrary.gov/topics/witopicindex.html.

Glossary

Guardian ad litem (GAL): A guardian ad litem is an attorney admitted to practice in Wisconsin who must advocate for the best interest of a minor child as to paternity, legal custody, physical placement, and support. The GAL has none of the rights or duties of a general guardian.

Joint legal custody: Joint legal custody means the situation in which both parties share legal custody and neither party's legal custody rights are superior, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order.

Legal custody: With respect to any person granted legal custody of a child, legal custody means the right and responsibility to make major decisions concerning the child, except

with respect to specified decisions as set forth by the court or the parties in the final judgment or order.

Maintenance: Maintenance is a payment from one spouse to another spouse that a court may order as part of a judgment of divorce, legal separation or annulment. Referred to in other jurisdictions as "alimony" or "spousal support," the goal of maintenance is to allow the parties to maintain a standard of living reasonably comparable to that experienced during the marriage. The amount and duration of maintenance, if any, varies based on the application of several statutory factors.

Major decisions: Major decisions include, but are not limited to, decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator's license, authorization for nonemergency health care, and choice of school and religion.

Mediation: Mediation means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute resolution skills, to define and resolve their own disagreements. In cases where a child is involved, the best interest of the child is the paramount consideration.

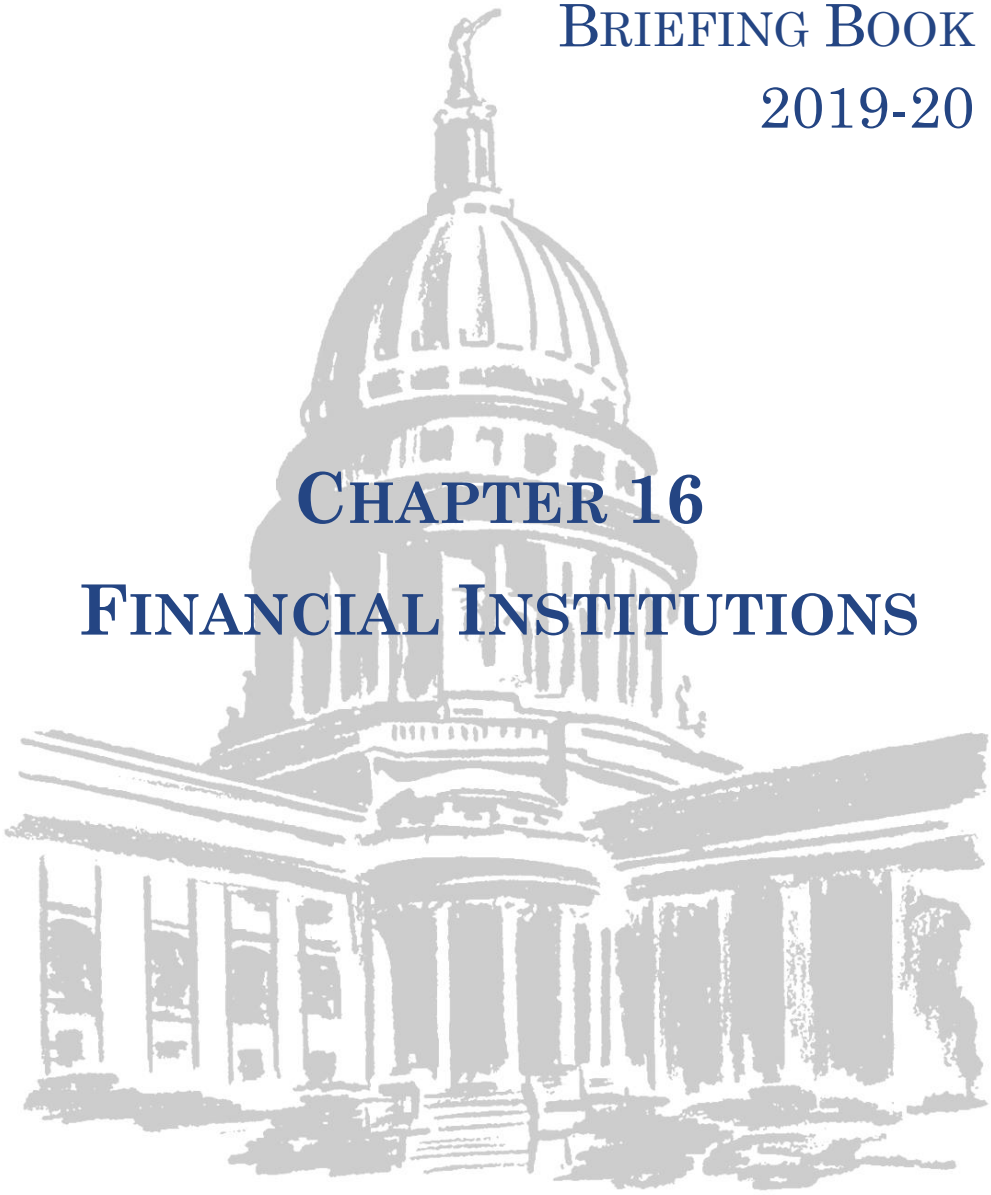
Physical placement: Physical placement means the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility, during that placement, to make routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody.

Sole legal custody: Sole legal custody means the situation in which only one party has legal custody.

Termination of parental rights (TPR): Termination of parental rights means that, pursuant to a court order, all rights, powers, privileges, immunities, duties, and obligations existing between parent and child are permanently severed.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 16
Financial Institutions

Zach Ramirez, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Introduction

To protect consumers, businesses, and the stability of the economy, state and federal law provide for extensive regulation of the financial industry. A central aspect of this regulation is the requirement that, before beginning operation, a financial service provider must obtain a license or charter from the appropriate regulatory body. In some instances, an entity wishing to provide service in Wisconsin may choose to obtain its charter from Wisconsin, the federal government, or another state. In other instances, an entity must obtain authorization from both Wisconsin and the federal government.

Institutions that accept deposits ("depository institutions"), such as banks and credit unions, must undergo rigorous evaluation before receiving a charter, but may offer a wide range of services pursuant to that charter. Certain services, such as lending, may also be offered by nondepository institutions, upon receipt of a state-issued license that authorizes a limited range of activity but entails less regulation.

In considering legislation, the Legislature is frequently tasked with crafting regulations that are sufficiently robust to protect Wisconsin consumers and businesses, but which do not entail burdens that place Wisconsin financial institutions at a competitive disadvantage relative to institutions chartered or licensed by another state or the federal government.

Depository Institutions

There are several types of depository institutions, each with its own legal form. However, the differences in business models that once distinguished one type from another have lessened over time. In the current era, the primary differences remaining are between banks and credit unions, and between depository institutions that are nationally chartered and those that are state-chartered.

Banks

Since the late 1800s, the United States has had a "dual banking system," in which both the federal government and the states have chartering and regulatory authority. Bank founders may choose to apply for a charter from either the federal government or a state, and may convert an existing charter.

The United States has a "dual banking system," in which both the federal government and the states have chartering and regulatory authority.

The effect of the dual banking system on banking policy is subject to ongoing debate. Some argue that the regulatory competition between the states and the federal government "reduces the likelihood of unimaginative and unresponsive regulation," while others have

argued that it leads to "competition in laxity" or a "race to the bottom" between federal and state regulators.[1]

A bank's choice of charter determines: (1) which government agency will have primary responsibility for supervising the bank as its bank regulator; and (2) the extent to which it is subject to particular state and federal laws.

Chartering and Regulatory Agency

The Office of the Comptroller of the Currency (OCC), a bureau within the Department of the Treasury, charters and regulates national banks. National banks are required to become members of the Federal Reserve System (FRS) (which entails oversight by the Federal Reserve Board), and to obtain deposit insurance from the Federal Deposit Insurance Corporation (FDIC), which also conducts its own oversight activities.

The Wisconsin Department of Financial Institutions' (DFI) Division of Banking charters state banks and regularly examines them to ensure their sound and safe operation. [chs. 220 to 224, Stats.] Although Wisconsin law does not specifically require Wisconsin banks to obtain deposit insurance, all Wisconsin banks currently do so, and are subject to FDIC oversight. Additionally, Wisconsin banks may choose to join the FRS and submit to the associated oversight. [12 U.S.C. s. 321.]

The extent to which a given bank has a preference for being supervised at the state or federal level depends on the fees charged by the supervisory agency, and the bank's perception of how well the agency's regulatory approach fits with the bank's business model. For example, some observers maintain that Wisconsin regulators have a better understanding of issues relating to agricultural finance.[2]

Applicability of State and Federal Law

Whether a bank is chartered by the federal or state government determines the extent to which particular federal and state laws apply. Although significant differences remain, the regulatory treatment of national and state banks has generally converged as a consequence of efforts by state and federal regulators and lawmakers to protect the competitiveness of their respective banks.

Federal law determines the powers that national banks may exercise, and the U.S. Supreme Court has held that the states are preempted from enforcing any law that infringes on these powers. As a result, large banks conducting multistate operations often choose a national charter in order to avoid being subject to varying state laws.

To ensure the competitiveness of state banks in relation to national banks, many states have enacted laws generally referred to as "wild card statutes" that grant their state-

[1] See, e.g., Congressional Research Service, *Banking Law: An Overview of Federal Preemption in the Dual Banking System*, January 23, 2018, at 7.
[2] See, e.g., Paul Gores, *More Wisconsin National Banks Seeking Switch to State Charters*, Milwaukee Journal Sentinel, September 9, 2017.

chartered banks the power to engage in any activity that a nationally chartered bank may engage in. For example, Wisconsin law authorizes the Division of Banking to, by rule, authorize state banks to "exercise any right, power or privilege permitted national banks under federal law, regulation or interpretation." [s. 220.04 (8), Stats.] However, the statute does not authorize the Division of Banking to use this authority to make changes relating to the protections afforded to consumers under the Wisconsin Consumer Act (WCA), discussed in a later section.

States have also tended to provide their own state-chartered banks with powers that national banks do not have, especially with regard to insurance underwriting, real estate, and corporate underwriting. [Michael S. Barr, Howell E. Jackson, and Margaret E. Tahyar, *Financial Regulation: Law and Policy* (2016), pp. 176-177.] For example, Wisconsin law provides Wisconsin-chartered banks the option of becoming a "Universal Bank," thereby acquiring additional authority to exercise all powers necessary or convenient to effect the purposes for which the bank is organized or to further the business in which the bank is engaged. [ch. 222, Stats.]

The extent to which states may do this, however, has been limited by the FDIC Improvement Act of 1991, which generally requires state-chartered banks seeking deposit insurance to obtain approval from the FDIC before engaging in any activity that nationally chartered banks are not authorized to engage in. [12 U.S.C. s. 1831a.]

Many states, including Wisconsin, have also sought to protect the competitiveness of their banks in relation to banks chartered by other states ("out-of-state banks"). To this end, many states have enacted various "reciprocity statutes" that condition the exercise of powers by out-of-state banks on reciprocal approvals for its banks by other states. For example, Wisconsin law prohibits an out-of-state bank from establishing a branch in Wisconsin unless the Division of Banking determines that the laws of the home state of the out-of-state bank are reciprocal with respect to a Wisconsin bank establishing a branch in that state. [s. 221.0904 (2) (b), Stats.]

Many states, including Wisconsin, have enacted "reciprocity statutes" that condition the exercise of powers by out-of-state banks on reciprocal approvals for its banks by other states.

Credit Unions

Credit unions may be nationally chartered and regulated by the National Credit Union Administration (NCUA), or state-chartered and regulated by the Wisconsin Office of Credit Unions, which is attached to DFI for administrative purposes only. [12 U.S.C. s. 1754; ch. 186, Stats.]

Credit unions are exempt from state and federal income tax.

Credit unions are owned cooperatively by individuals or organizations sharing a "common bond," and are operated on a not-for-profit basis for the benefit of their members, who each receive one vote, regardless of the size of their deposit. For these reasons, and "because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means," credit unions are exempt from most taxes. [Credit Union Membership Access Act, P.L. 105-219.]

Federal law exempts nationally chartered credit unions from federal, state, and local income tax; state and local sales tax; and from any taxes on franchises, reserves, or capital. However, federal law does not provide an exemption from taxes on real or personal property. [12 U.S.C. s. 1768.]

Federal law also exempts state-chartered credit unions from federal income tax, but it gives each state discretion to decide whether to impose other taxes. Wisconsin law exempts Wisconsin-chartered credit unions from state income tax. [26 U.S.C. s. 501 (14) (a); s. 71.26 (1) (a), Stats.]

Accounts in nationally and state-chartered credit unions are insured through the National Credit Union Share Insurance Fund administered by NCUA. [ch. 186, Stats.]

Both nationally and state-chartered credit unions are generally prohibited from providing services to any person or organization who does not meet the credit union's membership criteria. Generally, a credit union's membership must be limited to one of the following categories: (1) a single group that has a common bond of occupation or association; (2) more than one group, each of which has a common bond of occupation or association meeting certain criteria; or (3) persons or organizations within a well-defined community. [s. 186.02 (2) (b), Stats.; 12 U.S.C. s. 1759 (b).]

Savings Institutions

Savings institutions, also referred to as "thrifts," comprise the third general category of depository institutions. These institutions may take the form of a savings and loan association or a savings bank, and can be chartered at the national or state level, and may convert an existing charter. Savings institutions generally focus on real estate financing, and must maintain a certain portion of their portfolio in housing-related assets. [chs. 214 and 215, Stats.]

Nondepository Institutions

A business or individual that is not authorized as a depository institution may nonetheless conduct business providing financial services, such as lending or facilitating payments, by obtaining the appropriate license from DFI, which licenses and oversees the practices of:

- **Loan companies** engaged in the business of making loans. [s. 138.09, Stats.]

- **Payday lenders** engaged in the business of making short-term loans that are secured by checks or electronic funds transfer authorizations signed by the borrower. [s. 138.14, Stats.]
- **Mortgage bankers, brokers, and loan originators** engaged in the business of mortgage lending. [ss. 224.71, 224.72, and 224.725, Stats.]
- **Sales finance companies** engaged in the business of purchasing retail installment contracts and consumer leases from motor vehicle retail sellers and lessors. [s. 218.0101, Stats.]
- **Community currency exchanges** engaged in the business of cashing checks and handling money orders. [s. 218.05, Stats.]
- **Sellers of checks** engaged in the business of transmitting money. [ch. 217, Stats.]
- **Insurance premium finance companies** engaged in the business of advancing funds to enable another party to pay the premiums necessary to acquire insurance. [s. 138.12, Stats.]

Regulation of Consumer Finance

The WCA is intended to:

- Protect customers against unfair, deceptive, false, misleading and unconscionable practices by merchants.
- Permit and encourage the development of fair and economically sound consumer practices in consumer transactions.
- Coordinate the regulation of consumer credit transactions with the federal Consumer Protection Act. [s. 421.102 (2), Stats.]

The WCA applies to any "consumer credit transaction," which generally includes any transaction of no more than $25,000 involving a finance charge or payment of more than four installments, and which is with an individual who is engaging in the transaction for personal, family, or household purposes. The most common examples of consumer credit transactions are loans, credit cards, credit sales, and leases. [ss. 421.301 (10) and (17), Stats.]

Among other provisions, the WCA: (1) prohibits agreements from including certain contract terms that are considered to be disadvantageous to consumers; (2) requires certain disclosures to be made to a consumer; (3) provides consumers a right to prepay and prescribes mandatory rebates for prepayment; (4) mandates that certain notices be provided to consumers and limits the circumstances under which certain charges may be levied upon a consumer; (5) provides a consumer with certain rights and opportunities to cure a default before it results in adverse consequences; and (6) regulates debt collection practices. [chs. 421 to 427, Stats.]

DFI is responsible for administering the WCA, and may investigate complaints, conduct hearings, and commence civil actions through the Department of Justice. [s. 426.104, Stats.] Additionally, DFI is authorized to specify, by rule, specific conduct in consumer transactions and debt to be unconscionable and to prohibit that conduct. [s. 426.108, Stats.]

At the federal level, the Consumer Financial Protection Bureau (CFPB) has broad regulatory authority over businesses, including banks, credit unions, and the mortgage industry, as well as payday lenders, debt collectors, the student loan industry, and other consumer finance transactions. The CFPB was created in 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The CFPB, a federal entity created in 2011, has broad authority regarding consumer protection. See http://www.consumerfinance.gov for more information.

Interest Rate Regulation

Wisconsin law generally imposes no limitations on the interest rate that may be charged. Prior Wisconsin laws capping the interest rate ("usury laws") were repealed over the course of the 1980s and 1990s, in part because of federal actions depriving states of the authority to apply their usury laws to all creditors.

In 1978, the U.S. Supreme Court held that a nationally chartered bank, credit union, or savings association could "export" the maximum interest rate allowed under the laws of its home state. As a result, Wisconsin's usury laws became unenforceable against nationally chartered banks, credit unions, and savings associations with a home state other than Wisconsin, and these financial institutions became authorized to charge Wisconsin residents any interest rate authorized under the laws of their home state. [*Marquette National Bank v. First of Omaha*, 439 U.S. 299 (1978); 12 U.S.C. ss. 85 and 86.]

Federal law was subsequently amended to additionally apply the same rule to any federal-insured, state-chartered bank, credit union, or savings association, although the law provides options for a state to limit the applicability within its borders. [12 U.S.C. ss. 1463 (g), 1757 (5), 1785 (g), 1813 (a), and 1831d.]

Wisconsin largely deregulated interest rates during the 1980s, and repealed its remaining usury limits in 1996, following the actions of certain states, such as South Dakota, to eliminate their usury limits. The stated purpose of this legislation was to enable Wisconsin-based creditors to compete with out-of-state creditors, who take advantage of federal law to charge interest rates and fees allowed by their home states to Wisconsin residents. [chs. 45 and 100, Laws of 1981; 1989 Wisconsin Act 31; 1995 Wisconsin Act 328; Aaron Gary, *Regulating Credit Card Interest Rates and Fees*, Wisconsin State Bar Business Law News, June 17, 2009.]

Debt Management, Collection, and Restructuring

DFI licenses and regulates the conduct of credit service organizations engaged in the business of assisting a buyer in obtaining credit or improving its credit rating, and adjustment service companies engaged in the business of assuming the obligations of a debtor by purchasing the accounts a debtor has with a creditor. [ss. 218.02, 422.501, and 422.502, Stats.]

Wisconsin law requires a debt collection agency to be licensed, and prohibits a debt collection agency from using any "oppressive or deceptive" practice, including:

- Using or threatening to use force or violence.
- Threatening criminal prosecution
- Communicating with a debtor with such frequency, at such hours, or in such a manner that can reasonably be expected to harass the debtor.
- Using obscene, profane, or threatening language.
- Contacting a debtor by telephone following a request by the debtor that such collection efforts cease.
- Communicating or threatening to communicate with the debtor's employer before obtaining a final judgment against the debtor.
- Disclosing or threatening to disclose false information adversely affecting the debtor's reputation, or any information affecting the debtor's reputation with reason to know that the person to whom it is disclosed does not have a legitimate business need for the information.

[ss. 218.04 and 427.104, Stats.; s. DFI-Bkg 74.16, Wis. Adm. Code.]

The U.S. Constitution grants Congress the authority "to establish…uniform Laws on the subject of Bankruptcies throughout the United States." [U.S. const. art. I, s. 8, cl. 4.] Thus, bankruptcy is governed entirely by the federal Bankruptcy Code. [11 U.S.C. ss. 101-1532.]

Wisconsin law provides an alternative system of debt restructuring commonly referred to as a "Chapter 128 Action," in which a debtor may be able to stop further debt from accruing and to develop a plan for resolving debts. [s. 128.21, Stats.]

Regulation of Securities Transactions

A broad scope of investment arrangements qualify as securities under Wisconsin and federal law. The definition of "security" generally encompasses any arrangement that involves an investment in a common enterprise that entails the expectation that the investor may receive profits resulting from the managerial efforts of someone else. [s. 551.102 (28), Stats.]

Generally speaking, securities laws are intended to protect investors by: (1) requiring issuers of securities to register the securities with the appropriate regulatory body and disclose information about the nature and risks of the securities; (2) requiring securities professionals and businesses to be licensed; and (3) prohibiting fraudulent and misleading conduct.

Registration of Securities and Disclosure by Issuers

The primary purpose for mandating the registration of securities is to protect the investing public from being disadvantaged by a lack of access to material information about an investment. Protecting investors in this way, however, imposes costs that may impede issuers, particularly small businesses, from obtaining the capital needed to start or expand operations. To address this concern, federal and state law provide exemptions from registration requirements.

A security may be required to be registered with the federal government, the state government of each state in which it is offered, or both. Certain securities, referred to as "federal covered securities," such as those approved to be listed on a national exchange, must be registered with the federal Securities and Exchange Commission (SEC), but need not be registered at the state level. [15 U.S.C. s. 77r (a) (1) (A) and (b) (1) (A).] Conversely, securities that are offered and sold only to residents within a single state by an issuer that is incorporated under the laws of and is doing business in that state, need not be registered with the SEC. [15 U.S.C. s. 77c (a) (11).]

To facilitate compliance by issuers, most states, including Wisconsin, have collaborated to make their registration requirements uniform, by enacting statutes that largely fit with a "Uniform Securities Act" developed by the National Conference of Commissioners on Uniform State Laws. [2007 Wisconsin Act 196.] Among other provisions, the uniform provisions exempt certain securities, such as those issued by a highly regulated entity, such as a public utility, from registering at the state level. [s. 551.201 (1), (3), (5), and (7), Stats.] The Legislature may modify, supplement, or refuse to enact any provision recommended by the Uniform Securities Act.

For securities that must be registered in Wisconsin, the issuer must submit to DFI extensive information regarding the issuer's financial status, employees, and owners, as well as a description of how the proceeds of the offering will be used. [ss. 551.304 (2) and 551.305, Stats.; s. DFI-Sec 3.02 (1), Wis. Adm. Code.] DFI reviews the information to determine if it is complete and true in all material respects. [ss. 551.304 (3) and (4), 551.305 (8), and 551.306 (1), Stats.]

Licensing of Securities Professionals and Businesses

To protect investors, Wisconsin and federal law provide that certain securities transactions may only be conducted by service providers that are registered with the SEC and DFI.

Generally, a "broker" is any person engaged in the business of buying or selling securities for another person, and a "dealer" is any person engaged in the business of buying or selling

securities for the person's own account. A "broker-dealer" is a person engaged in the business of acting as a broker, a dealer, or both. [s. 551.102 (4), Stats.]

Most broker-dealers must be registered with both the SEC and DFI. [s. 551.401 (1), Stats.] Both federal and Wisconsin law require a broker-dealer to pass certain examinations of professional competence, and adhere to certain standards of conduct. [s. DFI-Sec 4.01 (3), Wis. Adm. Code.] In most instances, a company registers as a broker-dealer or an investment adviser, and the individuals working for the company register as securities agents and investment adviser representatives, respectively.

Wisconsin law requires that each broker-dealer must: (1) maintain minimum amounts of net capital; (2) limit aggregate indebtedness to within a specified range; (3) maintain certain records; (4) comply with reporting requirements that include filing with DFI an annual financial statement and a copy of every complaint against it; and (5) comply with certain rules of professional conduct in serving clients. [ss. DFI-Sec 4.02, 4.03, and 4.04, Wis. Adm. Code.]

"Investment advisers" are persons who are in the business of advising others on the value of securities or the advisability of buying or selling securities. [s. 551.102 (2), (4), (15), and (16), Stats.] Generally, an investment adviser must be registered with the SEC if managing $110 million or more, and may be registered with the SEC if managing $100 million or more. Federal law prohibits Wisconsin from requiring investment advisers registered with the SEC to be registered with DFI. Investment advisers that are not registered with the SEC must be registered with DFI if they maintain a place of business in Wisconsin, or have six or more Wisconsin residents as clients during a 12-month period. [s. 551.403 (1), Stats.; 15 U.S.C. s. 80b-3a.]

To be licensed in Wisconsin, a person must pass certain examinations or have obtained certain professional certifications intended to verify professional competence. [s. DFI-Sec 5.01 (3), Wis. Adm. Code.] Each investment adviser must maintain positive net worth in certain specified amounts; maintain certain records; comply with reporting requirements that include annually filing with DFI a copy of every complaint against it; and comply with certain standards of professional conduct in serving clients. [ss. DFI-Sec 5.02, 5.03, and 5.04, Wis. Adm. Code.]

Fraudulent and Misleading Conduct

Wisconsin law prohibits a person, in connection with the offer, sale, or purchase of a security, from: (1) employing a scheme to defraud; (2) making an untrue statement of material fact; (3) omitting to state a material fact necessary in order to prevent a statement from leading another person being misled; or (4) engaging in an act, practice, or course of business that operates as a fraud upon another person. [s. 551.501, Stats.]

THE FINANCIAL TECHNOLOGY ("FINTECH") INDUSTRY

Since the mid-2010s, a variety of financial services have been offered by financial technology ("fintech") companies that deploy the Internet, mobile communication devices, proprietary algorithms, and other information technology as a means of providing service. These companies include:

- **Marketplace lenders**, such as Lending Club and Prosper, which use algorithms to identify credit-worthy individuals and businesses and use an online platform to connect them with interested lenders.
- **Mobile payment systems and mobile wallets**, such as Square and Venmo, which enable users to make purchases and transfer money via an online account and a smartphone, thereby avoiding the need to use cash, credit card, or a check.
- **Digital wealth management platforms** that use algorithms based on information provided by an investor in order to provide that investor with financial management and investment advice.
- Providers of **virtual currencies**, such as Bitcoin, that use distributed ledger ("blockchain") technology to facilitate the transfer of digital assets.

The new manner in which the services are provided, as well as the multistate nature of the companies' operations, have raised questions regarding how they should be regulated.

In 2016, the OCC announced plans to explore the possibility of granting a national charter for certain types of fintech companies. Proponents of the idea argued that it would facilitate fintech operations by exempting them from state licensing laws, which vary from state to state. In April 2017, the Conference of State Bank Supervisors sued to stop the OCC from granting such charters, arguing that the OCC lacks authority to grant charters for nondepository institutions. In May 2018, a court dismissed the lawsuit because no charters had yet been issued; however, the OCC continues to consider options for developing a fintech charter.

In Wisconsin, DFI has been engaged in analyzing the extent to which Wisconsin law authorizes it to regulate various fintech activities. DFI has concluded that Wisconsin's seller of checks laws do not authorize it to regulate or license virtual currency transmitters. DFI has, however, joined an initiative coordinated by the North American Securities Administrators Association to take action in response to virtual currency offerings that violate securities fraud laws.

ADDITIONAL REFERENCES

1. Legislative Council Information Memorandum, *Overview of Wisconsin' Securities Laws*, IM-2018-01 (January 2018).
2. Wisconsin Department of Financial Institutions: http://www.wdfi.org.
3. U.S. Department of the Treasury: http://www.treas.gov.

4. Federal Deposit Insurance Corporation: http://www.fdic.gov.
5. U.S. Securities and Exchange Commission: http://www.sec.gov.
6. Consumer Financial Protection Bureau: http://www.consumerfinance.gov.
7. *Banking Law: An Overview of Federal Preemption in the Dual Banking System*, Congressional Research Service. Accessed at: https://fas.org/sgp/crs/misc/R45081.pdf.
8. *Who Regulates Whom and How? An Overview of U.S. Financial Regulatory Policy for Banking and Securities Markets*, Congressional Research Service, available at: https://fas.org/sgp/crs/misc/R43087.pdf.
9. *Bankruptcy Basics: A Primer*, Congressional Research Service, available at: https://fas.org/sgp/crs/misc/R45137.pdf.
10. *Taxation of Credit Unions in Brief*, Congressional Research Service, available at: https://www.everycrsreport.com/files/20160331_R44439_88187bc772927b3be4e326cdebf9bd6dc5eaf3e3.pdf.

GLOSSARY

Office of the Comptroller of the Currency (OCC): Federal agency that issues charters to and regulates national banks and savings institutions.

Consumer Financial Protection Bureau: A federal entity with broad authority to provide consumer education, enforce federal consumer financial laws, and study consumer financial markets.

DFI: The Wisconsin Department of Financial Institutions. The agency that, through the Division of Banking and the OCC, charters and regulates state banks, savings institutions, and credit unions.

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.

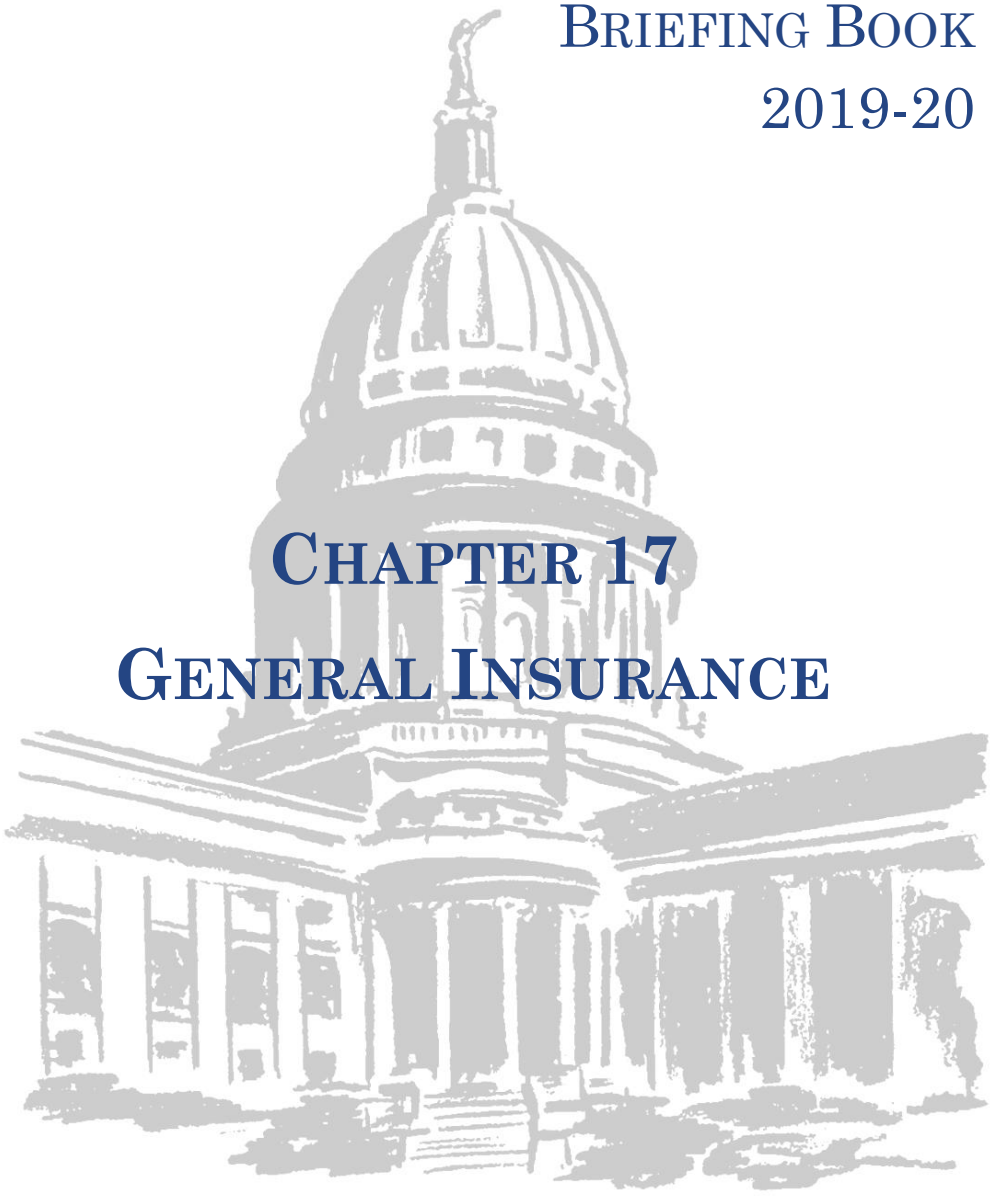
Office of Credit Unions: State agency attached to DFI for administrative purposes that charters and regulates state-chartered credit unions.

Office of Thrift Supervision (OTS): Defunct federal agency that chartered and regulated federal savings institutions. The OTS was merged with various federal agencies in 2011 (primarily the OCC).

Wisconsin Consumer Act: Wisconsin statutes regulating credit, trade practices, the sale of credit insurance, and debt collection practices in certain transactions entered into between consumers and financial institutions or merchants. Covered transactions must involve no more than $25,000 and be entered into for personal, family, or household purposes.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 17

General Insurance

Margit S. Kelley, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

This chapter briefly describes the duties of the Office of the Commissioner of Insurance (OCI), provides an overview of major types of insurance, including property and casualty, disability, and life insurance, and briefly describes certain state insurance funds. This chapter does not discuss health insurance, which is covered in Chapter 18, *Health Care and Health Insurance*.

Insurance is largely regulated by the states, rather than the federal government. The McCarran-Ferguson Act of 1945 outlines the roles of state and federal government in insurance regulation, and specifies that states generally retain regulatory authority over insurance. The Act reverses the usual preemption of state law by federal law that occurs under the Supremacy Clause of the U.S. Constitution. Absent a congressional act specifically relating to the business of insurance, such as the Affordable Care Act, McCarran-Ferguson provides that state law controls over conflicting federal legislation. [15 U.S.C. s. 1012.]

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. [s. 601.01, Stats.] As summarized by OCI, its major functions include:

OCI's website has numerous publications for consumers, agents, and insurers, available at: https://oci.wi.gov/

- Reviewing insurance policies that are sold in Wisconsin to determine if they meet the requirements of Wisconsin laws.
- Conducting examinations of domestic and foreign insurers to assure compliance with Wisconsin laws.
- Monitoring the financial solvency of licensed companies to ensure availability of coverage for consumers.
- Issuing licenses for companies, agents, brokers, and others.
- Assisting and educating consumers.
- Researching special insurance issues to assess the impact on Wisconsin.
- Operating the State Life Insurance Fund that is available to all Wisconsin residents and the Injured Patients and Families Compensation Fund that insures health care providers for medical malpractice.

Insurance Delivery

Insurance Agents

In Wisconsin, there are essentially two types of licensed insurance intermediaries who can help individuals obtain insurance policies from insurers. [s. 628.02 (3) and (4), Stats.]

One type of intermediary is a "broker," who works on behalf of the individual person who is applying for insurance. A broker does not act on behalf of the insurance company, though the broker may process certain paperwork and collect premiums. A broker is under no obligation to a particular company, and may generally procure insurance with companies selected by the individual. As a result, a broker is frequently referred to as an "independent insurance agent."

The other type of intermediary is an "agent," who works on behalf of an insurance company. An agent does not act on behalf of an individual, but rather has certain duties and obligations to the insurance company. An agent typically has a fixed relationship with the insurance company that the agent represents, and works under contract with that particular insurance company.

Insurance Providers

Insurance generally may be offered only by an authorized insurer that is licensed to offer insurance in the state. [s. 601.04, Stats.] All insurers licensed to do business in Wisconsin must comply with state laws and regulations, including financial and accounting requirements, marketing regulations, and forms approvals.

A "risk-retention group" is a specific type of insurance provider for members of a group who are related by a common business. A risk-retention group is formed as a corporation or limited liability company, and spreads and shares liability exposure among its members. Under federal law, a state may regulate the formation and operation of a group that is formed within the state, but may impose only specific, limited requirements on a group that is formed in another state. [15 U.S.C. ss. 3901 to 3906.]

Many OCI filing forms and processes follow models prepared by the National Association of Insurance Commissioners (NAIC), in order to provide standardization and nationally recognized practices.

A "self-insurer," sometimes referred to as a self-funded plan, pays claims and judgments directly from its own funds. This method is sometimes used by businesses or governmental units for auto insurance, worker's compensation, and health insurance. A self-insured plan is generally not considered to be insurance, and is therefore often subject to different laws and regulations from licensed insurers.

In specific circumstances, a "surplus lines insurer" may offer insurance if certain requirements are followed. Surplus lines insurance is a specific type of insurance that is

provided only for risks that are declined by standard underwriting processes, typically for high risks. 2017 Wisconsin Act 16 removed a limitation that authorized only nondomestic insurers to offer surplus lines insurance, and instead authorizes domestic insurers to offer surplus lines insurance, subject to certain requirements. [s. 618.41, Stats.]

Other types of organizations that may provide insurance include domestic stock and mutual insurance corporations, town mutuals, service insurance corporations, and fraternal organizations. [chs. 611 to 614, Stats.]

Types of Insurance Coverage

Wisconsin's statutory provisions related to insurance and the powers and duties of OCI are set forth in chs. 600 to 655, Stats. OCI's administrative rules are set forth in chs. Ins 1 to 57, Wis. Adm. Code. The statutes and rules affect various types of insurance. A few of the most common types of insurance coverage in specific lines are briefly described below.

Auto Insurance

All Wisconsin drivers must have motor vehicle liability insurance coverage, with limited exceptions for drivers who post sufficient bond or self-insure. [ss. 344.33 (2), 344.61 to 344.67, and 632.32, Stats.] An auto insurance policy must contain coverage at specified minimum limits for property damage liability, personal injury liability, and injury caused by an uninsured motorist, as follows:

Forty-nine states and the District of Columbia require drivers to have motor vehicle liability insurance coverage.

- Personal injury: $25,000 per person/$50,000 per incident.
- Property damage: $10,000.
- Uninsured: $25,000 per person/$50,000 per incident for bodily injury or death.
- Underinsured: Not required, but the insurer must give notice to an insurance purchaser that it is available, and, if purchased, minimum coverage of $50,000 per person/$100,000 per incident is required.

A person operating a vehicle on a roadway must be in possession of proof of the insurance and must display the proof upon demand from any traffic officer. The proof can be presented in either printed or electronic format.

Although not required by law, auto insurance coverage may include collision and comprehensive coverage. Collision coverage pays to repair or replace a car in the event the car hits another object (even

In Wisconsin, the penalty for operating a vehicle without insurance is a forfeiture up to $500.

if it is the driver's fault). Comprehensive coverage pays for damage to a car by other causes, such as fire, theft, vandalism, hail, or hitting an animal. Optional coverage for medical payments may also be purchased, and is required by law to be offered at the time of auto insurance purchase.

Commercial Liability Insurance (Including Worker's Compensation)

The purpose of commercial liability insurance is to protect a business against losses arising from a claim against the business. This would generally include bodily injury and property damage coverage for premises liability and certain negligent acts. Coverage that is specific to a particular business can be included, such as liquor liability or pollution liability.

A particular type of commercial liability insurance, worker's compensation insurance, is required for nearly every Wisconsin business. It insures against work-related injury and death and is generally the employee's exclusive remedy in such cases. For a brief description of worker's compensation insurance, see Chapter 21, *Labor and Employment Law*.

Credit Insurance

Credit insurance may be sold to a person obtaining a loan or credit card at the same time the loan or credit card is obtained. The insurance pays all or a portion of an outstanding credit balance if a claim is filed due to an event that is covered under the policy, such as death, disability, or unemployment of the person. The payment for the premiums is generally written into the payment for the loan.

Crop Insurance

Prior to planting, a farmer may purchase insurance to cover a portion of damage in the event of hail, drought, or other peril that results in crop loss. Some policies also cover loss in value due to a change in market price. This insurance may be purchased from private insurance companies under plans that are approved and subsidized by the Federal Crop Insurance Corporation. Alternatively, basic crop insurance may be purchased on the private market with more limited coverage options at any time during the growing season.

Crop insurance has expanded under federal law with programs for organic farmers, bioenergy, specialty crops, and livestock policies.

Disability Income Insurance

Disability income insurance replaces some portion of an employee's income for a specified period of time in the event that the employee is unable to work due to a covered injury or illness. This is also sometimes referred to as short-term disability insurance, or income or salary continuation insurance.

Flood Insurance

Flood insurance covers losses to property caused by flooding, such as damage to structures, damage to household mechanicals, and costs of cleanup. Flood insurance is provided to those living in flood hazard areas through the National Flood Insurance Program (NFIP) and is administered by local insurance agents. Participating communities must agree to enforce sound floodplain management standards in order for buildings in the area to be eligible for coverage. Property owners and renters may work with a licensed property or casualty insurance agent to determine if flood insurance is available and advisable for their area; in high-risk areas flood insurance is required.

Homeowners (Including Renters, Condominium, and Mobile Home) Insurance

Homeowners insurance compensates a homeowner or renter in the event of losses to the house and belongings. Some considerations when purchasing homeowner's insurance include the amount of coverage needed, whether the coverage should be based on market value or replacement cost, the deductible amount, and special riders for jewelry, antiques, art, firearms, or other personal property that insurance companies frequently treat separately from ordinary household items.

A number of mobile apps are available for Android and iPhone users to photograph and record descriptions of possessions for a home inventory.

Homeowners insurance also offers protection if someone is injured on the property or in some cases in which the negligence of the homeowner or renter results in injury to a person or damages to the property of another.

Life Insurance

Life insurance provides a benefit in the form of a cash payment or an annuity in the event of the death of the insured. The two main types are term insurance and cash value insurance (sometimes referred to as "whole life"). Term insurance premiums are generally lower in the early years, but the policy provides no residual value at the end of the term. Cash value insurance builds in value over time and can be cashed out prior to death or used to pay premiums in later years.

Long-Term Care Insurance

The OCI Guide to Long-Term Care is available at:

https://oci.wi.gov/Pages

Long-term care insurance generally provides coverage for medical and other services needed for an extended illness or disability. The policy may cover a variety of levels of care, much of which may not be covered by Medicare. A

policy must cover institutional care in a nursing home or other facility, and home health care or other community-based services. Long-term care services are most commonly used by elderly persons, but could be needed for an extended illness or disability at any age. For more information on long-term care programs and services for the elderly, generally, see Chapter 20, *Human Services and Aging*.

Portable Electronics

Wisconsin law allows a vendor of portable electronics to sell insurance for portable electronic devices without a license so long as certain supervision, disclosure, and other procedural steps are followed. The insurance may be obtained at a store at the same time an electronic device is purchased. The insured value may be up to $5,000. [s. 632.975, Stats.]

Travel Insurance

OCI regulates a specific type of license, known as a "travel insurance producer" license. Travel insurance policies provide coverage for risks associated with planned travel, including trip cancellation, loss of baggage, and sickness or accident. Under the licensing structure, a travel agent or travel service may work with a licensed travel insurance agent so that the travel agent or travel service may offer travel insurance with its services. [s. 632.977, Stats.]

State Programs

Segregated Insurance Funds

OCI administers the State Life Insurance Fund under ch. 607, Stats., and the Injured Patients and Families Compensation Fund under s. 655.27, Stats. The State of Wisconsin Investment Board is responsible for investing and managing the monies in each trust fund.

Wisconsin is the only state that offers life insurance to its residents through a state-run program.

The **State Life Insurance Fund** offers a maximum of $10,000 of life insurance coverage to state residents who purchase a policy from the fund. Both term and whole life policies are offered.

The **Injured Patients and Families Compensation Fund** provides medical malpractice protection to health care providers for claims in excess of $1,000,000 per claim or $3,000,000 annual aggregate for each policy year. Health care providers obtain primary medical malpractice insurance from private insurance companies or risk retention groups. The fund is intended to curb the cost of health care as a result of medical malpractice claims, and to ensure that proper claims are satisfied.

OCI additionally administers the **Local Government Property Insurance Fund**, which was discontinued by 2017 Wisconsin Act 59, the 2017-2019 Biennial Budget Act. No new coverage has been offered since July 1, 2017, and all claims must be filed by July 1, 2019. The fund had offered property insurance for tax-supported local government property, such as government buildings, schools, libraries, and motor vehicles. [ch. 605, Stats.]

Risk-Sharing Plans

Wisconsin offers risk-sharing plans for individuals who do not meet underwriting conditions and are unable to obtain coverage on their own. Unless exempt, each insurer in the identified lines of insurance participates in their respective plans and shares an equitable distribution of risks. [s. 619.01, Stats.] These programs, overseen by OCI, include:

- The Wisconsin Automobile Insurance Plan (WAIP). An application to the plan may be made through any licensed property and casualty insurance agent.
- The Wisconsin Worker's Compensation Insurance Pool. The Wisconsin Compensation Rating Bureau administers the pool.
- The Wisconsin Insurance Plan, for basic property insurance. An application may be made through any licensed property and casualty insurance agent.
- The Wisconsin Health Care Liability Insurance Plan, for medical professionals. The program is privately managed by Wausau MedMal Management Services, LLC.

