



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
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STEPHEN R. MILLER
CHIEF

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April 26, 2000

MEMORANDUM

To: Representative Mark Miller

From: Debora A. Kennedy, Managing Attorney

Subject: City-county health departments

You have asked several questions about city-county health departments that are created under s. 251.02(1), stats., after January 1, 1994. I have consulted Attorney Marc Shovers, who drafts legislation related to municipalities and counties, and Attorney Richard Champagne, who drafts legislation related to public sector employment, in answering your questions, as follows:

1. Can the city-county health department enter into contracts under s. 66.30, stats., with other jurisdictions?

Yes, assuming that "other jurisdictions" refers to other local health departments. Section 251.09, stats., authorizes local health departments (which are defined under s. 250.01 (4), stats.) jointly to provide health services as agreed upon under s. 66.30, stats., unless, notwithstanding s. 66.30, stats., the agreement conflicts with a provision of ch. 251, stats. (It is not clear what provision of ch. 251, stats., might conflict, but, hypothetically, it might be an instance in which the contracted-upon level of services does not meet the minimums required under s. 251.05 (2).) In addition, confusingly, s. 251.04 (1), stats., empowers a local board of health to contract or subcontract to provide public health services. Section 66.30 (2), stats., provides broad powers to a municipality (defined in s. 66.30 (1) (a), stats., to include, among others, a city and a county) to contract with other municipalities and with tribes or bands "for the receipt or furnishing of services or the joint exercise of a power or dutyauthorized by law". No statute specifically excludes this action, and s. 66.30 (2), stats., is required to be interpreted liberally in favor of cooperative action between municipalities and between municipalities and federally recognized Indian tribes and bands in this state. However, because the definition of "municipality" under s. 66.30 (1) (a), stats., does not specifically refer to a city-county health department or to a local board of health, it appears that the city and county would be required under this statute to be signatories to such a contract on behalf of the city-county health department.

2. Will a city with a health department lose any home-rule authority in public health policy by entering into a city-county health department?

No. Cities have general authority unless prohibited by the constitution or preempted by legislation that affects all cities uniformly. *Local Union No. 487 v. Eau Claire*, 147 Wis. 2d 519, at

522, 523 (1989) holds “[M]unicipalities in Wisconsin, such as the city of Eau Claire, have broad home rule powers pursuant to art. XI, sec. 3 of the Wisconsin Constitution which reads as follows:

(1) Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature.”

Local Union goes on to say “[T]he home rule provision of the constitution is to be liberally construed. *State ex rel. Ekern v. Milwaukee*, 190 Wis. 633, 639, 209 N.W. 860 (2936). This home rule provision does two things. First, it makes a direct grant of legislative power to cities and villages by expressly giving cities and villages the power to determine their local affairs and government. Second, it limits the state legislature in the exercise of its general grant of power by limiting enactments in the field of local affairs of cities and villages. *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526, 253 N.W.2d 505 (1977).”

There is no indication from the provisions relating to city–county health departments in Ch. 251, stats., that the legislature intended any infringement on the home–rule authority of cities, except for the limitation on the establishment of additional city health departments that is under s. 251.02 (1), stats.

3. Is the authority granted to counties to protect public health significantly different than the authority cities enjoy under home rule?

Yes, to the extent that counties are limited in authority to the statutory scope of specific authorization, whereas cities have general authority unless prohibited by the constitution or preempted by legislation that affects all cities uniformly. County authority was outlined in *St. ex rel. Teunas v. Kenosha County*, 142 Wis. 2d 498, at 504, 418 N.W.2d 833 (1988): “It has . . . become well recognized that ‘a county board has only such powers as are expressly conferred upon it or necessarily implied from the powers expressly given or from the nature of the grant of power.’ *Town of Vernon v. Waukesha County*, 102 Wis. 2d 686, 689, 307 N.W.2d 227 (1981). Stated otherwise: ‘counties are creatures of the Legislature and their powers must be exercised within the scope of authority ceded to them by the state. . .’ *Dane County v. Department of Health & Social Services*, 79 Wis.2d 323, 329–30, 255 N.W.2d 539 (1977) (citing *State ex rel. Conway v. Elvod*, 70 Wis. 2d 448, 450, 234 N.W.2d 354 (1975)’. ”.

