



Wisconsin Legislative Reference Bureau

The Foundations for Legislating in Wisconsin

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THE FOUNDATIONS FOR LEGISLATING IN WISCONSIN

The Wisconsin Legislature is the preeminent political institution in the state. The legislature is the lawmaking body, and its enactments have far-reaching effects on all residents of this state in areas such as education, employment, the environment, and health care. Legislating in Wisconsin, therefore, is a subject of vital concern to all who live and work in Wisconsin. The state legislature is a majority-rule institution, organized by political party with a strong committee structure. But how the members of the legislature engage in legislating is a reflection of many factors—constitutional, internal, and external—that involve the nature of legislative power; the political and legal structure of state government; the partisan composition of the legislature; the interactions between the legislature, the governor, and other political institutions; and the recent history of Wisconsin politics.

THE PLENARY NATURE OF LEGISLATIVE POWER

The Wisconsin Constitution vests the legislative power in the Senate and the Assembly. Wisconsin courts have held that the legislative power is plenary, which means that all political, economic, and other powers are reserved to the legislature unless specifically limited or restricted by the state or federal constitution. For example, the legislature may enact any laws it chooses or engage in any other action it considers appropriate, but it may not enact retroactive laws, impair contracts, or violate rights granted to men and women under the state or federal constitution, such as the right of assembly or freedom of speech or due process.

In Wisconsin, the legislature has plenary lawmaking power, unless the state or federal constitution provides otherwise. Put differently, unlike in the case of the U.S. Constitution, in which the Congress possesses only those specific powers delegated to it in the Constitution, the Wisconsin Legislature possesses every possible legislative power unless the state constitution prohibits or restricts the exercise of any power or assigns the power to another political institution or unit of government. One key to understanding legislating in Wisconsin is recognizing that the state constitution is crafted entirely as a limitation on the power of the legislature. Everything the legislature does is presumed to be constitutional unless a court finds the action to be unconstitutional beyond a reasonable doubt.

BICAMERALISM

Not only does the Wisconsin Constitution simply restrict legislative power, but also it organizes legislative power by creating a legislature in which there are two separate houses—the Senate and the Assembly. The Senate consists of 33 members, while the Assembly consists of 99 members. In Wisconsin, as in all states, representation is based on population and on the principle of “one person, one vote.” As of 2012, each assembly district consists of about 57,444 people, and each senate district consists of about 172,333 people. A senate district comprises three assembly districts. As a result, every Wisconsin resident is represented by two members of the legislature—one in the Senate, the other in the Assembly. This legislative arrangement is known as bicameralism, a system of representation in which legislative power is checked and balanced internally by dividing that power between two political bodies, which must come together and agree on a course of action before that action can become law.

Wisconsin senators serve for four-year terms, while representatives to the assembly serve for two-year terms. At least in theory, senators represent a broader array of voters, with varied and competing interests, and senators’ longer terms of office potentially relieve them from having to prepare for and seek reelection on a permanent basis. Representatives to the assembly, in contrast, represent a narrower swath of voters, who may have more common or shared interests, and, with shorter terms of office, representatives may need to focus more on reelection activities on an ongoing basis.

Bicameralism does not restrict or narrow the substance of legislative power, per se, but it makes the exercise of legislative power a bit more cumbersome and deliberate. In the extreme, however, this arrangement can result in gridlock, when the two houses cannot agree on legislation. For lawmaking purposes, in a bicameral system, two legislative institutions, instead of one, are necessary for political action.

Bicameralism diffuses political power within the legislature, making it difficult for any one interest to dictate its public policy preferences in the lawmaking process. For a law to be enacted, a majority of each house of the legislature must pass the same bill. If Wisconsin had a unicameral legislature, an interest group would have to direct its efforts toward winning majority support in only one house. But a bicameral legislature requires that an interest group persuade a majority of members in the Senate and the Assembly to pass the same legislation. The majorities in the two houses may have different interests. Bicameralism not only makes the enactment of laws more difficult and time-consuming, but also it may potentially moderate the substance of the legislation because, for example, different political parties could be a majority in each of the houses and must accommodate each other. If one political party controls both houses, however, bicameralism may have little effect on the substance of legislation. Nonetheless, depending on the circumstances, bicameralism can result in gridlock or it may promote compromise and stability.