Wisconsin Healthcare Stability Plan

2017 Wisconsin Act 138 established a state-based reinsurance program called the Wisconsin Healthcare Stability Plan (WIHSP). Under the program, an insurance company that offers individual health insurance policies may receive reinsurance payments to offset claims for covered benefits if a person's claims exceed a calculated amount. OCI must administer the plan, in consultation with an actuarial firm, subject to approval under the federal Affordable Care Act. [s. 601.83, Stats.]

The goals of the reinsurance program are to stabilize or reduce premiums in the individual market, increase participation by health insurers, improve access to providers and services, and mitigate the impact of high-risk individuals on premiums.

OCI submitted a waiver request to the federal government on April 18, 2018. According to the request, the anticipated first plan year for the program will begin on January 1, 2019.

For more information on WIHSP, see Chapter 18, *Health Care and Health Insurance*.

Additional References

1. For questions, comments, or complaints relating to insurance companies or agents conducting business in Wisconsin, contact OCI, P.O. Box 7873, Madison, Wisconsin

53707-7873, (608) 266-0103, or toll free at (800) 236-8517. A complaint may also be filed online at: https://ociaccess.oci.wi.gov/complaints/public.

2. WAIP has information available at: www.waip.org.

3. The Wisconsin Insurance Plan for basic property insurance is available at: https://wisinsplan.com.

4. The Legislative Audit Bureau has prepared the following audits relating to state insurance programs, available at http://www.legis.wisconsin.gov/lab:

   - *Injured Patients and Families Compensation Fund* (Audit Report 16-4).
   - *Local Government Property Insurance Fund* (Audit Report 15-16).
   - *State Life Insurance Fund* (Audit Report 16-12).

5. The Insurance Information Institute (I.I.I.) provides consumer and insurance industry information, and links to home inventory software and apps, at www.iii.org.

6. The NAIC provides information regarding the insurance industry generally and insurance practices in all 50 states at: www.naic.org.

7. The NAIC Consumer Information Source is available at: https://eapps.naic.org/cis.

8. The NFIP has resources on flood insurance, and is available at: https://www.floodsmart.gov.

GLOSSARY

Adjuster: An employee or contractor working for an insurance company who inspects claims and establishes the company liability in a claim.

Agent: A person who negotiates and sells insurance contracts on behalf of one or more insurance companies.

Annuity: A payment benefit sold by insurance companies that makes a periodic (usually monthly) payment for the life of a person or for a predetermined period of time.

Anti-stacking provision: Insurance contract provision that prohibits adding multiple sets of limits to a single loss event.

Authorized insurer: An authorized insurer is an insurer that holds a valid certificate of authority to do insurance business in this state. This term is synonymous with a "licensed insurer."

Beneficiary: The person or entity named in an insurance policy as the recipient of insurance money as the result of a covered event.

Broker: An individual representing insurance purchasers to arrange for coverage that meets the customer's needs.

Cancellation: Termination of an insurance policy before its expiration date.

Collision coverage: Auto insurance coverage that pays for damage to the policyholder's vehicle caused by a collision with another vehicle or object.

Comprehensive coverage: Auto insurance coverage that pays for damage to the policyholder's vehicle for losses caused by fire, theft, vandalism, and other incidents not involving collision with another vehicle or object.

Domestic insurer: Insurance corporation organized under the laws of this state.

Financial responsibility law: A law requiring a person involved in an automobile accident to furnish security up to certain minimum dollar limits.

Foreign insurer: Insurance corporation organized under the laws of another state.

Homeowners insurance: Policy covering damage to the insured's property and providing liability coverage for injuries and acts of negligence.

Liability: Individual responsibility for causing injury or property damage.

Liability insurance: Insurance covering legal liability for injury or property damage caused by the insured.

Reducing clause: Provision in an insurance contract that reduces recovery by amounts received from other sources (such as the other party or worker's compensation).

Rider: Special provisions added to a policy that are not contained in the original policy contract. Riders are frequently used in homeowners insurance for items such as jewelry, antiques, or firearms.

Subrogation: The right of an insurance company to recover money paid on a claim from a third party. A common example occurs in uninsured motorist coverage, where the policyholder is paid by their own insurer and the insurer takes action to collect from the uninsured, at-fault party.

Term insurance: Life insurance for a given period of time, with no investment component that would provide residual or cash value. If the insured survives the policy term, the insurer pays nothing.

Umbrella policy: A policy providing additional liability coverage after the limits of another policy are reached (such as a home or auto policy). These policies frequently provide coverage in many situations not covered by the other liability insurance policies.

Unauthorized insurer: An unauthorized insurer is one that does not hold a valid certificate of authority to do insurance business in this state.

Underinsured motorist (UIM) coverage: An auto insurance policy under which the insurance company will pay damages to the insured for which another motorist is liable in

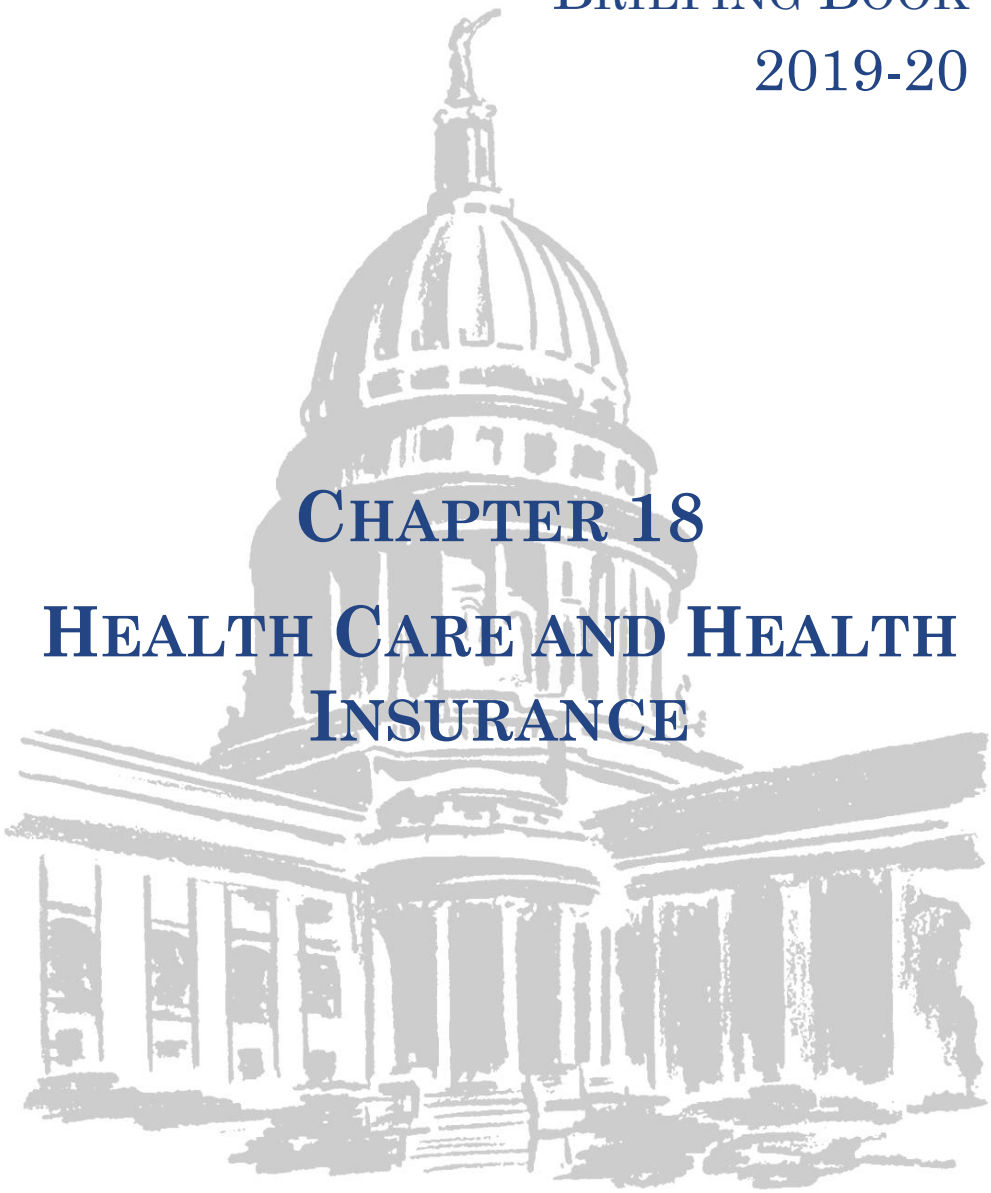
an amount up to the point that total recovery equals the insured's UIM limits. If, for example, an at-fault driver had $50,000 of liability coverage and caused $70,000 worth of damage, a $100,000 UIM policy would pay the additional $20,000 to cover what the other party's insurance did not.

Uninsured motorists coverage: A policy that will pay bodily injury damages to the insured for which another motorist is liable if that motorist is uninsured or cannot be identified.

Whole life insurance: Life insurance that remains in force during the insured's entire lifetime, provided premiums are paid as specified in the policy. Whole life insurance also builds a savings called the cash value.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 18
HEALTH CARE AND HEALTH INSURANCE

Brian Larson, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Introduction

State regulation of health care services includes oversight of professionals and caregiver background checks, credentialing of health facilities and programs, and enforcement of industry regulations and consumer protections. The state has primary responsibility for regulation of the health insurance market, subject to limitations under federal law. In addition, the state and federal government each play a role in administering major public health programs, such as Medicaid, and certain provisions of the federal Affordable Care Act (ACA), as described below.

State Regulation of Health Care Professionals, Programs, and Facilities

Health Care Professionals

The state provides credentialing and oversight of health care professionals through examining boards and affiliated credentialing boards in the Department of Safety and Professional Services. Health professions include 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. In addition, the Department of Health Services (DHS) licenses emergency personnel, including first responders and various categories of emergency medical technicians.

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 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 and is referred to as an advanced practice nurse prescriber.

Caregiver Background Checks

Certain entities regulated under Wisconsin law are required to conduct background checks of employees who have contact with clients or vulnerable individuals. The background check involves a criminal history search from records maintained by the Department of Justice, information maintained by DHS concerning abuse of patients, and other specified information. The entities required to conduct background checks include nursing homes, community-based residential facilities (CBRFs), hospitals, home health agencies, child welfare agencies, and group homes. Consult DHS's website for a comprehensive description of entities and requirements.

More information about caregiver background checks is available at:

http://www.dhs.wisconsin.gov/caregiver/index.htm

Health Facilities and Residential Programs

State Licensing

The state licenses and certifies a number of health facilities and caregiving residential programs.

Information about facilities regulated by DHS is available at:

http://dhs.wisconsin.gov/rl_DSL/index.htm

The Division of Quality Assurance in DHS licenses adult family homes, CBRFs, and residential care apartment complexes (RCACs), as well as hospitals, hospices, 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 are places where five or more adults reside in independent apartments and receive supportive, personal, and nursing services not more than 28 hours per week.

Although the term "assisted living" is commonly used, this is not actually a type of licensed facility. Typically, a facility referred to as an assisted-living facility is either a CBRF or an RCAC. 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.

[See generally, ch. 48, Stats.; and subch. I, ch. 50, Stats.]

Zoning Exceptions for Certain Residential Facilities

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 family residences. These programs, which are referred to generally as "community living arrangements" in the statutes, may

locate in specified residential areas depending on the number of residents in the facility. 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. Information about these facilities and programs is included in Chapter 20, *Human Services and Aging*.

Medical Malpractice

Any person, or certain relatives of a person, who is injured by the malpractice of a health care provider may sue for economic and noneconomic damages. Noneconomic damages are intended to compensate for pain and suffering, loss of companionship, mental distress, and loss of enjoyment of life. Current law limits noneconomic damages to $750,000 per occurrence of medical malpractice. [s. 893.55, Stats.] In a recent challenge to the law, the Wisconsin Supreme Court, in *Mayo v. Wisconsin Injured Patients and Families Compensation Fund*, 2018 WI 78, determined that the cap on noneconomic damage was not unconstitutional on its face or as applied in that case. This overturned the decision of the lower court, which had struck down the cap.

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 million per occurrence and $3 million 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, which then provides coverage for medical malpractice claims in excess of those amounts. The Injured Patients and Families Compensation Fund is administered by OCI. [ch. 655, Stats.]

State and Federal Regulation of Health Insurance Market

Regulation of health care occurs at both the federal and state levels. Many of the regulatory functions are allocated to states, through constitutional requirements and congressional acts such as the McCarran-Ferguson Act. Credentialing and oversight of health care professionals, programs, and facilities are all primarily state government activities as described above. At the same time, some federal laws include requirements related to health care that may preempt state law in applicable cases, including the Health Insurance Portability and Accountability Act (HIPAA), Employee Retirement Income (ERISA), Emergency Medical Treatment and Labor Act (EMTALA), Controlled Substances Act (CSA), and federal statutes administered by the Food and Drug Administration (FDA).

The role of regulating health insurance has also traditionally been allocated to the states. In Wisconsin, as in other states, this activity has continued in recent years, but it has

evolved into more of a shared responsibility with the federal government since passage of the Patient Protection and Affordable Care Act, as described below.

Office of the Commissioner of Insurance

The Office of the Commissioner of Insurance (OCI) regulates health insurance with respect to issues of financial stability and consumer protection. Types of health insurance regulated by OCI include defined network plans, or HMOs, as well as plans in which an insured person may select from any health care providers to provide covered services (generally referred to as an "indemnity plan"). All insurers must be licensed in Wisconsin and meet state marketing and financial standards. OCI regulates all rate and form filings, performs financial and market conduct examinations, and responds to consumer complaints. OCI also regulates health insurance agents and licensed navigators who help consumers to find health insurance coverage.

OCI also operates the Wisconsin Healthcare Stability Plan (WIHSP), which is scheduled to begin in 2019. WIHSP is a reinsurance program authorized by 2017 Wisconsin Act 38. The Act directed OCI to apply for a waiver to operate the program under section 1332 of the ACA. If WIHSP is approved, OCI will administer a $200 million fund on behalf of carriers that issue health plans on the individual market. Carriers will receive payments to offset costs for an enrolled individual's covered benefits, if those costs exceed an anticipated amount, in a benefit year.

Mandates

State insurance laws include various types of mandates that must be met by insurance plans. These health insurance mandates generally fall into the following categories:

- Requiring coverage of a particular type of health care provider (e.g., a chiropractor or an optometrist).
- Requiring coverage for the treatment of a particular disease or condition (e.g., temporomandibular disorders or breast reconstruction).
- Requiring coverage of a particular type of health care treatment, service, or equipment (e.g., mammograms or lead poisoning screening).
- Requiring coverage for particular persons because of their relation to the insured person (e.g., newborn infants or adopted children).

[s. 601.423, Stats.]

Federal Preemption

Because of the federal Employee Retirement Income Security Act (ERISA), OCI does not regulate self-insured employee benefit plans. ERISA provides that it supersedes all state laws that relate to employee benefit plans of private employers. Therefore, a state's insurance laws, including health insurance mandates, do not apply to such plans. Because

ERISA's preemption does not apply to governmental self-insured plans, such as municipal or school district self-insured plans, the state's insurance laws apply to those plans.

Patients' Rights

Various protections exist related to patient's rights that must be followed and taken into account by health care plans. For example, plans must provide protections for insured persons relating to coverage of emergency care and experimental treatment. 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 the criteria the plan uses to determine whether a treatment, procedure, drug, or device is experimental.

In addition to the above provisions that are intended to apply in a range of contexts, state law contains various patient protections applicable to a specific type of plan or service. For example, for persons insured under defined network plans, the law sets forth duties of health plans and patients' rights in the following areas:

- Access standards.
- Continuity of care.
- Provider disclosures.
- Quality assurance.
- Use of a physician as a medical director.
- Data systems and confidentiality.
- OCI oversight.

Defined network plans are 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 (also referred to as a "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").

The statutes include requirements that defined network plans include sufficient 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.

Continuation Rights

Both federal law and Wisconsin law provide that a person who would otherwise terminate coverage under a group plan may continue to be covered under the group plan for a specified period of time.

Both federal law and Wisconsin law provide that a person who would otherwise terminate coverage under a group plan may 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.)

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 the employee's death, divorce of 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 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.

[s. 632.897, Stats.]

For more information on continuation rights, visit the DHS' *Consumer Guide to Healthcare*, at:

http://www.dhs.wisconsin.gov/guide/pay/losing.htm

Major Health Care Coverage Programs

Described below are major programs with state government financial involvement that provide health care coverage to eligible persons. The programs are administered by DHS, with claims processing done by private contractors. Medicaid, BadgerCare Plus, and SeniorCare all have income eligibility criteria, while Medicaid also has asset eligibility requirements. The federal Medicare program is also an important source of health care coverage for many Wisconsin residents.

In addition to the programs described in this chapter, DHS administers programs that provide assistance to persons with certain chronic diseases (chronic renal disease, cystic fibrosis, and hemophilia) and acquired immunodeficiency syndrome (AIDS).

Medicare

Detailed information about Medicare is included in a federal publication, *Medicare & You*, which is available at:

http://www.medicare.gov

The federal Medicare program, administered by the Centers for Medicare and Medicaid Services (CMS) in the U.S. Department of Health and Human Services (DHHS), is a major source of payment for health care for elderly and disabled persons. Most U.S. citizens age 65 and older, people under age 65 with certain disabilities, and people with end-stage renal disease, are eligible for coverage under the program. Medicare has four parts:

Medicare provides coverage for citizens age 65 and older and individuals under age 65 with certain disabilities, without regard to income or assets.

Medicare Part A provides hospital insurance that includes inpatient care in hospitals, nursing homes, skilled nursing facilities, and critical care access hospitals, but does not include long-term care or custodial care. Most Part A enrollees are not required to pay a premium to receive those benefits if they or their spouse paid Medicare taxes while working.

Medicare Part B provides supplementary medical insurance that covers such services as medically necessary doctor visits, outpatient care, and other services not covered by Medicare Part A. Unlike Part A, most people are required to pay a premium to participate in Medicare Part B.

Medicare Part C combines the benefits available under Medicare Parts A and B, and does so through private health insurance plans referred to as Medicare Advantage Plans. These Medicare Advantage Plans can also offer additional benefits, including Medicare Part D prescription drug coverage.

Medicare Part D is a prescription drug benefit program. People are eligible to participate in Medicare Part D if they are entitled to Medicare Part A or they are enrolled in Medicare Part B. Generally speaking, participation in Medicare Part D is voluntary, although some individuals, such as "dual eligibles" (individuals who are eligible for coverage under both the Medicare and Medicaid programs), are automatically enrolled in a Medicare Part D plan.

Medicaid

Information about Medicaid enrollment and benefits:

http://www.dhs.wisconsin.gov/publications/p0/p00079.pdf

Medicaid, commonly referred to as Medical Assistance (MA) or Title 19, is a program that provides health care services to persons of limited resources. DHS administers Wisconsin's MA program under a framework of state and federal laws, and in conformity with the state plan it submits to CMS.

Medicaid has income and asset eligibility requirements. Medicaid laws also limit an applicant's ability to divest property in order to bring assets below the level allowed for eligibility. However, Medicaid provides 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 covers an 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 several other health care services.

In Wisconsin, Medicaid services for individuals who are elderly, blind, or disabled (EBD) are provided through a variety of programs administered by DHS. These programs provide EBD individuals traditional MA services such as physician services, inpatient and outpatient hospital services, and nursing home care. Some EBD recipients also receive non-traditional long-term care services under Family Care and other home and community-based waiver programs.

When a spouse applies for Medicaid to cover the expenses of long-term care in a nursing home or other long-term care facility, spousal impoverishment protections allow the couple to disregard certain assets and income for purposes of Medicaid eligibility, so that the non-institutionalized spouse will not be required to deplete his or her assets in order to pay for the care of the institutionalized spouse.

During the past decade, Wisconsin's Medicaid program has grown increasingly complex. This is due, in part, to agreements between the state and the federal DHHS that waived aspects of federal Medicaid law, thereby enabling the state to expand coverage. Examples of current waiver programs are the state's home- and community-based long-term care programs (including the community options waiver program, the community integration program, and the long-term care children's waiver program),

SeniorCare, Family Care and BadgerCare Plus. Information about the MA waiver programs is also provided in Chapter 20, *Human Services and Aging*.

Medicaid is funded jointly by the federal government and the State of Wisconsin. In general, approximately 58% of the costs are paid by the federal government and 42% of the costs are paid by the state government.

[subch. IV, ch. 49, Stats.; chs. DHS 101-109, Wis. Adm. Code.]

BadgerCare Plus

BadgerCare Plus Information:
1-800-362-3002

http://dhs.wisconsin.gov/badgercareplus/

BadgerCare Plus is a Wisconsin Medicaid program that offers an array of health care services for low-income persons. Adults with household incomes at or below 100% of the federal poverty level (FPL) are eligible for BadgerCare Plus. Pregnant women with household incomes at or below 305% of the FPL and children (under 19 years old) with household incomes at or below 305% of the FPL are also eligible. Copayments for services are between $0.50 and $3 per service. There are no copayments for preventive services. [s. 49.471, Stats.]

BadgerCare Plus is funded by federal funds available under Medicaid and under the state Children's Health Insurance Program (CHIP), state general purpose revenue (GPR) funds, and premiums paid by 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, does not receive Medicaid benefits, has an annual household income at or below 240% of the FPL, and pays a $30 annual enrollment fee. There is no asset limit for SeniorCare. The term "household income" is defined by DHS by rule. FPLs are calculated annually and the income eligibility limits for SeniorCare may be found at the DHS website at:
http://www.dhs.wisconsin.gov/seniorCare/fpl.htm

To qualify for coverage under SeniorCare, most participants must meet an $850 annual deductible for prescription drugs. However, the deductible is $500 for persons with a household income between 160% and 200% of the FPL, and the deductible is zero for persons with annual incomes of less than 160% of the FPL. 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. In addition, drug coverage is available under SeniorCare for persons whose household income exceeds 240% of the FPL if they spend

greater than the amount by which their income exceeds 240% of the FPL on prescription drugs.

SeniorCare is funded by state GPR, federal Medicaid dollars, and enrollment fees.

[s. 49.688, Stats.; ch. DHS 109, Wis. Adm. Code.]

The Affordable Care Act and the Federal Exchange

For more information on the implementation of the ACA in Wisconsin, see:

https://www.dhs.wisconsin.gov/publications/p0/p00634.pdf

A comprehensive health reform portal maintained by the Henry J. Kaiser Family Foundation can be found at:

http://kff.org/health-reform/

A healthcare information web portal maintained by the DHHS can be found at:

http://www.healthcare.gov

In 2010, Congress passed the Patient Protection and Affordable Care Act, often referred to as the "ACA." Almost immediately, the ACA was challenged on constitutional grounds. In June 2012, the U.S. Supreme Court upheld the ACA in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012). The Court rejected only one provision of the law, the "Medicaid expansion," which was held to be optional for the states. Subsequently, the Governor and the Legislature did not accept the Medicaid expansion funds in Wisconsin. Below is an overview of the health insurance market reforms introduced by the ACA, as they took effect in the state.

Overview of Key ACA Provisions

The ACA established new requirements for private insurance companies, including requiring dependent coverage up to age 26 for all individual and group policies, prohibiting pre-existing condition exclusions, prohibiting lifetime caps on coverage, and requiring new private plans to cover preventive services with no copayments or deductibles.

Under the ACA, all insurers must sell a health insurance policy to any person who applies for coverage unless fraudulent information is provided by the consumer. This is referred to as "guaranteed issue."

The ACA requires insurance plans that cover individuals and small businesses to spend 80% of premium dollars on health care claims and quality improvement. Insurance plans in the large group market must spend 85% of premium dollars on those services. Insurers that do not meet these thresholds must provide rebates to policyholders.

Plans are required to offer the following "essential health benefits":

- Ambulatory patient services.
- Emergency services.

- Hospitalization.
- Maternity and newborn care.
- Mental health and substance use disorder services, including behavioral health treatment.
- Prescription drugs.
- Rehabilitative and habilitative services and devices.
- Laboratory services.
- Preventive and wellness services and chronic disease management.
- Pediatric services, including oral and vision care.

Plans are categorized into one of four tiers. The tiers and the extent of coverage provided are as follows: bronze plans, on average, cover 60% of expected costs; silver plans cover 70% of these costs; gold plans cover 80%; and platinum plans cover 90%.

All plans offered on the federal exchange must limit in-network annual out-of-pocket expenses to $6,850 for individual coverage and $13,700 for family coverage.

Insurance premium credits for federal taxes are available for individuals and families with incomes between 100% and 400% of the FPL, which is $11,880 to $47,520 for individuals and $24,300 to $97,200 for a family of four.

Premium Tax Credits:
A premium tax credit calculator is available on the Kaiser Family Foundation website: http://healthreform.kff.org/subsidycalculator.aspx

The premium tax credit is refundable, which means that if a person has no tax liability, rather than receiving a credit against their taxes, the amount of the credit is paid directly to the individual's insurance company to help reduce the cost of health insurance. Premium tax credits are available only for health insurance that is purchased through a health care exchange.

The Federal Health Insurance Exchange

Federal Exchange:
The website for the federal exchange is www.healthcare.gov

Wisconsin chose not to establish a state-operated exchange, and therefore, Wisconsin participates in the federal health insurance exchange (exchange), also referred to as the "marketplace." The federal exchange operates a website designed to help consumers find and purchase health insurance.

The exchange website allows consumers to: (1) check their eligibility for government assistance programs, including any subsidies available to help pay for private health insurance; (2) compare health insurance plans based on cost; and (3) link to insurers for the purchase of health insurance after they choose a plan in which they are interested.

In general, health insurance may be purchased on the exchange only during periods of "open enrollment." Individuals and families may also qualify for special enrollment periods outside of open enrollment if they experience certain triggering events, such as: (1) loss of minimum essential coverage; (2) gaining or becoming a dependent; (3) newly gaining citizenship; and (4) becoming newly eligible for premium tax credits. Individuals and families generally have 60 days from the time of a triggering event to enroll.

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs, including Medical Assistance, BadgerCare Plus, and related programs. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb/.

2. More information regarding the ACA may be found on the following websites:

    - The National Conference of State Legislatures maintains a health reform implementation website at: http://www.ncsl.org/issues-research/health.aspx.
    - The Henry J. Kaiser Family Foundation maintains a comprehensive health reform web portal at: http://kff.org/health-reform/.
    - DHHS maintains a healthcare information web portal at: http://www.healthcare.gov.

3. DHS has prepared the following consumer publications related to programs and services under its jurisdiction:

    - *Consumer Guide to Health Care* http://dhs.wisconsin.gov/guide/index.htm.
    - *Choosing Wisconsin Residential Options* http://dhs.wisconsin.gov/bqaconsumer/ResidOpts/seek.htm.

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 telephone 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@wisconsin.gov or by writing to the Board on Aging and Long Term Care at: 1402 Pankratz Street, Suite 111, Madison, WI 53704-4001.

GLOSSARY

ACA: Affordable Care Act, or the Patient Protection and Affordable Care Act, passed by Congress in 2010.

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 in the federal 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).

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.

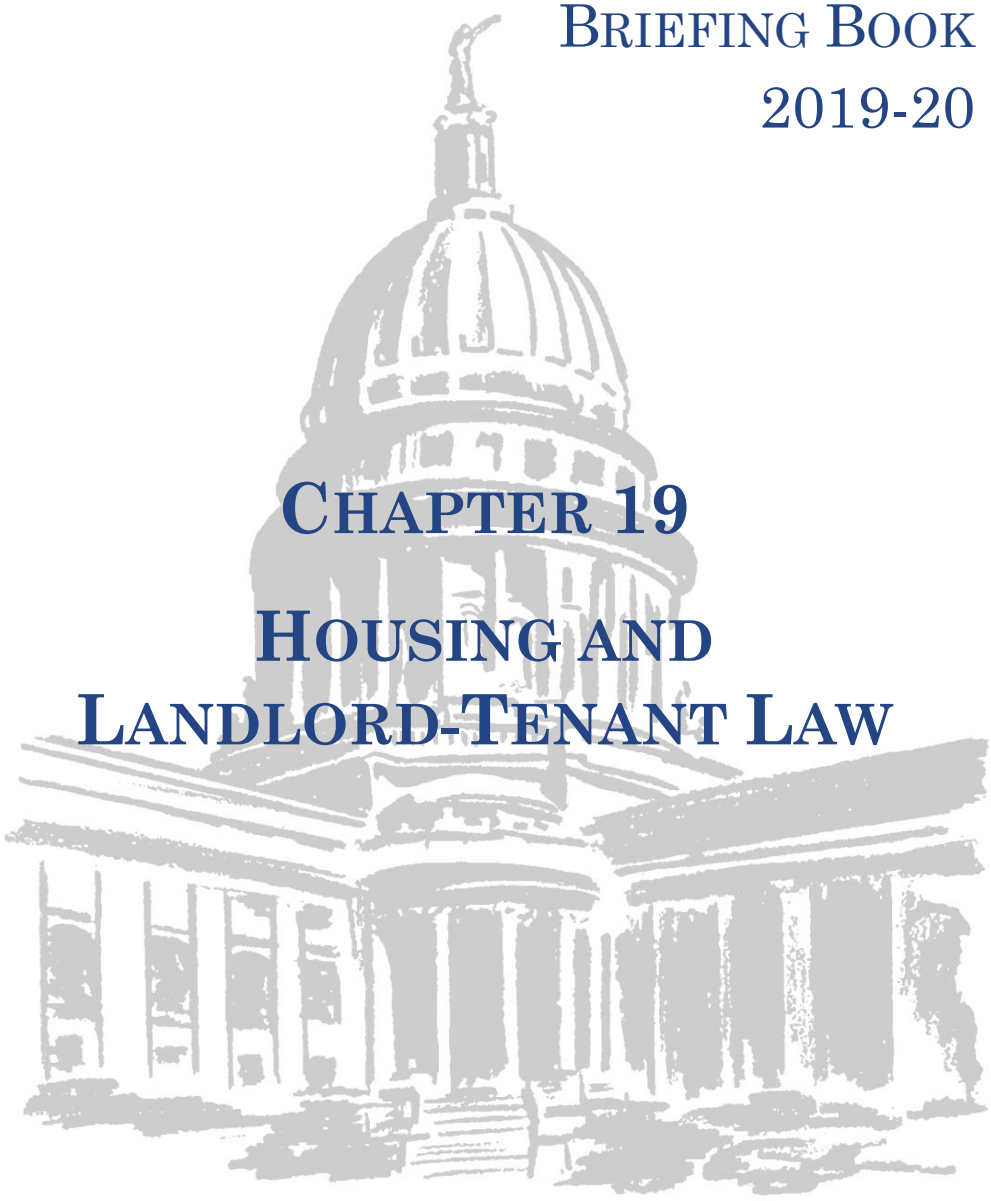
Health Insurance Exchange or Marketplace: The website maintained by the federal government that facilitates the purchase of health insurance by consumers.

Federal Poverty Level (FPL): This level is set by the federal government and varies based on family size. Individuals with incomes below the poverty level are believed to be lacking the resources to meet their basic needs.

Navigator: A federally funded entity or individual who helps consumers determine their eligibility for public assistance programs. They also help consumers compare health insurance options displayed on the federal exchange website after consumers input their preferences.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 19

HOUSING AND LANDLORD-TENANT LAW

Anna Henning, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Introduction

The state and federal governments provide programs to subsidize the cost of housing. More than 100 local public housing authorities throughout the state also play a role.

The key federal agency involved in housing is the U.S. Department of Housing and Urban Development (HUD). The Wisconsin Housing and Economic Development Authority (WHEDA) and the Department of Administration (DOA) have primary roles in administering housing assistance programs at the state level.

State and federal laws, often referred to as "fair housing" laws, each prohibit discrimination in real estate transactions. At the federal level, the Fair Housing Act prohibits housing discrimination and is administered by HUD. The Wisconsin fair housing law is administered primarily by the Department of Workforce Development (DWD). Local governments and organizations such as the Metropolitan Milwaukee Fair Housing Council also play a role in providing fair housing services.

State law regulates the rental of residential property. Among other issues, landlord-tenant law governs rental agreements, landlord and tenant rights, and eviction proceedings.

Housing Assistance

Federal housing assistance programs date to the Great Depression. A 1934 Act authorized mortgage insurance programs, to spur lending. Public housing programs were developed shortly afterward. Several decades later, partly in response to concerns regarding concentrated poverty, program priorities shifted away from government-built housing, toward subsidized affordable housing in private developments.

Today, a complex landscape of federal, state, and local housing assistance programs aim to address multiple goals, including, for example, preventing homelessness, increasing homeownership, or incentivizing affordable housing construction. Although specific policies are often debated, lawmakers from various political perspectives often agree there is a role for government in addressing affordable housing shortages. This chapter summarizes a fraction of current programs applicable in Wisconsin.

HUD – Wisconsin Field Office:

414-297-3214

http://www.hud.gov/states/wisconsin

HUD Programs

HUD administers numerous housing assistance programs, as described below. More detailed information regarding HUD programs is available on www.hud.gov, www.makinghomeaffordable.gov, or through HUD's Wisconsin field office in Milwaukee.

Several of HUD's better known programs include:

- **Mortgage Insurance Program**. HUD's Federal Housing Administration (FHA) supports homeownership by low- and moderate-income families through the Federal Housing Administration program. The program 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.

HUD was created by Congress in 1965. HUD's mission is to help both low- and moderate-income families by creating strong, sustainable, inclusive communities, and quality affordable homes for all.

- **Housing Counseling Programs**. HUD administers a grant program to sponsor housing counseling agencies, including approximately 25 agencies throughout Wisconsin, that provide services to homebuyers, homeowners, low- to moderate-income renters, and the homeless. Counselors provide advice on avoiding foreclosure, home buying, renting, defaults, credit issues, and reverse mortgages.
- **Make Home Affordable Program**. The Making Home Affordable program, administered jointly with the U.S. Department of Treasury, helps to connect homeowners to counseling agencies and can help homeowners avoid foreclosure by reducing monthly loan payments, reducing the loan's interest rate, and modifying second mortgages.
- **Public Housing Program**. The federal public housing program provides housing at affordable rent for eligible low-income families, the elderly, and persons with disabilities. Local housing agencies receive HUD funds to manage housing and determine applicant eligibility based on income limits developed by HUD.
- **Housing Choice Voucher Program**. The housing choice voucher program is administered by local public housing agencies. This program, formerly known as "Section 8," provides assistance to low-income renters and first-time homebuyers. Participants must have income below 50% of median income for the relevant county or metropolitan area, and generally must contribute 30% of their adjusted monthly income for rent and utilities.

[24 C.F.R. Parts 203, 214, 905-972, and 982.]

DOA Programs

The Division of Energy, Housing, and Community Resources (DEHCR) in DOA administers various supportive and affordable housing programs. Partnering with private and municipal utilities, DEHCR also administers several programs for home energy assistance and home weatherization.

State law requires DOA to prepare a comprehensive state housing strategy plan, known as the State of Wisconsin Consolidated Plan, once every five years. DOA submitted the most recent plan to the Legislature in October 2015. The plan serves as the state's application to HUD for key federal program funds and also acts as a plan for distributing federal and state dollars to a variety of housing programs, community programs, and economic development programs. [s. 16.302, Stats.]

The current *State of Wisconsin Consolidated Plan* is available on DOA's website at:

http://www.doa.state.wi.us

Programs Financed With State Funds

DOA housing programs financed with state funds include:

- The **Housing Cost Reduction Initiative (HCRI) Program**. The HCRI program provides direct financial assistance to reduce the housing costs of low- and moderate-income households. Funds may be used for assistance to eligible homebuyers and eligible homeowners facing foreclosure. Funds are awarded to local governments, tribes, and organizations.
- The **Homeless Prevention Program (HPP)**. The HPP provides funds for security deposits, short-term rental assistance, and utility costs. The HPP is funded through the HCRI program.
- The **Transitional Housing Grant Program**. The Transitional Housing Grant program provides competitive grants to organizations and county or municipal governments for the provision of transitional housing and associated supportive services for people who are homeless, to facilitate transition to self-sufficiency.
- The **Interest Bearing Real Estate Trust Account (IBRETA) Program**. The IBRETA 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 **State Shelter Subsidy Grant (SSSG) Program**. The SSSG program 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.

[ss. 16.303 to 16.308, Stats.]

Programs Financed With Federal Funds

DOA also administers initiatives financed with federal HUD funding, through the Home Investment Partnerships program, generally referred to as the HOME program.[1] This HOME program is separate from WHEDA's home ownership mortgage loan program, described below, which also uses HOME as an acronym. The HUD-funded HOME program primarily helps households having incomes no greater than 80% of county median income. However, the household income threshold drops to 60% of county median income for rental rehabilitation and home rental housing development programs for most households. These federal HUD HOME-funded programs include the following:

- The **HOME Homebuyer and Rehabilitation (HHR) Program**. The HHR program provides grants to local organizations assisting qualified low-income homebuyers and landlords. Assistance 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 **HOME Rental Housing Development Program**. The HOME Rental Housing Development program funds projects leading to additional rental units for low-income households, through new construction or the acquisition and rehabilitation of existing properties. Awards are made to community housing development organizations that sponsor the developments.

[24 C.F.R. Part 92; ss. 16.309 and 16.54, Stats.]

DOA administers various other federally financed programs. One key program is community development block grants, through which local governments receive grants for local housing programs.

[ss. 16.309 and 16.54, Stats.; ch. Adm 90, Wis. Adm. Code.]

Programs for Home Energy Assistance and Weatherization

DOA's DEHCR administers several programs for home energy assistance and for home weatherization. These programs include the following:

- The **Wisconsin Home Energy Assistance Program (WHEAP)**. WHEAP provides cash benefit assistance in the form of heating costs, electric costs, and energy crises. WHEAP operates with both federal and state funding.
- The **Wisconsin Weatherization Assistance Program**. DOA contracts with various community action agencies, housing authorities, local governments, and other non-profit organizations to provide weatherization services to eligible households. The weatherization services are designed to reduce home heating bills, save energy, and make the home warmer in the winter and cooler in the summer.

[1] The federal HOME program also provides grants to local governments and nonprofit organizations for homelessness prevention.

[ss. 16.26 and 16.27, Stats.; ch. Adm 45, Wis. Adm. Code.]

WHEDA Programs

Many low- to moderate-income Wisconsin households are assisted by WHEDA, which sells mortgage revenue bonds to finance housing development, and provides mortgage loans to qualifying individuals at below-market interest rates. WHEDA also administers three federally-funded programs on behalf of the state, as described below.

WHEDA incurs debt by issuing bonds, secured by a capital reserve fund, to finance private housing construction and loans.

The Legislature created WHEDA as an authority, not a state agency, so that its operating budget is not included in the state budget. Article VIII, Section 7, of the Wisconsin Constitution authorizes the state to incur debt to defend itself and for other public purposes, but does not explicitly authorize the state to incur debt by selling mortgage revenue bonds to finance private housing. Thus, WHEDA's operating budget is financed primarily from interest earnings on loans it makes, from its investments, and from administrative fees it assesses.

[ch. 234, Stats.]

WHEDA Housing Programs for Homebuyers and Homeowners

Programs administered by WHEDA to assist qualified individuals with purchasing or improving homes include the following:

- **WHEDA Advantage Program**. The WHEDA Advantage program provides first mortgage loans to qualified low- and moderate-income homebuyers. The program allows the purchase of a single-family home or a duplex and also provides loans for major rehabilitation of a home (at least 33% of the purchase price of the home). Among the various types of assistance, WHEDA Advantage loans provide down payment assistance and assistance with closing costs. The program is based on a national lending initiative agreement between Fannie Mae and state housing finance agencies.
- **WHEDA FHA Advantage Program**. The WHEDA FHA Advantage program is similar to the WHEDA Advantage program. It provides low-cost mortgage loans to qualified low- and moderate-income homebuyers with flexible underwriting. The borrower may purchase an existing single-family home or a HUD reviewed and approved condominium. The borrower must also participate in homebuyer education.
- **Easy Close Advantage Program**. The Easy Close Advantage program offers low-cost, fixed interest rate loans to qualifying WHEDA Advantage program participants which may be used for a down payment on a home, closing costs, and homebuyer education expenses.

- **Property Tax Deferral Loan Program**. Under the Property Tax Deferral Loan program, low-income elderly homeowners are able to convert home equity into income to pay property taxes.

[subch. I, ch. 234, Stats.]

WHEDA Housing Programs for the Development and Rehabilitation of Housing

WHEDA administers other programs to encourage the development of housing for low- to moderate-income persons, including the following:

- **WHEDA Foundation Grant Program**. Under the WHEDA Foundation Grant program, grants are provided by the WHEDA Foundation (a nonprofit corporation, founded by WHEDA), to nonprofit organizations and local governments for improving housing opportunities for low- and moderate-income persons, elderly persons, disabled persons, and persons in crisis.
- **Multifamily Housing Programs**. WHEDA provides numerous loan options to assist in the development and rehabilitation of affordable multifamily housing for low- to moderate-income persons, homeless persons, or persons with disabilities. Some loans are short-term and others are long-term.

[s. 234.65, Stats.; see generally, subch. I, ch. 234, Stats.]

Federally-Funded Programs Administered on Behalf of the State

WHEDA administers the following federally-funded housing programs on behalf of the state:

- **Low-Income Housing Tax Credit Program**. WHEDA administers the state's low-income housing tax credit program, which assists the development or rehabilitation of affordable rental housing.
- **HUD Housing Choice Voucher Program**. 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. This program is also described under HUD programs above.
- **WHEDA Preservation Revolving Loan Fund (PRLF)**. PRLF is funded by the U.S. Department of Agriculture. WHEDA uses PRLF funds to allocate loans to rural multifamily developments in communities of 20,000 or less if the multifamily housing integrates low-income families and individuals, as well as people who are elderly or have disabilities.

HOUSING DISCRIMINATION

Housing discrimination is prohibited under the federal Fair Housing Act and Wisconsin's Fair Housing Law. HUD's Office of Fair Housing and Equal Opportunity administers the federal Fair Housing Act and establishes national policies relating to fair housing. At the

state level, the Equal Rights Division in DWD is primarily responsible for administering and enforcing Wisconsin's fair housing law. DWD also provides technical assistance regarding enforcement matters to local government, as well as private and nonprofit organizations in the state. At the local level, in some areas, organizations such as fair housing councils help individuals understand their rights with respect to fair housing.

Federal Fair Housing Act

The federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, is codified at 42 U.S.C. s. 3601, *et seq.* Traditional grounds for discrimination prohibited by the federal Fair Housing Act are race or color, national origin, religion, and sex. Disability and familial status were added in 1988. Each of these prohibited grounds for discrimination is a characteristic that defines a "protected class" of persons, and those individuals within the class are protected from housing discrimination based on the characteristic.

The federal Fair Housing Act prohibits housing discrimination based on race, color, national origin, religion, sex, disability, or familial status.

With respect to disability, the Fair Housing Act prohibits the refusal of reasonable modifications at the expense of the disabled person. The law also prohibits the refusal of reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary for persons with disabilities to have the equal opportunity to use and enjoy the dwelling. The Fair Housing Act requires certain multifamily dwellings to be designed and constructed as accessible housing.

With respect to familial status, the 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, with some exceptions.

[42 U.S.C. ss. 3604-3606.]

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 fewer than four units.

The federal Fair Housing Act also imposes accessibility requirements for persons with physical disabilities on multifamily housing, which include requirements related to sizing of passageways, placement of door handles and

Wisconsin's Fair Housing Law protects the following six additional classes not protected under federal law: (1) sexual orientation; (2) marital status; (3) status as a victim of domestic abuse, sexual assault, or stalking; (4) lawful source of income; (5) age; and (6) ancestry.

outlets, and access to existing common areas. The act applies to buildings with **four or more** dwelling units first ready for occupancy after March 13, 1991.

Wisconsin Fair Housing Law

Wisconsin's Fair Housing Law, also known as the "open housing law," is similar to its federal counterpart. However, the state law prohibits discrimination based on a wider range of characteristics than federal law. State law prohibits housing discrimination against the same protected classes as federal law, as well as: (1) sexual orientation; (2) marital status; (3) status as a victim of domestic abuse, sexual assault, or stalking; (4) lawful source of income; (5) age; and (6) ancestry. [s. 106.50 (1m) (h), Stats.]

With respect to disability and familial status, the Wisconsin Fair Housing Law includes similar provisions to the Federal Fair Housing Act.