4. May either of the jurisdictions who are party to a city–county health department adopt additional public health procedures that are above and beyond the proposed activity and expenditures proposed by the city–county health department in its budget as prepared under s. 251.11, stats.?

The answer to this question is dictated by the answer to question 3., above; that is, the city is not limited to the scope of s. 251.11 (1), stats., in funding and carrying out activities in addition to those set forth in s. 251.11 (1), stats., whereas the county is so limited.

5. Can a municipality contract with a city–county health department for public health services that are not included as part of the basic services and unified budget adopted under s. 251.11?

Since the answer to Question No. 1. deals with the power for the city–county health department to contract, per se, I have assumed that this question, instead, addresses whether that part of a

city-county health department that is funded by a county is restricted from contracting to provide services in addition to those budgeted under s. 251.11, stats. I would appear that, if such a contract would necessitate expenditures in addition to those specified in s. 251.11 (1), stats., the county would be restricted, whereas the city would not. However, it might be argued that the limitations under s. 251.11 (1), stats., apply only to the services required under s. 251.05, stats., and for the jurisdictional area of the city-county health department only and that those restrictions are inapplicable for the provision of services under contract by the city-county health department in another jurisdictional area, for which authorization appears to exist under s. 66.30 (2), stats.

6. Can the jurisdictions which create a city-county health department negotiate an agreement relating to the status of employees of the city-county health department, union representation, civil service procedures, etc.?

Under ss. 251.04 (8) and 251.11 (2), stats., the local board of health of a city-county health department is required to employ staff and determine employee compensation (assuming that the county executive does not exercise the employment power under s. 251.04 (9), stats.). It would appear, then, that the local board of health serves as employer for both city and county employees. However, it is unclear if the local board of health would be an employer for those employees for the purposes of collective bargaining, because a local board of health is not included in the entities specified under the definition of "municipal employer" under s. 111.70 (1) (j), stats. The status of employees of the city and county can be negotiated (by the employer) so long as the negotiation does not violate the terms of each group's collective bargaining agreements as to wages, hours and conditions of employment. Ultimately, employment of these employees would probably require a successor collective bargaining agreement in which these issues could be addressed.

With respect to civil service procedures, county employees appear to be covered by Chapter 63, stats., if the chairperson of the county board has appointed members of a county civil service commission under s. 63.01. Although there appear to be no explicit statutory provisions relating to city civil service authority for cities other than Milwaukee, it could be assumed that cities could act in this capacity under their home rule authority.

As may be apparent from this memorandum, the answers to several of the questions posed are not explicit from the statutes. If I can provide you with further assistance, please let me know. I would also recommend that you speak to Marc Shovers and Richard Champagne, who have greater expertise than I with respect to the issues of municipal government and public sector employment. In addition, Attorney Richard Sweet of the Legislative Council was involved in preliminary drafting for 1993 Wisconsin Act 27.

Kennedy, Debora

From: Miller, Mark
Sent: Wednesday, April 26, 2000 11:01 PM
To: Kennedy, Debora
Subject: City-county health department

Ms Kennedy,

Thank you for your responses to my questions regarding a city-county health department. Your answers raise new questions, which I want to discuss with you and the other attorneys at LRB. However, I prefer to wait until I am back in Madison and we can have a discussion rather than an email exchange.

I asked the question about the difference in the authority granted to counties (local boards of health) compared to cities because s. 251.04(7) grants Boards of Health authority to "...assure that measures are taken to provide an environment in which individuals can be healthy." This grant of authority seems so broad that it appears to provide counties, through their boards of health, almost unlimited authority. Hence my question whether this grant of authority differed significantly from the home rule authority available to cities. However, I did not cite this section when I asked my question which caused you to answer the more general question regarding the difference between cities and counties in the exercise of their powers. I apologize for not being more careful when I composed this question.