SEPARATION OF POWERS

In Wisconsin, the state constitution divides political authority among the legislative, executive, and judicial branches of government. This arrangement is referred to as the separation of powers doctrine and, like bicameralism, makes the exercise of political power more difficult than if one political institution had all power. The Wisconsin Constitution assigns the political branches both individual and shared powers. In this arrangement, the legislature makes the laws and provides funding for government operations; the governor and executive branch agencies enforce the laws, administer programs, and exercise powers delegated to the executive branch by law; and the courts adjudicate legal disputes, hear appeals, and determine the constitutionality or legality of governmental actions if those actions are challenged in a lawsuit.

In terms of shared powers, the governor of Wisconsin is assigned a role in the legislative process through his or her power to fully or partially veto bills passed by the legislature. In Wisconsin, the governor can partially veto bills containing appropriations to decrease spending for state programs or, through the creative use of the partial veto, to alter the meaning or effect of legislation. The legislature has a role in the enforcement of laws by having the powers to (1) slow down or temporarily halt the promulgation of administrative rules; (2) approve appointments to positions in the executive branch; (3) call state agencies to task at legislative hearings over the manner in which laws are enforced or administered; (4) perform audits of state agencies authorized to administer the law; or (5) through processes such as Joint Committee on Finance hearings, review and approve state agency plans and programs. Finally, the legislature can amend laws or enact new laws to replace laws the courts have held to be unconstitutional.

More often than not, legislating in Wisconsin requires the cooperation or involvement of all three political branches. In order for a public policy idea to be realized in practice, the legislature must pass a bill, the governor must sign or not veto the bill, state agencies must make sincere and sustained efforts to administer and enforce the policy as intended, and the courts must not on constitutional or other legal grounds strike down the policy. In a separation of powers system, as there is in Wisconsin, there are numerous formal and informal veto points at which opponents to legislation may block the fulfillment of public policy goals. In such a system, successful legislating requires diligence and the active involvement of all branches of government.



WISCONSIN STATE CAPITOL, MADISON.

Photo of 1905 capitol courtesy of the Wisconsin Historical Society.

ORGANIZING THE LEGISLATURE

The Wisconsin Legislature is organized by political party, and each house of the legislature consists of members who have varying years of service in the legislature. In recent years, political party control of the Senate has regularly changed between Democrats and Republicans. Since 1993, the two political parties have almost evenly split control of the Senate, with party control even changing during the course of one legislative session four times. In the Assembly, since 1993, the Democrats have been the majority party for 4 years, while the Republicans have been the majority party for nearly 20 years. In general, the Wisconsin Senate is a highly competitive political institution, with changing and narrow majorities, while the Wisconsin Assembly has more stable and larger majorities. Also, since 1993, the Office of the Governor has been held by Republicans for 16 years and by Democrats for 8 years.

Usually, therefore, there is not unified control by the same political party of the legislative and executive branches of government. In fact, the same political party has concurrently held the governorship, the Senate, and the Assembly in only about seven of the last 20 years. This pattern of partisan control of political institutions has two consequences in terms of legislating in Wisconsin. First, during times of divided political control of the legislative and executive branches, there is generally less public policy innovation, as the two political parties must compromise or simply agree to incremental public policy changes in order to enact legislation. There is policy change, to be sure, but the change is less contentious than it would otherwise be if the same political party organized all of the political institutions.

Second, it is during those times when the same political party holds the office of the governor and is the majority party in the two houses of the legislature that public policy change or innovation is at its highest. To the extent that the majority political party advocates an identifiable public policy agenda, that agenda can be more successfully acted on when the party is in a dominant position in the legislative and executive branches. Unlike the United States Senate, in which a minority of senators can prevent the majority from acting, the Senate and the Assembly in Wisconsin are majority-rule institutions, in which a majority can always have its way. The lesson from this is that legislating in Wisconsin is characterized by periods of incremental public policy change interspersed with brief periods of more far-reaching policy change.

The Wisconsin Legislature is comprised of members, including party leaders, whose actions are necessary for legislating in Wisconsin. Continuity in leadership provides leaders with the experience needed to guide the lawmaking process, while continuity in membership enables individual senators and representatives to the assembly to acquire public policy expertise and become successful advocates of public policies. Experienced leaders can negotiate the hazards of the legislative process to realize policy aims, while long-serving legislators have the experience and knowledge of institutional history to achieve policy goals. An important factor affecting legislating in Wisconsin, however, is that there is surprisingly little continuity among legislative leaders over time and there is significant and constant turnover among individual legislators.