Covered Housing

Wisconsin's open housing law differs from the federal Act in that it covers single-family residences that are owner-occupied. According to the governing statute: "The legislature finds that the sale and rental 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

State law also imposes accessibility requirements for persons with physical disabilities on multifamily housing. Accessibility requirements under the state open housing law are similar to those under the federal Act. The state law applies to housing first ready for occupancy on or after October 1, 1993, consisting of **three or more** dwelling units and including **at least one** elevator. [s. 101.132, Stats.]

Enforcement and Complaints

A person may file a complaint with HUD on HUD's website at: www.hud.gov/complaints_home

Federal and state fair housing laws are enforced primarily in response to complaints initiated by individuals who feel that they have been discriminated against in their search for housing. Complaints may be filed under either the federal Fair Housing Act or the Wisconsin Fair Housing Law. Some areas of the state are served by a fair housing council, which may assist individuals in the complaint process, as described below.

Complaints Under the Federal Fair Housing Act

A person alleging a violation under the federal Fair Housing Act has the following two general options for proceeding:

Information on filing a state fair housing complaint is available on the DWD's Equal Rights Division website:
http://www.dwd.wisconsin.gov/er/civil_rights/housing/housing.htm

First, 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 charges are issued, the person who filed the complaint will not have to pay the costs of pursuing a legal remedy.

Second, 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.

A benefit of the first option 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.

Complaints Under Wisconsin's Law

A person alleging a violation under Wisconsin's open housing law may file a complaint with DWD's Equal Rights Division no later than one year after the alleged discrimination occurred. DWD's Equal Rights Division must find **probable cause** to believe that discrimination occurred before charges may be issued, whereas the federal Act requires only **reasonable cause**. [s. 106.50 (6), Stats.]

In addition, a person alleging a violation of Wisconsin's Fair Housing Law, including the Attorney General on behalf of an aggrieved person, may bring an action for enforcement in civil court. [s. 106.50 (6m), Stats.]

Fair Housing Councils

To find out if a particular area is served by a fair housing council, contact:

Metropolitan Milwaukee Fair Housing Council, Inc. (MMFH)

(414) 278-1240

http://www.fairhousingwi.com

A fair housing council is an organization that helps individuals to understand their options for pursuing a complaint under the fair housing laws. Assistance is provided in Milwaukee by the Metropolitan Milwaukee Fair Housing Council, which also helps individuals in other communities find out if their area is served by a fair housing council.

Residential Landlord-Tenant Law

State law regulates the rental of residential properties and provides for the severability of rental agreements and prohibited provisions. Residential landlord-tenant law is a mix of

state statutes, administrative rules, and common law (law derived from court decisions on individual cases). Cities, villages, towns, and counties are prohibited from enacting or enforcing ordinances that place certain limits requirements on landlords. [ss. 66.0104 and 66.1010, Stats.]

Chapter 704, Stats., sets forth the main part of Wisconsin statutory law governing landlord and tenant relationships. Among other provisions, the chapter sets forth requirements relating to landlords' obligations and liability, security deposits, termination of tenancies, and terms that render leases unenforceable.

Exclusive Right of Possession

Unless a lease specifies otherwise, a residential tenant generally has an exclusive right to possession of the leased premises. However, with advance notice, and at reasonable times, a landlord may enter the premises to inspect or repair the property or to show the premises to prospective tenants or purchasers. If a tenant is absent from the premises, a landlord may also enter without notice, if the landlord reasonably believes that the entry is necessary to preserve or protect the premises. [s. 704.05 (2), Stats.]

Landlord Obligations

A residential landlord generally has a duty to do all of the following:

- Keep the premises and equipment in the landlord's control in a reasonable state of repair.
- Make all necessary structural repairs.
- Comply with local housing code requirements.

[s. 704.07 (2), Stats.]

Severability of Rental Agreements and Prohibited Provisions

Provisions of a rental agreement are generally severable. Severability allows certain provisions in a lease to be invalidated without invalidating the other provisions. An example of a provision that is void and severable from the rental agreement is an agreement to waive any of the duties owed by either the landlord or tenant requiring the property to meet code requirements and be fit for tenants. [ss. 704.02 and 704.07 (1), Stats.]

Rental agreement provisions found to be void or unenforceable are generally severable from the rental agreement itself. This allows the rest of the agreement to be enforceable. Some prohibited provisions are not severable, and render the entire agreement invalid.

However, under the statutes, certain provisions found to be void or unenforceable will not be severed from the agreement but, instead, will render the entire lease void and

unenforceable. A provision will render an entire rental agreement void and unenforceable if it does any of the following:

- Allows a landlord to take certain retaliatory actions because a tenant has contacted an entity for law enforcement, health, or safety services.
- Authorizes the eviction or exclusion of a tenant from the premises other than by a process established in state statute.
- Provides for accelerated rent payments in the event of tenant default or breach of obligations under the rental agreement or otherwise waives the landlord's statutory obligation to mitigate damages.
- Requires a tenant to pay attorney fees or costs incurred by the landlord, except as required by court order.
- Authorizes a landlord to act on the tenant's behalf in an action arising under the rental agreement.
- States that a landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord.
- Imposes liability on a tenant for personal injury arising from causes clearly beyond the tenant's control or for property damage caused by natural disasters or persons other than the tenant or the tenant's guests or invitees.
- Waives a landlord's statutory or other legal obligations to deliver the premises in a habitable condition and maintain the premises.
- Allows a landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property, if the tenant, or someone who lawfully resides with the tenant, is the victim of that crime.
- Allows the landlord to terminate a tenancy for a crime committed in relation to the rental property if the rental agreement does not include a statutorily required notice relating to certain domestic abuse protections.

Terminations of Tenancy and Eviction

A landlord may terminate a tenancy for one or more of the following reasons, subject to statutory notice requirements:

- A tenant stays beyond the period included in a lease termination notice for a periodic tenancy or a tenancy at will.
- A tenant fails to pay required rent.
- A tenant, a member of the tenant's household, or a guest or other invitee of the tenant or a member of the tenant's household: (1) engages in criminal activity that threatens the health or safety of, or right to peaceful enjoyment of, the premises by other tenants or persons residing in the immediate vicinity; (2) engages in any criminal activity that

threatens the health or safety of the landlord (or the landlord's agent); or (3) engages in any drug-related activity on or near the premises.

- While subject to one of several types of court orders, a tenant commits certain acts, including verbal threats, which cause another tenant (or the other tenant's child) in the same unit, multi-unit dwelling, apartment complex, or manufactured or mobile home community, to face an imminent threat of serious physical harm.

[ss. 704.16 (3), 704.17, and 704.19 (8), Stats.]

A landlord (or other person entitled to the possession of property) may commence a civil action to evict a person whose tenancy has been terminated (or who is otherwise occupying property illegally). Special timelines, pleading requirements, and remedies apply to eviction actions. [ss. 799.40 to 799.445, Stats.] A court must temporarily stay such eviction proceedings if a tenant applies for the emergency assistance program, which provides limited assistance to qualifying families in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. [s. 799.40 (4), Stats.]

In some instances, a tenant may argue that the tenant has been subject to a "constructive eviction." Technically, "constructive eviction" is a defense to an action brought by a landlord for unpaid rent. The defense applies if a tenant has been forced to vacate rental housing because of substantial habitability concerns materially affecting the tenant's health and safety. [s. 704.07 (4), Stats.]

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs and agencies, including state housing programs, the property tax deferral loan program, and WHEDA. The Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
2. The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) publishes the *Landlord Tenant Guide*. The guide is available on DATCP's website, www.datcp.wi.gov.

Glossary

Fair Housing Act: A federal law prohibiting housing discrimination based on race, color, national origin, religion, sex, disability, or familial status.

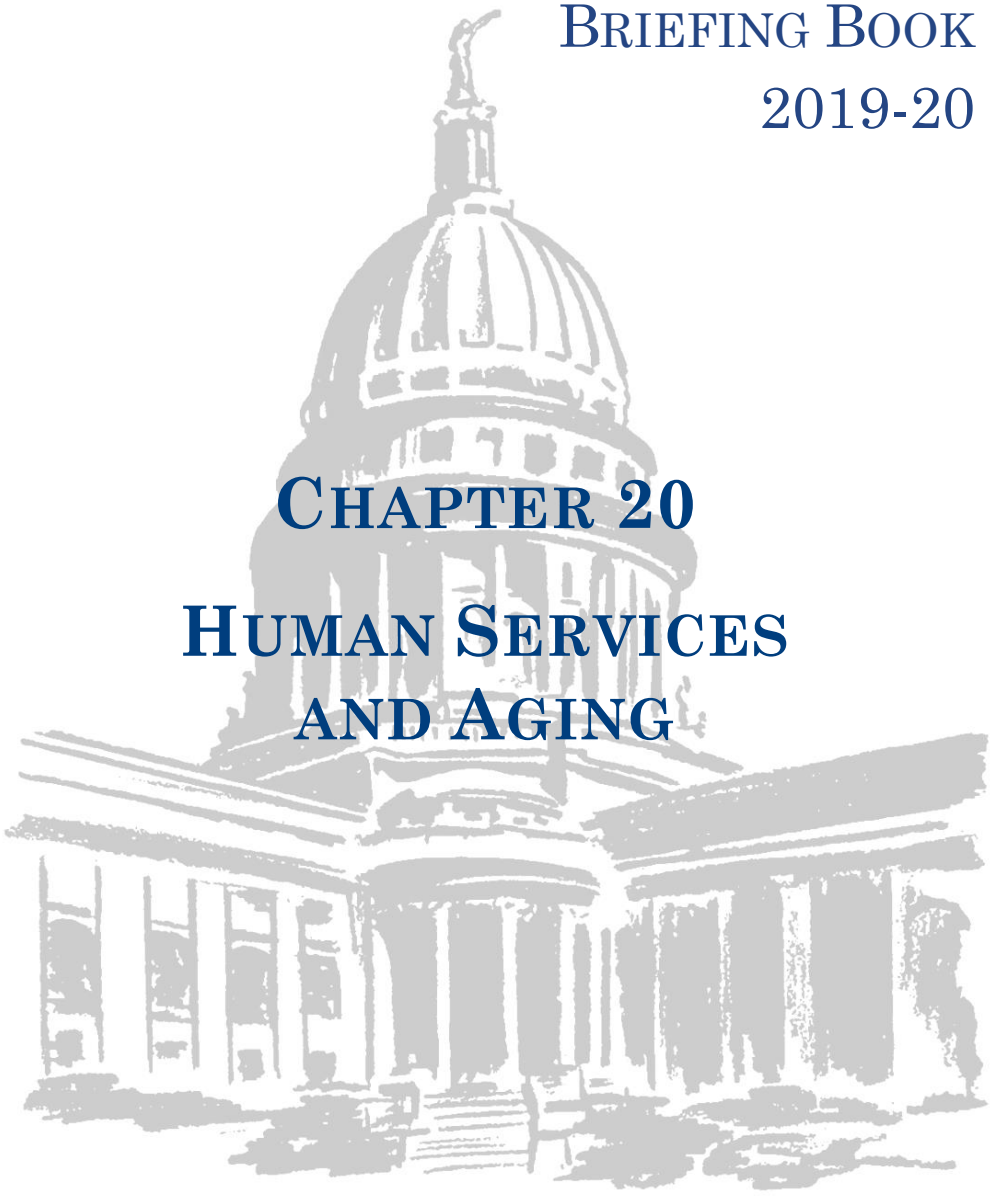
Fair Housing Law: A state law, also called the "Open Housing Law," prohibiting housing discrimination.

HUD: The U.S. Department of Housing and Urban Development.

WHEDA: The Wisconsin Housing and Economic Development Authority.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 20

Human Services and Aging

Steve McCarthy and Andrea Brauer, Staff Attorneys
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

Human services and aging programs are regulated primarily by two state agencies: the Department of Health Services (DHS) and the Department of Children and Families (DCF). Services are generally operated on a county level, with some administration by resource centers and regional consortia. DHS and DCF administer funds and provide operational oversight, for most programs, while directly providing services only in certain circumstances.

Department of Health Services

DHS administers or regulates the following programs:

- The FoodShare Wisconsin program and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
- Long-term care services, including Family Care and the Medicaid waiver programs.
- Residential long-term care programs, including the state centers for persons with developmental disabilities.
- 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 issues.
- Supplemental payments to the federal Supplemental Security Income (SSI) program.

Department of Children and Families

DCF administers or regulates the following programs:

- Adoption programs.
- Brighter Futures Initiative.
- Child care licensing and certification.
- 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 Wisconsin Works (W-2) program.

Income Maintenance Administration

Online access to apply for health, nutrition, child care, and W-2 assistance is available at:

https://access.wisconsin.gov

Wisconsin counties, except for Milwaukee County, are organized into 10 multi-county consortia to administer the following "income maintenance" programs: BadgerCare Plus, Medicaid, FoodShare, the Wisconsin Shares Child Care Subsidy, and the SSI Caretaker Supplement. If a county does not enter a consortium or DHS determines a consortium does not meet performance requirements, DHS must provide the services or contract with another consortium to provide the services. DHS operates Milwaukee County's income maintenance system as a single-county consortium, through Milwaukee Enrollment Services (MilES). [s. 49.78, Stats.]

2017 Wisconsin Act 266 requires all contracts for the administration of W-2 and the FoodShare Employment and Training Program (FSET) to be paid on a performance-based system, using certain identified performance metrics.

Pay for Success Contracting

2017 Wisconsin Act 267 authorizes the Department of Administration (DOA) to contract with a private organization to provide social, employment, or correctional services, for which payment on the contract is conditioned upon achievement of performance measures. DHS, DCF, the Department of Workforce Development, and the Department of Corrections must each conduct a study of how the pay for success contracting model could be used for the programs they administer and submit a report to the Legislature.

Economic Assistance Programs

W-2

The W-2 program is an economic support program for low-income families. DCF oversees 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. [ss. 49.141 to 49.162, Stats.]

Eligibility

The lifetime eligibility limit for W-2 is 48 months; however, extensions may be granted in limited circumstances. To be eligible to participate in W-2, an individual must satisfy the following nonfinancial requirements:

- Be a custodial parent who is at least 18 years old.
- Be a U.S. citizen or qualifying alien.
- Reside in Wisconsin.
- Fully cooperate in efforts to establish paternity of a dependent child and obtain support payments.
- Not receive federal or state Supplemental Security Income (SSI) payments or federal Social Security disability insurance payments.

W-2 participants must also meet financial eligibility requirements. An individual, 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 the value of one homestead property, if the home is valued at no more than 200% of the statewide median for homes, excluding the value of agricultural land and any other amount that DCF excludes by rule as a result of a hardship. [s. 49.145, Stats.]

2015 Wisconsin Act 55 and 2017 Wisconsin Act 59 generally require participants to comply with a drug screening, testing, and treatment program in order to maintain eligibility in the W-2 program.

Employment Requirement

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 employment matches, community services jobs, or transitional placements.

- **Unsubsidized employment**. Job search assistance is provided to an unemployed individual who, once employed, will receive wages from an employer. Generally, unsubsidized employment is appropriate for an unemployed person who has no barriers to work (or barriers that can 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 employment match program (TEMP)**. Individuals who have basic skills, but lack sufficient work experience, may be placed in a TEMP job. Through a TEMP 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 40 hours per week for participation in work, education, and training activities, which may specifically include up to 10 hours per week in education and 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 grant for up to 40 hours per week for participating in work training or other employment-related activities, which may specifically include up to 12 hours per week in education or training.

Participants in W-2 subsidized employment positions are required to search for unsubsidized employment throughout their participation. A W-2 agency assists a participant in searching for unsubsidized employment. Caretakers of infants age 12 weeks or younger and unmarried women in the third trimester of an at-risk pregnancy may receive cash grants in lieu of employment placements. [s. 49.148 (1m), Stats.]

Additional Support Services

In addition to employment services, other support services may be available for W-2 participants, including 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.

W-2 recipients may also be eligible for the state and federal earned income tax credit, child care subsidies through the Wisconsin Shares Child Care Subsidy program, nutrition assistance through the FoodShare Wisconsin Program, BadgerCare Plus, or other medical assistance (MA) programs.

Transform Milwaukee and Transitional Jobs Programs

The Transform Milwaukee Jobs program in Milwaukee County was established in 2013 and is administered by DCF. To be eligible to participate in the program, an individual must satisfy all of the following criteria:

- Be at least 18 years of age.

- If over 24 years of age, be a biological or adoptive parent of a child under 18 years of age whose parental rights to the child have not been terminated, or be a relative and primary caregiver of a child under 18 years of age.
- Have an annual household income that is below 150% of the federal poverty line.
- Have been unemployed for at least four weeks.
- Be ineligible to receive unemployment insurance benefits.
- Not be a participant in a W-2 employment position.

An individual may participate in the program for a maximum of 1,040 work hours. The program reimburses an employer for a minimum of 20 hours a week for work performed by the participant. The reimbursement includes a wage subsidy for hours worked, not to exceed 40 hours a week at the federal or state minimum wage. The employer may pay more, but is not subsidized for any amount exceeding the minimum wage. [s. 49.163, Stats.]

DCF is also authorized to operate a Transitional Jobs program outside of Milwaukee County, with the same eligibility and program requirements as the Transform Milwaukee Jobs Program, to the extent that funds are available. In selecting the geographic area or areas in which to conduct the Transitional Jobs program, DCF is required to prioritize areas with relatively high rates of unemployment and childhood poverty or other special needs.

Wisconsin Shares Child Care Subsidy Program

Under Wisconsin Shares, the state subsidizes child care expenses for eligible W-2 and other low-income working families. DCF administers Wisconsin Shares through the income maintenance consortia. The subsidy is available to enable parents with a child under age 13, or under age 19 if the child is disabled, to work or participate in certain work or educational activities. [s. 49.155, Stats.]

In order to qualify, parents must meet the applicable income, asset, employment, and educational requirements. Generally, a family whose gross income is at or below 185% of the federal poverty level is 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.

Child care providers that accept Wisconsin Shares must have at least a two-star rating under the Young Star quality rating system.

FoodShare Wisconsin

Formerly known as food stamps, benefits under the federal Supplemental Nutrition Assistance Program are provided through FoodShare Wisconsin.

The FoodShare Wisconsin program, formerly referred to as the food stamps program, is administered by DHS to help low-income families buy food each month. Funding for the monthly benefit amount is provided by the federal Supplemental Nutrition Assistance Program (SNAP), which is administered by the U.S. Department of Agriculture. The state administrative costs are generally 50% state funded and 50% federally funded. Eligibility determinations and issuance of debit (Quest) cards used to purchase food are generally done by the income maintenance consortia. [s. 49.79, Stats.]

Participants must meet all of the following nonfinancial eligibility requirements:

- Be a U.S. citizen or resident alien who qualifies for benefits under the federal law.
- 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 households.
- Comply with certain requirements regarding the establishment of paternity and child support.

Households must also meet certain asset requirements and pass a two-part income test, with a gross income at or below 200% of the federal poverty level. Several items are then deducted from gross income to determine if net income meets a net income threshold (generally, 100% or below the federal poverty level) to qualify for FoodShare. [s. 49.79 (1p) and (1r); 7 C.F.R. Part 273, subpart D.]

Able-bodied adults without dependents who participate in FoodShare are subject to a federal work requirement, which can be satisfied by working or participating in W-2 or the FoodShare Employment and Training (FSET) program. FSET participation has otherwise been voluntary since 2008. However, if the federal government approves, beginning on October 1, 2019, DHS will generally be required to make FSET participation mandatory for all able-bodied FoodShare recipients between ages 18 and 50, for the maximum number of hours allowed under federal law. A number of exceptions apply, including that DHS will not have to require FSET participation for pregnant women or caretakers of dependents who are disabled or under the age of six. [2017 Wisconsin Acts 263 and 264.]

As of June 1, 2018, DHS has also begun implementing a drug screening, testing, and treatment policy for certain FSET participants. [ch. DHS 38, Wis. Adm. Code.]

In addition, 2017 Wisconsin Act 266 requires DHS to create a 10-month pilot program for a healthy eating incentive in the FoodShare program.

WIC

WIC is a federally funded program administered by DHS through local offices to promote and maintain the health of nutritionally at-risk pregnant, breastfeeding, or new mothers, infants under age one, and children under age five. To be eligible, families may not earn income that exceeds 185% of the federal poverty level. [s. 253.06, Stats.]

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, BadgerCare Plus, and Head Start. In addition, women receive information on healthy eating during pregnancy and on breastfeeding.

SSI

Federal SSI

SSI is a federal program that provides cash benefits to persons who are age 65 or older, as well as to children and adults who are blind or disabled. SSI is available for those qualifying individuals only if they meet particular financial need requirements. However, unlike Social Security retirement benefits, a work history is not needed. Individuals who receive SSI payments automatically qualify for Medicaid and may also qualify for FoodShare. SSI is administered by the U.S. Social Security Administration.

SSI eligibility requirements for children and adults who are blind or disabled are as follows:

- 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 qualify for SSI payments based on disability:
    - An adult must have a physical or mental impairment that prevents the individual from performing any substantial gainful activity (earnings up to $1,690 per month for blind individuals and $1,010 for other disabilities) and which has lasted, or is expected to last, for a continuous period of at least 12 months or result in death.
    - 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 at least 12 months.

All eligible individuals must also have limited income and resources. An individual may be eligible for SSI payments if the person has countable resources of up to $2,000 for a single person, or up to $3,000 for married couples. Certain resources are excluded from consideration, including the person's home and car. The income limit is determined from a given formula. [42 U.S.C. s. 1382.]

State SSI Supplement

Wisconsin is among the majority of states and the District of Columbia that supplement federal SSI payments with a state supplemental payment to SSI beneficiaries. 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. [ss. 49.77 and 49.775, Stats.]

Wisconsin has chosen to supplement federal SSI payments with a state supplemental payment to SSI beneficiaries.

The state SSI supplement provides a basic supplement, and, in some cases, an exceptional expense supplement or a supplement for caretakers of dependent children. 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 supported living that qualifies for an SSI Exceptional Expense Supplement (SSI-E), which is an additional cash benefit available to SSI members who live in certain nonmedical substitute care facilities or who need additional support services to live independently.

If an SSI recipient has a spouse who is also eligible to receive SSI payments, the couple receives a combined benefit.

The 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 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 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. The dependent children themselves must be SSI recipients. The SSI Caretaker Supplement is funded by TANF and GPR funds. [s. 49.775, Stats.]

Human Services and Aging Programs

Long-Term Care and Support

The state offers several Medicaid-funded managed care programs that provide long-term care services to eligible recipients. Eligible recipients typically include elderly individuals,

adults with developmental disabilities, and adults with physical disabilities. Community-based long-term care programs use state funds or a combination of federal and state funds. They are monitored by DHS and administered by county agencies to deliver community-based services to elderly or disabled persons who need long-term assistance in bathing, dressing, cooking, and other daily activities involving self-care and home care. The Family Care and IRIS programs are the major community-based long-term care programs in Wisconsin.

Family Care

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 MA and non-MA eligible persons.

Under Family Care, Aging and Disability Resource Centers (ADRCs) serve as the primary point of entry for accessing long-term care services, including Family Care. All counties and tribes are served by ADRCs, that provide information and referral services, determine functional and financial eligibility for Family Care, and help persons enroll in Family Care. When a person enrolls in Family Care, he or she becomes 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 that is tailored to an individual's needs, circumstances, and preferences. [ss. 46.2805 to 46.2895, Stats.]

IRIS

The IRIS (Include, Respect, I Self-Direct) program provides a self-directed, fee-for-service alternative to Family Care. Individuals with long-term care needs who qualify for MA-funded community-based services, but do not wish to enroll in Family Care, have the option to participate in IRIS, which offers program participants greater control over their personal care services and providers.

IRIS offers program participants greater control over their personal care services and providers.

MA Waiver Programs

Community Options Program – Regular

Under the Community Options Program (COP), also known as COP-Regular (COP-R) program, 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-R serves the elderly and persons with developmental disabilities, chronic mental illness, physical disabilities, and alcohol or drug dependency.

COP-R provides screening of potential participants, coordination of services, and supplementary funding to counties for support services to COP-R clients. COP-R is funded by state GPR funds. [s. 46.27, Stats.]

A list of COP coordinators by county is available at: http://dhs.wisconsin.gov/cop/contacts.htm

Community Integration Programs IA and IB

The Community Integration Programs IA and IB, or "CIP IA and IB," permit federal MA funds that would normally be required to fund institutional care for persons with developmental disabilities to be used for long-term community support services for those individuals. Both programs are funded from federal MA funds and state GPR.

Under CIP IA and IB and CIP II, participating counties receive payments to divert or relocate persons from institutional settings into appropriate community settings.

Under CIP IA, participating counties receive a payment to relocate persons into appropriate community settings from the state centers for persons with developmental disabilities 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 MA reimbursement is reduced. The participant remains eligible for SSI and all other MA services.

The purpose of CIP IB 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 to persons who require the level of care necessary to qualify for MA reimbursement in an intermediate care facility for persons with mental retardation (ICF-MR). CIP IB attempts to relocate or divert persons from nursing homes to individualized, integrated community services. 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 MA services. [s. 46.275, Stats.]

Residential Facilities

State Centers

DHS operates three residential centers for persons with developmental disabilities.

The Division of Care and Treatment 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' missions have 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.

Nursing Homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

A nursing home is a residential facility where five 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, 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. [s. 50.01 (3), Stats.]

When a nursing home accepts residents whose placements are funded by the Medicare or MA programs, the facility is subject to both federal and state regulations, and can be sanctioned under both state and federal law for the same violation. This is referred to as "dual enforcement." 2011 Wisconsin Act 70 prohibits DHS from serving a notice of violation to a nursing home for any Class A or B violation of state requirements if DHS has, in a statement of deficiency, cited the nursing home for a violation under federal regulations based on the same facts. A Class "A" violation is one that creates a condition or occurrence presenting a substantial probability of death or serious mental or principal harm to a resident. A Class "B" violation is one that creates a condition or occurrence that threatens the health, safety, or welfare of a resident.

An ICF-IID is an institution (or a distinct part of an institution) that primarily provides treatment or rehabilitative services for persons with mental retardation or related conditions and provides 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-IID for three or more unrelated persons. [ch. DHS 134, Wis. Adm. Code.]

Assisted Living Facilities

DHS' *Consumer Guide to Finding and Choosing an Assisted Living Facility* is available at:

https://www.dhs.wisconsin.gov/guide/assisted-living.htm

The Division of Quality Assurance in DHS licenses adult family homes, community-based residential facilities (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 that consist of individual apartments and provide up to 28 hours per week of services that are supportive, personal, and nursing services. [chs. DHS 83, 88, and 89, Wis. Adm. Code.]

Services for Children With Delays or Disabilities

A list of resources for families and children is available at:

https://www.dhs.wisconsin.gov/children/resources.htm

Wisconsin has a number of programs available for children with delays or disabilities. The programs are designed to assist families in caring for their child at home and in the community. Families may be eligible for one or more programs based on their assessed need.

Autism Services

Autism benefits are provided as state plan services. Autism services are 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.

Counties are responsible for administering the in-home autism benefit. Counties conduct assessments, establish ISPs, and perform quality assurance activities for each participant.

Information on behavioral treatment and other support services for children with autism is available at:

https://www.dhs.wisconsin.gov/clts/waiver/autism/index.htm

Children who are eligible for in-home autism services may qualify for one of two levels of services for up to three years as long as they begin receiving services by the time they are eight years old. Consultative behavioral intervention services provide 10 to 20 hours per week of face-to-face service. Early intensive behavioral intervention services provide 30 to 40 hours per week of face-to-face service. DHS may grant variances to the three-year limit. Services are also available at the ongoing 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.

The Governor's Council on Autism advises DHS on strategies for implementing statewide supports and services for children with autism.

Insurers must 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. 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. [s. 632.895 (12m), Stats.]

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.

State, regional, and tribal Birth to Three resources are available at:

https://www.dhs.wisconsin.gov/birthto3/index.htm

There are no income eligibility requirements for the Birth to Three program; children who meet disability criteria are eligible regardless of their families' income status. However, parents contribute to the cost of the services based on their ability to pay. [ch. DHS 90, Wis. Adm. Code.]

Care4Kids

DHS and DCF partner to implement Care4Kids, a program designed to offer comprehensive and coordinated health services for children and youth in foster care. The Care4Kids program creates a "medical home" team for children in foster care, ensuring that children receive individualized treatment plans in order to address their specific health care needs, including trauma related care. A medical home is a concept, not a place. A medical home means that each child has a team that coordinates care to meet a child's needs. These needs can be medical in nature, but also include community-based supports and services. The program is currently available in the six Southeastern Wisconsin counties: Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha.

Children and Youth With Special Health Care Needs Program

A list of CYSHCN contacts is available at:

https://www.dhs.wisconsin.gov/mch/contacts/mch.htm

The Children and Youth with Special Health Care Needs Program (CYSHCN) collaborates with national, state, and community-based partners to link children to appropriate services, close service gaps, reduce duplication and develop policies to better serve families. The CYSHCN Program works to improve systems of care for anyone from birth through age 21 with a chronic physical, developmental, behavioral or emotional illness, or condition. [s. 253.02 (2) (f), Stats.]

Children's Long-Term Support Waiver

The Children's Long-Term Support (CLTS) waiver provides children with long-term care needs with MA 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.

The CLTS waiver provides MA services and a single point of entry for services to children with long-term care needs.

State funding supports CLTS in several counties across the state. Counties may also create CLTS 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 MA 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 MA card services, which are services provided to a MA recipient, as detailed in the state MA 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 MA.

Children's Community Options Program

The Children's Community Options Program (CCOP), administered by DHS' Bureau of Children's Long-Term Support Services, provides supports and services to children living at home or in the community who have one or more of the following long-term disabilities: developmental disabilities; physical disabilities; or severe emotional disturbance. CCOP is operated locally, under contract with DHS, with funding used to provide a range of services and supports that allow a child to remain in his or her home community.

In order to be eligible for CCOP, a child's disability must be characterized by a substantial limitation on functional ability in at least two of the following areas: self-care; receptive and expressive language; learning; mobility; and self-direction. Additionally, the child must meet all of the following eligibility criteria: be under 22 years of age; be a resident of Wisconsin with intent to remain; live in a home or community setting; and require a level of care typically provided at an ICF-IID, a nursing home, or a hospital. [s. 46.272, Stats.]

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 MA coverage. A disabled child under these circumstances may be eligible for MA if all of the following criteria are met:

- The child is under age 19 and determined to be "disabled" by Social Security Act standards.
- The child requires a level of care at home that is typically provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded (ICF-MR).
- Services can be provided with safe and appropriate care at home.
- The child does not have assets or income in his or her name in excess of current standards for a child living in an institution.
- The child does not incur MA costs at home that exceed the costs MA would pay if the child were in an institution.

A list of Katie Beckett program consultants is available at:
http://www.dhs.wisconsin.gov/children/kbp/kbpcons.htm

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.

Services for Older Adults

Information on resources provided by the Bureau of Aging and Disability is available at:

https://www.dhs.wisconsin.gov/dltc/badr.htm

Wisconsin has a variety of programs and services for older adults and their caregivers. The Bureau on Aging and Disability Resources in DHS is responsible for the development of policy and the management of programs that serve aging adults; persons with physical disabilities or who are blind or visually impaired, deaf or hard-of-hearing; those in need of adult protective services; and persons who need or receive information about or access to community-based long-term support through an ADRC.

Aging and Disability Resource Centers

A map of ADRCs is available at:

https://www.dhs.wisconsin.gov/adrc/consumer/index.htm

DHS promotes ADRCs as the first place to go to get accurate, unbiased information on all aspects of life related to aging or living with a disability. ADRCs also provide counseling regarding long-term care options, benefit specialists, health and wellness programs, and a number of other programs and services for persons aging or living with a disability.

Dementia Care System Redesign

DHS is engaged in an initiative to redesign the state's dementia care delivery system. The goals of this initiative are to ensure that individuals with dementia receive appropriate, safe, and cost-effective care, that individuals with dementia are not unnecessarily or inappropriately placed in institutions, and that the burden on families and caretakers related to caring for persons with dementia is reduced.

Additional information on the DHS redesign of the dementia care system is available at:

https://www.dhs.wisconsin.gov/dementia/index.htm

DHS is focusing its efforts on five broad categories: (1) community awareness and services; (2) facility-based long-term care; (3) care for people with significant challenging behaviors; (4) dementia care standards and training; and (5) continuing data collection, research and analysis. Specific initiatives include the creation of toolkits both for employers and for building dementia-friendly communities, outreach to increase referrals to ADRCs, outreach to reduce stigma and educate the public about dementia, engaging local public health departments in the dementia initiative, and many other strategies.

Alzheimer's Family and Caregiver Support Program

The Alzheimer's Family and Caregiver Support Program (AFCSP) is administered by the Division of Long-Term Care in DHS and operated by county or tribal aging offices. The program responds 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 net income of $48,000 or less after costs related to Alzheimer's are subtracted from the couple's gross income.

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. [s. 46.87, Stats.]

Older Americans Act Programs

Established under the federal Older Americans Act (OAA) in 1973, the federal Administration on Aging administers an "aging network," comprised of various state units on aging, and a variety of programs which support elderly persons in the community. The Administration on Aging distributes funds to the states. In Wisconsin, the 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. 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.

A directory of county and tribal aging offices is available at:

http://dhs.wisconsin.gov/aging/offices/coagof.htm

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 and are homebound due to health reasons.

Board on Aging and Long-Term Care

The state Board on Aging and Long-Term Care was created by the Legislature in response to the 1979 OAA Amendments. 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 and reside in nursing homes, group homes, or are participating in Family Care and 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, Medicare supplemental insurance, MA, long-term care insurance, and other forms of health insurance. [s. 16.009, Stats.]

Elderly Benefit Specialists

A list of elderly benefit specialists by county and a list of elderly benefit specialists serving tribes is available at:

https://www.dhs.wisconsin.gov/benefit-specialists/ebs.htm

Anyone age 60 or older who is having a problem securing benefits, including Medicare, MA, SSI, and FoodShare, or is having problems regarding housing or consumer issues, is eligible for the Elderly Benefit Specialist program. 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.

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.
- MA and BadgerCare Plus.
- Private insurance and individual copayments.

Counties have the primary responsibility for providing community mental health services in Wisconsin.

The primary mental health programs offered in the community are Community Support Programs (CSP). 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

A directory of the CSTs in the state may be found at:

https://www.dhs.wisconsin.gov/cst/index.htm

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. [s. 46.56, Stats.]

Comprehensive Community Services

Comprehensive Community Services (CCS) are services for individuals who are less functionally impaired by their mental illness than those requiring CSP who need help arranging a comprehensive range of services to support a fuller recovery. Under federal law, CCS is an optional MA benefit. [ch. DHS 36, Wis. Adm. Code.]

Community Recovery Services

Wisconsin's Medicaid State Plan Amendment under 1915(i) State Plan Home and Community Based Services is called Community Recovery Services (CRS), and provides community living supportive services, supported employment services, and peer-support services. CRS services are individualized based on the needs identified through a comprehensive assessment and a person-centered planning process. The program is based upon a continuous improvement process characterized by continual growth and improved functioning of the client, and includes measures of individual outcomes associated with the implementation of goals included in the Individual Service Plan.

Involuntary Commitment

Current law requires a civil court proceeding to obtain involuntary mental health treatment or care for an individual. 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.

A person must meet several criteria, including one of five legal standards of dangerousness, in order to be committed by a court for involuntary mental health treatment.

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 five statutory standards that demonstrate harm to oneself or others.

[s. 51.20, Stats.]

The Division of Mental Health and Substance Abuse 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 is located in Madison and the Winnebago Mental Health Institute is located near Oshkosh.

Information on substance abuse services, including where to find a treatment provider, is available at:

https://www.dhs.wisconsin.gov/aoda/phlsasindex.htm

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 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.

Child Welfare Services

The Division of Safety and Permanence in DCF supervises child welfare services, including child protective services, foster care, and kinship care.

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.

Child protective services are administered by county human or social services departments in 71 counties and by the 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 have jurisdiction over those cases.

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 department is responsible for providing intake and investigation services to determine if children have 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.

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.

[s. 48.13, Stats.]

Dispositional Alternatives

If a juvenile court adjudicates a case 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 the child 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 best interest 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 and adoption, 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. [s. 48.345, Stats.]

Foster Care

A child may be placed in a foster home under the Children's Code, ch. 48, Stats., or Juvenile Justice Code, ch. 938, Stats. Foster care placements typically are made pursuant to a court order. A court may order foster care following a 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 placements also may be made without a court order for up to six months under a voluntary placement.

Children may be placed in a foster home if the children's court or juvenile court makes certain findings and orders the placement.

Pursuant to administrative rules, a foster home is licensed 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 up to seven children under certain circumstances or eight children to keep siblings together. [ch. DCF 56.09 (1m) (b), Wis. Adm. Code.]

Foster care children are automatically enrolled in MA for medical, dental, and mental health coverage.

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.

The foster care licensing system specifies the levels of care that a licensed foster home is certified to provide. Wisconsin licenses five levels of foster homes, based on the severity of the child's needs. Foster home payments are adjusted accordingly, and are also adjusted based on the age of the child in care. [ch. DCF 56, Wis. Adm. Code.]

Speaker's Task Force on Foster Care

In the 2017-18 Legislative Session, Assembly Speaker Robin Vos established the Speaker's Task Force on Foster Care to study and make recommendations on policy initiatives to

improve the child welfare system, including support for children, families, child welfare agencies, caseworkers, and foster parents.

Based on information and recommendations received at the Task Force's public hearings, members of the Task Force introduced a package of 13 bills, collectively referred to as "Foster Forward." The legislative package addressed a number of broad policy areas, including home removal prevention, improving the child welfare system, and providing support for foster care providers and foster care youth. Ultimately, 11 of the 13 bills were signed into law as 2017 Wisconsin Acts 250-260.

Kinship Care

Kinship care provides a payment of $238 per month (with an increase to $244 beginning January 1, 2019) 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 an 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 CHIPS (being found in need of protection or services) 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.

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, which enables DCF to capture federal funds under Title IV-E of the federal Social Security Act for these placements. However, if a kinship care relative's application for a foster home license is denied, the county department or 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. [s. 48.57, Stats.]

Additional References

1. Legislative Council Information Memoranda *FoodShare Work Requirements* (IM-2018-04) and *Regulation of Group Living Arrangements for Adults* (IM-2012-10), available at: http://www.legis.wisconsin.gov/lc.

2. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on various subjects including, among others, Wisconsin Works, Supplemental Security Income, FoodShare, community aids, and services for persons with development disabilities. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
3. The selected Legislative Audit Bureau audit reports, available at http://www.legis.wisconsin.gov/lab:
    - Audit Report 15-4, *Non-Emergency Medical Transportation*.
    - Audit Report 13-15, *Child-Placing Agencies*.
    - Audit Report 12-8, *FoodShare Wisconsin*.
    - Audit Report 12-3, *FoodShare Benefits Spent Outside of Wisconsin*.
    - Audit Report 11-5, *Family Care*.
4. DCF website, http://dcf.wisconsin.gov.
5. DHS website, http://dhs.wisconsin.gov/.
6. Greater Wisconsin Agency on Aging Resources, www.gwaar.org.
7. Coalition of Wisconsin Aging Groups, cwagwisconsin.org.
8. Wisconsin Board for People With Developmental Disabilities (formerly the Wisconsin Council on Developmental Disabilities), www.wi-bpdd.org.
9. Wisconsin Board on Aging and Long-Term Care (includes Ombudsman program), longtermcare.wi.gov.

GLOSSARY

ADRC: Aging and Disability Resource Center. One-stop resource for long-term care options counseling, benefit specialists, health and wellness programs, and a number of other programs and services for persons aging or living with a disability.

BMCW: Bureau of Milwaukee Child Welfare.

BIW: Brain Injury Waiver Program. A MA 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 MA 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 MA 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 MA 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 MA 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 MA waiver program that provides children with long-term care needs with MA 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 MA 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.

FSET: FoodShare Employment and Training Program.

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.

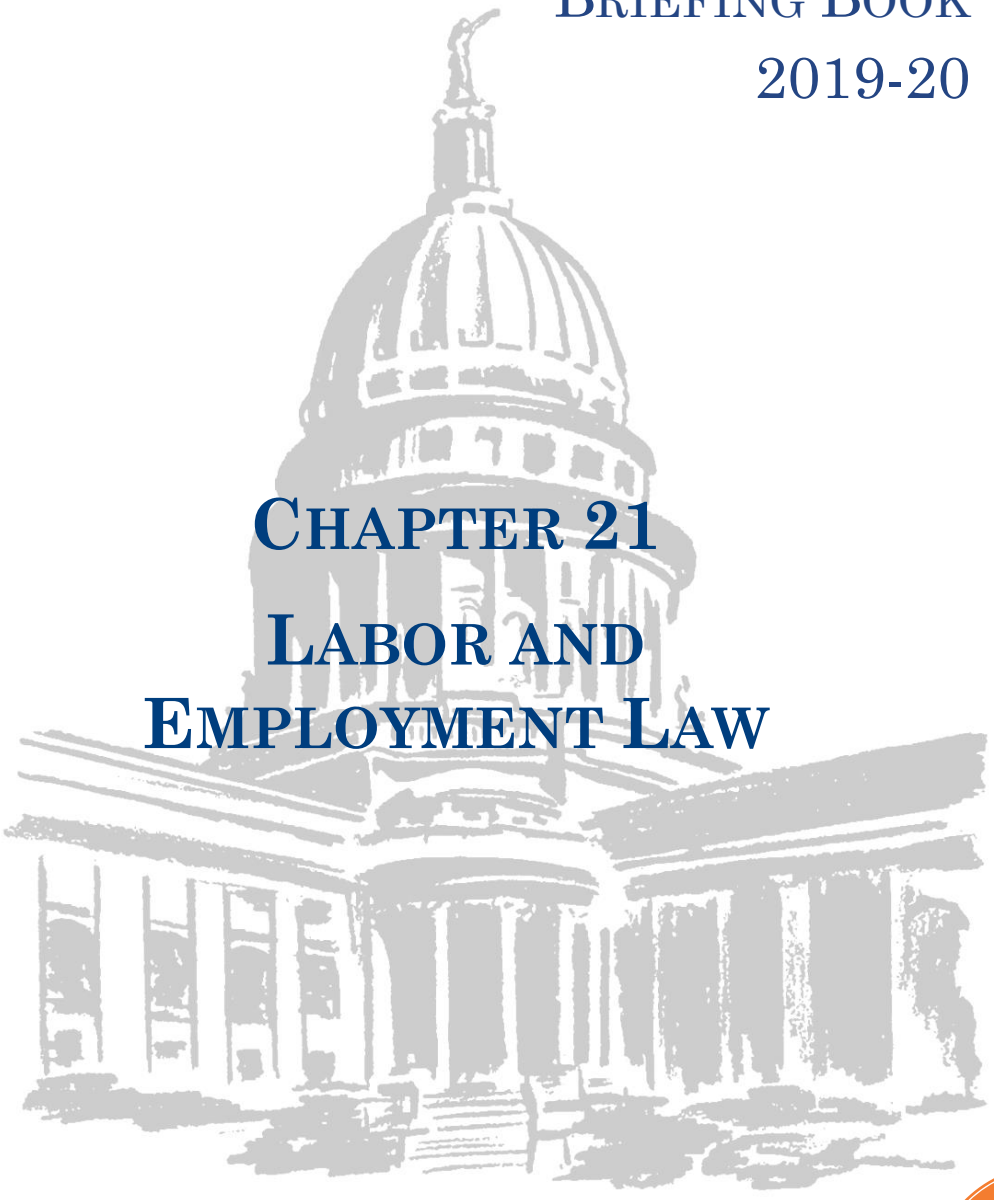
SSI-E: Supplemental Security Income Exceptional Expense Supplement. An enhanced payment added to the state SSI payment of each SSI recipient who meets the program requirements.

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.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 21

Labor and Employment Law

Margit S. Kelley, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

This chapter summarizes various state laws that affect the relationship between an employee and employer.

In general, Wisconsin's employment laws are administered by the state's Department of Workforce Development (DWD), including laws relating to wages and hours, employment discrimination, family and medical leave, unemployment insurance, and worker's compensation. The Wisconsin Employment Relations Commission (WERC) and the Division of Personnel Management (DPM), within the Department of Administration, play significant roles in the collective bargaining process.