I am out of town until Monday. I will contact you next week to discuss your memo in more detail. Again, thank you for responding on such short notice.

Mark Miller

*48th Assembly District
Capitol, Room 3 North
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Rep.Miller@legis.state.wi.us*

Kennedy, Debora

From: Miller, Mark
Sent: Thursday, July 20, 2000 5:13 PM
To: Shovers, Marc
Cc: Kennedy, Debora
Subject: City-County Public Health Agencies

Ref: Debora Kennedy's memo, April 26, 2000, City-county health departments

Marc,

While you were gone, I asked Debora Kennedy the following question which she wanted to wait for your return to respond:

Section 251.04 (7) provides a broad grant of authority to local boards of health, to wit: "A local board of health shall assure that measures are taken to provide an environment in which individuals can be healthy."

Is this grant of authority comparable to the home rule authority enjoyed by Wisconsin municipalities? This is the question I asked in question 3 of the referenced memo, but the response addressed the general differences in the authority granted to counties and to municipalities. The question arises in the context of a city wanting to maintain its ability to undertake additional public health measures for its citizens that may not be part of the services provided by a joint city-county public health department. This relates to questions 4 and 5 of the referenced memo.

I anticipate there will be ongoing discussions on the question of city-county public health departments that will generate clarifying legislation in the next session of the legislature.

Mark

Mark Miller

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COUNTY OF DANE

Kathleen M. Falk, County Executive

CITY OF MADISON

Susan J. M. Bauman, Mayor

Date: August 8, 2000

To: Members of the Dane County Legislative Delegation

From: Dane County Executive Kathleen M. Falk
Mayor Susan J.M. Bauman *gmb* *14*

Re: Clarification of Statutes Governing Public Health Unification Issues

As you are aware, the City of Madison and Dane County have been working toward unification of the city and county public health functions. At this juncture, there is one outstanding issue that we wish to have resolved through a change in the statutes governing city/county health departments.

The area of concern is the legal standing of a city/county health department. There is some difference in views of the intent of the existing statutes. The city/county health department must be a free-standing agency subject to the taxing authority and oversight of the respective jurisdictions. Specifically, the city/county health department must be able to enter into contracts with other jurisdictions and must be able to carry out other responsibilities. Rather than let these differences stand in the way, we have mutually agreed to seek changes in the statutes.

Representative Mark Miller has participated in the unification effort and has offered to assist us in the effort to obtain draft language from the Wisconsin Legislative Reference Bureau and introduce the needed legislation in the next session. We would be very grateful if you would help by supporting this legislation.

We are both strongly committed to public health unification that we believe will better serve the citizens in our community. We are committed to working with all of you to ensure passage of legislation that will make this possible. We appreciate your efforts to help move this forward.

Thank you.

Agenda Item No. _____
Copy Mailed to Alderpersons _____

City of Madison, Wisconsin

AN AMENDED MOTION _____

to accept the memorandum report and attached documents relating to cost apportionment between the City and County under Sec. 251.11, Wis. Stats., with amendment and direction by Council to the Joint Public Health Advisory Committee regarding the next steps in the process of unifying the City and County public health departments.

Presented June 20, 2000
Referred _____
Rereferred _____
Reported Back _____
Adopted 07/11/00 POF _____
Rules Susp. _____ Tabled _____
Public Hrg. _____

APPROVAL OF FISCAL NOTE BY THE
COMPTROLLER'S OFFICE IS NEEDED

Approved by: _____

Drafted by: Patricia Gadow, Director
of Public Health

Date: June 20, 2000

Fiscal Note: _____

Comptroller's Office

RESOLUTION NO. _____
ID NO. _____

SPONSOR(S): Ald. Linda Bellman, Ald. Cindy Thomas, Ald. Dorothy Borchardt,
Ald. Gary Poulson, Ald. Santiago Roas, Ald. Matt Sloan, Ald. Mike Verveer,
Ald. Judy Compton, Ald. Roberta Kiesow, Ald. Steve Holtzman,
Ald. Susan Hamblin, Ald. Mike Staude, Ald. Ken Golden