From 1993 to 2015, for example, there have been nine different Speakers of the assembly and twelve different senate majority leaders, some of whom even served in these positions for more than one period. Legislative member turnover is also surprisingly high. Of the 99 representatives to the assembly who were seated at the start of the 2015 legislative session, only two had served since 1997. Similarly, of the 33 senators seated at the start of the 2015 legislative session, only six had served since 1997. In fact, if you compare membership during a relatively recent period, of the 99 representatives to the assembly who held seats at the start of the 2015 legislative session, only 22 had served since 2007, while of the 33 senators holding office at the start of the 2015 legislative session, only 16 had served since 2007 (although two were representatives to the assembly at that time). As a general rule, serving in the legislature is not a career path for most members.

LEGISLATIVE-EXECUTIVE RELATIONS

Given the bicameral structure of the legislature, an entrenched separation of powers system, a divided party government, and high turnover among members and leaders of the legislature, it might be expected that legislating in Wisconsin is a near-to-impossible task—there are just so many opportunities for failure. But this has not been the case, as the Wisconsin Legislature is one of the most active legislatures in the entire United States. The Wisconsin Legislature is a full-time body, holding floor periods and conducting committee work throughout the two-year legislative session. Many members are full-time legislators, with professional partisan and nonpartisan staff and with access to information on virtually every conceivable public policy. But the lawmaking process is also affected by the fact that from 1987 to 2010 Wisconsin had only two elected governors, a fact which few states can boast. And, in Wisconsin, the governor during this time has played a major role in setting the public policy agenda of the legislature through the budget process, through working closely with legislative leadership on legislation, and through the convening of special sessions.

The most important way in which the governor affects the lawmaking process in Wisconsin is through the biennial budget bill. Since 1931, the governor has been required by law to prepare the executive budget bill, which contains both fiscal and policy items. In many ways, the executive budget bill sets the policy agenda for the legislative session. The legislature does not necessarily enact whatever the governor proposes, as the Joint Committee on Finance carefully reviews each fiscal or policy proposal and the bill

is amended throughout the legislative process. But the final biennial budget bill the legislature ultimately passes usually tracks and contains most of the governor's policy proposals from the executive budget bill.

In recent years, the executive budget bill has been substantially expanded in scope and now covers virtually most areas of state government. Recent budget bills have been over 1,500 pages long, more than four times longer than budgets from a generation ago. Given that the biennial budget bill is the most important bill considered by the Senate and the Assembly during the legislative session, effectively setting the legislative agenda, a large amount of legislative action on public policy in Wisconsin consists only in evaluating, reacting to, and amending the proposals of the governor. Legislating in Wisconsin is often a matter of reacting to the governor.

In addition to setting the policy agenda in the legislature by compiling the executive budget bill, the governor can also set the legislative agenda by calling the legislature into special session, a power granted to the governor under the Wisconsin Constitution. The legislature must convene a special session when called upon, and the only matters the houses may take up during special session are those that are germane to the "call of the session." From 1848 to 1986, a period of 138 years, the governor called 58 special sessions. From 1987 to 2014, in contrast, a period of only 27 years, the governor called 33 special sessions. This is an average of more than one special session a year in recent years. To be sure, the legislature is not required to pass any legislation during a special session, and sometimes the legislature adjourns a special session without taking any action on a bill, but the fact that the governor increasingly uses special sessions as a way of convening the legislature allows the governor yet another way to set the legislative agenda in Wisconsin.

LEGISLATING IN WISCONSIN

The lawmaking process in Wisconsin is conditioned by constitutional factors, such as the separation of powers and bicameralism; factors internal to the legislature, such as leadership, member turnover, committee structure, and partisanship; and external factors, such as the increasing ability of the governor to set the policy agenda in the legislature. Understanding legislating in Wisconsin requires an appreciation of all of these factors and their interaction. The legislature is the lawmaking body in Wisconsin, but the process that governs how laws are enacted is not one that is always under the complete control of individual members of the legislature. The foundations of legislating in Wisconsin are legal, institutional, and political.