In addition to state law, the employment relationship may also be governed by federal law and regulations, collective bargaining agreements, employment contracts, and employer policies. Although this chapter briefly describes the state laws relating to employment, any significant discussion of federal law and regulations, collective bargaining agreements, employment contracts, and employer policies is beyond the scope of this chapter.

WAGES AND HOURS

Minimum Wage

Wisconsin sets minimum wage rates that employers must comply with when paying employees. Wisconsin's minimum wage requirements generally apply to all public and private sector employers, including nonprofit organizations, regardless of whether they are covered by the federal minimum wage law.

The Wisconsin and federal minimum wages are $7.25 per hour.

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.)

Wages below the minimum wage are authorized in certain limited circumstances. In particular:

- For a "tipped employee" who customarily and regularly receives gratuities in the course of employment, the minimum wage is reduced. In that type of employment, the minimum wage is $2.33 per hour, if, with tips, the wage adds up to at least $7.25 per hour.
- For an employee who is under age 20, the minimum wage is $5.90 per hour for the first 90 days of employment. The law refers to a young worker in this situation as an "opportunity employee."
- For a camp counselor, the minimum wage ranges from $210 to $350 per week, depending on whether meals and lodgings are furnished.
- For golf caddies, the minimum wage is $5.90 for nine holes and $10.50 for 18 holes.

More information about the minimum wage and overtime requirements may be found at:
https://dwd.wisconsin.gov/er/labor_standards/

- For an employee with a disability, an employer may receive a special license from DWD to pay a wage that is commensurate with the person's ability and productivity. If the employer is a charitable organization or not-for-profit institution with a recognized program for workers with disabilities, the law refers to the situation as a "sheltered workshop."

The state's minimum wage law specifies that it is to be construed as providing a uniform minimum wage throughout the state. A city, village, town, or county may not enact a minimum wage ordinance.

[ch. 104, Stats.; ch. DWD 272, Wis. Adm. Code.]

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.

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.

[ss. 103.01 to 103.03, Stats.; ch. DWD 274, Wis. Adm. Code.]

Wage Payment and Wage Claims

With limited exceptions, Wisconsin law requires employers to pay their employees at least once per month. An employee who quits or is discharged from a 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 the employer.

If an employee is not paid, the employee may file a wage claim or bring an action in court against an employer.

Once a wage claim is filed, DWD must investigate and attempt 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 or that are provided by the employer to employees as an established policy.

More information about wage payment and wage claims may be found at:
https://dwd.wisconsin.gov/er/labor_standards/

Typically, an employee must file a wage claim within two years of the wages being due. 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. If a lien from a lending institution was in place before a wage lien took effect, the first $3,000 of certain unpaid wages covered under the wage lien has priority over the lender's lien. A wage lien generally has priority over most other liens, except an environmental remediation lien.

[ch. 109, Stats.]

Employment of Minors

State law regulates the types and hours of employment for minors.

Wisconsin regulates the employment of minors with respect to types of employment and hours of work. In particular, a minor may not be employed to perform work that is dangerous or prejudicial to the minor's life, health, safety, or welfare. State laws and regulations identify a number of occupations in which a minor cannot be employed, depending in some cases on the minor's age.

More information about minor employment laws may be found at:
https://dwd.wisconsin.gov/er/labor_standards/

A minor under age 18 may not work at any gainful occupation during the hours that the minor is required to attend school, unless the minor has completed high school. In addition, a minor under age 16 may not work at any gainful occupation, other

than domestic service, farm labor, or public exhibitions, as follows:

- For more than three hours on a school day, or eight hours on a nonschool day.
- For more than 18 hours in a school week, or 40 hours in a nonschool week.
- For more than six days in a week.
- Before 7:00 a.m. or after 7:00 p.m., during the school year, from the day after Labor Day to May 31.
- Before 7:00 a.m. or after 9:00 p.m., during the summer, from June 1 to Labor Day.

An employer is required to provide meal periods to a minor if the minor works for more than six consecutive hours. Those meal periods must be at least 30 minutes in length and generally must be provided reasonably close to the meal times of 6:00 a.m., noon, 6:00 p.m., or midnight.

In most cases, an employer must obtain a permit to authorize the employment of a minor under age 16.

[ss. 103.64 to 103.82, Stats.; ch. DWD 270, Wis. Adm. Code.]

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

Breaks and Meal Periods

State law generally provides that the hours a person works should not be dangerous or prejudicial to the person's life, safety, health, or welfare. Wisconsin law does **not** require employers to provide specific rest periods or breaks to adult 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 longer than six hours. An employer must pay all employees for an "on-duty" meal period. An "on-duty" meal period is a period during which the worker is not provided at least 30 minutes away from work or allowed to leave the employer's premises.

[s. 103.02, Stats.; s. DWD 274.02, Wis. Adm. Code.]

More information about breaks and meal periods may be found at:
https://dwd.wisconsin.gov/er/labor_standards/

Prevailing Wage

Wisconsin does not use a prevailing wage structure for projects of public works. Effective September 23, 2017, the 2017-18 Biennial Budget Act (2017 Wisconsin Act 59) eliminated the prevailing wage law for state building and highway projects. Effective January 1, 2017, the 2015-17 Biennial Budget Act (2015 Wisconsin Act 55) eliminated the prevailing wage law for local projects of public works.

Family and Medical Leave

Wisconsin is one of several states that has its own Family and Medical Leave Act (FMLA) in addition to the federal FMLA. Wisconsin's FMLA covers employers with 50 or more permanent employees. An employee is covered under Wisconsin's 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.

Wisconsin's FMLA requires that employees be allowed leave for certain family or medical reasons.

The law requires that such employees be allowed up to the following amounts of leave 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 at:
https://dwd.wisconsin.gov/er/civil_rights/fmla/

In addition, Wisconsin law allows employees to take up to six weeks of leave from employment in a 12-month period to serve as an organ or bone marrow donor.

The family, medical, and organ donor leave provisions require an employer to allow an employee to return to work in the same or an equivalent position if the employee returns within the given time period. An employer is not required to provide wages or salary during the leave, but must continue group health insurance that was in effect before the leave. Other conditions and requirements also apply to an employer and employee under the FMLA provisions.

[ss. 103.10 and 103.11, Stats.; ch. DWD 225, Wis. Adm. Code.]

Employment Discrimination

More information about fair employment may be found at:
https://dwd.wisconsin.gov/er/civil_rights/discrimination/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.

Wisconsin's Fair Employment Law prohibits employment discrimination based on certain classifications.

Employment discrimination includes refusing to employ or terminating any individual, 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 found to have been discriminated against in violation of the Fair Employment Law, the remedies may include reinstatement, back pay, attorney fees, and costs.

DWD, local governments with equal rights commissions, and the federal Equal Employment Opportunity Commission (EEOC) operate under work-sharing agreements that allow a person to file a single claim with one agency for investigation and resolution, while treating the claim as being cross-filed in the overlapping jurisdictions.

[ss. 111.31 to 111.395, Stats.; ch. DWD 218, Wis. Adm. Code.]

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.

UI provides temporary cash benefits to eligible employees who become unemployed through no fault of their own.

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% of the first $7,000 of each employee's earnings for the calendar year. The federal tax rate is reduced for state taxes paid in contributions to the state UI program. The federal tax credit is designed 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.

Wisconsin imposes a contribution tax on employers to finance UI benefits paid to unemployed workers, which meets the requirements for employers' federal tax reduction. Generally, most private, for-profit employers make contribution payments into the state UI reserve fund. The contribution rate is paid on the first $14,000 of wages paid by an employer to an employee during each calendar year and, after an initial standard rate for a new employer, the rate is generally based on an employer's experience with the amount of UI benefits paid to its employees.

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

The maximum weekly UI benefit is $370, and the minimum weekly UI benefit is $54.

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 that 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 requirements:

- Have sufficient base period wages in covered employment.
- Be available for work and able to work.
- Register for work.
- Undertake four work search actions per week.

The online application portal for UI benefits is available at: my.unemployment.wisconson.gov

Claims may be made with DWD online 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.

In addition, the 2015-17 Biennial Budget Act (2015 Wisconsin Act 55) created drug testing requirements for UI claimants that are in the process of implementation. Under the Act, an applicant must undergo a screening process if the applicant's suitable work involves

occupations that regularly conduct drug testing, as identified by DWD or the U.S. Department of Labor. If the screening process indicates a reasonable suspicion of unlawful use of controlled substances, the applicant must undergo a test for the presence of controlled substances. An applicant is generally ineligible for UI benefits for a certain period of time if the applicant: (1) declines the testing; or (2) tests positive for the presence of controlled substances, without evidence of a valid prescription, and declines to participate in a substance abuse treatment program and job skills assessment.

The amount of UI benefits an eligible employee may receive is based on the applicant's prior 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. The amount is reduced if a person remains partially employed.

The maximum amount a claimant may normally receive is typically 26 weeks, based on 26 times the weekly benefit rate or 40% of the total base period wages, whichever is less. 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. In all cases, a "waiting week" applies to an applicant's first week of benefits, which is paid out when the person reaches their maximum benefit amount.

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 developed and agreed-upon unanimously by the UIAC members. [ch. 108, Stats.; chs. DWD 100 to 150, Wis. Adm. Code.]

More information about UI may be found at: https://dwd.wisconsin.gov/ui/

Worker's Compensation

The Worker's Compensation Division of DWD administers the state's Worker's Compensation (WC) program. The WC law, established in 1911, provides for a system of no-fault insurance that pays benefits to employees for accidental injuries or diseases

WC pays benefits to employees for accidental injuries or diseases arising from employment.

arising from an employee's job. Generally, for workplace injuries, WC is the exclusive remedy against the employer. In other words, an injured employee typically cannot sue the employer for the injury and may only recover those benefits authorized by the WC law.

An employer is required to cover 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 law provides penalties for employers who fail to obtain insurance when required to do so.

The cost of WC insurance varies based on job classification. Insurance rates and classifications depend on past work-related injury experience, 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.

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 WC 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.
- Vocational rehabilitation services.

Benefits payable under WC include reasonable and necessary medical costs and lost wages.

For the period when an employee is out of work and recovering from an injury, the employee may receive WC benefits in an amount that is up to two-thirds of weekly wages, subject to a weekly maximum.

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, including Sunday if normally worked. Generally, the first insurance payment is made within 14 days of the report of the injury.

More information about WC may be found at:
https://dwd.wisconsin.gov/wc/

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

an additional period of compensation based upon statutory formulas in existence at the time of the injury.

Generally, 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 recommended changes to the WC law on a biennial basis.

[chs. 102 and 626, Stats.; chs. DWD 80 and 81, Wis. Adm. Code.]

Collective Bargaining

Collective bargaining is a process in which an employer and a representative for the employees negotiate over certain subjects relating to employment, with the intention of reaching an agreement. An agreement reached between the employer and the employees' representative is typically formalized in a written document called a collective bargaining agreement.

Public Sector Employers and Employees

Collective bargaining for public sector employees is governed by the Municipal Employment Relations Act (MERA) for municipal employees and the State Employment Labor Relations Act (SELRA) for state employees. [subchs. IV and V of ch. 111, Stats.]

General public sector employees can collectively bargain on base wages but are prohibited from bargaining on other subjects. Public safety employees and certain transit employees generally can bargain on wages, hours, and conditions of employment.

MERA distinguishes between three types of municipal employees:
(1) general municipal employees;
(2) public safety employees; and (3) transit employees. SELRA distinguishes between two types of state employees: (1) general state employees; and (2) public safety employees. A "general municipal employee" is a municipal employee who is not a public safety employee or transit employee. Likewise, a "general

state employee" is a state employee who is not a public safety employee. A "public safety employee" is generally a police officer, fire fighter, or emergency medical services provider.

General municipal employees and general state employees can collectively bargain with their employers on base wages but are prohibited from bargaining collectively on other subjects, including hours, conditions of employment, and "fair-share" agreements for agency fees. Base wages can be bargained on up to a maximum limit, which is determined by a statutory formula. Any increase in total base wages that exceeds the limit must be approved by referendum. Under MERA and SELRA, "base wages" does not include overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, or automatic pay progressions.

Public safety employees and transit employees can collectively bargain with their employers on wages, hours, and conditions of employment, with some exceptions. State law also allows public safety and transit employees to collectively bargain on "fair-share" agreements for agency fees, but that is overridden by the U.S. Supreme Court decision in *Jamus v. AFSCME*, which ruled that a public employee cannot be required to pay agency fees for the cost of the collective bargaining process and contract administration. [585 U.S. ___ (2018).]

Private Sector Employers and Employees

Collective bargaining for private sector employees is generally governed by federal law, specifically the federal National Labor Relations Act (NLRA), as amended. The National Labor Relations Board (NLRB) administers the NLRA. Private sector employees can collectively bargain on wages, hours, and other terms and conditions of employment.

Private sector employees can collectively bargain on wages, hours, and other terms and conditions of employment.

State law contains some provisions relating to collective bargaining for private sector employees. [subch. I of ch. 111, Stats.] For example, 2015 Wisconsin Act 1 created what is commonly referred to as a "right-to-work" law for private sector employers and employees. The law prohibits an employer and labor organization from entering into an agreement that requires membership in a labor organization as a condition of employment, and it prohibits a person from requiring an individual to pay dues to a labor organization.

Private Sector Employment Associated With Public Funding or Approval

State law prohibits the state and local governmental units from requiring private parties to enter into collective bargaining agreements.

In particular, 2017 Wisconsin Act 3 specified that the state and local governmental units cannot require a person to enter into an agreement with a labor organization on a project of

public works, and cannot consider, in reviewing bids, whether or not an agreement is in place with a labor organization. This applies to a collective bargaining agreement that may be used between contractors and labor organizations on an identified project of public works. This type of agreement is sometimes referred to as a project labor agreement, or, in some cases, as a community workforce agreement.

Additionally, 2017 Wisconsin Act 327 specified that the state and local governmental units cannot require a person to accept provisions of a collective bargaining agreement or to waive rights under state or federal labor relations laws. This applies to any action by ordinance, policy, regulation, contract, zoning, permitting, licensing, or any other condition of the state or a local governmental unit that affects a private employer. This type of agreement is sometimes referred to as a labor peace agreement.

Additional References

1. DWD has prepared a number of publications that provide information concerning employment laws. Those publications may be found at: https://dwd.wisconsin.gov.
2. The U.S. Department of Labor has information on federal employment laws available on its website at: https://www.dol.gov/.
3. The NLRB has information on private sector employment relations provisions under the NLRA available on its website at: https://www.nlrb.gov.
4. Legislative Council Information Memorandum, *Wisconsin's "Right-to-Work" Law* (IM-2015-04), available at: http://legis.wisconsin.gov/lc.
5. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers that describe various state programs, including Wisconsin's UI system, available at: http://www.legis.wisconsin.gov/lfb.
6. Legislative Reference Bureau, *Worker's Compensation Law in Wisconsin*, Wis. Policy Project, Vol. 1, No. 1 (Jan. 2018), available at: www.lrbdigital.legis.wisconsin.gov.
7. Legislative Audit Bureau, Audit Report 17-10, *Unemployment Reserve Fund*, available at http://www.legis.wisconsin.gov/lab/.

Glossary

Department of Workforce Development (DWD): The state agency that administers many of Wisconsin's employment laws and programs.

Division of Personnel Management (DPM): The division in the Department of Administration that administers various laws and policies relating to state employment, including the state civil service system, and that represents the state in collective bargaining with most state employees.

Family and Medical Leave Act (FMLA): The state or federal law that requires that employees be allowed leave for family or medical reasons.

Municipal Employment Relations Act (MERA): The state law that governs collective bargaining for municipal employers and employees.

National Labor Relations Act (NLRA): The federal law that governs collective bargaining for private sector employers and employees.

State Employment Labor Relations Act (SELRA): The state law that governs collective bargaining for state employers and employees.

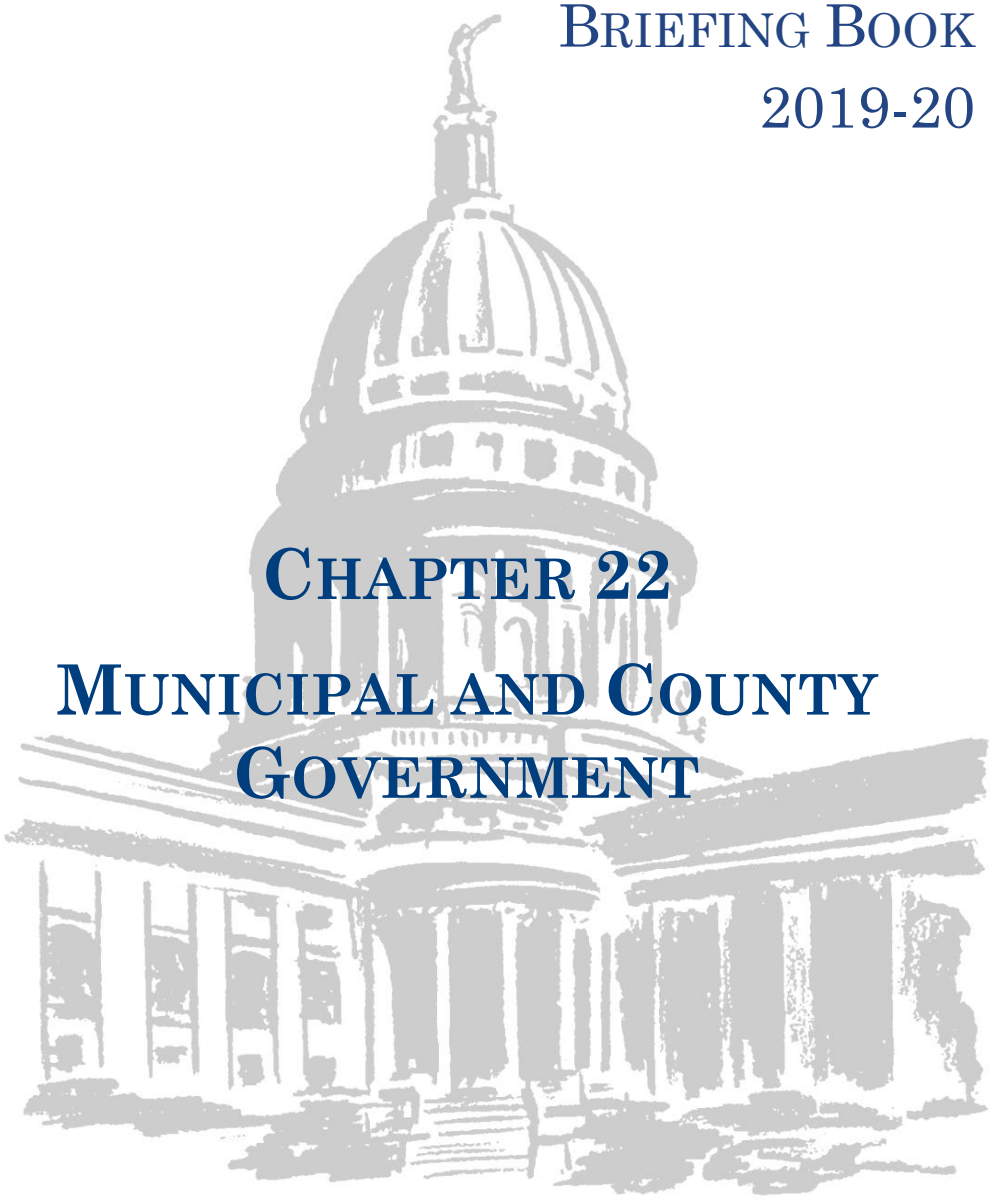
Unemployment Insurance (UI): The state program that provides temporary cash benefits to eligible employees who become unemployed.

Wisconsin Employment Relations Commission (WERC): The state agency that processes cases and resolves disputes relating to collective bargaining.

Worker's Compensation (WC): The state program that pays benefits to employees for accidental injuries or diseases arising out of employment.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 22
MUNICIPAL AND COUNTY GOVERNMENT

Andrea Brauer, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

Wisconsin is comprised of 72 counties, 1,253 towns, 190 cities, and 411 villages, commonly referred to as general purpose units of local government.[1] Each general purpose unit of local government has some degree of authority to independently determine local affairs, conferred through "home rule authority" and state statutes. Municipalities and counties also often work together through intergovernmental cooperation agreements to provide local services to their residents.

OVERVIEW OF GENERAL PURPOSE LOCAL UNITS OF GOVERNMENT

General purpose local units of government are divided into two tiers: counties and municipalities (towns, villages, and cities). They are all creatures of the state in that their existence depends on laws enacted by the state Legislature.[2] The Legislature also largely determines their powers and duties, although the Wisconsin Constitution confers "home rule" authority to cities and villages for them to determine their local affairs and government. General purpose local units of government are distinct from special purpose local government units such as school districts, sanitary districts, and inland lake districts.

County government is the oldest form of local government in Wisconsin, dating back to 1818 when it was still part of the Michigan Territory.

Counties

Wisconsin's 72 counties serve dual functions, being both 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. Estimated county populations range from 4,256 (Menominee County) to 948,930 (Milwaukee County). County boundaries are generally established by the Legislature; however, the statutes also provide mechanisms by which a county may be consolidated with an adjoining county. [ss. 2.01 and 59.08, Stats.] Additionally, the Wisconsin Constitution restricts counties with an area of 900 square miles or less from being divided or made smaller without a favorable referendum by the voters of the county. [Wis. Const. art. XIII, s. 7.]

---

[1] Statistics regarding counties and municipalities cited in this chapter are from the 2017-18 *Wisconsin Blue Book*.

[2] Chapter 66, Stats., relates to general municipal law; statutes specific to counties are found in ch. 59; those related to towns are in ch. 60; those related to villages are in ch. 61; and those related to cities are in ch. 62.

Administrative Home Rule

The Wisconsin Constitution authorizes the Legislature to establish one or more systems of county government. It states that the Legislature may confer on county boards powers of a "local, legislative, and administrative character." [Wis. Const. art. IV, ss. 22 and 23.] Consequently, county powers are not derived from the State Constitution, but from what is specifically authorized by state statutes and what can reasonably be implied from them. Thus, unlike cities and villages, counties have no general constitutional or statutory home rule authority, discussed later in this chapter. Instead, they have "administrative home rule" authority to organize their own departments. [s. 59.03, Stats.]

Q: What is administrative home rule authority?

A: Administrative home rule authority allows a county to decide for itself how to organize or consolidate its administrative departments and is conferred by statute.

Role in Local Government and Administration of State Programs

Counties are considered local units of government because they have local governmental powers. The local functions exercised by counties vary widely, but generally include the powers to levy and collect property taxes, construct and maintain county highways, engage in land use planning, and maintain parks and recreational facilities.

Counties are also considered an administrative arm of the state because they are required to carry out or enforce certain state laws. For example, counties are required to maintain judicial court records, manage state elections, keep vital statistics and property records (birth and death certificates, marriage licenses, and property deeds), and enforce and prosecute state criminal laws. Counties are also required to carry out various state programs, such as health and human services programs. [s. 46.23, Stats.]

Counties administer the state's health and welfare services, court system, and highway maintenance programs, as well as many other state programs.

Structure of County Government

A county's legislative power 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 to two-year terms in the spring nonpartisan election held in odd-numbered years. Each county board consists of supervisors elected from individual supervisory districts drawn by the county board after each federal decennial census. The statutes establish the maximum number of supervisors a county may have, based on population, except for Milwaukee

County. Milwaukee County currently has no statutorily prescribed maximum number of county board supervisors. Menominee County is also unique in that it currently consists of only one town. As such, elected town board members automatically serve as county board members. If the county ever has one or more villages, then the county board must also have one supervisor from each village in the county. [s. 59.10 (2) (a), (3) (a), and (5), Stats.]

In any county other than Menominee, the size of the county board may be adjusted only after each federal decennial census. The procedures to do so are specified in the statutes. [s. 59.10 (2), (3), and (5), Stats.]

Counties must provide for either a county executive, a county administrator, or a county administrative coordinator. The most powerful of these positions is the county executive, who is elected for a four-year term, serves as the chief executive officer of the county, and has veto authority, including partial veto of appropriation measures. There are 12 counties with a county executive, including Milwaukee County, which is required to have a county executive. [ss. 59.17 to 59.19, Stats.]

A county administrator is appointed by the county board to coordinate county operations. Twenty-nine counties employ a county administrator. Since 1987, state statutes have required a county board in a county with no county executive or county administrator (half of the counties) to designate an elected or appointed county official as administrative coordinator. The administrative coordinator is responsible for coordinating all administrative and management functions of county government not vested by law elsewhere. [s. 59.18, Stats.] Thirty-one counties have an administrative coordinator.

Q: Do towns have any type of home rule authority?

A: No. Towns, similar to counties, only possess powers expressly given to them by state statutes. However, unlike counties, towns do not have administrative home rule.

Several other county offices are required by the Wisconsin Constitution. For example, the constitution requires each county to have the elective offices of a sheriff, district attorney, clerk, treasurer, register of deeds, judge, and a clerk of circuit court. Counties with a population of less than 500,000 are also required to have a surveyor and may choose to have either an elective office of coroner or a medical examiner system. [s. 59.20, Stats.]

Towns

Wisconsin's 1,253 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 governmental services. Estimated town populations vary from 40 (Town of Wilkinson, Rusk County) to 22,083 (Town of Grand Chute, Outagamie County).

Town Uniformity

Towns do not have statutory or constitutional home rule authority to determine their own local affairs through charter ordinances. Instead, Wis. Const. art. IV, s. 23 requires that: "the legislature shall establish but one system of town government, which shall be as nearly uniform as practicable . . . ." 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 structural or organizational scheme, or "system," of town government. However, state laws 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 expressly delegated to them; the language of the statutes, and what can necessarily be implied from the statutes, determine the structure, method, and scope of town government. For example, the Legislature has given towns the power to provide for law enforcement, fire protection, and roads; levy taxes; and exercise zoning authority if the town is not governed by a county zoning ordinance. Also, towns may elect to exercise village powers. It is important to note, however, that if a town elects to exercise village powers, the structure of the town government does not change. [ss. 60.10 (2) (c) and 60.22 (3), Stats.]

Town Meetings

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.

Town electors (eligible voters residing in the town) directly affect the governance of their town through town meetings. A town meeting has authority specified in statutes over various town matters, including the town's property tax levy. The annual town meeting is generally held on the third Tuesday in April. The town electors may, however, vote to delegate some town meeting powers to the town board. Additional town meetings, referred to as special town meetings, may also be convened if called by a town meeting, upon written request of at least 10% of the town's electors, or if called by the town board under limited circumstances. [ss. 60.10 to 60.12, Stats.]

The town meeting is specifically granted the following three different types of powers: (1) direct powers, including the power to levy taxes; (2) directives or grants of authority to the town board, including the power to levy taxes, purchase land, and exercise village powers, as discussed below; and (3) authorizations to the town board to appropriate money for specific purposes, including conservation activities, civic functions, and animal, insect, and weed control. [s. 60.10, Stats.]

Town Boards

An elected town board, generally consisting of three or five members, handles town government matters that are not under the jurisdiction of the town meeting, along with any powers delegated from the town meeting. (The Town of Menominee in Menominee County may have up to seven members on its town board.) [ss. 60.20 and 60.21, Stats.] Town board supervisors serve two-year terms and are elected in the spring election of odd-numbered years. [s. 60.30, Stats.] The town board chair has a number of statutory powers and duties that can be characterized as administrative or executive. For example, the town chair must preside over town meetings and town board meetings. The town chair must also act on behalf of the board in various matters, including seeing that town orders and ordinances are obeyed. [s. 60.24, Stats.] Towns are also authorized, but not required, to create the position of town administrator to carry out duties assigned by the town board. [s. 60.37 (3), Stats.]

As previously mentioned, the town meeting may grant the town board the power to exercise all village powers. This allows the town board to exercise village powers under ch. 61, Stats., except those village powers "that conflict with statutes relating to towns and town boards." Subject to the latter limitation, the exercise of village powers expands the town board's regulatory and land use authority. It extends to various powers, including police powers for regulating the public's health, safety, and welfare, as well as expanded land use planning authority. A town that is granted authority to exercise village powers is not required to exercise any of these powers, nor does this authority make the town become a village, or give it annexation authority. [ss. 60.10 (2) (c) and 60.22 (3), Stats.]

Cities and Villages

Wisconsin's 190 cities and 411 villages are sometimes referred to as "incorporated" municipalities or "municipal corporations." This reflects to some extent their legal status. Early in state history, villages and cities were incorporated by special acts of the Legislature. In 1871 and 1892, constitutional amendments were adopted prohibiting the Legislature from incorporating any city, village, or town by special act. As a result, cities and villages incorporate according to general incorporation laws, and the basic outline of city and village government is set forth in the statutes (sometimes referred to as "general charter" laws). [Wis. Const. art. IV, s. 31; chs. 61 (villages) and 62 (cities), Stats.]

Not all Wisconsin cities and villages are urban. For example, the smallest city is the City of Bayfield, with a population of 480. The smallest village, the Village of Stockholm, has a population of 65.

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. Estimated city populations vary from 594,667 in Milwaukee to 485 in Bayfield. Likewise, estimated village populations vary from 36,907 in Menomonee Falls (Waukesha County), to 66 in Stockholm (Pepin County).

Q: What is "constitutional home rule" authority?

A: Constitutional home rule authority allows a village or city to determine its local affairs and governance, which is done through a charter ordinance. This authority is subject, however, to the Wisconsin Constitution and legislative enactments of statewide concern that uniformly apply to every city or village.

Classes of Cities

The Wisconsin statutes divide cities into four classes, based on population, as follows:

- First class cities, with a population of 150,000 or over.
- Second class cities, with a population of at least 39,000, but less than 150,000.
- Third class cities, with a population of at least 10,000, but less than 39,000.
- Fourth class cities, with a population of less than 10,000.

[s. 62.05 (1), Stats.]

Changing from one class of city to another is not automatic. In addition to having the requisite population, the city must make any necessary changes in government and the mayor or city manager must make a proclamation and publish this change according to law. For example, the City of Madison has an estimated population of 247,207, which is a sufficient population size to become a first class city, but has not taken the necessary steps to do so. Thus, for purposes of statutes relating to cities, Madison remains a city of the second class.

Distinctions among second, third, and fourth class cities are few; the primary distinctions are between first class cities (currently, only the City of Milwaukee) and the other three 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. [See subch. II, ch. 62, Stats.]

Constitutional and Statutory Home Rule Authority

Under Wis. Const. art. XI, s. 3 (1), 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 is referred to as

"constitutional home rule" authority. Cities and villages implement home rule by enacting charter ordinances under s. 66.0101, Stats.

Wisconsin Supreme Court decisions issued in 2014 and 2016 interpreted constitutional home rule authority relatively narrowly. Under that case law, state law trumps a city or village charter ordinance if **either**: (1) the state legislation addresses a matter of statewide concern; **or** (2) the state legislation affects every city or village with uniformity. [*Black v. City of Milwaukee*, 2016 WI 47; *Madison Teachers, Inc. v. Walker*, 2014 WI 99.]

Unlike "constitutional home rule" authority, "statutory home rule" authority is conferred through state statutes, not limited to matters of local affairs, and may be implemented through various measures such as ordinances and regulations.

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." Statutory home rule is a broad grant of authority to be exercised for the good order of the city or village, commercial benefit, and public health, safety, and welfare. The exercise of statutory home rule can be preempted, either expressly or impliedly, by state legislation. [ss. 61.34 (1) and 62.11 (5), Stats.]

City and Village Governments

While the powers of cities and villages are similar, there are differences in how their governments are organized. There are two different governmental structures for cities and two for villages: for cities, the mayor-council structure and the council-manager structure; for villages, the president-village board structure and the village board-manager structure. While each governmental structure has an elected legislative body, the executive may either be elected or appionted by the legislative branch. Cities and villages decide for themselves which governmental structure to use. [ss. 61.195, 61.24, 62.09 (1) (b) and (3) (c), and 64.01, Stats.]

The two forms of city government are mayor-council and council-manager. The two forms of village government are president-village board and village board manager.

The vast majority of Wisconsin cities use the mayor-council form of government organization, where the mayor is elected. Only 10 cities use the council-manager (or city-manager) form, where the city manager is appointed by the city council. Under the mayor-council form of government, the common council consists of alderpersons typically elected by alder districts and the mayor, who is elected at large, to be the city's chief executive officer. The mayor votes in the event of a tie vote in the city council and has veto power. [s. 62.11 (1), Stats.] Wisconsin cities operating under the mayor-council form generally have a "weak" mayor. This is because instead of

concentrating administrative responsibilities in the mayor's office, administrative responsibilities are spread among the mayor, elected administrative officers, boards and commissions, and independent appointed officials.

Most Wisconsin villages utilize the president-village board form of government. Only nine villages operate under the village board-manager form of government. 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. [s. 61.32, Stats.]

The manager form of government for both cities and villages is set forth in ch. 64, Stats. 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.

Intergovernmental Cooperation

Wisconsin 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 counties, towns, villages, and cities to cooperate in specific areas, such as police and fire protection and library services.

General Authority

General purpose and special purpose units of local government have broad authority to cooperate with each other and with Indian tribes and bands in Wisconsin through procedures specified in s. 66.0301, Stats.

The statutes authorize municipalities (broadly defined to include both general purpose and special purpose units of local government) to contract with other municipalities and with American Indian tribes for the receipt or furnishing of services or the joint exercise of power or duty. The general limitation on this authority is that 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. Further, the law must be "interpreted liberally in favor of cooperative action …." [s. 66.0301, Stats.]

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." Several means of financing these regional projects are provided in ch. 67, Stats.

Wisconsin municipalities may contract with municipalities in other states to provide or receive services. These contracts must be approved by the Wisconsin Attorney General. [s. 66.0304, Stats.]

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. These agreements generally must be approved by the Attorney General. [s. 66.0304, Stats.]

County Provision of Services to Cities, Villages, and Towns

A county may provide local government services to a city, village, or town that requests the county to do so. Under this provision, counties, cities, villages, and towns are not limited by the extent of their lawful powers and duties, as is the case under the general authority for cooperation. Thus, for example, even though county boards have no independent authority to provide fire protection, counties may provide such services upon the request of a city, village, or town located within the county. 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. Such powers may be exercised exclusively by the county or jointly by the county and the town, city, or village. [s. 59.03 (2), Stats.]

Revenue Sharing

Counties, towns, villages, and cities may enter into agreements to share revenues from taxes and special charges with other counties, towns, villages, or cities and with Indian tribes and bands. A county, town, village, or city that enters into a revenue sharing agreement must be contiguous to at least one other county, town, city, or village also entering into the agreement. The revenue sharing agreement 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. Originally enacted in 1996, this provision was intended, among other things, to assist in eliminating disputes over municipal boundaries. [s. 66.0305, Stats.]

Counties, towns, villages, and cities may share revenue with each other and federally recognized American Indian tribes and bands in this state through procedures specified in s. 66.0305, Stats.

Revenue sharing agreements may include various appropriate matters, but must have a minimum term of 10 years and must specify each of the following:

- The boundaries of the area within which the revenues are to be shared.
- The formula or other means of determining the amount of revenues to be shared.
- The date upon which revenues agreed to be shared shall be paid to the appropriate county, town, village, or city.
- The method by which the agreement may be invalidated after the 10-year minimum duration has expired.

[s. 66.0305 (4) (a), Stats.]

A public hearing must be held before a revenue sharing agreement may be entered into by the interested municipalities. The governing body of a participating municipality or county or interested electors may also call for an advisory referendum. [s. 66.0305 (3) and (6), Stats.]

Area Cooperation Compacts

State law requires each city, village, or town located in a federal standard metropolitan-statistical area to enter into an "area cooperation compact" with at least two other municipalities or counties in that region. A "federal standard metropolitan statistical area" is a geographical region defined by the U.S. Office of Management and Budget to meet certain high population density criteria and to have high economic ties within the area, as measured by worker commuting. The intent behind area cooperation compacts is to reduce the cost of local governmental services. The compact must perform at least two specified services which may include: 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. A cooperation compact must be structured to provide significant tax savings and provide a plan for collaboration, benchmarks to measure progress, and outcome-based performance measures to evaluate success. [s. 66.0317, Stats.]

Boundary Issues

DOA's Municipal Boundary Review Section:

608-264-6102

www.doa.wi.gov

Municipal boundaries are often a source of tension and conflict, particularly in developing areas. The statutes provide detailed procedures for annexation as well as for municipal incorporation, consolidation, and detachment. Other statutes seek to avoid conflicts over municipal boundaries by promoting cooperative plans and intergovernmental agreements to specify boundaries in areas of urban growth. Included in these procedures is the requirement that the Department of Administration (DOA)'s Municipal Boundary Review Section provide

assistance and review most of these boundary changes (all but detachment). The principal statutes relating to these topics are in subch. II of ch. 66, Stats. Annexation, incorporation, consolidation, detachment, and boundary agreements are described below.

Annexation

Annexation is the process of transferring local jurisdiction of land from unincorporated areas (towns) to incorporated areas (cities and villages). Usually, 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. In this case, a city or village can only accept or reject a landowner petition for annexation.

Annexation is a process whereby town territory becomes part of a village or city, usually initiated by owners of the town property proposed to be annexed.

Several annexation procedures are available. The most commonly used procedure is direct annexation by unanimous approval. Under this procedure, the owner or owners of the property involved (and any other resident electors) petition for annexation. The land must be contiguous to the annexing city or village. The city or village governing body may approve the annexation by adoption of an ordinance by two-thirds vote; there is no provision for a city or village residents to approve or reject the annexation by referendum. Also, a town is prohibited from bringing an action on any grounds to contest the validity of a direct annexation by unanimous approval. [s. 66.0217 (2), Stats.]

Other general annexation procedures include direct annexation by less than all the electors and property owners in the territory; annexation by referendum; and annexation initiated by a city or village with a court-ordered referendum. These procedures either allow or require a referendum of the electors of the territory to be annexed and are used infrequently. 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. Finally, special procedures govern how a city or village may annex "town islands," or create town islands when annexing other portions of a town. [ss. 66.0217 (3), 66.0219, 66.0221, and 66.0223, Stats.]

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 in 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:

DOA's Municipal Boundary Review Section must conduct an advisory review of annexations initiated in counties with a population of 50,000 or more. [s. 66.0217 (6), Stats.]

- 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.

[s. 66.0217 (6), Stats.]

Describing the purpose of DOA review, the Wisconsin Court of Appeals has stated that the 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." [*Incorporation of the Town of Pewaukee*, 186 Wis. 2d 515, 525 (Ct. App. 1994).]

Municipal Incorporation

Municipal incorporation is the process of creating a new village or city from town territory. Incorporation requires three separate approvals: the circuit court, the Incorporation Review Board (Review Board) described below, and the electors of the area to be incorporated. Once incorporated, the territory may not be annexed by another village or city. [ss. 66.0201 to 66.0213, Stats.] Consequently, incorporation may be initiated in some cases as a defensive move to prevent annexation by a neighboring village or city.

Municipal incorporation is the process of creating a new village or city from town territory.

Incorporation procedures are initiated by a petition to the circuit court by at least 25 persons who are both electors and property owners in the territory to be incorporated. If the proposed city or village includes 300 or more people, then the minimum number of signatures increases to 50. The court must determine 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 Review Board. [ss. 66.0203 (2) to (8) and 66.0205, Stats.]

Municipal incorporations are approved by the circuit court, the Incorporation Review Board, and then by the residents in a court-ordered referendum. [ss. 66.0201 to 66.0213, Stats.]

The Incorporation Review Board ("Review Board") 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. [s. 15.105 (23), Stats.]

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. [ss. 66.0203 (9) and 66.0207, Stats.]

If an incorporation petition is approved by the Review Board, the circuit court must order a referendum to be held in the territory to be incorporated. A favorable referendum vote is necessary for the incorporation to take place. [ss. 66.0203 (8) and 66.0211, Stats.]

Statutory incorporation standards have been an obstacle 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 address the hurdles to the general incorporation procedures. [See, ss. 66.0215 and 66.02162, Stats.]

Consolidation

Consolidation is a procedure that allows a town, village, or city to consolidate with another contiguous town, village, or city. Likewise, a county may also consolidate with another county. The consolidation procedure begins when the governing body of each affected unit of government passes, by two-thirds 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's review is based on the same standards

Consolidation is a process whereby a town, village, or city merges with a contiguous town, village, or city, or a county merges with a contiguous county. The process is initiated by two-thirds vote of each local governmental unit's governing body.
[s. 66.0229, Stats.]

that 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. [s. 66.0229, Stats.]

Town Consolidations With a City or Village

An alternative statutory procedure authorizes the consolidation of all or part of a town with a contiguous city or village. The procedure requires adoption of an ordinance by a two-thirds vote by each consolidating municipality and ratification by the electors at a referendum. There is no requirement that the consolidation be submitted to the circuit court or DOA, but several requirements must be met as a condition of consolidation, including:

- The consolidating town and city or village must adopt identical resolutions describing the level of specified services that will be available to the consolidated city or village, including all of the following services: public parks; public health; animal control; library; fire and emergency rescue; and law enforcement.
- The town and the city or village must adopt identical resolutions that relate to the ownership or leasing of government buildings.
- The city or village must execute separate boundary agreements with each city, village, and town that borders the proposed consolidated city or village.
- The consolidating town and city or village must agree to adopt a comprehensive plan for the consolidated city or village.
- At least some part of the consolidated city or village must receive sewage disposal services.

[s. 66.0230, Stats.]

Consolidating Counties

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. 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. The procedure also allows electors on their own to initiate the consolidation process in the absence of such action by the county board. [s. 59.08, Stats.]

The consolidation of counties may be initiated by either the county boards or the counties' electors. [s. 59.08, Stats.]

Detachment

Detachment is the process by which territory is transferred from one municipality to another. For example, territory can be detached from one city or village and attached to another contiguous city, village, or town. Most commonly, detachment is used to transfer city or village territory back into an unincorporated town.

The general detachment process is initiated when a majority of property owners of three-fourths of the taxable property to be detached (or all property owners if there is no taxable property in the territory) publish notice of their intent to circulate a detachment petition. They must then file the petition with the city or village from which detachment is sought. The city or village from which detachment is sought must adopt an ordinance to detach the property. The city, village, or town from which attachment is sought must then adopt an ordinance to attach the property. [s. 66.0227, Stats.]

There is also a detachment process specific for certain farm lands located in a city. The process includes a petition by property owners; a circuit court hearing with notice served on the city, town, and property owners; and a court order. The statutes limit what farm lands qualify for this detachment process. The total territory of farm land must be at least 200 acres, owned by one or more property owners each owning at least 20 acres. Also, the land must have been located in the city for at least 20 years, used exclusively for agricultural purposes, contain no public improvements, and not be platted. [s. 62.075, Stats.]

Boundary Agreements

Cooperative Plans

There are three types of boundary agreements allowed under state statutes: cooperative plans; intergovernmental agreements; and stipulations by court order.

Any combination of cities, villages, or towns may determine their shared boundary lines under a cooperative plan approved by DOA. The cooperative plan must include, among other things, a description of its consistency with the parties' comprehensive plans (described in the following section), a schedule and description of boundary changes and freezes, and provision for delivery of municipal services to the territory covered by the plan. Local procedures for adopting a cooperative plan consist 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, but it may be longer if agreed to by the parties and approved by DOA. [s. 66.0307, Stats.]

DOA must approve a cooperative plan if the plan meets statutorily specified criteria concerning all of the following: (1) the plan's consistency with applicable laws; (2) the plan's

provision for municipal services; (3) the compatibility of any affected boundary with the characteristics of the surrounding community; (4) the shape of any affected boundary; and (5) 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. Also, DOA may provide mediation services under a mediated agreement procedure, whereby one municipality may bring an adjacent municipality "to the table" in connection with a common boundary dispute and related issues. [s. 66.0307 (4m) and (5), Stats.]

Intergovernmental Agreements

Common municipal boundaries may also be determined by a general intergovernmental agreement. No state approval is necessary and the maximum term of such an agreement is 10 years. These agreements might be used by municipalities that, for example, wish to make minor changes in their common boundaries or by municipalities that wish to enter into an initial, shorter-term agreement before developing a cooperative plan, as described above. [s. 66.0301, Stats.]

Stipulations by Court Order

If annexation is challenged in court, the parties to the litigation may enter into a written stipulation, compromising and settling the litigation and determining the portion of the boundary that is the subject of the annexation. The court having jurisdiction of the litigation may enter a final judgment establishing the boundary as specified in the stipulation. [s. 66.0225, Stats.]