WHEREAS, resolution 25072 adopted by the Common Council on August 17, 1999, directed, in part, that "until formal agreement upon a cost apportionment budget methodology is reached between the City and County, no significant amount of City staff time shall be invested in the public health unification project, except as necessary to complete the cost apportionment analysis and related City/County agreement"; and

WHEREAS, to date, there has been no fiscal analysis or cost apportionment analysis provided by the County comptroller; and

WHEREAS, the City and County legal opinions have identified lack of clarity in §251.11, Wis. Stats., regarding the contracting authority and independent status of a City/County public health department; and

WHEREAS, the Joint Advisory Committee and the Public Health Commission have identified these issues as significant issues needing resolution; and

WHEREAS, the Joint Public Health Advisory Committee states in its report of June 5, 2000 that it will continue to develop transition and implementation plans for creating a unified public health entity, unless otherwise directed.

NOW, THEREFORE, BE IT RESOLVED that the Common Council directs that the next steps in the process of unifying the City and County public health departments be:

1. A thorough fiscal analysis by the County Comptroller on the impact of cost apportionment on the portions of the County budget dealing with public health functions;
2. A referral by the Mayor and County Executive of the outstanding legal issues of contracting authority and independent status to the Legislative Reference Bureau (LRB) for drafting; and
3. A methodology for establishing a budget process be undertaken by the Joint Advisory Committee with assistance from City and County staff; and

BE IT FURTHER RESOLVED that the Council directs that Management Team activities focus on current collaborative activities until the above issues are resolved, supports the continuation of the current collaboration in the areas of: systems improvement in data, intake, and communicable disease work by City/County staff teams, and requests the Mayor report to the Common Council by the first meeting in September concerning the outstanding legal issues of contracting authority and independent status; and

BE IT FINALLY RESOLVED that the Joint Public Health Advisory Committee oversee the current collaborative staff teams and focus on developing a methodology for the establishment of a budget process with assistance of City and County staff.



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September 5, 2000

MEMORANDUM

To: Representative Mark Miller

From: Debora A. Kennedy, Managing Attorney

Subject: Public health unification

You have asked me to review the statutes and advise you with respect to statutory changes that would be necessary or desirable to facilitate negotiations between the city of Madison and Dane County concerning formation of a city-county health department, including investing the city-county health department with the authority to contract with other public and private entities for the provision of services. As requested, this memorandum sets forth a number of suggested statutory changes. In addition, in order to show the likely form that the suggested changes would take, I have attached a draft of proposed legislation that incorporates the changes. The draft is in preliminary form, however, and may not be introduced until it is acceptable to you and has been converted to final form.

Assumptions:

I have made the following several assumptions in formulating this memorandum and the accompanying preliminary draft:

1. The proposed city-county health department is *not* intended to be statutorily considered as a separate unit of government, with taxing and ordinance-creation authority, such as is a special purpose district. It also is not intended to be a subunit exclusively of the county or exclusively of the city; rather it is, instead, intended to be an entity that functions as a subunit, as do other forms of local health departments; however, it is a subunit subject to the control of a city and county acting jointly under an agreement between the two that specifies their relative powers and duties, the powers and duties of the local board of health for the city-county health department and the powers and duties of the city-county health department itself. (Statutorily, the difference is important; as a separate unit of government, the extent of powers and duties of a city-county health department is unclear; therefore, each instance in the statutes in which other units of government are mentioned must be examined to determine whether the phrase "city-county health department" should be added, to explicitly confer a power or a duty to the city-county health department in that instance. If, however, a city-county health department is considered to be a subunit of a city and a county acting jointly, this broad-scale statutory amending is unnecessary, because the subunit assumes those existing powers and duties of a county and a city that are conferred to it under ch. 251, stats., or under the joint city-county agreement.)

2. As an entity that is a subunit of a city and county operating jointly, the city-county health department, as represented by its board of health, must have clear statutory authority to do all of the following:

a. Contract with other entities, whether public or private, for the provision of services and for other matters, under agreements signed by the head of the board of the city-county health department.

b. Function as an employer for both city and county employees (under the agreement between the city and county mentioned under subd. 1., above) for the purposes of hiring and firing, collective bargaining, determining compensation, etc. In other words, the employees of the city-county health department will no longer be either city or county employees, but will instead be employees of the city-county health department, a new kind of governmental employer.

Suggested statutory changes:

The following are suggestions for statutory language changes that would clarify the authority for creation and the extent of powers and duties of a city-county health department:

1. The current definition of "county health department" in s. 251.01 (2), stats., should be repealed, because it conveys the impression that a city-county health department is solely a subunit of a county, without city involvement and authority. I believe that the definition was created to function as a kind of shorthand reference to various entities in the statutes (see, for example, the use of "county department" in s. 251.08, stats.); it is at odds with ss. 251.03 (3) and 251.11 (1), stats., and is confusing. Repeal of s. 251.01 (2), stats., necessitates the amendment of ss. 46.56 (3) (b) 6., 251.01 (1) and (3), 251.02 (1) and 251.08, stats.

2. A statute similar to s. 251.02 (1), stats., should be created to describe explicitly the manner in which a city-county health department may be established, its jurisdiction and the lines of authority, in conformity with ch. 251, stats., that flow from a city and a county that agree to establish such a health department. Currently, only s. 251.01 (1), stats., provides a glancing reference to creation of a city-county health department; the provision is written in passive voice and provides no information about the power or means for the creation. Please see s. 251.02 (1m), created in the preliminary draft. Statutes that currently cross-reference s. 251.02 (1), stats., with respect to a city-county health department, should be amended to reference the newly-created provision (see ss. 250.01 (4) (a) 2., 251.11 (1) and (2) and 251.15 (2), stats. Correspondingly, s. 251.02 (1), stats., should be amended to delete reference to creation of a city-county health department except as an exception to the statutory requirement for creation of a county health department. It should also be amended to clarify that the requirement for a county board to establish a county health department applies to a *single* county health department and is excepted in those instances in which the county board jointly establishes a city-county health department with a city common council or in which the county board establishes a multiple county health department with another county board.

3. Section 251.04 (1), stats., should be amended to provide to a city-county board of health explicit governing authority for a city-county health department. In addition, s. 251.04 (1), stats., permits a "local board of health" (which is defined in s. 250.01 (3), stats., to include a city-county board of health) to contract or subcontract to provide public health services. It might be advisable to add that the contracting or subcontracting may be done with a public or private entity, although the current language is probably broad enough to encompass this.

4. A definition of the term "city-county board of health" that parallels the definition of "county board of health" under s. 251.01 (1), stats., should be created in ch. 251, stats., to clarify its use in other statutes, such as s. 251.02 (1m) (b) and (c). (Note that this creation necessitates the renumbering of s. 251.01 (1), stats.)

5. It might be advisable to amend s. 251.02 (3), stats., to clarify the area of jurisdiction of a multiple county health department. I am unsure whether to list the area of a city-county health department as one of the exceptions to that jurisdiction and therefore did not do so in the preliminary draft. However, it may be unlikely that a county will establish both a multiple county health department and a city-county health department; moreover, even if that does happen, it is conceivable that the multiple county health department and the city-county health department will have the same jurisdiction.

6. On the advice of Marc Shovers, the attorney who drafts in municipal law, s. 66.0301 (1) (a), stats., (the definition of "municipality" for purposes of intergovernmental cooperation agreements) should be amended to include reference to a city-county health department, in order to clarify language in s. 251.09, stats., that authorizes local health departments jointly to provide health services and to clarify that a city-county health department may provide public health services to a municipality (such as a city) under contract.