Comprehensive Planning

Wisconsin's comprehensive planning law potentially affects every general purpose local unit of government in the state. This stems from the fact that the law includes a "consistency requirement," which states that in order for a county, town, village, city, or regional planning commission to enact or amend any of the following types of land use ordinances, these ordinances must be consistent with the comprehensive plan:

- Official mapping ordinances.
- Local subdivision ordinances.
- County, town, village, or city zoning ordinances.
- Shoreland or wetlands in shoreland zoning ordinances.

[s. 66.1001 (3), Stats.]

Comprehensive planning implementation guides can be found on DOA's website: http://www.doa.wi.gov

Additional information on preparing comprehensive plans can be found on the following websites:

The Department of Natural Resources: http://dnr.wi.gov/

The Department of Transportation: http://www.wisconsindot.gov

The State Historical Society: http://www.wisconsinhistory.org/

The Local Government Center, UW-Extension http://lgc.uwex.edu/

A comprehensive plan that is adopted by a county, town, village, city, or regional planning commission must include nine specified elements:

- Issues and opportunities.
- Housing.
- Transportation.
- Utilities and community facilities.
- Agricultural, natural, and cultural resources.
- Economic development.
- Intergovernmental cooperation.
- Land use.
- Implementation.

[s. 66.1001 (2), Stats.]

While the required content of each element of a comprehensive plan is delineated in general terms in the statutes, DOA has prepared guides for implementing most of the required elements, which are available on its website.

The law provides for public participation in the development of a comprehensive plan and that the plan must be adopted by ordinance. The law was amended in 2010 to clarify 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. [s. 66.1001 (1) (a), Stats.] This language clarified that adopting a comprehensive plan is only one step in the process and a plan 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.

The comprehensive planning legislation also requires each city and village with a population of at least 12,500 to adopt a "traditional neighborhood development" ordinance, which refers to a "compact, mixed-use neighborhood where residential, commercial, and civic buildings are within close proximity to each other." It also requires such cities and villages to enact a "conservation subdivision ordinance" to address "housing developments in a rural setting that is characterized by compact lots and

A comprehensive plan is a guide to the physical, social, and economic development of a local governmental unit. An ordinance enacting a comprehensive plan, by itself, does not make it a regulation.

common open space, and where the neutral features of the land are maintained to the greatest extent possible." These ordinances must be similar to model ordinances that have been developed by the University of Wisconsin (UW)-Extension, available on DOA's website. [s. 66.1027, Stats.]

State Mandates

A recurring issue raised by local governments 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. In addition, the Legislature has specifically targeted certain grants to local governments as providing mandate relief. Examples include county mandate relief payments and various grants to counties relating to the costs of operating circuit courts.

A county, town, village, or city may file a request with DOR for a waiver from a state mandate, except for state mandates related to health and safety.

The statutes provide a mechanism by which a county, town, village, or city may appeal to the Department of Revenue (DOR) and receive a waiver from a state mandate. A "state mandate" is defined for this purpose as a state law that requires one of these local units of government to engage in an activity or provide a service or to increase the level of its activities or services. A county, town, village, or city may file a waiver request with DOR and must state its reason for requesting the waiver. [s. 66.0143, Stats.]

Waivers may be granted under the statute from any state mandate except ones 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. [s. 66.0143 (2) and (3), Stats.]

Additional References

1. League of Wisconsin Municipalities, http://www.lwm-info.org.
2. Wisconsin Towns Association, http://www.wisctowns.com.
3. Wisconsin Counties Association, http://www.wicounties.org.
4. Paddock, Susan C., *The Changing World of Wisconsin Local Government*, pp. 99-172, *1997-1998 Wisconsin Blue Book*.
5. Anderson, Jason, *Counties, Cities, Villages, Towns Forms of Local Government and Their Functions* (Wisconsin Legislative Reference Bureau, October 2005), available at: http://www.legis.wisconsin.gov/lrb.
6. Shovers, Marc, *Special Purpose Districts: Types, Powers, and Duties* (Wisconsin Legislative Reference Bureau, January 2006), available at: http://www.legis.wisconsin.gov/lrb.
7. Ohm, Brian W., *Wisconsin Land Use and Planning Law*, CLEW Publications, UW Law School (2013, Board of Regents of the UW System).

Glossary

Administrative home rule authority: The authority conferred by statute to counties, allowing them to decide for themselves how to organize or consolidate their administrative departments.

Charter ordinance: The organizational ordinance of a village or city, enacted by a two-thirds vote of its legislative body. Procedures relating to the enactment of charter ordinances are found in s. 66.0101, Stats.

Constitutional home rule authority: The authority conferred by Wis. Const. art. XI. s. 3, to villages and cities, which allows them to determine their own local affairs and governance. To exercise this authority, the city or village must do so by enacting a charter ordinance. Constitutional home rule authority is subject to the Wisconsin Constitution and legislative enactments.

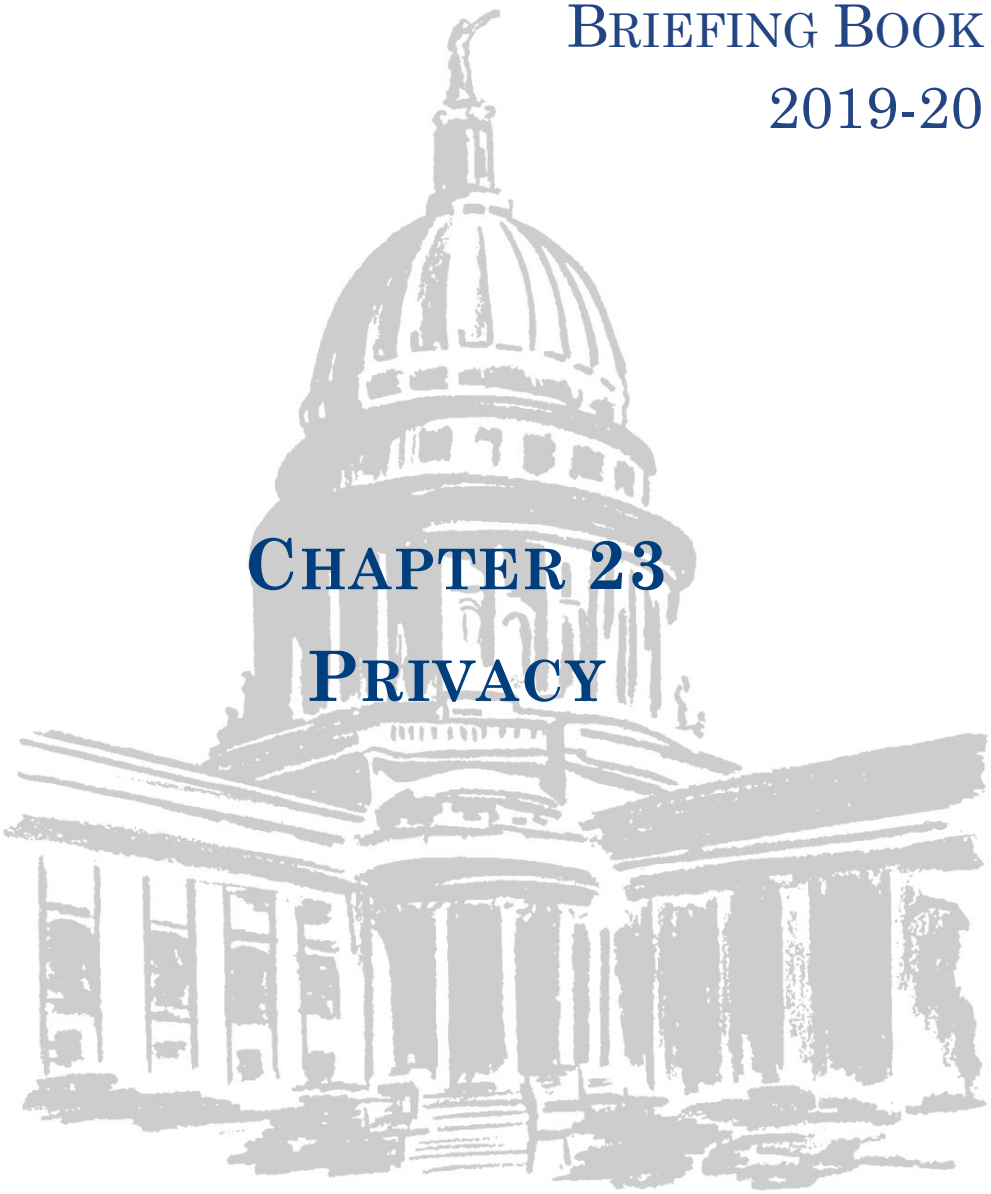
General purpose units of local government: Units of local government that provide basic, general services used by all residents. Referred to generally as "local units of government" or "local government," Wisconsin's local units of government are counties, towns, villages, and cities.

Special purpose local units of local government: Units of local government that provide special services targeted at specific groups of residents. Also referred to as "special purpose districts" in Wisconsin, these districts include school districts, technical college districts, sewerage districts, Southeast Wisconsin Professional Baseball Park District, Professional Football Stadium District, regional planning commissions, drainage districts, mosquito control districts, and various cultural arts districts, among others.

Statutory home rule authority: The authority conferred by ss. 61.34 (1) and 62.11 (5), Stats., to villages and cities to manage and control their property, finances, highways, navigable waters, and the public service. It also gives villages and cities the power to act for the good order of the village or city, commercial benefit, and for the health, safety, and welfare of the public. Unlike constitutional home rule, statutory home rule authority is not limited to local affairs and government. The authority may be exercised through various means including, ordinances, licenses, regulations, borrowing, money, tax levies, imprisonment, confiscation, and other necessary means.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 23
Privacy

Dan Schmidt, Principal Analyst
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Introduction

In Wisconsin, there is no specific state agency with general responsibility for privacy. 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.

The laws described in this chapter are the major privacy provisions in the Wisconsin statutes. While it is not an exhaustive list, it includes significant privacy provisions that are often the subject of constituent questions.

Wisconsin law recognizes the right to privacy and defines when equitable relief, compensatory damages, and attorney fees may be provided if privacy is invaded.

Invasion of Privacy

Civil Action

Wisconsin law recognizes an individual right to privacy. Under the statutes and case law, a person may bring a civil action for damages resulting from an invasion of privacy. For purposes of civil relief, an invasion of privacy is defined as any of the following:

- **Highly Offensive Intrusion on Privacy.** 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.
- **Using a Person's Name or Likeness.** 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 About Private Life Events.** 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.
- **Depictions of Nudity.** 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 all of 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.
- 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 defense. 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. [s. 995.50, Stats.]

Crime of Invasion of Privacy

Under Wisconsin law, the following crimes of invasion of privacy are punishable as a Class A misdemeanor:

The crime of invasion of privacy prohibits, among other acts, the use of a surveillance device in a private place if the person has the intent to observe a nude or partially nude individual and does not have the consent of that individual.

- 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.
- Entering another person's private property without consent or entering an enclosed or unenclosed common area of a multi-unit dwelling or condominium and viewing 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.

An invasion of privacy crime is punishable as a Class I felony in the following circumstances:

- One of the aforementioned misdemeanor invasion of privacy crimes is perpetrated against a person who has not attained the age of 18 at the time of the violation.
- A person knowingly installs or uses any device, instrument, mechanism, or contrivance to intentionally view, broadcast, or record under the outer clothing of an individual that individual's genitals, pubic area, breast, or buttocks, including genitals, pubic area, breasts, or buttocks that are covered by undergarments, or to intentionally view, broadcast, or record a body part of an individual that is not otherwise visible, without that individual's consent.

A person who is convicted of a Class A misdemeanor may be fined up to $10,000, imprisoned for nine months, or both, and a person who is convicted of a Class I felony may be fined up to $10,000, imprisoned for up to three years and six 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. [s. 942.08, Stats.]

Personal Internet Account Privacy

Wisconsin law specifies that certain actions by an employer, educational institution, or landlord in accessing a person's personal Internet accounts are prohibited and may be subject to a forfeiture and enforcement by the Department of Workforce Development (DWD). For the purposes of the law, a "personal Internet account" is an Internet-based account that is created and used by an individual exclusively for purposes of personal communications.

Wisconsin law prohibits access to certain personal Internet information by employers, educational institutions, and landlords.

The law explicitly states that its provisions do not create a duty for an employer, educational institution, or landlord to search or monitor the activity of a personal Internet account. Likewise, an employer, educational institution, or landlord is not liable for any failure to request or to require access or observation of a personal Internet account.

Employers

The law specifies that, with certain exceptions, an employer may not request or require an employee or applicant to disclose access information, grant access, or allow observation, of a personal Internet account, as a condition of employment. An employer is also prohibited from discharging or otherwise discriminating against a person who refuses such a request or opposes such practices.

Under the exceptions, an employer may do any of the following:

- Discharge or discipline an employee for transferring proprietary or confidential information, or financial data, to the employee's personal Internet account without authorization.
- Conduct an investigation of certain misconduct, if the employer has reasonable cause to believe that activity in the personal Internet account relating to the misconduct has occurred. Misconduct includes: any alleged unauthorized transfer of proprietary or confidential information, or financial data; any other alleged employment-related misconduct; any violation of the law; or any violation of the employer's work rules as specified in an employee handbook. In conducting an investigation, an employer may require an employee to grant access or allow observation of a personal Internet account, but may not require the employee to disclose access information for that account.
- Restrict or prohibit a person's access to certain Internet sites while using a device or network that is supplied or paid for in whole or in part by the employer.
- Request or require access to a device, account, or service that is supplied or paid for in whole or in part by the employer, which is provided by virtue of the employment relationship or is used for the employer's business purposes.

- View, access, or use information about an employee or applicant that is available in the public domain or that can be viewed without access information.
- Request or require disclosure of an employee's personal email address.

Additionally, the law does not prevent an employer in the securities industry from complying with regulations relating to applicant screening and business oversight.

An employer that inadvertently obtains access information, through use of the employer's network or use of a device that is supplied or paid for in whole or in part by the employer, is not liable for possessing that information so long as the information is not used to access the employee's personal Internet account.

Educational Institutions

The law specifies that, with certain exceptions, an educational institution may not request or require a student or prospective student to disclose access information, grant access, or allow observation, of a personal Internet account, as a condition of admission or enrollment. An educational institution is also prohibited from refusing to admit, expel, suspend, or otherwise discipline a person who refuses such a request or opposes such practices. An "educational institution" includes a college, university, technical college, public school, charter school, private school, and a private educational testing service.

Under the exceptions, an educational institution may request or require access to a device, account, or service that is supplied or paid for in whole or in part by the educational institution, which is provided by virtue of the student's admission to the institution or is used for educational purposes. An educational institution may also view, access, or use information about a student or prospective student that is available in the public domain or that can be viewed without access information.

Landlords

Under Wisconsin law, a landlord may not request or require a tenant or prospective tenant to disclose access information, grant access, or allow observation, of a personal Internet account, as a condition of tenancy. A landlord is also prohibited from discriminating against a tenant or prospective tenant who refuses such a request or opposes such practices. A landlord may view, access, or use information about a tenant or prospective tenant that is available in the public domain or that can be viewed without access information.

An employer, educational institution, or landlord who violates a person's privacy rights in a personal Internet account is subject to a forfeiture of up to $1,000. Additionally, a person who has been discharged, expelled, disciplined, or otherwise discriminated against in violation of the law may file a complaint with DWD, which may take action to remedy the violation in the same manner as employment or housing discrimination complaints.

[s. 995.55, Stats.]

Prohibitions on Representations Depicting Nudity

Wisconsin law prohibits certain representations depicting nudity without the express permission of the subject of the depiction. A representation is generally defined as a photograph, exposed film, motion picture, videotape, recording or other audio or visual representation, or data that represents a visual image or audio recording. An intimate representation is specifically defined as:

- A representation of a nude or partially nude person.
- A representation of clothed, covered, or partially clothed or covered genitalia or buttock that is not otherwise visible to the public.
- A representation of a person urinating, defecating, or using a feminine hygiene product.
- A representation of person engaged in sexual intercourse or sexual contact.

Wisconsin law generally prohibits certain representations depicting nudity without the express permission of the individual depicted in the representation.

Capturing, Reproducing, Possessing

The law provides that anyone who does any of the following may be found guilty of a Class I felony and may be fined up to $10,000, imprisoned for three years and six months, or both:

- Captures an intimate representation without the consent of the person depicted under circumstances 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 does not consent to the capture of the intimate representation.
- Makes a reproduction of an intimate representation that the person knows or has reason to know was captured in violation of the above provision and that depicts an intimate representation captured in violation of the above provision, if the person depicted in the reproduction did not consent to the making of the reproduction.
- Possesses, distributes, or exhibits an intimate representation that was captured in violation of the above provision or a reproduction made in violation of the above provision(s), if the person knows or has reason to know that the intimate representation was captured in violation of the above provision or the reproduction was made in violation of the above provision(s), and if the person who is depicted in the intimate representation or reproduction did not consent to the possession, distribution, or exhibition.

A person who violates these prohibitions faces higher penalties if the victim is under 18. However, there are exceptions for parents or guardians and for representations of public importance. If the person depicted in violation of these prohibitions had not, at the time of the violation, attained the age of 18 years, the person who commits a violation may be found guilty of a Class H felony, and may be fined up to $10,000, imprisoned for six years, or both.

[s. 942.09 (2), Stats.]

2017 Wisconsin Act 129 created a new crime that generally prohibits soliciting sexually explicit representations from minors. Specifically, the Act prohibits a person from soliciting an intimate or private representation from a person who the actor believes or has reason to believe is less than 18 years of age. The prohibition created by the Act does not apply to a person who solicits such representations and is less than 18 years of age. The penalty for a violation of this crime is a Class A misdemeanor if the person who solicits the intimate or private representation is at least 18 years of age, but has not attained 21 years of age, and if the child solicited is not more than three years younger than the person who solicited the intimate or private representation. In all other instances, a violation of the prohibition created by the Act by a person who is at least 18 years of age is penalized as a Class I felony.

[s. 942.09 (4), Stats.]

Distribution of Sexually Explicit Images

Wisconsin law prohibits the distribution of certain sexually explicit images without the consent of the person depicted. The statutes specifically prohibit a person from doing the following:

- Posting, publishing, or causing to be posted or published, a private representation if the actor knows that the person depicted does not consent to the posting or publication of the private representation.
- Posting, publishing, or causing to be posted or published, a depiction of a person that he or she knows is a private representation without the consent of the person depicted.

"Posting or publishing" includes posting or publishing on a website, if the website may be viewed by the general public. A "private representation" is defined as a representation depicting a nude or partially nude person or depicting a person engaged in sexually explicit conduct that is intended by the person depicted to be captured, viewed, or possessed only by the person who, with the consent of the person depicted, captured the representation or to whom the person depicted directly and intentionally gave possession of the representation.

A violation of either of these provisions is a Class A misdemeanor, punishable by imprisonment for up to nine months, a fine of up to $10,000, or both. If the person depicted or represented in the violation of this provision had not, at the time of the violation, attained the age of 18 years, the person who commits a violation may be found guilty of a Class I felony and may be fined up to $10,000, imprisoned for up to three years and six months, or both.

This prohibition does not apply to the following:

- The parent, guardian, or legal custodian of the person depicted if the private representation does not violate the crime of sexual exploitation of a child or possession of child pornography, and the posting or publication is not for the purpose of sexual arousal, gratification, humiliation, degradation, or monetary or commercial gain.

- A law enforcement officer or agent, acting in his or her official capacity in connection with the investigation or prosecution of a crime.
- A person who posts or publishes a private representation that is newsworthy or of public importance.
- A provider of an interactive computer service, as defined in 47 U.S.C. s. 230 (f) (2), or to an information service or telecommunications service, as defined in 47 U.S.C. s. 153, if the private representation is provided to the interactive computer service, information service, or telecommunications service by a third party.

[s. 942.09 (3m), Stats.]

Representations Depicting Nudity in a Locker Room

Wisconsin law generally prohibits a person from intentionally capturing, while present in a locker room, a representation of a nude or partially nude person while the person is nude or partially nude in the locker room without permission. Such violations are punishable as a Class A misdemeanor if the victim is an adult, and a violator may be fined up to $10,000, imprisoned for nine months, or both, and as a Class I felony if the person represented in the violation was under 18 years at the time of the violation. This prohibition does not apply if the person consents to the capture of the representation and the person is, or the actor reasonably believes that the person is, 18 years of age or over when the person gives his or her consent, or the person's parent, guardian, or legal custodian consents to the capture of the representation.

Wisconsin law also prohibits, without adult consent, a person from intentionally exhibiting or distributing to another a representation of a nude or partially nude person while the actor is present in, and the person is nude or partially nude in, the locker room, or transmitting or broadcasting an image of a nude or partially nude person from a locker room while the person is nude or partially nude in the locker room. A violation of one of these provisions is a Class I felony, punishable by a fine of up to $10,000, imprisonment for up to three years and six months, or both. If the person represented in the violation had not, at the time of the violation, attained the age of 18 years, the violation is a Class H felony, punishable by a fine of up to $10,000, imprisonment for up to six years, or both.

[s. 942.09, Stats.]

Use of a Drone

Wisconsin law prohibits an individual from using a drone with the intent to photograph, record, or otherwise observe another individual in a place or location where the individual has a reasonable expectation of privacy. The penalty for a violation of this provision is a Class A misdemeanor, punishable by imprisonment for up to nine months, a fine of up to $10,000, or both. This prohibition does not apply to a law enforcement officer authorized to use a drone pursuant to a search warrant.

[s. 942.10, Stats.]

Identity Theft

Identity theft occurs when a person intentionally uses or attempts to use personal identifying information or personal identification documents of another to obtain anything of value, including credit or services.

The unauthorized use of personal identifying information, commonly termed "identity theft," 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.
- 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 a 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. [s. 943.201, Stats.]

Records Containing Personal Information

Wisconsin law requires certain businesses and government entities to take actions to protect personal information.

Financial institutions, medical businesses, and tax preparation businesses in Wisconsin must make personally identifying information in their documents undiscoverable before disposing of them, and certain businesses must notify individuals of unauthorized acquisition of personal information.

Disposal of Records

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. The statutes provide that these businesses may discard the records only after they do 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.
- 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.

Wisconsin law requires certain business entities to notify individuals of unauthorized acquisitions of personal information. 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. [s. 134.98, Stats.]

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 to 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 not more than $1,000, imprisoned for not more than 90 days, or both. Such a violation is commonly referred to as "dumpster diving." [s. 134.97, Stats.]

Notification Requirements

Specified entities must provide notification regarding the unauthorized acquisition of personal information. The law applies to entities that:

Certain business entities must notify individuals of the unauthorized acquisition of personal information held by those entities.

- Conduct business in Wisconsin and maintain personal information in the course of business.
- License personal information in Wisconsin.
- Maintain a depository account for a Wisconsin resident.
- Lend money to a resident of Wisconsin.

An "entity" also includes:

- 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.
- A city, village, town, or county.

For purposes of the notification requirements, "personal information" means an individual's last name and 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:

- The individual's Social Security number.
- The individual's driver's license number or state identification number.
- 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.
- The individual's DNA profile.
- The individual's unique biometric data, including a 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: (1) the acquisition of personal information does not create a material risk of identity theft or fraud to the subject of the personal information; or (2) 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. [s. 134.98, Stats.]

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. [s. 134.98 (3), Stats.]

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 to 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. [s. 134.98 (3m), Stats.]

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. 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. [s. 146.82, Stats.]

Patient health care records are generally confidential and may not be disclosed except with the informed consent of the patient or a person authorized by the patient to give consent or under exceptions specified in Wisconsin statutes.

Informed consent to disclose patient health care records to an individual, agency, or organization must be in writing. 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.
- 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.

In certain circumstances, patient health care records may be released without the informed consent of the patient. These circumstances include 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. Absent informed consent, recipients of patient health care information generally must keep that information confidential and may not disclose such information.

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. [ss. 146.82 and 146.83, Stats.]

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 set forth in s. 51.30, Stats., and HIV test result laws are set forth in s. 252.15, Stats.

Prohibition on Wiretapping

A person may generally record a communication if the person is a party to the communication or has prior consent from one of the parties to the communication.

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. 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.

However, a person is strictly prohibited from performing any interception with the purpose of violating a law or committing any other injurious act. A violation of the wiretapping prohibitions is a Class H felony punishable by a fine of up to $10,000, imprisonment for up to six years, or both. [s. 968.31, Stats.]

National Do Not Call Registry

1-888-382-1222
http://www.donotcall.gov

Prohibition on Unauthorized Telephone Solicitations

Residents of Wisconsin who do not wish to receive telephone solicitations may request to be included in the National Do Not Call Registry. The

registry is maintained by the Federal Trade Commission (FTC).

A telephone solicitor (or employee or contractor) may not make a telephone solicitation to a residential customer if that individual is listed in the Do Not Call Registry. 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 engage 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 Department of Agriculture, Trade and Consumer Protection (DATCP) enforces these provisions. [s. 100.52, Stats.]

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 businesses' 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.

Social Security Numbers

Use and Collection by Government

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: (1) the disclosure is required by federal law or the disclosure is required by a federal, state, or local agency maintaining a system of records in existence and operating before January 1, 1975; or (2) the disclosure was required under a 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 individuals 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.

Federal law limits the circumstances under which a state or local government may request an individual's Social Security number. Federal law also requires the state to collect Social Security numbers as a condition for receiving federal funding for child support and family assistance programs.

While a state or local governmental agency is limited in its ability to require individuals to disclose their Social Security numbers, those agencies are not prohibited from **requesting** that a person provide his or her 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 mandatory 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.

The federal Personal Responsibility and Work Opportunity Reconciliation Act 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 of receiving 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/. 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, DATCP website at: http://www.privacy.wi.gov/.
4. The Federal Trade Commission's website on identity theft at: http://www.identitytheft.gov/.

Glossary

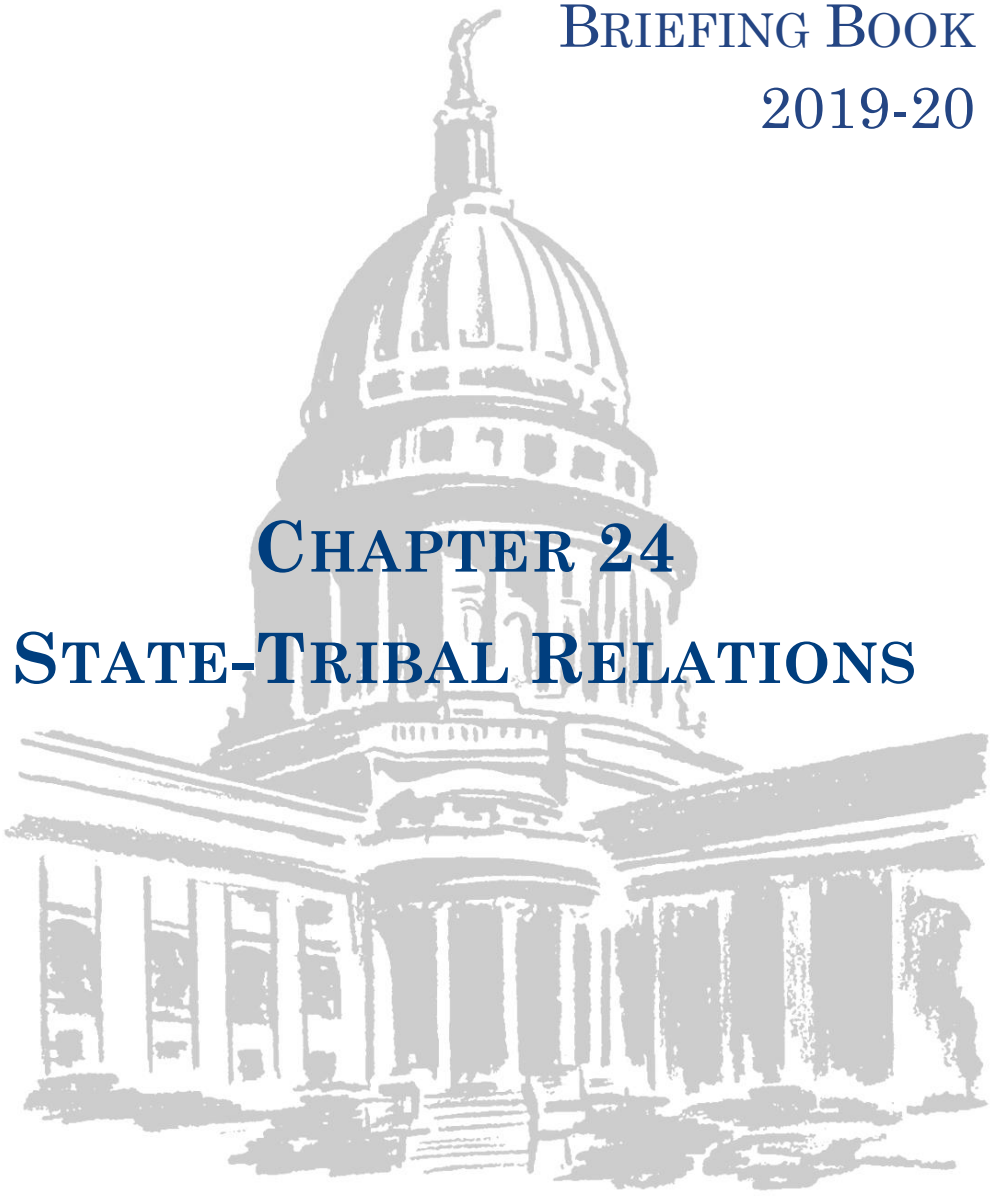
DATCP: The state Department of Agriculture, Trade and Consumer Protection.

Do-Not-Call Registry: The federal telephone nonsolicitation directory maintained by the FTC.

FTC: Federal Trade Commission.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 24
State-Tribal Relations

David Moore, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

The 11 federally-recognized American Indian tribes and bands[1] in Wisconsin have a unique relationship with the state. As entities accorded sovereign status under federal law, the tribes' relations with the state are governed by an evolving and intertwining patchwork of federal, tribal, and state law.

The tribes' sovereign status means that they possess a certain amount of autonomy and are empowered to govern themselves and promote their own cultural and economic development. The sovereignty of American Indian tribes, however, is not the same as the sovereignty of a nation-state or of a U.S. state. Members of American Indian tribes are also citizens of the United States and residents of the various states, with the same rights and responsibilities as all other U.S. citizens.

Each tribe and band in Wisconsin has a distinct history. The Menominee Tribe traces its origins in these lands back thousands of years to the people of the Old Copper Culture. The Potawatomi and the various bands of Chippewa (also called Ojibwe) living in Wisconsin originated in other areas of the country, but migrated here prior to European settlement. The Oneida Nation and the Stockbridge-Munsee Band of Mohican Indians inhabited areas in the northeast and mid-Atlantic United States until after the Revolutionary War, but settled in Wisconsin after being displaced from their historical homelands. Ancestors of members of the Ho-Chunk Nation occupied land now in the State of Wisconsin prior to European settlement, were displaced from Wisconsin, but later voluntarily returned despite having to repurchase tribal lands they once owned.

The history of American Indian tribes and bands in Wisconsin, while rich and varied, has also been fraught with the consequences of government policies that deprived Native Americans of their lands, marginalized their culture, and relegated them to reservations that often lacked the resources to sustain them. The present-day relationship of the tribes and the state, then, is informed both by the legacies of these policies as well as by the mutual respect implicit in the relationship of one sovereign government to another.

AMERICAN INDIAN TRIBES IN WISCONSIN

Each tribe in Wisconsin has its own government, land base, and membership. 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 the tribe owns, and the approximate number of enrolled members.

[1] The statutes typically refer to "federally recognized Indian tribes or bands in this state." In this chapter, references to "American Indian tribes" or "tribes" refer to all of the federally-recognized tribes and bands.

Name of Tribe	Approximate Number of Enrolled Members (as of November 2010)	Wisconsin Counties in Which Reservation or Off-Reservation Trust Land is Located
Bad River Band of Lake Superior Chippewa Indians	6,945	Ashland, Iron
Forest County Potawatomi Community	1,400	Forest, Marinette, Milwaukee, Oconto
Ho-Chunk Nation	6,563	Adams, Clark, Crawford, Dane, Eau Claire, Jackson, Juneau, La Crosse, Marathon, Monroe, Sauk, Shawano, Vernon, Wood
Lac Courte Oreilles Band of Lake Superior Chippewa Indians	7,275	Burnett, Sawyer, Washburn
Lac du Flambeau Band of Lake Superior Chippewa Indians	3,415	Iron, Oneida, Vilas
Menominee Indian Tribe of Wisconsin	8,720	Menominee, Shawano
Stockbridge-Munsee Band of Mohican Indians	1,565	Shawano
Oneida Tribe of Indians of Wisconsin	16,567	Brown, Outagamie
Red Cliff Band of Lake Superior Chippewa Indians	5,312	Bayfield
St. Croix Chippewa Indians of Wisconsin	1,054	Barron, Burnett, Polk
Sokaogon Chippewa Community (Mole Lake)	1,377	Forest

Sources: Membership data is taken from *Tribes of Wisconsin*, prepared by the Department of Administration (DOA) (February 2018), and reflects information provided by each tribe. The enrollment data in this publication was last updated in November 2010.

Tribal Government

Every tribe in Wisconsin has a constitution that establishes the structure of its government. Each tribe has an elected legislative body, often called a tribal council, tribal governing board, or business committee. Some tribal constitutions provide that certain issues must be voted on by the general membership of the tribe, rather than determined by the elected governing body. Every tribe also has an elected executive, termed a chair or president. In some tribes, the executive is elected by the tribe's general membership; in other tribes, the executive is elected by the tribal council. Each tribe also has a tribal court. The subject matter over which a tribal court has jurisdiction varies from tribe to tribe.

Information about the tribal courts in Wisconsin, including the subject matter jurisdiction of each court, is available at:

http://www.wtja.org

In addition to these decision-making bodies, each tribe has various administrative departments that deal with particular issues, including human services, child welfare, education, environment, business development, health, and transportation. Some tribal governments have law enforcement departments.

Intergovernmental relations and jurisdictional issues are addressed later in this chapter.

Tribal Membership

Each tribe has the authority to determine its own membership (typically called enrollment). Examples of criteria for membership include blood quantum requirements, ancestors on a specific roll, and patrilineal or matrilineal descent rules. Some individuals of Indian descent may not be eligible for membership in any tribe and some may be eligible for membership in more than one tribe.

Not all American Indians in Wisconsin are members of Wisconsin tribes. Some are enrolled in tribes outside the state and some are not enrolled in any tribe. Who is considered an American Indian depends on the circumstance for which the definition is employed. In some circumstances, such as the U.S. Census, American Indian status is based on self-identification. For the purposes of many state and federal programs, however, whether someone is an American Indian generally depends on whether the individual: (1) has a particular degree of Indian blood; and (2) is recognized by a tribe as a member.

According to data from the 2010 Census, 81,852 people in Wisconsin identify themselves as American Indian or Alaskan Native, either as one race or in combination with one or more other races. This represents 1.5% of the Wisconsin population. The majority of people who identify themselves as American Indian in Wisconsin do not live on reservations.

Tribal Consortia

Tribes in Wisconsin sometimes interact with federal, state, and local government through intertribal consortia. These umbrella organizations serve as mechanisms through which the tribes can collaborate with each other on governance and provision of services to their constituents. The consortia assist the independent tribal governments in operating broader service systems, developing policies, and addressing their communities' needs. While consortia support individual tribes' local efforts, policy implementation is generally accomplished by member tribes through their own elected representatives.

Great Lakes Inter-Tribal Council

The Great Lakes Inter-Tribal Council (GLITC) is a consortium of the 11 federally-recognized tribes in Wisconsin plus the Lac Vieux Desert Tribe of Michigan. The GLITC Board of Directors is comprised of the tribal chair of each member tribe or the chair's designated representative. 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 with the delivery of services and with supplementing member tribes' service capacities. GLITC's functions also include advocating for its member tribes and communicating with the state government about issues of concern to the tribes.

Great Lakes Indian Fish and Wildlife Commission

The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) represents 11 Chippewa bands in Minnesota, Wisconsin, and Michigan, including all six Wisconsin Chippewa bands. As discussed later in this chapter, when various Chippewa bands ceded territory in Wisconsin to the United States by treaty in 1837 and 1842, they reserved the right to hunt, fish, and gather on off-reservation public lands and territories throughout the ceded territories. In the 1980s, a series of federal court decisions approved the Chippewa bands' proposal to adopt an off-reservation code governing their members' exercise of those rights and to form an inter-tribal agency to enforce that code. GLIFWC is the agency the Chippewa bands created for this purpose.

In addition to developing and enforcing the off-reservation conservation code, GLIFWC also provides resource management expertise, legal and policy analysis, and education services. GLIFWC wardens may also make arrests for violations of state laws and render aid and assistance to Wisconsin peace officers under certain circumstances.

Other Consortia

In addition to GLITC and GLIFWC, Wisconsin tribes have created various other inter-tribal groups that work on particular issues and may work in coordination with GLITC. One example is the Tribal Aging Directors Association, which meets regularly to discuss issues related to the services the tribes provide to their elders.

INDIAN LANDS IN WISCONSIN

Most of the federally-recognized tribes in Wisconsin have a reservation; that is, land that the federal government has set aside for the use of the tribe. However, land within the boundaries of these reservations may or may not belong to the tribe or tribal members. This is because the federal General Allotment Act of 1887 authorized the President to allot portions of reservations to individual Indians. Under the Act, the United States would hold the allotments in trust for 25 years; after that period, the land would be conveyed to the Indian in fee. For a variety of reasons, many of these allotments were sold to non-Indians once they were converted to fee status. This resulted in a substantial diminution of Indian-held land, and reservations being disaggregated into a "checkerboard" of jurisdictions.

Trust Land Versus Fee Land

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. By contrast, the vast majority of the Oneida Reservation is fee land, much of which is owned by non-Indians. The ownership status impacts economic development and legal administration of the land.

Trust land, as the term is used here, is land to which the United States holds title for the benefit of a tribe or individual American Indian. Trust land cannot be sold without the approval of the U.S. Secretary of the Interior and is exempt from taxation by state and local government. By contrast, fee land is land to which a tribe, individual, or other entity holds title without restriction.[2] In general, fee land is subject to taxation by state and local government.

If a tribe or American Indian purchases land and holds the title in fee simple, the tribe or American Indian may petition the Secretary of the Interior to take the land into trust. An individual American Indian may petition to convert fee land to trust land only if the land is on or adjacent to a reservation or land that is already in trust or restricted status. A tribe, however, may petition to have any land it owns in fee converted to trust land. Federal regulations set forth the procedure and criteria the Secretary must use when determining whether to take land in trust.

Off-Reservation Trust Land

Federal law permits a tribe to apply to have the United States take into trust land that it owns, even if the land is outside the boundaries of the tribe's reservation. One reason tribes place off-reservation land into trust is because Indian gaming may only be conducted on a reservation or on trust land; however, a tribe may also petition to have off-reservation land placed in trust for other purposes.

[2] There is another category of land status that is unique to American Indians. Restricted fee land is land which the tribe or tribal member holds title to in fee, subject to a federal patent that restricts alienation. For most purposes, such land is treated the same as trust land.

The Secretary of the Interior has discretion in deciding whether to hold land in trust. Under federal regulations, the criteria the Secretary must use when making this decision vary depending on whether the land is within the boundaries of or contiguous to a tribe's reservation or whether it is outside the boundaries of and noncontiguous to a reservation. The Secretary's analysis also varies depending on whether the tribe intends to use the land for gaming purposes. The process for placing off-reservation land trust for gaming purposes is discussed on page 14 of this chapter.

TRIBAL SOVEREIGNTY

In very general terms, sovereignty refers to the right or power to govern, including the authority of a political entity to make its own laws and enforce those laws within its territory. The sovereign status of tribes is a matter of federal law.

The sovereignty of American Indian tribes is unique because it is not absolute. In an early U.S. Supreme Court case, Chief Justice John Marshall described the tribes' sovereignty as different from that of a foreign nation-state, terming the tribes "domestic dependent nations," a phrase courts have used frequently when discussing the tribes' sovereignty. Chief Justice Marshall wrote:

> Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. [*Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).]

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 "domestic dependent nations." In general, the third category consists of areas in which federal courts have held that a particular aspect of sovereignty does not apply to a tribe. For example, in 1978 the U.S. Supreme Court held that a tribe, as a domestic dependent nation, could not impose a criminal penalty against a non-Indian for an alleged crime against an Indian on the tribe's reservation. [*Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).]

Relation to Federal Government

The unique political status of American Indian tribes flows from their special relationship with the federal government. The genesis of this special relationship stems from federal policy extending back to the founding of the United States to treat Indian tribes as sovereign nations. This policy is expressed in two provisions of the U.S. Constitution: the first grants to Congress "the power...[t]o regulate commerce with foreign nations, and among the several states, and with the Indian tribes"; the second grants to the President

the power to make treaties, including Indian treaties, with the advice and consent of the Senate. [U.S. Const. art. I, s. 8, and art. II, s. 2; William C. Canby, Jr., *American Indian Law in a Nutshell*, 13 (West Publishing Co. 2009).]

The tribes' relationship with the federal government is most often described as a trust relationship. Chief Justice Marshall articulated this view when he wrote that as domestic dependent nations the tribes' relationship to the United States "resembles that of a ward to his guardian." Over time, this paradigm evolved into a framework that also justified the federal government's authority to exercise power over the tribes. For example, in 1886, the U.S. Supreme Court explained that because of the federal government's "course of dealing" with the tribes and the treaty promises it had made, the federal government owes the tribes "the duty of protection," and this obligation is accompanied by the concomitant power to carry out that duty. [*United States v. Kagama*, 118 U.S. 375, 384-85 (1886).]

The parameters of the federal government's trust responsibility to the tribes are not well defined. The U.S. Supreme Court has held that this responsibility, in some of its aspects, establishes legally enforceable duties, particularly with regard to the Executive Branch. With regard to Congress, however, this responsibility is largely considered a moral or political obligation.

Relation to State Government

A tribe is not a political subdivision of a state. This means that a state may not enact legislation requiring a tribe to do anything unless Congress, a treaty, or a court decision explicitly grants such power to a state.

The state and tribes located in Wisconsin frequently work together on issues of mutual concern. For example, state-mandated social services are administered by the counties in Wisconsin. As residents of the state, American Indians residing on reservations are eligible for these services. Tribes administer many of these programs for the residents of Indian reservations, using state funds and operating under state supervision.

Sovereign Immunity

Sovereign immunity refers to the principle that a government may not be sued without its consent. Courts have held that sovereign immunity applies to tribes and tribal business organizations just as it does to the federal and state governments. Like the federal and state governments, a tribe may also waive sovereign immunity.

Treaties

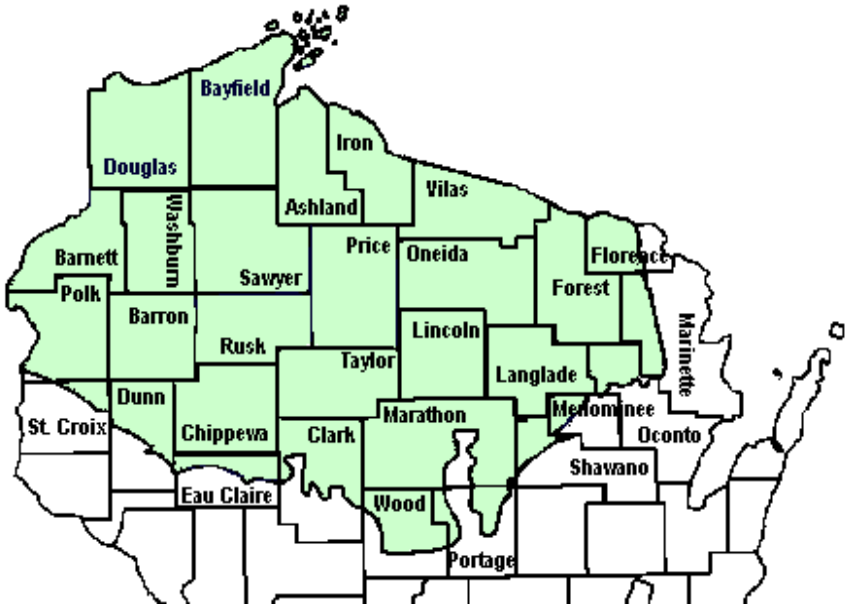
Most tribes in the United States have entered into one or more treaties with the United States. In 1871, Congress effectively terminated the President's authority to enter into future treaties with tribes. A treaty, however, remains in force until Congress abrogates it. Therefore, the terms of treaties made prior to 1871 generally remain relevant to analyzing the issues these treaties address. In Wisconsin, as discussed below, terms of treaties the

Chippewa made with the United States in the mid-19th century continue to impact contemporary state-tribal relations.