7. On the advice of Richard Champagne, the attorney who drafts in the area of public sector employment, s. 111.70 (1) (j), stats. (the definition of "municipal employer" for purposes of collective bargaining) should be amended to include a reference to a city-county health department, in order to clarify that a city-county health department, and not the city or the county, is the municipal employer for all individuals employed by the city-county health department. This issue brings up an additional problem which you may wish specifically to address: preservation of the status in employment of currently-employed persons of the county and city who will become employees of the city-county health department. I am attaching to this memorandum, for your perusal, a copy of s. 46.2895 (8), stats. (as enacted under 1999 Wisconsin Act 9), which provides this explicit language for employees of a family care district. It is our opinion that language similar to this is necessary if the preservation of employee status is desired..

Please let me know if I can provide you with further assistance with respect to this matter.

Memo

Date: September 6, 2000

To: Dane County Executive Kathleen Falk and Madison Mayor Sue Bauman

Re: LRB memo relating to City-County Public Health agency.

Attached is a copy of the memo from Debora Kennedy, Managing Attorney for the Legislative Reference Bureau (LRB). She responds to the issues you identified regarding the desired features of a City-County public health agency. Included with the attachment is a draft of a statutory change that accomplishes the goals that you outlined in your August 8, 2000, memo to the Dane County legislative delegation.

Ms Kennedy's memo is based on assumptions that the city and county may want to modify. The memo also suggests that the city and county have some options to consider even within the given assumptions. The memo is very detailed in its statutory references and it will require close attention to the statutes in order to comprehend the changes being suggested.

Please let me know if this memo is responsive to your request and whether you desire additional work from the LRB. I will do whatever I can to assist in the creation and passage of legislation that meets the needs of the City of Madison and Dane County as it seeks to create a City-County public health agency.

~~Attachment~~ not included



JK

Kennedy, Debora

From: Miller, Mark
Sent: Thursday, September 14, 2000 9:49 AM
To: Champagne, Rick
Cc: Kennedy, Debora; Shovers, Marc
Subject: City-County Health Department

Mr. Champagne,

You are referenced in the September 5, 2000 memo from Debora Kennedy to me on the subject of Public Health unification. You suggested that the statutes might require revision in order for a City-County public health agency, operating under a joint agreement of the city and county, to hire employees and to allow for ease of transfer of employees between the agency and the municipality/county. The relevant portion of the memo is attached.

I believe the outcome desired by the City of Madison and Dane County is for maximum flexibility with respect to negotiating the status of employees who work for the city-county public health agency. The status would be part of the joint agreement between the jurisdictions. Ideally the statutes would permit a number of options including, but not limited to:

1. The agency being the employer,
2. The county being the employer,
3. A transitional (or permanent) status where employees retain status as employees of their original jurisdiction but are assigned to the public health agency (this could be important to long-standing employees of one jurisdiction or the other),
4. Flexibility in determining the employee bargaining unit,
5. The ability to allow easy employee transfer between joint agency and the city and county.

If the statutes are modified so that a City-County public health agency clearly operates under an agreement between the city and county as suggested in Ms Kennedy's memo, might not the issue of employee status also be included as a part of that agreement?

Mark Miller

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Kennedy, Debora

From: Champagne, Rick
Sent: Friday, September 15, 2000 10:29 AM
To: Miller, Mark
Cc: Kennedy, Debora; Shovers, Marc
Subject: RE: City-County Health Department

Representative Miller:

The issue of the employment status of the city and county employees who will staff a joint city-county health operation can certainly be addressed as part of the agreement between the city and county. You should be aware, however, that the terms of the city-county agreement with respect to the employment status of the city and county employees may be constrained by collective bargaining agreements that are currently in place between the county and county employees and the city and city employees. In addition, city and county employees may have certain property interests in their positions and certain rights, granted either through statute, ordinance, or collective bargaining agreements, that may constrain the terms of the city-county agreement on employment issues. How this will all play out will depend largely on the specific governmental form assumed by the city-county public health agency and who is the employer of the affected employees. Let me give you a few examples.