Chippewa Treaties

In 1836, 1837, 1842, and 1854, the Chippewa entered into treaties with the United States covering land in what is now northern Michigan, Minnesota, and Wisconsin. In the 1837 and 1842 treaties, the Chippewa reserved specified lands ("reservations") but ceded other land to the federal government. In Wisconsin, this ceded territory covers approximately 22,400 square miles in the northern third of the state.

Territory in Wisconsin Ceded by Chippewa Treaties of 1837 and 1842



Source: Wisconsin Department of Natural Resources (DNR).

In the treaties, the Chippewa reserved use rights, also called usufructuary rights, to hunt, fish, and gather within the ceded territory.

With the exception of Lake Superior fishing rights, the treaty rights were generally not exercised in Wisconsin until 1983, when the U.S. Court of Appeals for the Seventh Circuit, in *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341 (7th Cir.), affirmed the rights reserved in the treaties for Chippewa to hunt, fish, and gather in all public land within the ceded territory. Following the decision, 11 Chippewa bands, including six bands located in Wisconsin, established GLIFWC to help the member bands manage and enforce their treaty rights.

A series of subsequent federal judicial rulings further clarified the parameters of the treaty rights and the extent to which the state may regulate tribal hunting, fishing, and gathering in the ceded territory. The U.S. District Court for the Western District of Wisconsin held that the treaty rights include "rights to those forms of animal life, fish, vegetation and so on that [the Chippewa] utilized at treaty time" and that tribal members have the right to "use

all of the methods of harvesting employed in treaty times and those developed since." However, the court held that the rights "have been terminated as to all portions of the ceded territory that are privately owned as of the time of the contemplated or actual use of those rights." For the purpose of its holding, the court clarified that "private lands" include lands that are privately held and that are not enrolled in the forest cropland or in the managed forest lands program (and not designated as closed to public access). [Final Judgement of Judge Barbara Crabb in *Lac Courte Oreilles Band of Lake Superior Indians v. State of Wisconsin*, No. 74-C-313-C (March 19, 1991).]

With regard to state regulation of tribal members' activities, the district court held that the state may regulate such activities in the interest of conservation and in the interest of public health and safety. The court also outlined rules governing the regulation of several specific resources, including walleye, muskellunge, and deer. In 2012, the Chippewa tribes petitioned the court to modify the final judgment issued in 1991 to prohibit the state from enforcing the state law prohibiting the shining of deer against tribal members. The petition was initially denied, but that denial was reversed by the 7th Circuit Court of Appeals, so the court modified the 1991 order to provide that the state prohibition on shining may not be entered against tribal members in the ceded territories.

Over time, GLIFWC and member Chippewa bands have negotiated memoranda of understanding with the Wisconsin Department of Natural Resources (DNR) to coordinate the regulation of hunting, fishing, and gathering by tribal members in the ceded territory.

To date, courts have primarily interpreted Chippewa treaty rights in the context of direct restrictions on tribal members' hunting, fishing, and gathering rights. In upholding such rights, the U.S. Supreme Court has noted that tribal treaty rights are "not inconsistent with state sovereignty over natural resources." [*Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 208 (1999).]

JURISDICTION

Some of the most complex issues in Indian law concern questions of jurisdiction; that is, whether a particular government—federal, state, or tribal—has the authority to enforce a law in a given context against a particular person. This complexity arises because jurisdiction in Indian country may vary depending on whether either party is an Indian and the location of the crime.

Criminal Jurisdiction

In Wisconsin, with one exception, the state has **criminal** jurisdiction over all land in Indian country. Under federal law, "Indian country" includes: (1) all lands within the limits of a reservation; (2) all dependent Indian communities; and (3) all Indian allotments. [18 U.S.C. s. 1151.]

The exception to the general rule that the state has criminal jurisdiction over all land in Indian country is the Menominee Reservation. This is because all Wisconsin tribes except

the Menominee are subject to Public Law 83-280, commonly referred to as P.L. 280. Passed by Congress in 1953, P.L. 280 transferred 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. Wisconsin is one of the five states in which Congress transferred criminal jurisdiction to the states via P.L. 280. Federal recognition of the Menominee Tribe and Reservation was terminated in 1953; when the recognition was restored in 1973, the Menominee Reservation was not made subject to P.L. 280.

On the Menominee Reservation, criminal jurisdiction depends on the nature of the crime and the status of the perpetrator and victim. The following table illustrates the general scope of criminal jurisdiction on the Menominee Reservation.

Criminal Jurisdiction on Non-P.L. 280 Reservations
(Menominee, in Wisconsin)

	"Major" Crime (As defined by the Major Crimes Act)	**All Other Crimes**
Indian perpetrator, Indian victim	Federal jurisdiction (under Major Crimes Act) & tribal jurisdiction	Tribal jurisdiction
Indian perpetrator, Non-Indian victim	Federal jurisdiction (under Major Crimes Act) & tribal jurisdiction	Federal jurisdiction (under General Crimes Act) & tribal jurisdiction
Non-Indian perpetrator, Indian victim	Federal jurisdiction (under General Crimes Act)	Federal jurisdiction (under General Crimes Act)
Non-Indian perpetrator, non-Indian victim	State jurisdiction	State jurisdiction

Source: This table was prepared by the Tribal Law and Policy Institute (available at: http://www.tribal-institute.org/lists/jurisdiction.htm). A more detailed summary is available from the United States Department of Justice at: (http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00689.htm).

Civil Jurisdiction

P.L. 280 also granted the state **civil** jurisdiction over all land in Indian country except the Menominee Reservation. This means state laws regarding private matters, such as contract law and tort law, generally apply on Indian land.

P.L. 280's grant of civil jurisdiction, however, is more limited than its grant of criminal jurisdiction. First, the civil jurisdiction conferred by P.L. 280 is adjudicatory, meaning that it pertains to civil actions involving the resolution of disputes, not civil actions involving the regulation of activities. Second, even where the state has civil adjudicatory jurisdiction, tribes may exercise concurrent jurisdiction.

On the Menominee Reservation, jurisdiction in civil cases depends on: (1) whether the claim arose on trust land or fee land; and (2) whether any of the parties belong to the Menominee Tribe.

On all reservations there may also be federal jurisdiction in some cases. For example, federal jurisdiction could arise because the plaintiff and defendant are not from the same jurisdiction or because a federal question is involved. In these cases, a tribal court might have concurrent jurisdiction.

Civil Regulatory Jurisdiction

Generally, a state's civil regulatory laws do not apply to tribes or tribal members in Indian country. Greatly simplified, civil regulatory laws are laws that regulate conduct or activities that do not violate state public policy. Examples of civil regulatory laws are laws relating to taxation, and employment and workplace regulations.

It is not always clear whether a particular law is a civil regulatory or criminal prohibitory law because both types of laws regulate conduct. There is no bright line test to resolve this jurisdiction question even where a law imposes a criminal penalty. For purposes of analyzing jurisdiction under P.L. 280, courts generally look to whether a state prohibits certain conduct or permits it subject to regulation. "The shorthand test is whether the conduct at issue violates public policy."[3]

States may assert civil regulatory jurisdiction over **non-Indians** on a reservation under certain circumstances, but exceptional circumstances are necessary to assert jurisdiction over the activities of **Indians** for on-reservation activities. [*Cabazon*, at 215 (citing *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-32 (1983)).] A state must generally overcome two independent but related barriers to show that a state civil regulatory law applies to Indians in Indian country. First, the law must not be preempted by federal law. Second, the law may not "unlawfully infringe 'on the right of reservation Indians to make their own laws and be ruled by them.'" [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980) (quoting *Williams v. Lee*, 217, 220 (1959)).]

Applicability of State Civil Regulating Laws

Indian Actors Outside Indian Land. Absent an express federal law to the contrary, activities of American Indians and tribes outside of Indian country are subject to a state's nondiscriminatory civil regulatory laws. An example of an express law to the contrary is a treaty reserving off-reservation rights to hunt, fish, and gather.

Applicability of Tribal Civil Regulatory Laws. A tribe may exercise civil regulatory jurisdiction over its members on the tribe's reservation or on off-reservation trust land. Tribes also have regulatory authority over the conduct of nonmembers on tribal lands.

In very limited circumstances, a tribe may also regulate nonmembers on nonmember fee lands. These circumstances include regulating, "through taxation, licensing, or other means, the activities of nonmembers who enter into consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." Courts have also stated that a tribe may "exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."

[3] See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 209 (1987) ("[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation.").

However, courts have construed these circumstances very narrowly. [*Montana v. United States*, 450 U.S. 544, 564, and 566 (1981).]

P.L. 280 only confers jurisdiction for a statewide law, and does not apply to local ordinances. Thus, local ordinances do not apply on Indian land, and tribes may have their own ordinances that will apply in civil actions, to the extent they do not conflict with state law.

INDIAN GAMING

In response to the growth of gaming on Indian lands in the 1980s, Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988, which provides a framework for regulating gaming on Indian lands. For the purposes of IGRA, "Indian lands" means: (1) all lands within the exterior boundaries of an Indian reservation; (2) any lands that the United States holds in trust for the benefit of a tribe (tribal trust land) or individual American Indian; and (3) all lands held by a tribe or individual American Indian subject to restriction by the United States against alienation and over which a tribe exercises governmental power. [25 U.S.C. s. 2703 (4).]

IGRA divides Indian gaming into three classes, each of which is subject to different regulatory oversight. Class I gaming consists of social games for prizes of minimal value or traditional forms of gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations. Class I gaming is not regulated by IGRA; tribes themselves may regulate Class I gaming.

Class II gaming consists of bingo, certain games similar to bingo if played at the same location as bingo, and certain card games if played under particular circumstances. Class II gaming is regulated by the National Indian Gaming Commission, which was established by IGRA.

Class III gaming consists of "all forms of gaming that are not Class I gaming or Class II gaming." [25 U.S.C. s. 2703 (8).] Generally, this includes the types of gaming typically associated with casinos, such as slot machines, roulette, and banked card games such as blackjack. A tribe may conduct Class III gaming on Indian lands if: (1) it is located in a state that permits such gaming for any purpose by any person, organization, or entity; and (2) the gaming is conducted in accordance with a tribal-state compact.

Gaming Compacts

Governor Negotiates. Wisconsin statutes authorize the Governor to enter into compacts with tribes under IGRA. The Office of Indian Gaming, within DOA, assists the Governor and the Secretary of Administration with gaming compact issues. [s. 14.035, Stats.]

Each of the tribes in Wisconsin has entered into a compact with the state that permits the tribe to conduct Class III gaming. Among other details, the compacts outline the games that may be played and how they must be conducted. Generally, the original compacts

permitted 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 2003 compact amendments authorized additional games, including craps, keno, and pari-mutuel wagering on live simulcast horse, harness, and dog racing events. In *Panzer v. Doyle*, the Wisconsin Supreme Court held that the Governor lacked the authority to permit these additional games. However, the Court later held—in *Dairyland Greyhound Park, Inc. v. Doyle*—that "gaming can be expanded to the extent that the State and Tribes negotiate for additional Class III games."

The compacts and compact amendments are available on the DOA Division of Gaming website, here:

http://www.doa.state.wi.us/divisions/gaming/indian-gaming

Duration of Compacts. All of the original gaming compacts—which were entered into on various dates in 1991 and 1992—were for terms of seven years. In 1998 and 1999, the compacts were amended and renewed for additional five-year terms. Compacts with 10 of the 11 tribes were amended and renewed again in 2003. (The 11th compact, with the Lac du Flambeau Band of Lake Superior Chippewa Indians, was automatically extended for five years from July 1, 2004 because neither the state nor the tribe sent a notice of nonrenewal.)

In the 2003 amendments, the 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 the state or by the tribe revoking its own authority to conduct casino gaming.[4]

In *Panzer v. Doyle,* the Wisconsin Supreme Court invalidated the indefinite duration provision of the state's compact with the Forest County Potawatomi Community, holding that the Governor lacked the authority to agree to a "perpetual contract." In 2005, the state and the Forest County Potawatomi Community entered into a compact amendment which substituted a 25-year term for the indefinite duration provision, specifying that renewal would occur automatically unless a notice of nonrenewal was served. Similar provisions were later added to the state's compacts with the Ho-Chunk Nation and the Lac du Flambeau Band of Lake Superior Chippewa Indians.

Off-Reservation Gaming

IGRA generally prohibits Class III gaming on land acquired in trust by the U.S. Secretary of the Interior (Secretary) after October 17, 1988 (the general effective date of IGRA), unless that land is located within or contiguous to the boundaries of the reservation of a tribe as those boundaries existed on October 17, 1988. [25 U.S.C. s. 2719 (a) (1).] Gaming

[4] Three of the compacts were also amended to specify that if the provision allowing for indefinite compact terms were to be invalidated by a court, the compact term would be 99 years.

may, however, be conducted on newly acquired off-reservation trust land if the Secretary, after consulting with appropriate state and local officials (including officials of nearby tribes) determines that gaming on the location would be in the best interest of the tribe and would not be detrimental to the surrounding community. Additionally, the Governor of the state in which the gaming is to be conducted must concur in the Secretary's determination. As with all Class III Indian gaming, Class III gaming authorized under this process must be conducted in accordance with the tribe's gaming compact with the state.

Information on the amounts tribes have paid to the states under the compact amendments, and how this revenue is spent, is available in the Legislative Fiscal Bureau's 2017 Informational Paper #86, *Tribal Gaming in Wisconsin* at: http://legis.wisconsin.gov/lfb

More information on Indian Gaming is available in the Legislative Audit Bureau's Report 12-15, *An Evaluation, Division of Gaming, Department of Administration, available* at: http://legis.wisconsin.gov/lab

Payments to the State. In the initial compacts, the tribes agreed to collectively reimburse the state $350,000 a year for the cost of regulating Indian gaming. Beginning in the 1998 and 1999 compacts, each tribe also agreed to make additional payments to the state. The payment amounts varied by tribe; however, in the first four years of payments, tribal payments averaged $23.5 million annually. The 2003 amendments significantly increased tribal payments for those tribes with larger casino operations. Currently, each of the tribes makes an annual payment to the state based on a percentage of the tribe's net gaming revenue (gross revenue minus winnings). In 2015-16, the tribes' net revenue-based payments to the state totaled $51,956,602.

Tribal-State Relations in Wisconsin

Executive Branch

On February 27, 2004, Governor Doyle issued Executive Order #39, affirming the government-to-government relationship between the state and the tribes in Wisconsin. This order requires Wisconsin's cabinet agencies, whenever feasible and appropriate, to consult the government of a tribe that they anticipate will be directly affected by an action of the state agency. All of Wisconsin's cabinet agencies have implemented measures to comply with the order's directive.

In addition to this consultation process, Indian gaming serves as a significant point of contact for the executive branch and the tribes. As discussed in the previous section, Wisconsin law delegates to the Governor the responsibility to negotiate gaming compacts with the tribes, and the Governor must concur in the Secretary of the Interior's determination before a tribe's off-reservation land may be taken into trust for gaming purposes.

Legislative Branch

Wisconsin law requires the Joint Legislative Council to establish the Special Committee on State-Tribal Relations (formerly known as the American Indian Study Committee) each biennium to study issues relating to American Indians and tribes in Wisconsin and to develop specific recommendations and legislative proposals relating to these issues. By statute, the Special Committee must be comprised of public members, who are recommended by the tribes and GLITC, and legislators. [s. 13.83 (3), Stats.]

In recent years the Legislature has invited the tribes to present a State of the Tribes address to the Legislature. This practice began in 2005 and has occurred every year since.

The Special Committee on State-Tribal Relations provides three important functions with respect to the Legislature's relationship with the tribes. First, it serves as a forum within the Legislature in which tribes can raise issues that are of concern to them. Second, by utilizing the Joint Legislative Council's study committee process, it provides a mechanism for developing legislative proposals on issues around which the tribes and legislators can together build consensus. Third, the Special Committee provides an environment in which legislators and representatives of the tribes can build working relationships with each other.

The Special Committee developed the legislation mentioned earlier in this chapter that expanded the authority of GLIFWC conservation wardens. In addition to this legislation, the committee's work has led to legislation on numerous other topics, including the following:

- The creation of a county-tribal cooperative law enforcement program.
- The protection of human burial sites.
- Granting full faith and credit in state courts for the actions of tribal courts and legislatures.
- Economic development on Indian reservations.
- Indian health issues.
- The enforcement of state laws by tribal law enforcement officers.
- Mutual assistance between tribal and state, county, or municipal law enforcement agencies.

The Special Committee on State-Tribal Relations developed two legislative proposals during the 2016 interim that were enacted in the 2017-18 Session:

- **2017 Wisconsin Act 351, relating to grants for treatment and diversion programs.**
- **2017 Wisconsin Act 352, relating to battery of a tribal judge, tribal prosecutor, or tribal law enforcement officer.**

Judicial Branch

Like the Legislative Branch, the Judicial Branch has also created an entity to address issues involving the Wisconsin tribes. The State-Tribal Justice Forum was reestablished in 2006, following the Walking on Common Ground conference, a national gathering of state, federal, and tribal courts, sponsored by the U.S. Department of Justice. The forum's general charge is "to promote and sustain communication, education and cooperation among tribal and state court systems and [to] work to promote initiatives outlined in the final report of the Walking on Common Ground conference." The forum is comprised of various state and tribal judges and other attorneys and officials.

The text of the rule and its 2009 amendment, and the state-tribal protocols, are available on the Wisconsin Court System website at: http://www.wicourts.gov/courts/committees/tribal.htm

One of the most significant issues the forum has addressed is concurrent jurisdiction and the transfer of cases between state and tribal courts. A significant impetus for resolution of this issue was a series of opinions, arising from litigation between a non-tribal member and the Bad River Band, addressing the obligations of circuit courts to confer with tribal courts when the courts have concurrent jurisdiction and the cases are pending in both courts. These decisions prompted two judicial administrative districts of Wisconsin to sign protocols with tribes for allocating jurisdiction when both the tribal court and the state court have jurisdiction and the same issue is pending in both courts. [*Teague v. Bad River Band of Lake Superior Chippewa Indians* (229 Wis. 2d 581 (Ct. App. 1999) (Teague I); 2000 WI 79 (Teague II); and 2003 WI 118 (Teague III)).]

In 2007, the Director of State Courts, on behalf of the State-Tribal Justice Forum, petitioned the Wisconsin Supreme Court to create a rule governing the discretionary transfer of cases to tribal court. On July 31, 2008, the court created s. 801.54, Stats., authorizing a circuit court on its own motion or the motion of any party to transfer an action to a tribal court if it determines that the tribal court has concurrent jurisdiction. Unless all parties agree to the transfer, the rule directs the circuit court to consider a number of factors when determining whether transfer is appropriate, such as whether issues in the action require interpretation of the tribe's laws.[5]

Additional References

1. Wisconsin Legislative Council Information Memoranda, available at http://www.legis.wisconsin.gov/lc:
    - IM-2013-09, *Law Enforcement in Indian Country: Sovereignty and Jurisdiction*.
    - IM-2013-10, *Law Enforcement in Indian Country: State Laws and Programs*.

[5] The court amended this rule in July 2009.

- IM-2013-11, *Law Enforcement in Indian Country: Tribal Institutions*.

2. Legislative Council Committee webpage for the Special Committee on State-Tribal Relations, http://www.legis.wisconsin.gov/lc.
3. Website of the Division of Intergovernmental Relations, DOA, providing information about the Wisconsin State-Tribal Relations Initiative and other information about tribes in Wisconsin: http://witribes.wi.gov/.
4. Website of GLITC. This website provides links to the websites of all of the tribes in Wisconsin: http://www.glitc.org.
5. Website of GLIFWC: http://www.glifwc.org.
6. Website of Wisconsin Judicare, Indian Law Office. This website provides links to tribal websites, including information about tribal courts in Wisconsin: http://www.judicare.org/.
7. Website of the National Conference of State Legislatures (NCSL) relating to state-tribal relations, including links to various NCSL publications and resources: http://www.ncsl.org/research/state-tribal-institute.aspx.
8. Website of the National Congress of American Indians: http://www.ncai.org/.

GLOSSARY

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.

IGRA: The Indian Gaming Regulatory Act.

Indian country: Generally, all land on reservations, all dependent Indian communities, and all Indian allotments.

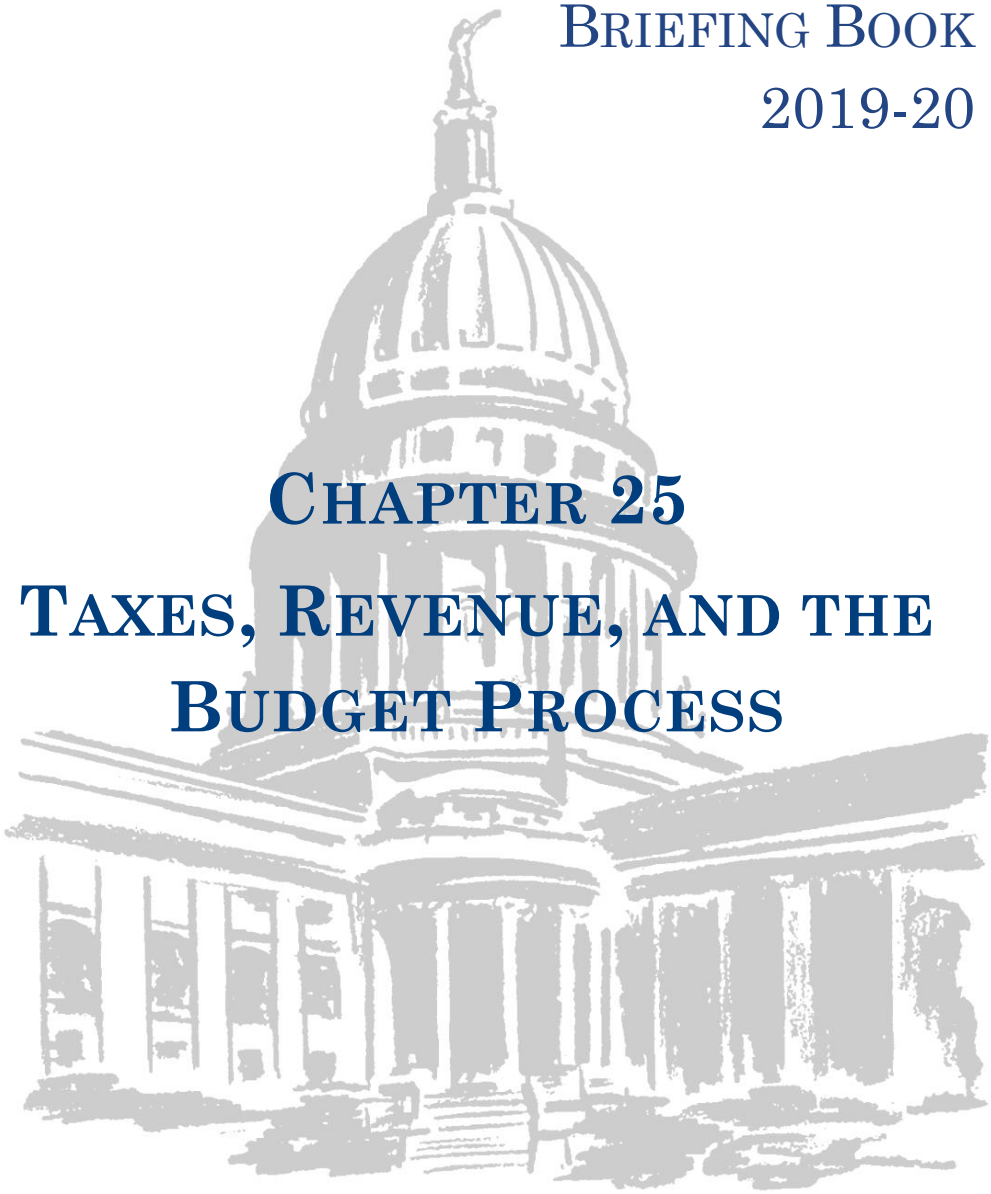
P.L. 280: Public Law 280. 1953 federal law transferring federal criminal and civil jurisdiction (but not civil regulatory jurisdiction) to several states (including Wisconsin, other than on the Menominee Reservation) and providing other states the option of assuming such jurisdiction.

Trust land: Land the title to which is held by the United States in trust for a tribe or American Indian.

Fee Land: Land to which an individual, tribe, or entity holds title without restriction.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 25
TAXES, REVENUE, AND THE BUDGET PROCESS

Scott Grosz, Principal Attorney and Rachel E. Snyder, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

This chapter provides a brief overview of taxes and revenue sources for the state, cities, villages, towns, and counties. These taxes and revenue sources include the property tax, individual and corporate income taxes, sales tax, excise taxes, and various fees. This chapter also provides an overview of the state biennial budget process. The state budget is the most comprehensive bill that the Legislature passes during the biennium. The budget bill affects all state agencies and involves significant interplay between the executive and legislative branches.

PROPERTY TAX

Wisconsin Constitution, Article VIII, Section 1, "the Uniformity Clause"

The property tax constitutes Wisconsin's largest single source of state or local revenue. The foundation for the structure of Wisconsin's property tax is derived from the Wisconsin Constitution. In particular, art. VIII, s. 1, of the Uniformity Clause, specifies:

> The rule of taxation shall be uniform but the legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods. Taxes shall be levied upon such property with such classifications as to forests and minerals including or separate or severed from the land, as the legislature shall prescribe. Taxation of agricultural land and undeveloped land, both as defined by law, need not be uniform with the taxation of each other nor with the taxation of other real property…. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.

Courts have interpreted the Uniformity Clause and the state's property tax statutes on numerous occasions. In doing so, a few key themes emerge, including the general requirement that property must be either fully taxed or wholly exempt from property taxation, and that property taxes must be levied on property in accordance with the market value of the property. Over the years, the Uniformity Clause has been amended, most notably to create an exception for agricultural property regarding the requirement of uniformity. Under this exception, property taxes on agricultural property are levied in accordance with the rental value of the property for agricultural use. [ch. 70, Stats.]

Except for agricultural property, the Uniformity Clause requires assessments according to market value.

Property Tax Administration

Primary administration of the state property tax system occurs at the local level, with oversight provided by the state Department of Revenue (DOR). Using statewide assessment practices prescribed by DOR, a property's value is determined by a local assessor, followed by aggregate review and "equalization" by DOR. Several local entities may levy property taxes, including counties, cities and villages, school districts, and technical college districts, as well as certain other special purpose districts. For an individual property subject to property tax, the total tax due is calculated by applying the mill rate of each taxing jurisdiction to the assessed value of the property. [ch. 74, Stats.]

Tax Incremental Financing

Many Wisconsin municipalities utilize tax incremental financing (TIF) to rehabilitate blighted areas and otherwise encourage growth, particularly industrial growth. Under TIF law, a municipality, with the permission of the other underlying taxation districts, may designate a portion of the community as a TIF district. Following this designation, the taxable value of the district is frozen for a period of time as it relates to the taxes collected by the underlying taxation districts. The municipality creating the district may make investments in the district to encourage growth or rehabilitate blight, with the funding for these investments coming from the taxes generated on new growth (the "tax increment") in the district during its lifespan. [s. 66.1105, Stats.]

Public Utilities

In lieu of a general property tax, public utilities in Wisconsin are subject to separate taxes, which are levied based on measures of value of company property (*ad valorem*) or measures of the company's profits (gross receipts). Examples of public utilities subject to *ad valorem* utility taxation include: airline carriers, municipal electrical companies, pipeline companies, railroad companies, and telephone companies. Examples of public utilities subject to gross receipts utility taxation include: electric cooperatives, and municipal and private heat, power, and light companies. [ch. 76, Stats.]

Income Tax

Individual Income Tax

Property tax, income tax, and sales tax are the three primary revenue sources in Wisconsin.

After the property tax, individual income and corporate income and franchise taxes are the second largest source of revenue in Wisconsin, with individual income tax collections responsible for the vast majority of income tax revenue. Generally, Wisconsin individual income taxes are computed by beginning with a taxpayer's federal adjusted gross income and applying any applicable adjustments that are specified under state law. Marginal individual income tax rates range from 4.0% to 7.65%. Prior to

determining a taxpayer's final tax liability, certain credits may be applied. Examples of these credits include credits for property taxes or rent, credits related to certain business pursuits, Wisconsin's earned income tax credit, and a homestead tax credit available for certain low-income households. [subch. I of ch. 71, Stats.]

Corporate Income Tax

Determination of corporate income taxes begins with computation of income, a process that may require analysis of a business' in-state and out-of-state activities, business expenses, and relationships between a business and other related business entities. The base corporate income tax rate is 7.9%. As with the individual income tax, prior to determining a business's final corporate tax liability, certain credits may be applied. [subch. IV of ch. 71, Stats.]

Taxation of Insurance Companies

Calculation of Wisconsin taxes for domestic and foreign insurance companies requires consideration of both the corporate income tax, as well as a separate insurance premiums tax, depending on the type of insurance issued. As with other corporate income taxes, the taxation of insurance company income, when applicable, is administered by DOR. The Office of the Commissioner of Insurance administers and collects applicable insurance premium taxes. [subch. VII of ch. 71, and subch. III of ch. 76, Stats.]

Sales Tax

General State Sales Tax

The state, counties, and certain special-purpose districts all have the authority to levy sales taxes.

Wisconsin law prescribes a statewide sales tax of 5% on the sale of goods and services in the state. Generally, sales of goods are presumed to be subject to sales tax, except as provided by law, while services subject to sales tax are only those identified by statute. Sales tax is typically collected by retailers and remitted to DOR. In situations where a taxable sale occurs, but no sales tax is collected by a retailer, state law levies a "use" tax. State law specifies that the consumer must remit use taxes at the time of income tax filing, although compliance with this procedure is known to be minimal. The issue of use tax collection most typically arises in the context of collection of tax on Internet sales and the policy debate surrounding the effect of Internet sales on local "brick and mortar" businesses. Pursuant to the recent U.S. Supreme Court case, *South Dakota v. Wayfair, Inc.,* DOR began collecting sales tax from most out-of-state retailers on October 1, 2018. [subch. II of ch. 77, Stats.; 585 U.S. __ (2018).]

County and Special Purpose District Sales Taxes

In addition to the statewide sales tax, state law authorizes counties to impose a 0.5% general sales tax. Sixty-six counties in Wisconsin have adopted the county sales tax. Additionally, in Southeastern Wisconsin, the Southeast Wisconsin Professional Baseball Park District (Miller Park District) levies a 0.1% sales tax in five counties, to be used for assisting in the development of Miller Park. Current law specifies the sunset of the district sales tax once certain obligations of the district are satisfied.

In addition to the stadium district, state law authorizes sales tax to be collected by certain exposition districts and premier resort areas. The taxing authority of these entities, however, is limited to sales of certain products or to sales relating to certain industries.

Other Taxes and Revenues

Excise and Occupational Taxes

State law places excise taxes on consumers who purchase certain products as well as occupational taxes on persons who engage in certain occupations. Examples of excise and occupational taxes in Wisconsin include the taxes placed on cigarettes, tobacco products, fermented malt beverages, intoxicating liquor, motor vehicle fuel, coal, oil refineries, grain storage, iron ore, and metalliferous mining.

Statutes relating to other taxes and revenues include ch. 70 (metalliferous mining taxes), ch. 77 (real estate transfer fee and room taxes), ch. 78 (motor vehicle fuel taxes), ch. 139 (alcohol and tobacco taxes), and s. 341.35, Stats. (wheel taxes).

Real Estate Transfer Fee

The state imposes a tax of $3 per $1,000 of real estate value on many types of transfers of real estate. Eighty percent of revenue from the transfer tax is paid to the state, while the remaining 20% is paid to the county where the real estate is located. The tax is administered at the local level by the register of deeds and is collected at the time a transfer of property is recorded.

Municipal Taxes and Fees

In addition to the property tax and local sales tax, certain other taxes are authorized at the local level. These taxes include "wheel" taxes, imposed on vehicles registered in a particular municipality, as well as "room" taxes, imposed on establishments that provide short-term lodging to the public.

Biennial Budget

The state's budget is a biennial budget, covering a two-year period ("fiscal biennium") starting July 1 of an odd-numbered year and ending June 30 of the next odd-numbered year (e.g., July 1, 2017 through June 30, 2019).

Current Fiscal Biennium: July 1, 2017 to June 30, 2019

Next Fiscal Biennium: July 1, 2019 to June 30, 2021

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. Wisconsin Constitution, Article VIII, Section 2 provides that: "No money shall be paid out of the treasury except in pursuance of an appropriation by law." Section 5 of Article VIII contains what is commonly referred to as the "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 the major fiscal and operational aspects of all state agencies and local government entities (municipalities, schools, and others).

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, 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 to create new programs or services. The requests must also include alternative budget proposals that assume no increase in state funding and a 5% decrease in state funding per fiscal year in the succeeding biennium. 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). [s. 16.42, Stats.]

By November 20 of each even-numbered year, the DOA Secretary must provide the Governor, or the Governor-elect, and each member of the next Legislature with a document compiling the total amount of each state agency's biennial budget request, as well as summary information on actual and estimated revenues for the current and forthcoming biennium. [s. 16.43, Stats.]

EXECUTIVE BRANCH BUDGET DEADLINES

September 15 (even-numbered year): Agencies submit budget requests to State Budget Office in DOA.

November 20 (even-numbered year): Secretary of DOA provides a report to the Governor and legislators detailing agency budget requests.

January, last Tuesday (odd-numbered year): the Governor delivers biennial budget message to the Joint Session of the Legislature.

On or before the last Tuesday in January of each odd-numbered year (unless a later date is agreed upon by the Governor and both houses of the Legislature), the Governor must deliver the biennial budget message to the Legislature. With the message, the Governor must also provide a biennial state budget report, the executive budget bill, and suggestions for the best methods for raising the needed revenues. [s. 16.45, Stats.]

LEGISLATIVE BRANCH CONSIDERATION OF BUDGET BILL

Joint Committee on Finance Review

In connection with the delivery of the Governor's budget message, the Governor prepares budget recommendations and incorporates them into an executive budget bill. The bill is drafted by the Legislative Reference Bureau (LRB), with the assistance of DOA. The executive budget bill must be introduced, without change, into one of the two houses of the Legislature, or in both houses as companion bills, by the Legislature's Joint Committee on Finance (JFC). Upon introduction, the bill must be referred to JFC for review. [s.16.47 (1m), Stats.] The nonpartisan Legislative Fiscal Bureau (LFB) staffs JFC and assists the committee in its budget deliberations. [s. 13.95, Stats.]

As part of its review, JFC may hold public hearings on the proposed budget with representatives of the state agencies involved (informational hearings) and hearings open to the general public (public 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 chairs, inform the committee's members of those parts of the budget that may impact or affect matters dealt with by the committee.

After the public hearings, 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. LFB drafts budget motions requested by the committee to modify provisions of the bills.

KEY LEGISLATIVE STEPS IN BUDGET PROCESS*

Executive budget bill introduced by JFC

↓

JFC hearings and executive sessions on bill

↓

Bill referred to first house; parties caucus on JFC version.

↓

Majority party version of budget bill introduced.

↓

First house debates, amends, and passes budget bill.

↓

Second house debates, amends, and passes its version.

↓

If necessary, conference committee resolves any differences between the two versions.

*** The process may vary in some respects, particularly if companion bills are introduced and the two houses act concurrently, rather than sequentially.**

Joint Survey Committee Reports

Depending on its content, the budget bill may also 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 may be acted on by the Legislature until the Joint Survey Committee on Retirement Systems has submitted a written report on the bill or amendment. [s. 13.50 (6), Stats.] No bill that affects any existing statute 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. [s. 13.52 (6), Stats.]

Party Caucuses

Once JFC has completed its action on the budget, the house in which the budget bill was introduced generally moves to commence party caucuses on the budget. If companion bills were introduced, each house may act concurrently. 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 as 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.

A budget bill is adopted by a majority vote of each house. Differences between the two versions are then resolved so that the same bill is ultimately passed by both houses, as described below.

Conference Committee and Report

If the two houses pass different versions of the budget, a conference committee may be convened. 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. The goal of the bargaining committee is to produce a report reconciling the differences between the two versions of the budget. Once the conference committee procedure is completed, a conference report is submitted to each house as an unamendable document. Each house then votes on the conference report. [Joint Rule 3.]

GOVERNOR'S PARTIAL VETO AUTHORITY; LEGISLATURE'S VETO OVERRIDE AUTHORITY

Partial Veto Authority

Once the Legislature passes a final budget bill, the bill is prepared for the Governor's consideration. The bill is not officially sent to the Governor until the Governor calls for it. The delay allows the Governor time to consider possible partial vetoes of the bill. 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. [Wis. Const. art. V, s. 10.] Thus, instead of having to accept or reject a bill in its entirety (as is the case with nonappropriation bills), the Governor may selectively delete provisions of the budget bill, vetoing either language or dollar amounts, or both, in any given provision, as follows:

The Governor may selectively delete provisions of a bill that includes an appropriation. The resulting provisions must relate to the same subject matter as the vetoed provision.

- Although 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 inserted to replace the stricken amount.
- 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, 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 two-thirds vote by each house, enact any partially vetoed portion into law, notwithstanding any gubernatorial objection. [Wis. Const. art. V, s.10.]

Key Concepts Related to State Budget Process

Continued Operation in Case of Delay

Because the state's biennial budget cycle begins on July 1 of the odd-numbered year, the budget law should, technically, be enacted and in effect by that date. However, if there is a delay in the process and the budget does not take effect by that date, state agencies may continue to operate at the same appropriation levels from the preceding budget until the new budget law takes effect. [s. 20.002 (1), Stats.]

Appropriations in Ch. 20, Stats.

The Wisconsin Constitution allows money to be paid out of the State Treasury pursuant only 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 published biennially in that statutory chapter.

Program Budget

The budget in Wisconsin is termed a "program budget." This means that the structure of both the appropriations schedule and the individual appropriations are generally 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. Agencies develop their budgets by identifying requested changes from the existing budget level (referred to as "the base budget"). Thus, the budget decision items in agency requests represent increments of change over the existing level of spending.

Fiscal Years

The biennial state budget incorporates two annual periods or fiscal years. Fiscal years run from July 1 to June 30. The biennial budget period runs from July 1 of the odd-numbered year to June 30 of the subsequent odd-numbered year. The biennial budget thus involves appropriations for both fiscal years (for example, fiscal year 2017-18 and fiscal year 2018-19).

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.
- **Action of JFC**. By JFC, under a number of statutory provisions that allow the JFC to modify or supplement agency budgets and position authorizations. A list of these may be found in Appendix III to the LFB Informational Paper on the JFC, available at http://www.legis.wisconsin.gov/misc/lfb/information_papers.

Non-Budget Fiscal Bills

During the legislative session, there are bills other than the biennial budget bill that request funds for specific limited purposes, such as for 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. As described in detail in Chapter 2, each fiscal bill must be accompanied by a fiscal estimate predicting the cost of the bill to the state and its political subdivisions. [s. 13.093 (2) (a), Stats.] Each fiscal bill must also be referred to JFC before being passed. [s. 13.093 (1), Stats.]

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on a variety of topics related to taxes, revenue, and the

budget process. The Informational Papers are available at: http://www.legis.wisconsin.gov/misc/lfb/informational_papers.

2. For information on the assessment of property, see DOR's Wisconsin Property Assessment Manual, at: https://www.revenue.wi.gov/documents/wpam18.pdf and DOR's Guide for Property Owners, at: https://www.revenue.wi.gov/DOR%20Publications/pb060.pdf.
3. For information on the appeal of property taxes, see DOR's Property Assessment Appeal Guide, at: http://www.revenue.wi.gov/DOR%20Publications/pb055.pdf.
4. For information on general sales taxes, as well as sales tax issues related to specific business operations, see the sales tax publications of DOR, at: http://www.revenue.wi.gov/Pages/HTML/taxpubs.aspx#sales.
5. For information on the fiscal effect of the state's tax exemptions, see DOR's Summary of Tax Exemption Devices, at: http://www.revenue.wi.gov/DORReports/17sumrpt.pdf.
6. For information on Wisconsin's TIF Laws, see DOR's "City/Village Tax Incremental Finance Manual," at: http://www.revenue.wi.gov/pages/Publications/sif-tif-cvmanual.aspx.

GLOSSARY

Ad valorem: Latin for "according to value." In Wisconsin, property taxes are generally levied in accordance with the value of the property or *ad valorem*.

Excise tax: A tax on the sale, consumption, or production of a particular good or service, typically levied in a different amount or measure than the ordinary sales tax.

Levy limit: A cap on the maximum amount of money that a taxing district may raise through property taxation.

Mill rate: A figure representing the amount per $1,000 of the assessed value of property. Property tax is calculated by multiplying the assessed taxable property value by the mill rate, and then dividing that sum by 1,000.

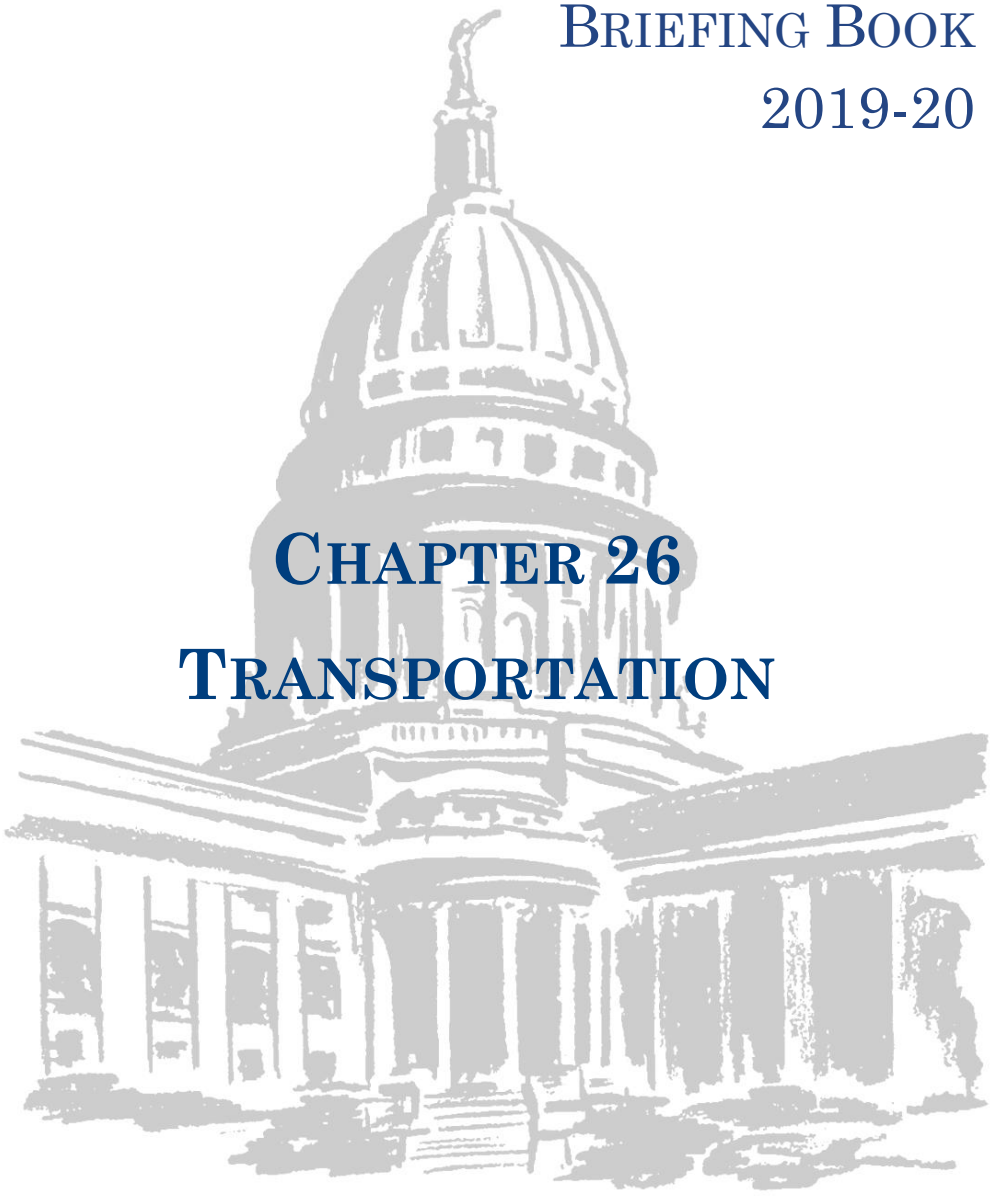
Tax incremental financing (TIF): A local economic development tool that allows a municipality to allocate increases in the tax base to specific infrastructure investments.

Use tax: a companion to the sales tax; use taxes are levied on the consumption of goods and services for which a sales tax is due but not collected at the time of sale.

Use value: A term of art that relates to property taxation for agricultural property, which is subject to taxation in accordance to its value as rental property for agricultural purposes.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

Wisconsin Legislator Briefing Book 2019-20



Chapter 26

Transportation

Steve McCarthy and Amber Otis, Staff Attorneys
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

The Department of Transportation (DOT) is responsible for the planning, promotion, and protection of all transportation systems in the state. DOT oversees programs relating to highways, motor vehicles, motor carriers, traffic law enforcement, railroads, waterways, mass transit, and aeronautics. This chapter summarizes the statutes relating to motor vehicle transportation and provides a brief overview of topics related to state highway and rail programs.

MOTOR VEHICLE LAWS

Wisconsin's motor vehicle laws are primarily contained in chs. 340 to 349 and 351, Stats., and chs. Trans 1 to 515, Wis. Adm. Code. Topics covered in these chapters include vehicle registration [ch. 341, Stats.], vehicle titles [ch. 342, Stats.], operator's licenses [ch. 343, Stats.], the financial responsibility of motor vehicle owners and operators [ch. 344, Stats.], the procedure for issuing traffic citations and prosecuting traffic law violations [ch. 345, Stats.], the rules of the road [ch. 346, Stats.], vehicle equipment requirements [ch. 347, Stats.], vehicle size and weight limits [ch. 348, Stats.], the authority of local governments to regulate motor vehicles [ch. 349, Stats.], and habitual traffic offenders [ch. 351, Stats.]. Chapter 340, Stats., defines terms used throughout these chapters.

Vehicle Registration

Upon taking ownership of a vehicle, a person must generally register the vehicle by applying for a certificate of title, regardless of whether the vehicle will be immediately operated on public highways. If the person intends to operate the vehicle on public highways, license plates must be displayed on both the front and rear of the vehicle. Certain vehicles, such as some types of farm equipment, are exempt from vehicle registration requirements. [ss. 341.05, 341.15, and 342.05, Stats.]

The registration for most vehicles must be renewed every year. At least 30 days before a vehicle's registration expires, DOT is required to send 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 obligations are addressed. The general initial and yearly registration fee for passenger cars and light trucks is currently $75. [ss. 341.08 (4m) and 341.25, Stats.]

Vehicle Title

If a vehicle is purchased from a licensed dealer in Wisconsin, the dealer will usually process the title and registration application. If a vehicle is purchased privately, the purchaser is responsible for applying to the 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 an odometer disclosure and provide any other required

information for assignment on the back of the title. The seller must also provide the buyer with a lien release for each lien listed on the title. Most importantly, the title must be signed by the seller. For sales of motor vehicles between private individuals, the seller must report to DOT the vehicle's identification number and the identity of the buyer within 30 days of the sale. [ss. 342.15, 342.155, 342.16, and 342.41, Stats.]

Special License Plates

DOT issues special registration plates for certain authorized special groups. Generally, a fee—in addition to the regular registration fee for the vehicle—is charged for the issuance or reissuance of most special plates. [s. 341.14, Stats.]

Various military personnel, veterans, and military medal recipients may obtain license plates designating their military service or achievements. [s. 341.14 (6r), Stats.]

For certain special group plates, DOT also collects an additional specified amount, which it then passes to a beneficiary organization. For example, a person interested in supporting endangered resources may obtain a special registration plate with a distinguishing design for a $15 fee, in addition to the regular annual registration fee, and a $25 annual donation. The $25 donation is forwarded to the Department of Natural Resource's endangered species programs. Similar fundraising plates exist for organizations such as Donate Life Wisconsin, the University of Wisconsin, the Wisconsin Women's Health Foundation, the Wisconsin Lions Foundation, and Lambeau Field, among others. [s. 341.14 (6r), Stats.]

More information about applying for vehicle title and registration is available at:

http://wisconsindot.gov/Pages/online-srvcs/external/bvs-landing.aspx

DOT also issues distinctive registration plates, commonly known as "collector" plates, for vehicles registered as special interest vehicles. A vehicle may be registered as a special interest vehicle if it is one of four types of former military vehicles, or if it is a motor vehicle that is at least 20 years old, the vehicle's body has not been altered from the original, and the vehicle is being preserved for its historical interest. Registration as a special interest vehicle requires a fee twice the regular annual fee, but the owner may re-register the vehicle without paying an additional registration fee. A special interest vehicle may be used in the same manner as other vehicles of the same type, subject to certain exceptions, such as a general prohibition against operating during the month of January. [ss. 341.14 (2m) and 341.266, Stats.]

Disabled Parking License Plates and Placards

A person who has a disability that limits or impairs the ability to walk may request a license plate and special identification card entitling the person to certain parking

For more information about accessible parking, see the DOT website at:

http://wisconsindot.gov/Pages/dmv/vehicles/dsbld-prkg/default.aspx

privileges. These privileges include an exemption from ordinances of general application imposing time limitations of a half hour or more and an exemption from parking meter payment requirements for parking spots with such time limitations. The vehicle may also be parked in marked spots reserved for motor vehicles displaying special registration plates or special registration cards. [ss. 341.14 (1a), 343.51, and 346.50 (2a), Stats.]

Special registration plates are also available to licensed drivers on whom a person with a disability regularly depends for transportation and to employers that provide a vehicle for an employee with a disability. Additionally, special license plates are available to veterans who submit a statement from the Department of Veterans Affairs every four years certifying that a veteran has a disability that limits or impairs the veteran's ability to walk because of injuries sustained while in the active U.S. military service. There is no additional fee for disabled veteran license plates. [s. 341.14 (1), (1e), (1m), and (1q), Stats.]

There are exceptions to the general requirement that a driver be licensed to operate a motor vehicle on public highways. For example, a person moving farm equipment to or from a farm-related destination does not need a license to operate the equipment on a highway.

Licensing of Drivers

General Licensing

DOT issues operator's licenses pursuant to a classified driver license system. The standard license is a "Class D" license which generally authorizes operation of cars and light trucks. A license authorizing operation of a "Class A," "Class B," or "Class C" is considered a commercial driver's license. A "Class M" license authorizes only operation of motorcycles. [s. 343.03, Stats.]

To obtain a Wisconsin Class D driver's license, a person must be at least 16 years old and provide documentation of his or her identity and legal presence in this state, among other information. The person must also pass knowledge, vision, and skills tests. DOT may require certain drivers to undergo medical or other special examinations. [ss. 343.14, 343.16, and 343.20, Stats.]

Instruction Permit

A person may receive an instruction permit if he or she is 15-1/2 years of age or older and passes knowledge and vision tests. A driver operating a vehicle under an instruction permit must obey rules regarding who may and who must accompany the driver. [s. 343.07 (1g), Stats.]

A driver with an instruction permit or probationary license may not drive a motor vehicle while using a cellular or other wireless telephone, except to report an emergency.

To receive an instruction permit, a driver under the age of 18 must be enrolled in or have completed an approved driver education course. An instruction permit for the operation of Class D vehicles is generally valid for one year. Instruction permits for motorcycle operation (Class M) and commercial vehicle operation (Class A, B, or C) are also available and may have different age requirements and restrictions than Class D instruction permits. [ss. 343.03, 343.04, and 343.07, Stats.]

Probationary License

Most new drivers are issued a probationary license, which carries certain restrictions, depending on occupancy and time of day. A probationary license expires two years from the date of the driver's next birthday. [ss. 343.085 and 343.20 (1) (a), Stats.]

For more information about laws specific to teen drivers, see the DOT website at:

http://wisconsindot.gov/Pages/dmv/teen-driver/teen-sfty/index.aspx

Before receiving a probationary license, a driver under the age of 18 must hold an instruction permit for at least six months and may not commit a moving violation during the six months prior to receiving the probationary license. The driver must have completed at least 30 hours of behind-the-wheel training and an approved driver education course and be enrolled in a school program or have completed high school. An application for any license by a person under age 18 must be signed by a parent, guardian, or adult sponsor. [ss. 343.06 (1), 343.085 (1) (b), and 343.15, Stats.]

Occupational License

A person whose driving privileges have been suspended or revoked may be eligible for a restricted driver's license called an "occupational license." An occupational license authorizes the holder to 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 60 hours per week. An occupational license may not be issued for the operation of commercial vehicles. [s. 343.10 (1) and (5), Stats.]

A driver's eligibility for an occupational license depends on the reason that the driver's license was revoked or suspended. For example, 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. [ss. 343.10 (2) and 351.07, Stats.]

More information about CDLs is available from DOT at:

http://wisconsindot.gov/Pages/dmv/com-drv-vehs/cdl-how-aply/cdloverview.aspx

Commercial Driver's License

A commercial driver's license (CDL) is required in Wisconsin to operate commercial motor vehicles (CMVs). CMVs include most 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. To receive a CDL, a driver must pass a knowledge test and a driving skills test in the type of vehicle the driver drives. Additional testing requirements are required for certain types of vehicles. A driver may not obtain a CDL until age 18 for travel within the state. The driver must be age 21 to obtain an unrestricted CDL, which also allows him or her to operate a CMV outside of the state. [ss. 343.04, 343.05 (2), 343.065, and 343.16, Stats.]

A CDL holder who has been convicted of multiple alcohol or serious traffic violations within certain timeframes is disqualified from operating a CMV. [s. 343.315, Stats.]

Motor Vehicle Liability Insurance

More information about proof of insurance requirements is available at:
http://wisconsindot.gov/Pages/dmv/license-drvs/rcd-crsh-rpt/Auto-insurance.aspx

It is unlawful to operate a motor vehicle upon a highway in Wisconsin unless the owner or operator of the vehicle has in effect a motor vehicle liability policy with respect to the vehicle being operated. A person operating a motor vehicle must generally have proof of this insurance in his or her immediate possession. [s. 344.62, Stats.]

Traffic Tickets

Law enforcement agencies in the state issue uniform traffic citations for moving traffic violations. To provide additional uniformity, the Wisconsin Judicial Conference sets "deposit" amounts for traffic offenses, many of which have a range of statutory penalties.

For example, the statutory penalty for speeding in a 65-mile per hour (MPH) speed limit zone is a forfeiture of $50 to $300. The deposit amount for a citation issued to a person traveling 76 to 80 MPH in a 65 MPH zone is $50 and the deposit amount for a person traveling 100 MPH or faster in the same zone is $300.

Each citation also includes a penalty surcharge (26% of the deposit amount) and a jail surcharge/crime lab drug surcharge ($23). Citations processed in county circuit court include a justice information system surcharge/court support services surcharge ($89.50) and circuit court costs ($25). Citations 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 $38 per citation.

The Judicial Conference publishes a comprehensive bond schedule that outlines the penalty ranges, deposit amounts, fees, and costs for moving violations, and is available online at:

https://wicourts.gov/publications/fees/index.htm

The amount written on a citation for the 76 to 80 MPH violation example above, then, would be $200.50 if the citation was to be processed in circuit court and $114 if the citation was processed by a municipal court that

collects the maximum court costs allowed. The amount on the citation for the 100 MPH or faster violation example would be $515.50 for circuit court or $429 for municipal court.

In addition to monetary penalties, a person is also assessed demerit points when he or she is convicted of a moving traffic violation. When a driver accumulates 12 or more demerit points in any 12-month period, his or her driver's license will be suspended for a minimum of two months.

The demerit points for particular offenses are listed in the Judicial Conference's bond schedule. For the two speeding examples discussed above, the demerit points are four and six points, respectively. Demerit points are doubled for traffic violations committed by a person with a probationary license or instruction permit who has had more than one traffic violation. The total demerit points assessed to a driver may be reduced in certain ways, such as by taking an approved traffic safety course. [s. 343.32, Stats.; ch. Trans 101, Wis. Adm. Code.]

The Department of Natural Resources, rather than DOT, regulates snowmobiles and all-terrain vehicles (ATVs). The laws regulating snowmobiles and ATVs, including OWI laws, are located in ch. 350, Stats., and ch. 23, Stats., respectively.

Rules of the Road

Chapter 346, Stats., contains most of the state's traffic laws. A full discussion of Wisconsin's traffic laws is beyond the scope of this chapter. However, DOT publishes the "Motorists' Handbook," which contains detailed information on the rules of the road as well as other topics of importance to drivers. This handbook can be found at: http://wisconsindot.gov/Documents/dmv/shared/bds126-motorists-handbook.pdf.

Operating While Intoxicated (OWI)

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. It is also illegal to operate a motor vehicle with a prohibited alcohol concentration. Generally, the prohibited alcohol concentration in Wisconsin is 0.08, though the prohibited level is lower in some circumstances. For example, the prohibited alcohol concentration for a person who has not reached the legal drinking age is 0.0. There are also specific alcohol concentrations for operators of CMVs. Operating under the influence offenses and operating with a prohibited alcohol concentration offenses are generally referred to collectively as OWI. [ss. 340.01 (46m) and 346.63, Stats.]

Penalties for OWI and OWI-related laws include restriction of driving privileges, monetary penalties, imprisonment, and ignition interlock device (IID) installation. The severity of penalties depends on various factors, including how many OWI-related offenses the person has committed and the harm caused during intoxicated operation. A complete table of the

penalties for OWI offenses is available here: http://wisconsindot.gov/Pages/safety/education/drunk-drv/ddoffenses.aspx.

Implied Consent

Under Wisconsin's "implied consent" law, a person who operates a motor vehicle upon a public highway in this state is deemed to have consented to submit to a chemical test to determine the person's alcohol concentration. Upon arresting a person for operating while intoxicated, a law enforcement officer may request the person provide one or more samples of his or her breath, blood, or urine for the purpose of determining the presence or quantity in his or her blood or breath of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of those substances. The consequences of improperly refusing to comply with this request are as follows:

Subject to an exception for 24-7 sobriety programs, a court must order a person's operating privilege for the operation of "Class D" vehicles be restricted to vehicles that are equipped with an IID and order that each motor vehicle for which person's name appears on the vehicle's certificate of title or registration be equipped with an IID for all first offense drunk drivers who had an alcohol concentration of 0.15 at the time of the offense, all repeat drunk drivers, and all drivers who improperly refused to take a required alcohol concentration test.

- The person's operating privilege will be revoked for a minimum of one year, though the person may apply for an occupational license after a certain time period. The revocation period and the eligibility date for an occupational license both depend on the person's history of OWI-related offenses.
- When the person obtains operating privileges, whether pursuant to an occupational license during the revocation period or upon reinstatement after the revocation period, the court must order that either the person's operating privileges must be restricted to operating vehicles that are equipped with an IID for a specified period of time, or that the person must participate in a 24-7 sobriety program, or both. The person must also generally install an IID on each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration.
- The person must obtain a court-ordered assessment of his or her alcohol or controlled substance use and comply with the driver safety plan, which may include education, treatment, or both, that the facility providing the assessment develops for the person. The person must also pay certain associated fees.
- The improper refusal is counted for the purposes of determining the penalties for subsequent improper refusals or OWI convictions.

[ss. 343.301, 343.305, and 343.307, Stats.]

Vehicle Equipment Standards

Chapter 347, Stats., and ch. Trans. 305, Wis. Adm. Code, prescribe equipment standards for motor vehicles operated on Wisconsin roads. Additional equipment standards apply to heavy trucks, trailers, and semi-trailers. These chapters also set requirements for how and when certain equipment is to be used; for example, they require that headlights and certain other lights must be illuminated during the hours of darkness.

Vehicle Size and Weight Limits

Chapter 348, Stats., imposes height, length, width, and weight restrictions on vehicles and vehicle combinations operated on Wisconsin highways. With exceptions, no person may operate a vehicle that exceeds these limitations on a Wisconsin road unless the person obtains a permit from the relevant authority to do so. Highway weight limitations depend on a number of factors, including the type of highway, the number and configuration of axles on a vehicle, the type of cargo, and the time of year. Vehicles must comply with both the gross vehicle weight requirements and individual weight requirements for particular axles or wheels.

A permit is typically required if vehicle dimensions (plus the load on the vehicle) exceed 8-1/2 feet wide or 13-1/2 feet tall. Length requirements depend on whether the vehicle is a single vehicle or a combination of vehicles (such as a tractor-semitrailer combination). Generally, a single vehicle may not exceed 45 feet in length, although the length limitations vary for vehicle combinations depending on the vehicle configurations. There are also exceptions to the statutory vehicle size restrictions. [ss. 348.05, 348.06, and 348.07, Stats.]

A single trip, consecutive month, or annual permit may be available for a vehicle that exceeds statutory weight limits. However, certain permits may not be issued if a load can reasonably be divided or reduced to comply with statutory limits. [subch. IV, ch. 348, Stats.]

Current law also provides special and seasonal limitations. For example, vehicles carrying certain raw forest products may carry additional weight in winter without a permit when roads are frozen and damage to roads is less likely. The increased limits for highways under the DOT's jurisdiction are triggered when the DOT makes a "frozen road declaration." This declaration usually extends from 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 overweight vehicles is restricted during the spring thaw due to the unstable condition of roadways during this period, and allowed vehicle weight may also be restricted for other special or temporary conditions. Special weight limits may also be established for particular bridges and culverts.

AGRICULTURAL VEHICLES

For more information about agricultural vehicles, see the DOT website at: http://wisconsindot.gov/Pages/dmv/agri-eq-veh/default.aspx

Agricultural vehicles are treated differently than other vehicles for a variety of circumstances. Depending on its type and use, an agricultural vehicle may be exempt from the registration requirement for highway use and may be subject to different weight and size limitations than other vehicles. [ss. 341.05 and ch. 348, Stats.]

"Implements of husbandry" and "agricultural CMVs" are the two primary categories of agricultural vehicles defined in the statutes. An "implement of husbandry" is a self-propelled or towed vehicle or combination of vehicles that is manufactured, designed, or reconstructed to be used, and is exclusively used, in the conduct of agricultural operations. An "agricultural CMV" is a CMV to which all of the following apply: (1) the vehicle is substantially designed or equipped, or materially altered from its original construction, for the purpose of agricultural use; (2) the vehicle was designed and manufactured primarily for highway use and, with limited exceptions, was manufactured to meet federal motor vehicle highway safety standards; (3) the vehicle is used exclusively in the conduct of agricultural operations; and (4) the vehicle is being used in any of the following ways: (a) harvesting farm products, directly applying fertilizer, spray, or seeds to a farm field, or distributing feed to livestock; (b) assisting another vehicle directly harvesting farm products by receiving farm products as they are harvested or assisting another vehicle directly planting potatoes by delivering seed potatoes to the planter; or (c) directly applying manure to a farm field or off-loading manure if field conditions do not permit manure application by the vehicle directly to the field. [ss. 340.01 (24) and 340.01 (10), Stats.]

Weight Limitations

Except on interstate highways and highways posted with special weight limits, an implement of husbandry or agricultural CMV may operate at a weight approximately 15% higher than weight limitations for other vehicles. In addition, the statutes provide limited exceptions to these weight limitations, including the following:

- Certain implements of husbandry are exempt from per wheel, axle, or group of axles weight limitations on non-state trunk highways, unless the relevant local unit of government has created a limitation by resolution or ordinance. [s. 348.15 (9) (f) 2., Stats.]
- There is generally no per wheel, axle, or group of axles weight limitation for an empty potato harvester operated under certain conditions. [s. 348.15 (9) (c) 1., Stats.]
- There is no per wheel, axle, or group of axles weight limitation and no gross vehicle weight limitation for an implement of husbandry or agricultural CMV being operated or transported by an implement dealer or farmer for purposes of delivery, repair, or servicing and being operated or transported directly between a farmer's owned or leased

land and the business of an implement dealer located within 75 miles. [s. 348.15 (9) (e) 1. a. and b., Stats.]

- There is no per wheel, axle, or group of axles weight limitation and no gross weight limitation for certain self-propelled implements of husbandry that are traveling to or from a farm-related destination between fields or between a farm and a field and are operated on the highway for a distance of 0.5 miles or less. [s. 348.15 (9) (e) 2., Stats.]

Length Limitations

Implements of husbandry are subject to length limitations that are greater than the limitations applicable to vehicles generally. If the implement of husbandry is a single vehicle, it may not exceed 60 feet in length; if it is a two-vehicle combination, it may not exceed 100 feet in length; if the vehicle combination is an implement of husbandry train or a truck-drawn agricultural train, its length may not exceed 70 feet or, if it is traveling at a speed of 25 miles per hour or less, 100 feet. The greater length requirements also apply to implements of husbandry transported by trailer or semitrailer on a highway to or from a farm-related destination and to implements of husbandry operated or transported by an implement dealer or farmer for purposes of delivery, repair, or servicing of the implement of husbandry if the implement of husbandry is being operated or transported between a farm and an implement dealer that are within a 75-mile radius of each other. [s. 348.07 (2) (e), (2m), and (2r), Stats.]

Width Limitations

There is generally no width limitation for implements of husbandry operated on a highway, but certain wide implements of husbandry are subject to lighting and marking requirements. Agricultural CMVs are generally subject to a width limitation of 10 feet. However, an agricultural CMV is subject to a 12-foot width limitation if it is operated for the purpose of spraying pesticides or spreading lime or fertilizer and has extending tires, fenders, or fender flares.

Implements of husbandry, regardless of their width, and agricultural CMVs compliant with the above width requirements may also be operated or transported between a farm and an implement dealer that are within a 75-mile radius of each other, and transported by trailer or semitrailer, without a permit, on a highway, other than a highway on the national system of interstate and defense highways, to or from a farm-related destination, at times other than hours of darkness. [s. 348.05 (2) (a), (2) (am), (2g), (3m), (3r), and (3t), Stats.]

Height Limitations

There is no height limitation for implements of husbandry. However, the operator of an implement of husbandry is responsible for ensuring that there is adequate height clearance between the implement of husbandry and any overhead structure or obstruction, other than any overhead utility line that does not satisfy the requirements of the state electric code or the National Electrical Safety Code. [s. 348.06 (2), Stats.]

No-Fee Permits

A highway maintaining authority may issue applicants a no-fee permit authorizing operation of implements of husbandry and agricultural CMVs that exceed statutory length or weight limitations. A no-fee permit is not valid on interstate highways and, as the name suggests, no fee may be charged for issuance or amendment of a no-fee permit or for any study or investigation in connection with the permit application. If a no-fee permit is issued, it may be amended to reflect changes in the applicant's circumstances, including a change in the highways to be traveled.

If a maintaining authority denies an application for a no-fee permit, it must notify the applicant in writing of the denial and the notice must include a reasonable and structurally based explanation of the denial that relates to the preservation of the roadway. If the application is made with respect to certain self-propelled implements of husbandry, the denial must approve a modified application that includes an approved alternate route or map of highways for operation of the implement of husbandry.

A county or municipality may also opt to authorize operation of implements of husbandry and agricultural CMVs exceeding statutory length or weight limitations by adopting a resolution or ordinance to serve as the approved permit. The municipality or county must make copies of the resolution or ordinance readily available to the public. [s. 348.27 (19), Stats.]

HIGHWAYS

A map of the state trunk highway system is available at: http://wisconsindot.gov/Pages/travel/road/hwy-maps/sth-map.aspx

See the Legislative Fiscal Bureau 2017 Informational Paper, *State Trunk Highway Program*, for more detailed information about state trunk highways.

Jurisdiction over the highways in Wisconsin is divided among the state and local governments. By statute, "highway" means all public ways and thoroughfares and includes bridges.

State Trunk Highway System

The state is responsible for all highways within the state trunk highway system. Generally, this system is the network of arterial roads that function as corridors for interstate and inter-regional travel. Currently, this system is comprised of approximately 743 miles of interstate freeways and 11,010 miles of state and U.S.-marked highways. These highways account for approximately 60% of all highway travel in the state. [s. 84.02, Stats.]

The state's responsibility for state trunk highways is carried out by the DOT. By statute, the DOT is directed to "have charge of all matters pertaining to the expenditure of state and federal aid for the improvement of highways, and shall do all things necessary and expedient in the exercise of such supervision." [s. 84.01 (2), Stats.]

Highway Improvement Program

An integral component of the DOT's responsibility to oversee the improvement of highways is the state Highway Improvement Program. This program is divided into two subprograms: (1) Major Highway Development; and (2) State Highway Rehabilitation.

Major Highway Development

The Major Highway Development subprogram involves selecting, planning, and completing major highway projects. "Major highway project" is defined by statute as a project that has either: (1) a total cost of more than $75 million; or (2) a total cost of more than $30 million and involves any of the following:

- Constructing a new highway 2.5 miles or more in length.
- Reconstructing or reconditioning an existing highway either by: (1) relocating 2.5 miles or more of the existing highway; or (2) adding one or more lanes five miles or more in length to the existing highway.
- Improving 10 miles or more of an existing divided highway having two or more lanes in either direction to meet freeway standards.

[s. 84.013 (1) (a), Stats.]

Transportation Projects Commission (TPC) and Enumeration

Unlike other highway construction projects undertaken by the DOT, major highway projects must generally receive the approval of the TPC and the Legislature before the project may be constructed. The Legislature's approval of a project is referred to as "enumeration."

Membership of the TPC includes the Governor (who serves as chairperson), three citizen members appointed by and serving at the pleasure of the Governor, five Senators (three from the majority party and two from the minority party), and five Representatives (three from the majority party and two from the minority party), appointed as are members of standing committees. The DOT Secretary serves as a nonvoting member. [s. 13.489 (1g), Stats.]

Current law establishes a procedure and timeline for the TPC to approve the DOT's project recommendations. Greatly simplified, the process is as follows. The DOT must first submit to the TPC a list of potential major highway projects. Next, the DOT must submit to the TPC its recommendations for which of these projects should be approved for the preparation of an environmental impact statement (EIS) or environmental assessment (EA). After receiving the DOT's recommendations, the TPC then notifies the DOT which projects may move on to the EIS or EA stage.

Approval to prepare an EIS or EA, however, does not authorize the DOT to complete a project. The DOT must also report to the TPC its recommendations for which projects should be enumerated in the next biennial budget. The TPC reviews these

recommendations and recommends approval, approval with modifications, or disapproval. The TPC may not recommend approval of a major highway project unless the TPC determines that there is sufficient funding to begin construction of the project within six years. Additionally, it may not recommend approval of the project until the DOT has completed a final EIS or EA, which has been approved by the Federal Highway Administration and reviewed by the TPC.

Once the TPC has recommended approval, with or without modifications, for the project, the Legislature may enumerate the project. Enumeration gives the DOT the authority to build the project.

New Requirements for DOT's Management of the State Highway Program

The Legislative Council staff has prepared an Act Memo that describes the changes made by 2017 Wisconsin Act 247. The Act Memo maybe found at: http://www.legis.wisconsin.gov/lc.

2017 Wisconsin Act 247 implemented recommendations from the Legislative Audit Bureau's January 2017 report evaluating DOT's management of the state highway program. The Act does all of the following:

- Specifies the types of information that DOT must include in its cost estimates to the TPC with respect to proposed major highway projects.
- Requires additional information to be included in DOT's semiannual report to the TPC and require that the semiannual report be distributed to specified joint and standing legislative committees, in addition to the TPC.
- Requires DOT, in certain circumstances, to consider and document the results of the uniform cost-benefit analysis before determining whether to undertake a proposed engagement for engineering, consulting, surveying, or other specialized services.

State Highway Rehabilitation

The State Highway Rehabilitation subprogram is comprised of three components: (1) existing highways; (2) state bridges; and (3) backbone rehabilitation.

The existing highways component funds projects that resurface, recondition, and reconstruct existing roadways. Resurfacing, reconditioning, and reconstructing are defined by statute as follows:

- **Resurfacing** means placing a new surface on an existing highway to provide a better all-weather surface and a better riding surface, and to extend or renew the pavement life. It generally involves no improvement in capacity or geometrics.
- **Reconditioning** means work in addition to resurfacing. Minor reconditioning includes pavement widening and shoulder paving. Major reconditioning includes improvement of an isolated grade, curve, intersection or sight distance problem to improve safety.

- **Reconstruction** means total rebuilding of an existing highway to improve maintainability, safety, geometrics, and traffic service. It is accomplished basically on existing alignment, and major elements may include flattening of hills and grades, improvement of curves, widening of the roadbed, and elimination or shielding of roadside obstacles.

[s. 84.013 (1) (b) to (d), Stats.]

The state bridges component funds projects to replace or rehabilitate bridges on the state highway system. The backbone component funds various rehabilitation projects on a system of highways that the DOT has designated as the "backbone" system. This is a system of 1,588 miles of critical highways that connect major economic areas within the state.

Rail Programs

Freight Railroad Assistance

The DOT administers various freight rail assistance grants and programs. The two major assistance programs for freight rail in Wisconsin are the Freight Rail Infrastructure Improvement Program (FRIIP) and the Freight Rail Preservation Program (FRPP).

FRIIP

FRIIP was established in 1977 to preserve the availability of rail service in Wisconsin. Specifically, FRIIP provides low or no interest loans to railroads, shippers, or local governments for rail-related capital improvement projects. FRIIP loans may be used for the following purposes:

- Line upgrades that will expand the use of a rail line for the public benefit, including increased passenger service and increased use of double-stack technology and piggyback service (carrying trailers or semi-trailers in a train atop a flatcar).
- Rail branch line stabilization or upgrading.
- Projects associated with rail intermodal facilities, such as terminals, team tracks, docks, conveyers, and other loading and unloading facilities.
- Relocation of a freight rail off-loading facility that has been agreed to by the owner of the facility; the city, village, or town in which the facility is located; and the city, village, or town in which the facility will be relocated.
- Rail line relocation or consolidation.

FRIIP loans must be allocated by the DOT on a public interest basis and must include a cost-benefit analysis prior to making a grant. Loans made under FRIIP may be used to cover up to 100% of an approved project's cost. [s. 85.08 (4m) (e), Stats.]

FRPP

FRPP provides financial assistance to railroads, rail service customers, and governmental units to preserve rail service lines that might otherwise be lost. FRPP provides grants of up to 80% of a project's total cost. Projects may include the purchase of abandoned rail lines to reinstate freight service or preserve the opportunity for future rail service, or the rehabilitation of facilities, such as tracks or bridges. [s. 85.08 (4m) (d), Stats.]

Passenger Railroad Assistance

The DOT also administers passenger rail programs. For example, the Rail Passenger Service Assistance and Promotion Program authorizes the DOT to do any of the following:

- Conduct financial and technical planning for rail passenger service in this state and evaluate existing rail passenger service.
- Contract with Amtrak, railroads, or other persons to provide rail passenger service or support services, equipment, station improvements, passenger platforms, equipment maintenance shops, parking areas, or other support facilities for rail passenger service.
- Consult with other states and with local governmental units regarding service levels for additional rail passenger service in this state.
- Monitor the quality of rail passenger service in this state.
- Conduct or contract for marketing studies and promotional activities to increase rail passenger service ridership in this state, identify potential riders, and educate the public about the availability and advantages of rail passenger service.
- Apply for and accept federal funds for rail passenger service.
- Acquire equipment or facilities for the purpose of providing rail passenger service or support services for rail passenger service.
- Enter into agreements with other states to assist or promote rail passenger service.

[s. 85.06, Stats.]

The state currently subsidizes intercity passenger rail for the Amtrak Hiawatha Line, which runs between Milwaukee and Chicago.

Additional References

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on various transportation topics, including transportation financing, transportation aid, and local transportation assistance programs. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.

2. Legislative Audit Bureau Reports, available at http://www.legis.wisconsin.gov/lab/:
    - Audit Report 17-2, *State Highway Program*.
    - *Construction and Inspection of Asphalt State Highways* (Letter Report, March 2011).
    - *Construction Engineering on State Highway Projects* (Letter Report, May 2009).
    - *Bridge Inspection Program* (Letter Report, February 2008).
    - Audit Report 03-13, *Major Highway Program*.
3. Wisconsin Department of Transportation:
    - For more information and statistics related to transportation funding in Wisconsin and the DOT budget, see: http://wisconsindot.gov/Pages/about-wisdot/performance/budget/budget.aspx.
    - To view other topics on DOT's "research and library" page, see: http://wisconsindot.gov/pages/about-wisdot/research/default.aspx.
    - For other publications that describe programs and services under the jurisdiction of the DOT, see: http://wisconsindot.gov/Pages/online-srvcs/find-dmv/default.aspx.
    - For a list of DOT Service Centers, see: http://wisconsindot.gov/Pages/travel/air/default.aspx.
    - For more information on aeronautics, see ch. 114, Stats., or see: http://wisconsindot.gov/Pages/doing-bus/aeronautics/default.aspx.
    - For more information on travel by railroads, see: http://wisconsindot.gov/Pages/travel/rail/default.aspx; or see http://ocr.wi.gov/.
    - For information about freight transportation by water, see: http://wisconsindot.gov/Pages/travel/water/default.aspx.
    - For information about bicycling in Wisconsin, see: http://wisconsindot.gov/Pages/travel/bike/default.aspx.

GLOSSARY

Commercial driver license (CDL): A license issued to a person by the DOT or another jurisdiction that authorizes the licensee to operate certain commercial motor vehicles.

Commercial motor vehicle (CMV): A motor vehicle designed or used to transport passengers or property and that either meets certain weight requirements, passenger requirements, or transports certain hazardous materials.

Environmental assessment (EA): An analysis of a proposed action prepared by the DOT to determine whether a potential major highway project constitutes a major action significantly affecting the human environment.

Environmental impact statement (EIS): A detailed statement prepared by the DOT for certain proposed major highway projects, the contents of which substantially follow guidelines issued by the United States council on environmental quality.

Freight Rail Infrastructure Improvement Program (FRIIP): A rail assistance program in Wisconsin that provides loans to railroads, shippers, or local governments for certain rail-related capital improvement projects.

Freight Rail Preservation Program (FRPP): A rail assistance program in Wisconsin that provides grants to railroads, rail service customers, and governmental units to preserve rail service lines that might otherwise be lost.

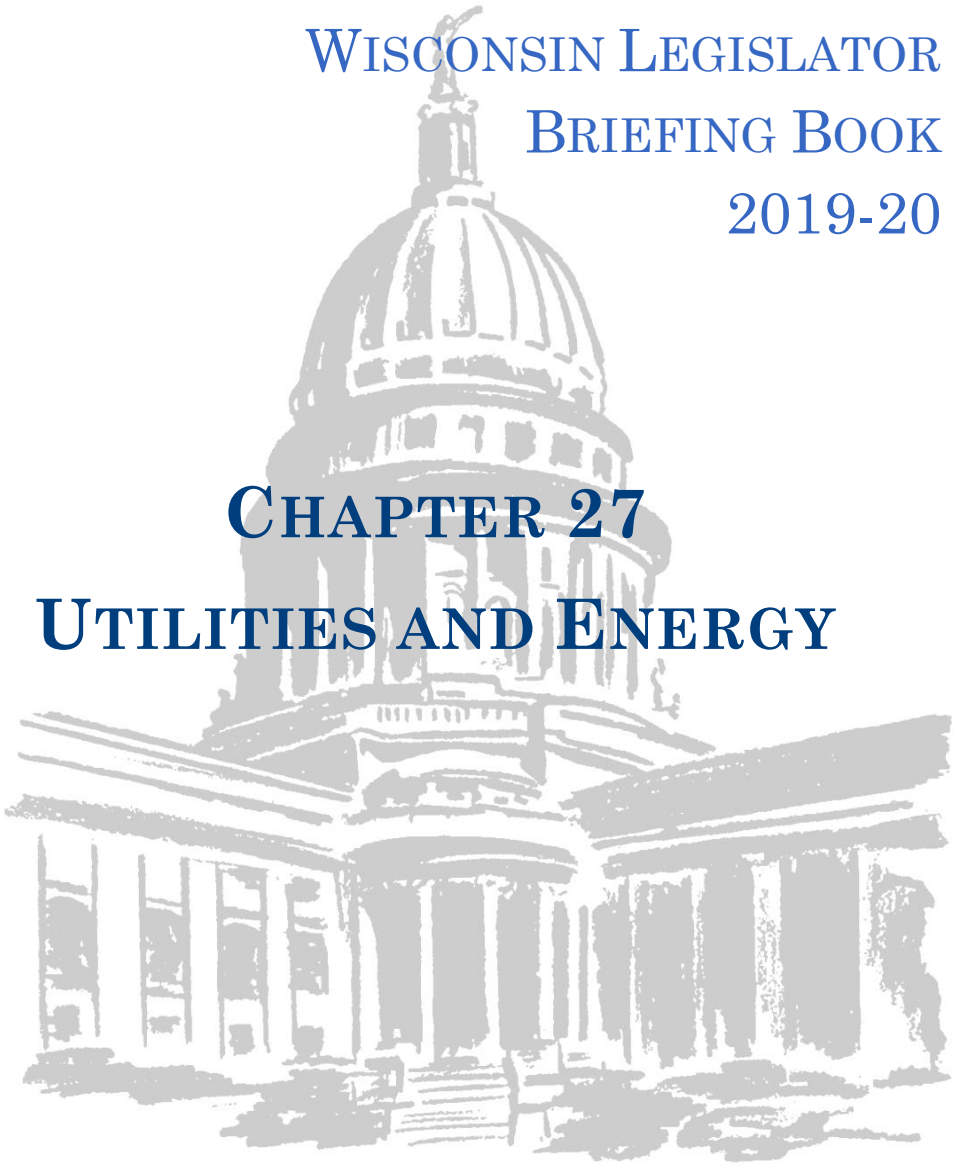
Ignition interlock device (IID): A device which measures a person's alcohol concentration and which is installed on a vehicle in such a manner that the vehicle will not start if a sample shows that a person has a prohibited alcohol concentration.

Operating while intoxicated (OWI): A term that generally applies to offenses for operating a motor vehicle while under the influence of an intoxicant, controlled substance, or any other drug which renders a driver incapable of safely driving, as well as offenses for operating a motor vehicle with a prohibited alcohol concentration.

Transportation Projects Commissions (TPC): A commission comprised of 15 members, including the Governor, citizen members, and legislators, generally tasked under state law with reviewing and recommending for enumeration proposed highway projects.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 27

UTILITIES AND ENERGY

Zach Ramirez, Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

Introduction

The availability of heat, light, and water service are central to modern life. For this reason, an individual, business, or local government that provides one of these services to the public is deemed a "public utility" and is subject to regulations designed to ensure the availability of service and protect the interest of consumers and the public utilities themselves.

Although the requirements that govern a public utility depend in part on the type of service it provides, Wisconsin law generally regulates: (1) a public utility's entrance into the Wisconsin market; (2) the area in which it may provide service; (3) the quality of its service; (4) the rates it may charge; and (5) the conditions under which it may terminate service.

This chapter provides an overview of the general regulations that govern all public utilities; discusses the industry-specific regulations that apply to water, telecommunications, and electric service; and briefly describes state policies relating to energy conservation and efficiency, and renewable energy.

State Public Utility Regulation in General

Wisconsin law defines "public utility" to mean any entity "that may own, operate, manage or control…all or any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly, to or for the public." [s. 196.01 (5) (a), Stats.]

This definition includes both privately owned (investor-owned) entities and municipally owned entities, meaning that municipal public utilities and investor-owned public utilities are generally regulated in the same manner. Not included within this definition are cooperatives, which are not-for-profit organizations owned and managed by members for the purpose of providing service to the members themselves. Consequently, the state does not regulate the rates charged by cooperatives, although it does exercise control over their large construction projects and service territories. [s. 196.01 (5), Stats.]

To provide utility service in Wisconsin, a provider must possess an "indeterminate permit" issued by the Wisconsin Public Service Commission (PSC). The PSC is headed by three commissioners nominated by the Governor and confirmed by the Senate, who serve six-year terms, one of whom the Governor designates to serve as the chairperson. An indeterminate permit authorizes a public utility to provide service, protects it from competition, and subjects it to regulation and termination by the state. [ss. 15.06 (1) (c) 1., and 15.79 (1), Stats.]

The PSC is prohibited from authorizing a public utility or cooperative to provide service where another public utility or a cooperative is already providing a similar service, unless the PSC determines that the public convenience and necessity require authorizing the competition. Similarly, a municipality is prohibited from establishing a public utility if there is already a public utility in the municipality; although, a municipality in which the

major part of the public utility is situated, may, at its discretion, purchase the public utility for a price set by the PSC. [ss. 196.01 (3), 196.495 (1m) (a), 196.50 (1) (a) and (4), and 196.54 (4) and (5), Stats.]

A public utility may, with the approval of the PSC, enter into an agreement with another public utility or cooperative to change which utility will serve a given area. [ss. 196.495 (1m) (b) and (4) and 196.50 (1) (am) 1., Stats.]

In exchange for having the exclusive right to provide service in a particular area, a public utility must serve all who reasonably request service. This generally entails offering prospective customers the same type of service that the public utility already provides to customers located nearby. [s. 196.37 (2), Stats.; *Milwaukee v. Public Service Comm.*, 268 Wis. 116, 120(1954).]

A public utility must provide its customers with "reasonably adequate services and facilities." To ensure service adequacy, the PSC exercises control over the service rules that a public utility has with its customers, sets performance standards, and requires public utilities to report on performance metrics, such as the frequency of service interruptions. To ensure that facilities are adequate, the PSC sets technical standards for equipment and requires public utilities to conduct certain inspection and maintenance activities. [ss. 196.03 (1), 196.19 (2), and 196.20 (1), Stats.]

Before constructing major new facilities, a public utility or a cooperative must obtain approval from the PSC. Among other reasons, the PSC may refuse if it finds that a project would: (1) substantially impair the efficiency of the service of the public utility; (2) provide facilities unreasonably in excess of probable future needs; or (3) add to the cost of service without proportionately increasing the value or quantity of service. [ss. 196.49 and 196.491, Stats.]

Unlike most industries, in which prices are set by the provider, the rates that a public utility may charge its customers are controlled directly by the state government through the PSC. The rates must be "reasonable" and "just." If the PSC finds rates to be unjust or unreasonable, it must change the rates. Generally, rates are calculated to provide a public utility the opportunity to generate revenue sufficient to cover the cost of providing service plus a certain percentage return (i.e., profit) on its capital investment [ss. 196.03 (1), 196.19 (1), and 196.37 (1), Stats.]

A public utility may not discontinue providing service unless it first obtains approval from the PSC. In granting its approval, the PSC may impose any term, condition, or requirement that it deems necessary to protect the public interest. In addition, a public utility must obtain PSC approval for any changes in its service rules that reduce the public utility's service obligations. [ss. 196.20 (1) and 196.81, Stats.]

WATER SERVICE

State law governs the reliability, availability, and cost of water service, while federal law largely sets minimum requirements relating water quality and safety.

Reliability, Availability, and Cost of Water Service

Most water utilities in Wisconsin are municipally owned, but a small number are investor-owned. Regardless of ownership, water utilities are subject to the general system of public utility regulation described in the preceding section. Municipally owned water utilities are entitled to the same rate of return (i.e., profit) permitted for investor-owned utilities. The income received by a municipal water public utility must first be used to meet operation, maintenance, debt service, and tax equivalent requirements for the utility, but any remaining income may be used for general city purposes or special municipal purposes. [s. 66.0811 (1), (2), and (3), Stats.]

Minimum Water Quality and Safety Standards

As described in Chapter 13, *Environmental Protection and Natural Resources*, the federal Safe Drinking Water Act establishes maximum contaminant levels for drinking water supplied from "public water systems," which includes all systems that provide the public with water for human consumption through pipes and which have at least 15 service connections or regularly serve at least 25 individuals.
[42 U.S.C. ss. 300f (4) (A) and 300g; s. 281.61 (1) (c), Stats.]

Differing levels of federal regulation apply to a public water system depending on its number of service connections, number of people served, and the portion of a year for which a person receives service. The strictest regulations apply to "community water systems," which are public water systems that serve at least 15 service connections used by year-round residents of the area, or which regularly serve at least 25 year-round residents. Fewer regulations apply to systems that serve 25 or more people for more than six months but less than one year, such as schools that have their own water supply. Still fewer regulations apply to public water systems that provide water in places where each individual consumer remains for only a short period of time, such as campgrounds. [42 U.S.C. s. 300f (15); s. 281.62 (1) (a), Stats.]

TELECOMMUNICATIONS

Most aspects of telephone, cable, and Internet service have been deregulated. With few exceptions, providers of these services are no longer required to make service available, and their rates are not controlled by state or federal agencies. State and federal activity is instead largely directed toward making service available and attainable through providing financial support to customers and service providers.

The Universal Service Fund

To help ensure that everyone can obtain and afford telecommunications service, the state created the Universal Service Fund (USF) in 1993. From the USF, the PSC provides direct assistance to low-income customers and customers in high-cost areas of the state. It also helps customers with disabilities obtain equipment to give them access to telecommunications and provides funding for the deployment of essential telecommunications services, such as telemedicine services in rural areas. The Legislature sets the budget for the program; the PSC apportions the cost among the telecommunications providers in the state, who then collect the funds from customers as a fee on their bills. USF revenue is also currently being used for broadband expansion grants, described below. [s. 196.218, Stats.]

The Wisconsin Broadband Expansion Grant Program

An interactive map of broadband service availability in Wisconsin is available at this address:

https://psc.wi.gov/pages/programs/WBO.aspx

The 2013-15 Biennial Budget Act (2013 Wisconsin Act 20) created the Wisconsin Broadband Expansion Grant Program. Under this program, the PSC awards grants to help incentivize and fund the construction broadband infrastructure. For-profit and not-for-profit organizations, including cooperatives and telecommunications utilities, may apply for grants; in addition, a municipality may submit a joint application with another eligible applicant. [s. 196.504, Stats.]

In selecting among eligible projects, the PSC must give priority to projects that:

- Include matching funds.
- Involve public-private partnerships.
- Affect "unserved areas" (i.e., areas that lack fixed wireless or wired service that is provided at actual speeds of at least 20% of the upload and download speeds recommended by the federal government).
- Are scalable.
- Promote economic development.
- Will not result in delaying the provision of broadband service to areas neighboring the areas to be served by a proposed project.
- Will affect a large geographic area or a large number of individuals or communities that are "underserved" (i.e., are served by fewer than two providers).

Because the statutes do not prescribe the relative weight to be given to each of the priorities, the PSC has discretion in applying them.

The Technology for Education Achievement (TEACH) Program

Wisconsin facilitates Internet access for educational institutions through the TEACH Program, which distributes funding through three subprograms: (1) Educational Telecommunications Access; (2) Information Technology Block Grants; and (3) Educational Technology Training Grants.

The Educational Telecommunications Access subprogram helps subsidize the cost of providing schools with access to Internet service. Wisconsin law authorizes the Department of Administration (DOA) to provide telecommunications services to schools and certain other educational and governmental entities. DOA provides service by contracting with a consortium of private service providers to obtain access to a wide area network called BadgerNet. DOA charges each school $100 or $250 per month, which is less than the cost DOA must pay to obtain service. The Educational Telecommunications Access subprogram uses money from the USF to cover the difference in the cost. [ss. 16.972 (2), 16.99 (2g), 16.997 (2) and (2c), and 20.505 (4), Stats.]

The Information Technology Block Grant subprogram provides schools and public libraries in rural areas with funding for improving information technology infrastructure. [s. 16.9945, Stats.]

The Educational Technology Training Grants subprogram provides funding to consortia of eligible school districts, consortia of eligible public libraries, and eligible public library systems for the costs of training teachers and librarians to use educational technology. [s. 16.996, Stats.]

Municipal Broadband

With certain exceptions, in order for a city, village, or town ("local government") to construct, own, or operate a facility for providing broadband service, it must hold a public hearing on the proposal. At least 30 days before the hearing, it must also prepare and make publicly available a report estimating the total costs and revenues derived from the facility, along with a cost-benefit analysis for a period of at least three years. [s. 66.0422 (2), Stats.]

In lieu of preparing a report and conducting a study, a local government may instead ask, in writing, each person that provides broadband service within the boundaries of the local government whether the person currently provides or intends to provide, within nine months, broadband service to the area proposed to be served by the local government. The local government may proceed to construct, own, or operate a facility for providing broadband service if any of the following conditions are satisfied:

- No one responds in the affirmative within 60 days.
- The local government finds that a person who responded by saying that it currently provides broadband service does not actually do so.

- The local government finds that a person who responded by saying that it intended to provide service within nine months did not actually begin providing service within that period. [s. 66.0422 (3d), Stats.]

Cable Video Service

For most of its history, land-based video service (i.e., cable television) was regulated by municipalities under franchise agreements negotiated between municipalities and service providers. 2007 Wisconsin Act 42 replaced municipal franchises with state franchises, issued by the Department of Financial Institutions (DFI). Generally, a franchise holder must pay each municipality in which it provides service a fee of up to 5% of the provider's revenues generated in the municipality, and must make certain channel capacity available for channels designated for public, educational, or governmental use. [s. 66.0420, Stats.]

Federal law requires video service providers to offer an entry-level basic tier service that includes all commercial and noncommercial educational local broadcast stations. In addition, a provider may also offer premium tiers with more programming than the basic service. [47 U.S.C. s. 543 (b) (7).]

Under federal law, a franchising authority, such as DFI, may regulate the rates charged for the basic service by a particular provider, if the Federal Communications Commission (FCC) concludes that the provider is not subject to "effective competition." In June 2015, the FCC issued an order finding that all cable systems nationwide are subject to "effective competition." As a result, DFI may not regulate rates for basic service unless it goes through a process at the federal level to prove that a particular cable provider is not subject to effective competition. [47 U.S.C. s. 543 (a) (2) (A); FCC Order 15-62.]

Electric Service

Providing electric service involves the generation of electric power, the long-range transmission of power over high-voltage transmission lines, and the distribution of power to end users over low-voltage lines.

Generation

The three components of the electric power system are generation, transmission, and distribution.

Any person wishing to construct a generation facility over a certain size must first obtain approval from the PSC.

For most generation facilities with a capacity of less than 100 megawatts (MW), a person must obtain a "certificate of authority" from the PSC. The PSC may refuse to grant its approval if it finds that the proposed facility would: (1) substantially impair the efficiency of the public utility; (2) provide facilities unreasonably in excess of future needs; or (3) add to the cost of service without proportionately increasing the value or quantity of service. [s. 196.49 (3), Stats.]

Before constructing a generation facility with a capacity of 100 megawatts or more, a person must obtain a Certificate of Public Convenience and Necessity (CPCN). The PSC may not approve the issuance of a CPCN, unless it finds that a proposed facility satisfies all of the requirements from the "certificate of authority" process listed above, as well as numerous other criteria, including: (1) the proposed facility satisfies the energy needs of the public; (2) the design and location of the facility is in the public interest, considering alternatives, as well as economic, safety, and environmental factors; (3) the proposed facility will not have an undue adverse ecological, public health, or aesthetic impact. [s. 196.491 (3), Stats.]

Sources of electric generation with a capacity of 15 megawatts or less that are located near the point where the electricity will be used or in a location that will support the functioning of the electric power distribution grid are referred to as "distributed energy generation resources" and are governed by interconnection rules developed by the PSC. [s. 196.496 (1), Stats.]

Distributed generation resources such as solar panels may be owned by the party on whose property they are located or by a third-party that manages the installation and ongoing operation of the facility in exchange for a fee paid by the property owner. However, third parties providing such service may be considered to be acting as a public utility without authorization, in violation of Wisconsin law.

In October 2017, the Wisconsin Solar Energy Industries Association requested that the PSC make a declaratory ruling regarding whether certain third-party solar services are considered to be "public utility" services that may be provided only by a public utility. In December 2017, the PSC refused to do so, stating that "the question…raises significant public policy considerations that the Commission believes are better left for the Legislature's determination…" [Final Order in PSC Docket 9300-DR-102.]

Transmission

Authority over electric transmission is shared by the PSC, the Federal Energy Regulatory Commission (FERC), and the Midcontinent Independent System Operator (MISO), which is a regional transmission organization (RTO) authorized by the FERC to plan and oversee the construction and operation of transmission facilities within a region that includes all or part of 15 states, including Wisconsin, and one Canadian province.

Over the past 25 years, Wisconsin and the federal government have encouraged regional planning and operation of transmission facilities in order to enhance system reliability and foster competition in the electric industry. In the late 1990s, the federal government encouraged utilities to form and join RTOs which would, among other functions, coordinate a regional planning process for new transmission facilities.

During the same period, Wisconsin provided incentives for electric utilities and cooperatives in the eastern part of the state to transfer ownership of their transmission facilities to the American Transmission Company (ATC), although in western Wisconsin,

Xcel Energy and Dairyland Power Cooperative did not transfer their facilities. Wisconsin law also required ATC and any other transmission-owning utility or cooperative to join MISO and transfer operational control of transmission facilities to MISO. [1997 Wisconsin Act 204; 1999 Wisconsin Act 9; FERC Order 2000.]

Wisconsin law requires MISO to ensure that each transmission facility under its control in Wisconsin is planned and constructed as part of a single system. It also requires that, if MISO determines that there is a need for additional transmission facilities in Wisconsin, MISO must order a utility to construct them. [s. 196.485 (1) (c) and (3) (b), Stats.]

Once a plan for a new transmission facility, such as a high-voltage line, is approved by MISO, it must also be approved by the PSC before it may be constructed. [ss. 196.49 and 196.491 (3), Stats.]

The rates that transmission utilities charge other utilities for transmission service are set by MISO with the approval of FERC. Utilities that pay the charges then include the payments in their operating costs that they document when requesting the PSC's approval of the rates they charge their retail customers for electric service.

Distribution

Only public utilities and cooperatives may provide distribution service in Wisconsin. Public utilities that provide distribution service are subject to the general system of public utility regulation described earlier in this chapter, which generally addresses the main issues involved with distribution service.

State Energy Policy

The state energy policy, set forth in s. 1.12, Stats., is comprised of five parts, including a requirement that state agencies and local governmental units 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 energy policy establishes the following three goals relating to the generation and use of energy: (1) reducing the ratio of energy consumption to economic activity in the state; (2) basing new capacity for electric generation on renewable energy resources, to the extent feasible; and (3) increasing the forested area of the state in order to ensure a future supply of wood fuel and reduce atmospheric carbon dioxide.

The five-part state energy policy is designated to guide the state in decisions affecting its own energy use and regulatory actions affecting others' energy use.

The statutes include a priority list for state agencies and local governments to consider for meeting the energy demands of energy users

in the state. [s. 1.12 (4), Stats.] To the extent cost-effective and technically feasible, the options must be considered in the following order:

- Energy conservation and efficiency.
- Noncombustible renewable energy resources.
- Combustible renewable energy resources.
- Advanced nuclear energy using a reactor design or amended reactor design approval after December 31, 2010, by the U.S. Nuclear Regulatory Commission.
- Nonrenewable combustible energy resources, in the following order listed:
    - Natural gas.
    - Oil or coal with a sulfur content of less than 1%.
    - All other carbon-based fuels.

The state energy policy includes directives to state agencies and local governmental units requiring them to prioritize energy conservation and efficiency and a list of the types of corridors to be prioritized when siting new electric transmission lines.

The energy policies in s. 1.12, Stats., apply only to state and local governments. The policies do not dictate the outcome of any individual agency decision. An agency's compliance with the policies is reflected in the process the agency uses in reaching decisions, as well as the overall pattern of the agency's decisions.

Conservation and Renewable Energy Programs

"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 resource programs. Each utility must spend an amount equal to 1.2% of its annual operating revenue derived from retail sales for these programs. The PSC is directed to oversee the programs, set goals and priorities, establish program design standards, and coordinate all energy efficiency and renewable resource programs. [s. 196.374, Stats.]

Program activities include educating energy users 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.

Focus on Energy is the state's principal conservation and renewable energy program.

The statutes give municipal electric utilities and electric cooperatives the option of either joining the Focus on Energy program or conducting what are termed "commitment to community" programs, in which the utility or cooperative provides a program similar to Focus on Energy to its customers or members. [s. 196.374 (7), Stats.]

Renewable Portfolio Standard

A renewable portfolio standard (RPS) is a requirement that electric power suppliers include a specified amount of generation capacity that is derived from renewable resources in their electric supply portfolios. 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. [s. 196.378, Stats.]

An RPS requires suppliers of electric power to include a specified amount of power from renewable resources in their portfolio of electric supply.

The statutes prescribe a unique RPS for each electric supplier that is based on the supplier's portfolio from the years 2001 to 2003. [s. 196.378 (2) (a) 2., Stats.] The statutes contain a statewide goal that approximately 10% of electric sales be derived from renewable resources by 2015. [s. 196.378 (2) (a) 1., Stats.] PSC staff report that all electric providers are in compliance with their obligations under the RPS, and that the statewide goal has been met.

Tax Incentives for Renewable Energy

Solar and wind energy systems are exempt from the property tax and the following are exempt from the sales and use taxes:

- Biomass that is used for fuel sold for residential use.
- Any residue that results from the harvesting of timber or the production of wood products that is used as fuel in a business activity.
- Certain equipment that generates energy from wind, sunlight, or agricultural waste, and electricity or energy produced by such equipment.

[ss. 70.111 (18), 77.54 (30) (a) 1m. and 4., and 77.54 (56) (a), Stats.]

Tax exemptions encourage the use of renewable resources by reducing the cost.

Low-Income Energy Programs

For information regarding Home Energy Plus, including where to apply for assistance, see: www.homeenergyplus.wi.gov

DOA administers low-income energy assistance programs under the program name Home Energy Plus. The state funds the programs with federal funds and fees collected by electric and natural gas utilities that are remitted to the state. The programs 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. [s. 16.957, Stats.]

Additional References

1. Information Memoranda prepared by Legislative Council staff, available at http://www.legis.wisconsin.gov/lc:
   - *Overview of Wisconsin's Public Utility Regulatory System*, IM-2017-01.
   - *Regulation of Telecommunications Services*, IM-2011-07.
   - *Municipal Regulation of Wind Energy Systems (2009 Wisconsin Act 40)*, IM-2009-05.
   - *The New Law Relating to State-Issued Franchises for Video Service Providers*, IM-2008-01.
   - *2005 Wisconsin Act 141: Energy Efficiency, Renewable Energy, and Energy Policy*, IM-2006-01.
   - *Customer-Owned Electric Generation: Opportunities for Customers, Challenges for Utilities*, IM-2015-07.
2. Low-Income Energy Programs: http://homeenergyplus.wi.gov.
3. Other:
   - Wisconsin PSC: http://psc.wi.gov.
   - FERC: http://www.ferc.gov/.
   - FCC: http://www.fcc.gov/.
   - Federal Energy Information Administration: http://www.eia.doe.gov/.

GLOSSARY

CA: Certificate of Authority.

CPCN: Certificate of Public Convenience and Necessity.

FCC: Federal Communications Commission.

FERC: Federal Energy Regulatory Commission.

IPP: Independent power producer.

MISO: Midcontinent independent system operator.

NRC: Nuclear Regulatory Commission.

PSC: Public Service Commission.

RPS: Renewable portfolio standard.

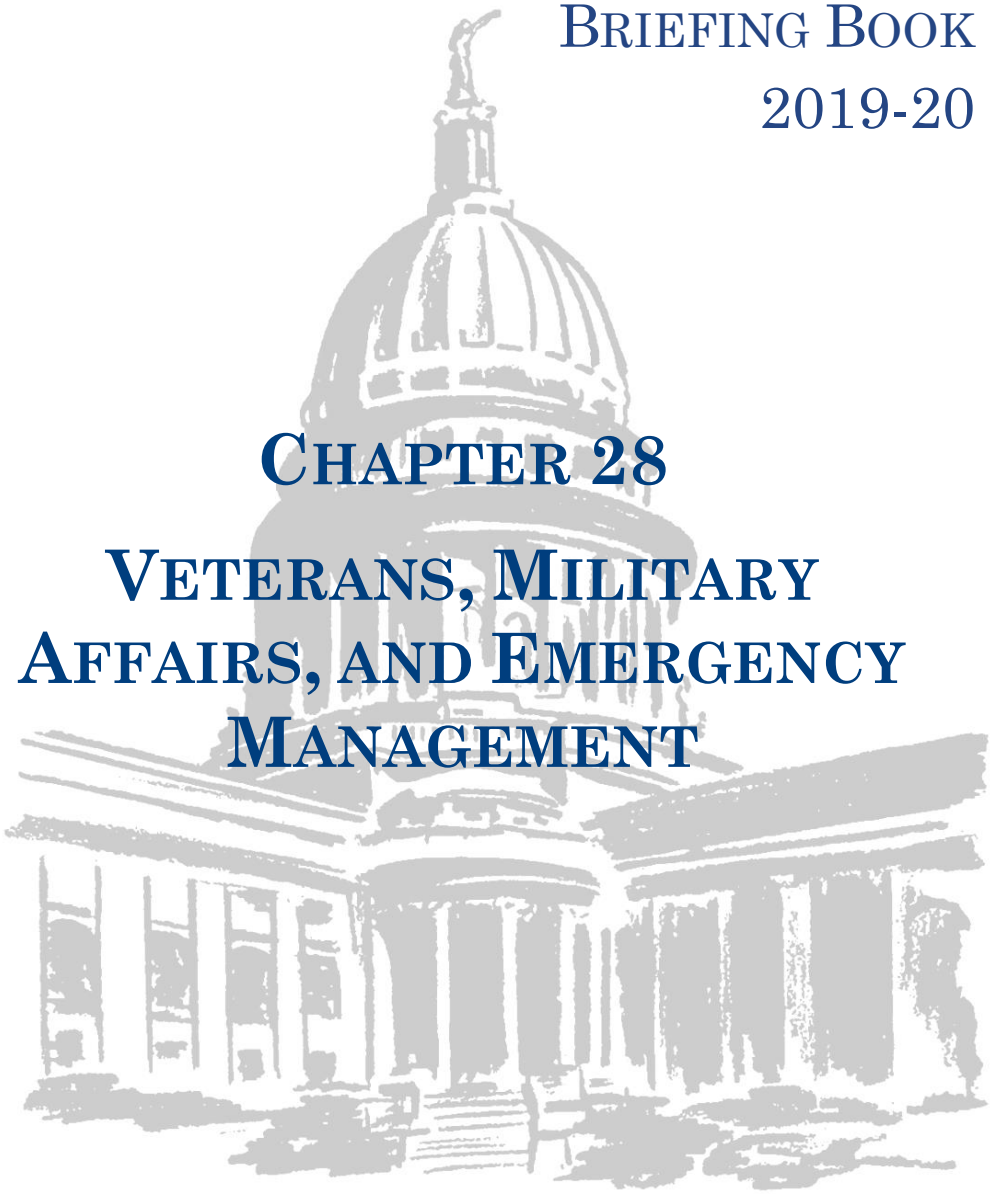
RTO: Regional Transmission Organization.

TEACH Program: Technology for Educational Achievement Program.

USF: Universal Service Fund.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20



CHAPTER 28

VETERANS, MILITARY AFFAIRS, AND EMERGENCY MANAGEMENT

David Moore, Senior Staff Attorney
Wisconsin Legislative Council

Table of Contents

Copies of the Wisconsin Legislator Briefing Book are available at:
http://www.legis.wisconsin.gov/lc

INTRODUCTION

This chapter provides a brief overview of state programs related to veterans affairs, military affairs, and emergency management The agencies with primary responsibility over these areas are the Department of Veterans Affairs (DVA) and the Department of Military Affairs (DMA). As will be described in greater detail below, DVA provides a variety of services to veterans of the U.S. armed forces and members of their families. These services include administering programs that provide health, educational, and economic assistance to eligible veterans and their dependents. DVA also operates three veterans homes, three veterans cemeteries, and the State Veterans Museum. DMA oversees the operations of the Wisconsin National Guard. The state mission of the Guard is to protect life and property and preserve peace, order, and public safety in times of natural and human-caused disasters and emergencies. DMA also administers Wisconsin's emergency management system through the Division of Emergency Management.

DEPARTMENT OF VETERANS AFFAIRS

DVA operates under the direction and supervision of the Secretary of Veterans Affairs, who is required to be a veteran. The Secretary is nominated by the Governor and confirmed by the Senate. Prior to nominating the Secretary, the Governor must personally consult with the presiding officers of at least six Wisconsin veterans organizations. In addition to the position of Secretary, there is a nine-member Board of Veterans Affairs (the "Board") that is comprised entirely of veterans. Board members are appointed by the Governor for staggered four-year terms and are subject to Senate confirmation. There must be a board member from each of the state's eight Congressional districts.

The DVA Secretary, after consulting with the Board, may promulgate rules necessary to carry out the department's powers and duties and must provide a copy of any proposed rule to the Board for review. The Board may make written comments on the rule, which must be included in the rule analysis submitted by DVA. [s. 45.02 (2), Stats.]

The Council on Veterans Programs ("the Council") 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 DVA, 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. [s. 45.03 (3), Stats.]

County Veterans Service Officers

Under state law, each county must have a county veterans service officer (CVSO) and provide the CVSO with office space and clerical assistance. DVA provides grants to counties for maintaining and operating CVSO 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, known as TVSOs. [s. 45.80, Stats.]

A link to a listing of all CVSOs is available at:

http://wicvso.org/locate-your-cvso

State Veterans Programs and Services

Wisconsin veterans may be eligible for a number of benefits and services from the state 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.

Information about veterans benefits may be obtained by calling DVA at: (800) WIS-VETS [(800) 947-8387].

Eligibility Requirements

To receive state veterans benefits and services, a veteran must meet eligibility requirements relating to military service and state residency. Family members of deceased or disabled veterans may also be eligible for certain benefits. Some veterans programs have additional requirements. [s. 45.02, Stats.]

Military Service

Information on eligibility for specific state veterans programs, and applications, is available on the DVA website at: http://www.dva.state.wi.us/pages/benefitsClaims/BenefitsandClaims.aspx **or from the CVSO offices.**

To fulfill the military service requirement for 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. These statutorily-specified periods include peacetime service of the lesser of two years or initial term of enlistment. They also

include service of 90 days during a war period as defined in Wisconsin Statutes. Those who served honorably for 90 days during this time period meet the eligibility requirement. [s. 45.01 (12), Stats.]

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 he or she makes an application. If a family member of a deceased veteran is applying for benefits, one of the following must apply to the veteran from whom the applicant derives eligibility:

- 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.
- The veteran was a resident of Wisconsin at the time of entry or reentry into active duty.
- The veteran was a resident for any consecutive 12-month period after entry or reentry into service and before the date of application for benefits or death.

[s. 45.02 (2), Stats.]

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. [s. 45.02 (4), Stats.]

Funding

The Veterans Trust Fund (VTF) finances many programs and services for Wisconsin veterans including education grants, retraining grants, and state veterans cemeteries. In addition to funding these veterans programs and services, appropriations from the VTF 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 VTF by designating an amount on the Wisconsin individual or corporate income tax form.

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 nonresident for tuition purposes by the University of Wisconsin (UW) System is entitled to a 100% remission of nonresident 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. [s. 36.27 (3e), Stats.] Eligible veterans attending schools in the Wisconsin Technical College System (WTCS) are granted statutory residency status. State law also gives veterans and members of the armed forces priority in registering for courses at UW System and technical colleges.

Information about the Wisconsin GI Bill and applications is available at:
www.dva.state.wi.us/Pages/educationEmployment/Education.aspx

Wisconsin GI Bill

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. The Wisconsin GI Bill applies to all degree credit courses, including distance education, online, cost recovery courses, and the UW-Madison Executive MBA program. [s. 36.27 (3p), Stats.]

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 nonresident for tuition purposes is also eligible to receive 100% remission of the nonresident portion of the tuition. Beginning in the fall semester of 2013, residency was expanded to veterans who lived in Wisconsin for at least five consecutive years immediately preceding the beginning of any school semester or session, even if they were not residents of Wisconsin at the time of entry. This expanded residency does not, however, extend to family member education benefits.

UW System has a "Frequently Asked Questions" document concerning the Wisconsin GI Bill at:
http://www.wisconsin.edu/veterans

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 must maintain a cumulative grade point average of at least 2.0. The child of an eligible veteran may receive the remission if the child is at least 17, but not yet 26, years of age.

VetEd Tuition Reimbursement Program

The VetEd Program reimburses veterans for tuition and fees paid for courses taken as undergraduates at the UW System, the 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 federal Post 9/11 GI Bill. Veterans may apply for VetEd through their CVSO or online at the DVA website.

Federal Post 9/11 GI Bill

The Post 9/11 GI Bill took effect on August 1, 2009. It provides funding for up to 36 months (four academic years) of tuition, books, and living expenses without contributions from the individual while in service, for veterans who served after September 11, 2001. For some qualifying veterans, this benefit can be transferred to a spouse or child, subject to certain conditions. Veterans and their qualifying dependents must use the Federal GI Bill and any other federal benefits to which they are entitled prior to using the Wisconsin GI Bill.

VETERANS LOAN PROGRAMS

Effective December 1, 2011, there is an indefinite moratorium on DVA's loan programs. Information on certain of these programs is included in this chapter because there are a number of these loans outstanding, but the department is no longer accepting new applicants. DVA is referring those veterans needing assistance with home loans to the Wisconsin Housing and Economic Development Authority Advantage Program, which can be found at: https://www.wheda.com/Home-Buyers/Available-Programs/.

Please note that the department is <u>not</u> currently issuing new loans under this program.

Veterans Primary Housing Loan Program

The Veterans Primary Housing Loan Program provided fixed-rate mortgage loans to qualifying state veterans to purchase or construct a home. Members of the National Guard and Reserves who had served for six consecutive years and who were living in the state at the time of application were also eligible for the program. DVA was the program lender, with funding for loans coming from the proceeds of state bond issuances. Veterans were required to make a down payment on the home of at least 5%, unless the veteran was totally and permanently disabled. There was no private mortgage insurance requirement. The loan principal amount was limited to 2-1/2 times the median sales price of a Wisconsin home. The outstanding loans are secured with a mortgage on the properties and the homes must be the veteran's primary or secondary residence (primary in the case of two- to four-unit residences).

Home Improvement Loan Program

Under the Home Improvement Loan Program, veterans could borrow up to 90% of their home's equity for additions, construction of a garage, repairs, and remodeling.

VETERANS GRANT PROGRAMS

DVA administers a number of grant programs for veterans and veterans organizations. These include the retraining grant program, the Assistance to Needy Veterans grant program, the CVSO grant program, and a program to provide grants to certain nonprofit organizations.

Retraining Grant Program

Under the Retraining Grant 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. [s. 45.21, Stats.]

Assistance to Needy Veterans Grant Program

The Assistance to Needy Veterans Grant 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. [s. 45.40, Stats.]

CVSO Grant Program

DVA provides grants to counties and tribes for the improvement of service to former military personnel of the county through the CVSO. The amount available to a county

under this program depends on the county's population and whether the county's veteran services officer is full-time or part-time.

The 2015-17 Biennial Budget bill modified the system used for making CVSO grants and tribal veterans service office grants from a sum-certain amount to an expense reimbursement basis. The budget bill specified that the costs eligible for reimbursement include only the following: (a) information technology; (b) transportation for veterans and services to veterans with barriers; (c) special outreach to veterans; (d) training and services provided by DVA and U.S. DVA; and (e) certain salary and fringe benefit expenses incurred in 2016.

Grants to Nonprofit Organizations

2015 Wisconsin Act 383 created a grant program administered by DVA, under which DVA may award up to a total of $250,000 in grants to nonprofit organizations that provide financial assistance or other services to veterans and their families. The maximum amount that may be granted to a nonprofit organization per fiscal year is $25,000.

Other Veterans Programs and Services

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 a principal dwelling.

A veteran must be at least 65 years of age and 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 U.S. DVA or is considered individually unemployable and is rated 100% disabled on that basis.

To qualify for the tax credit as a surviving spouse, 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. [s. 71.07 (6e), Stats.]

Assistance With Filing U.S. DVA Claims

The claims assistance office may be reached at (414) 902-5757.

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 county veterans services officers in most other counties in developing those claims.

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. DVA works with the UW System and provides grants to the Center for Veterans Issues, in Milwaukee, to fulfill this requirement. [s. 45.03 (13) (f), Stats.]

2017 Wisconsin Act 295 directed DVA to administer a pilot program to provide outreach, mental health services, and support to certain individuals who are serving or who have served in the armed forces and who have a mental health condition or substance abuse disorder.

Veterans Assistance Program

The Veterans Assistance Program provides assistance to veterans who have a need for assistance based on homelessness, incarceration, or other circumstances determined by DVA. This program provides eligible veterans with 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.

Veterans with a characterization of service other than a dishonorable discharge are eligible to participate in the program and there is no state residency requirement for the program. The program assists veterans' families to obtain housing, but cannot feed or house a veteran's spouse (unless also a veteran) or children. [s. 45.43, Stats.]

Employment and Training Services

Vow to Hire Heroes Act

The federal Vow to Hire Heroes Act created the Veterans Retraining Assistance Program (VRAP), which offers up to 12 months of retraining assistance to qualified unemployed veterans between the ages of 35 and 60. To be eligible, a veteran must not be eligible for any other VA education benefit programs, not be in receipt of VA compensation due to individual unemployability, and not be enrolled in a federal or state job training program.

2017 Wisconsin Act 195 created a state program called Hire Heroes. Under this program, an employer can be reimbursed for the wages it pays to a veteran, up to a certain amount.

Military Training Credit for Credentialing

State law provides consideration of equivalent military training in satisfying credentialing requirements for licenses and affiliated credentials administered by state agencies such as the Department of Safety and Professional Services, the Department of Children and Families, the Department of Health Services, the Office of the Commissioner of Insurance, the Department of Public Instruction, Division for Libraries, Technology and Community Learning, and the Department of Transportation.

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 CVSOs.

DVA also works with the Employer Support of the Guard and Reserve Program in providing resources for employers on the benefits of hiring veterans.

Veteran Employment Grants

2015 Wisconsin Act 385 created a program under which DVA may, beginning in the 2016-17 fiscal year, award up to $500,000 annually in grants to veterans, employers, and nonprofit organizations to improve employment outcomes for veterans in Wisconsin. Under the Act, DVA may award grants for the following purposes: (1) to assist veteran entrepreneurs; (2) to give employers in Wisconsin incentives to hire veterans, especially disabled veterans; (3) to help fund employment training for veterans, especially disabled veterans; or (4) other programs or purposes as determined by DVA by rule. [s. 45.437, Stats.]

Military Funeral Honors Program

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. [s. 45.60, Stats.]

For information about military funeral honors, call: (877) 944-6667.

State Veterans Facilities

Veterans Homes

There are currently three veterans homes in Wisconsin, located in King in Waupaca County, Union Grove in Racine County, and 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. The veteran must also be permanently incapacitated due to physical disability or age. Spouses of eligible veterans may also live at the home. [s. 45.51, Stats.]

Information and resources for women veterans is available at:

www.dva.state.wi.us/Pages/aboutWdva/WomenVeterans.aspx

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.

The Veterans Home at Chippewa Falls is a 72-bed skilled nursing facility.

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): (1) the Central Wisconsin Veterans Memorial Cemetery at King; (2) the Southern Wisconsin Veterans Memorial Cemetery at Union Grove; and (3) the Northern Wisconsin Veterans Memorial

Cemetery at Spooner. Veterans who meet specified requirements are eligible for burial at a Wisconsin veterans cemetery. A veteran must have been discharged or released from active duty under any conditions other than dishonorable or must have 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 been 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 preregister 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. [s. 45.61, Stats.]

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, nonprofit Wisconsin Veterans Museum Foundation contributes funds to the museum. [s. 45.07, Stats.]

Department of Military Affairs

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. [Wis. Const. art, V, s. 4.] Chapter 321, 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. Statutes regarding emergency management and response requirements, disaster assistance programs, and continuity of government are found in ch. 323, Stats.

Military Affairs

Wisconsin National Guard

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. A third deputy Adjutant General serves the Guard for civil authority support. This person may be a member of

either the Army or Air National Guard and may serve as joint chief of staff, responsible for overseeing the joint staff functions between the Army and Air National Guard. [ss. 321.10 and 321.30, Stats.]

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: a federal mission; and a state mission. Its federal mission is to provide trained units to the U.S. Army and Air Force in time of war or national emergency. 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.

Information on current Wisconsin Army and Air National Guard mobilizations is available at:

http://dma.wi.gov/DMA/about/ng

Additional information about Department of Defense-wide news is located at:
http://www.defense.gov/news

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 the event of any of the following:
    - War, insurrection, rebellion, riot, invasion, terrorism, or resistance to execution of the laws of the state or of the United States.
    - A public disaster resulting from flood, fire, tornado, or other natural disaster.
    - A declared public health emergency.
- In order to assess damage or potential damage as a result of and to recommend responsive action to natural or man-made events.
- Upon application of a U.S. marshal, village president, mayor, town board chair, or county sheriff.

[s. 321.39, Stats.]

The federal government currently provides approximately 90% of the funding for the Wisconsin National Guard.

The Adjutant General serves as the military chief-of-staff to the Governor. The Adjutant General has numerous duties, including the following:

- Advising the Governor on military issues and transmitting military correspondence to and from the Governor.

- Drawing from the state treasury money necessary for paying National Guard members on state active duty, under orders from the Governor.
- Providing necessary medical supplies and services to the National Guard during periods of state active duty.
- Having custody of all military property, records, correspondence, and other documents relating to the National Guard.

[s. 321.04, Stats.]

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.

Army National Guard and Air National Guard

The Wisconsin Army National Guard has approximately 7,500 members. Its headquarters are located in Madison. The four other major commands are: the 32nd Infantry Brigade Combat Team with headquarters in Camp Douglas; the 157th Maneuver Enhancement Brigade with headquarters in Milwaukee; the 64th Troop Command with headquarters in Madison; and the 426th Regiment Regional Training Institution, located at Fort McCoy. Subordinate units are located throughout the state.

Air National Guard

The Wisconsin Air National Guard is comprised of more than 2,200 members and includes the Air National Guard Headquarters at the Office of the Adjutant General and the 115th Fighter Wing at Truax Field, Madison; the 128th Air Refueling Wing at General Mitchell Field, Milwaukee; and the 128th Air Control Squadron and Combat Readiness Training Center located at Volk Field, Camp Douglas.

Service Member Support Division Programs

Further information about service member and family support programs is available online at:
www.wisconsinmilitary.org

The Wisconsin National Guard's Service Member Support Division provides pre-, during-, and post-mobilization support to commanders and service members by establishing a centralized connection to the many public and private agencies that provide benefits, programs, and services to Wisconsin military service members and their families.

Support programs include the following:

- **National Guard Family Program**: establishes and facilitates ongoing communication, involvement, and support between service members and their families.

- **Child and 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.

- **The Sexual Assault Response Program**: provides prevention training to all service members and resource and referral services to victims of sexual assault and domestic violence.

- **Suicide Prevention Program**: provides suicide prevention and intervention and training on the risk factors and warning signs of suicide and connects service members with resources.

- **Military Family Assistance Centers**: provide family members with information on entitlements and benefits available during the service member's deployment cycle.

- **Transition Assistance Advisor**: assists service members in accessing federal and state veterans benefits, programs, and services, as well as public and private programs and services.

The Service Member Support Division manages the administration of benefits, programs, and support services for Wisconsin service members and their families.

- **Director of Psychological Health**: provides assistance and direction to service members who are having transitional difficulties in adjusting to redeployment or life challenges.

- **Employer Support of the Guard and Reserve**: provides service members with education and awareness regarding employer relations, employment and re-employment rights, as well as programs and services to help strengthen employer support for the Guard and Reserve.

Other 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 a University of Wisconsin (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. [s. 321.40, Stats.]

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 $50,000.

Exemption From Nonresident Tuition

The 2017-18 Biennial Budget Bill provided an exemption from nonresident tuition for any student who is a member of the Wisconsin National Guard or a reserve unit of the U.S. armed forces and: (1) has been a member of the Guard or a reserve unit for the six months preceding the semester in which the student enrolls; (2) has resided in Wisconsin for the six months preceding the semester in which he or she enrolls; and (3) continues to be a member of the Guard or a reserve unit or is honorably discharged or released under honorable conditions.

Legal Protections for National Guard Members

Federal and State Employment and Re-Employment Rights

The federal Uniformed Services Employment and Re-Employment 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. Service in the National Guard under a state call-up by the Governor is not covered by USERRA; however, state law provides the same re-employment rights for persons called to state service in the National Guard. [s. 321.65, Stats.]

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. In order to qualify for payment, certain criteria must be satisfied. [s. 230.315, Stats.]

Other 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:

- 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.
- Staying civil court proceedings during the period of active service.
- Capping interest rates at 6% per year on debts incurred prior to entering the service.
- Protecting the member from eviction or mortgage foreclosure.
- 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.
- Providing college student members opportunities to complete course work and re-enroll in the school, if called to active duty while in school.

[subch. V, ch. 321, Stats.]

Wisconsin Emergency Management System

Overview of System

WEM's 24-hour emergency hotline number is: (800) 943-0003.

The WEM website is:
http://emergencymanagement.wi.gov

DMA administers Wisconsin's emergency management system through the Division of Emergency Management, more commonly referred to as "Wisconsin Emergency Management" or "WEM." WEM is headed by a division administrator appointed by the Governor. The purpose of the system is to prepare the state and its subdivisions and American Indian tribes to plan for, respond to, recover from, and mitigate emergencies resulting from enemy action and natural or human-caused disasters. [s. 323.01, Stats.]

Duties of Various Officials

The Governor is required to review state emergency management plans and to utilize WEM during a state of emergency. When the Governor declares a state of emergency for the state or a portion of the state, DMA, through WEM, is generally the lead state agency to respond to the emergency. If the Governor determines that a public health emergency exists, however, he or she may proclaim a state of emergency related to public health and designate the Department of Health Services (DHS) as the lead state agency to respond to that emergency. If the Governor determines that an emergency is related to computer and telecommunications systems, the Governor may designate the Department of Administration (DOA) as the lead agency. [s. 323.10, Stats.]

The state is divided into six emergency management regions, each headed by a WEM regional director. The regional directors work directly with the counties in coordinating WEM's programs and serve as on-site representatives of WEM during emergencies. WEM also provides an Emergency Police Services (EPS) Director and an Emergency Fire Services Coordinator to assist the state, its subdivisions, and tribes during emergencies.

At the local level, county sheriffs have various statutory powers 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, a 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 may 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. [ss. 323.11 and 323.14, Stats.]

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. [s. 323.13, Stats.]

The Adjutant General carries out statewide training programs and exercises and serves as the principal assistant to the Governor in directing emergency management activities.

Counties, towns, villages, and cities are required to adopt emergency management plans and programs that are compatible with the state ERP. [s. 323.14, Stats.] WEM provides assistance to local governments in the development of their plans. Each local government may appropriate funds and levy taxes for its emergency management program. Grants awarded by the U.S. Department of Homeland Security through WEM are a major source of funding to both state and local governments.

Disaster Assistance

Wisconsin Major Disaster Assistance Program

This state program makes payments to local units of government for damages and costs incurred as a result of a disaster. A disaster is 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. Funds from the Wisconsin Major Disaster Assistance Program may be used for costs including debris removal, emergency protective measures, and road damage. Local governments must provide a 30% match. [s. 323.31, Stats.]

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. Local, tribal, and state governments and certain private not-for-profit agencies may receive grants through the public assistance program (75% federal funds, 12.5% state funds, and 12.5% local cost-sharing) to replace uninsured publicly owned facilities and equipment damaged in a disaster.

More information on disaster recovery programs may be found at:

http://emergencymanagement.wi.gov/recovery/government.asp

The public assistance program also provides funding to reduce the potential of future disaster damages through the hazard mitigation program.

Funding is available to individuals, farmers, and businesses in the form of disaster housing grants, Small Business Administration loans, other needs assistance grants, and Farm Service Agency loans.

Hazardous Materials

The Emergency Planning and Community Right-to-Know Act (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. WEM and local emergency planning committees in each county implement this requirement. [s. 323.60, Stats.]

WEM also 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. There are currently 25 HAZMAT teams strategically located throughout the state.

Continuity of Legislative Operations

Wisconsin law provides a mechanism for choosing interim successors for legislators if specified criteria are met. The provision takes effect if there are nine or more vacancies in the Senate at the same time or if there are 25 or more vacancies in the Assembly at the same time. [s. 13.41, Stats.]

The Wisconsin Constitution, Article V, Section 4 provides that the Governor may convene the Legislature at a place other than the State Capitol building in the case of invasion or

prevalence of contagious disease. State law further provides that whenever, during a state of emergency, it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the state capital, the Governor is required to designate an emergency temporary location for the seat of government and to take such action and issue such orders as are necessary for an orderly transition of the affairs of state government to that location. While the seat of government remains at a temporary location, all official acts required by law to be performed at the seat of government are as valid and binding when performed at the temporary location as if performed at the normal location. [s. 323.51 (1) and (2), Stats.]

Wisconsin law also allows the Legislature, by joint rule, to provide a process for designating an emergency temporary seat of government for the Legislature that is different than the location designated by the Governor. Specifically, the statutes provide that, whenever, as the result of a disaster or the imminent threat of a disaster, it becomes imprudent, inexpedient, or impossible to conduct the business of the Legislature at the state capital, the Legislature may meet either at the location designated by the Governor or the location designated by the Legislature itself. Information about this location is not subject to inspection or copying under the Open Records Law. The Legislature may meet for up to one week per session in a location other than the state capital or the temporary seat of government designated by the Governor, in order to practice meeting in a temporary location. [s. 323.51 (1m), Stats.]

Additional References

1. The Wisconsin DVA website: http://dva.state.wi.us/Pages/home.aspx.
2. The U.S. DVA website: http://www.va.gov/.
3. A list of CVSOs can be found at: http://dva.state.wi.us/CVSO.asp.
4. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers on various state programs, including programs for veterans. These Informational Papers are available at: http://www.legis.wisconsin.gov/lfb.
5. 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/.
6. Wisconsin's Homeland Security website is a comprehensive source of information on homeland security issues. The website is: http://www.hsc.wi.gov.
7. WEM's website is: http://emergencymanagement.wi.gov.
8. Information on emergency preparedness is available at: http://ready.wi.gov.
9. Information about the rights and responsibilities of employees and employers under the federal USERRA is available at:
    - http://www.dol.gov/vets/whatsnew/userraguide0903.rtf.
    - Employer Support of the Guard and Reserve, (608) 242-3169.

10. Information about re-employment rights for military personnel called to state service may be obtained from the Office of the Staff Judge Advocate DMA, (608) 242-3071.

GLOSSARY

CVSO: County Veterans Service Officer. Each county has a CVSO who is responsible for providing information and assistance to individuals seeking state and federal benefits, programs, and services.

DD-214: Department of Defense Form 214, or "Certificate of Release or Discharge from Active Duty." One of the most commonly-used documents by veterans to support a determination of eligibility for benefits.

Disaster: Wisconsin law defines "disaster" as 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.

DVA: Wisconsin Department of Veterans Affairs.

ICS: Incident Command System. Wisconsin law defines ICS 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.

Post-9/11 GI Bill: Federal program providing education benefits to veterans who have served on active duty since September 11, 2001. Largely replaced the Montgomery GI Bill, though veterans entitled to Montgomery GI Bill benefits in some cases can choose between the two.

PMI: Private Mortgage Insurance. This insurance is typically required by the lender and paid by the borrower on mortgages obtained with less than 20% down.

PTSD: Post-Traumatic Stress Disorder.

Veteran with service-connected disability: A veteran who has an illness or injury incurred in or aggravated by military service as determined by the U.S. DVA.

TVSO: Tribal Veterans Service Office.

U.S. DVA: U.S. Department of Veterans Affairs.

Veterans Trust Fund (VTF): A fund designed to provide services to veterans including assistance for employment, housing, health care, education, and transportation.

VRAP: Veterans Retraining Assistance Program. A program created under the VOW to Hire Heroes Act of 2011 offering 12 months of training assistance to unemployed veterans who are at least 35 years old but no older than 60.

WEM: Wisconsin Emergency Management. WEM is the informal name of the Division of Emergency Management in DMA.

WERP: Wisconsin Emergency Response Plan. The ERP is the state's comprehensive emergency management plan.

WI GI Bill: Tuition remission program established in Wisconsin Statutes providing tuition remission for Wisconsin veterans.

WTCS: Wisconsin Technical College System.

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304