If the city and county agree to create the city-county public health agency as a new local governmental unit and provide that the agency will employ all of its own employees, then the city and county are relatively free to initially establish the employment status of the city and county employees in the city-county agreement. The reason is that the employees of the public health agency will no longer be either city or county employees and thus are not covered by collective bargaining agreements, nor covered by the protections in statutes and ordinances that apply to city and county employees. Once the former city and county employees are employed at the city-county public health agency, assuming the employees have collective bargaining rights, the employees and the agency will be required to bargain over wages, hours, and conditions of employment. Through such a process, the employees and the agency, of course, could subsequently bargain issues related to wages, hours, and conditions of employment that might be different from the terms of the city-county agreement regarding employment.

In contrast, if the city and county agree to create the city-county public health agency as a county agency and provide that all employees of the agency will be county employees, including any former city employees, then the city-county agreement dealing with the employment status of the city and county employees would be constrained by existing collective bargaining agreements between the county and the current county employees. Most certainly, the county could not enter into an agreement with the city to take away any rights guaranteed to current county employees by collective bargaining agreements covering the county employees.

Finally, if the city and county agree simply to create the city-county public health agency as a joint agency and agree that each unit of government will provide employees who will retain their status as city and county employees, then issues regarding wages, hours, and conditions of employment will be determined by collective bargaining agreements for those city and county employees in the units. Again, neither the city nor county could enter into an agreement to take away any rights guaranteed to city or county employees by collective bargaining agreements covering current city or county employees. Obviously, for those city and county employees not in collective bargaining units, the city and county compensation plans will determine salaries.

Thus, the city and county can certainly decide in the city-county agreement the employment status of the employees who will staff the city-county public health agency. But the specific governmental form of the city-county public health agency and the decision that the city and county will make regarding who is the employer of the employees will determine the extent to which the city-county agreement, with respect to employment issues, is constrained by collective bargaining agreements, statutes, and ordinances.

I realize that this is an exceedingly complex issue that will require careful and considerable discussion. If I may be of further assistance, please do not hesitate to contact me.

Rick

Rick Champagne
Senior Staff Counsel
Legal Section
Wisconsin Legislative Reference Bureau
100 N. Hamilton St.

Kennedy, Debora

From: Miller, Mark
Sent: Friday, February 16, 2001 3:41 PM
To: Kennedy, Debora
Subject: City-County health Department

Debora,

It appears that the excellent job you did in drafting changes to statutes to allow Dane County and the City of Madison to enter into an agreement for a City-County health department addressed all the areas of concern with suitable language. Please redraft the preliminary draft from last year (LRB 0075/P1 as a draft for introduction in this session.

Mark Miller

Mark Miller

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Capitol Room 112 North
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Kennedy, Debora

From: Miller, Mark
Sent: Monday, February 19, 2001 4:14 PM
To: 'james.ryder@co.eau-claire.wi.us'
Cc: Kuhn, Jamie
Subject: City-County Public Health Agency



City-County Kennedy
memo 2604...



Word for Windows 97



Tag Image File Format
Graphic



Tag Image File Format
Graphic



Tag Image File Format
Graphic

Dear Mr.. Ryder,

I have talked with you in the past regarding the effort to unify the public health departments of Dane County and City of Madison using the Eau Claire City-County model. This process exposed some shortcomings in the current statutes that preclude the adoption of the model you are using. According to the LRB attorney and a member of the committee who was part of the redrafting of Chapter 251, the law was intended to capture the model you implemented. Dane County Corporation Council, and the Madison City Attorney have advised us that the law contains inconsistencies which cast doubt on the legality of a city-county model.

At the request of the jurisdictions, I drafted corrective language and clarified several issues relating to the formation and operation of a city-county public health agency. Attached are copies of the opinions of Corp Counsel and the City Comptroller, a memo from Debora Kennedy, the Reference Bureau Attorney who drafted the revisions, and a copy of the resulting preliminary draft.

I would appreciate your review of these documents. Please alert me if you see any difficulties that this legislation may cause to the operation of the Eau Claire City-County Public Health Department. The intent of the changes was to capture your current operation, clarify some issues to assure that the combined agency contemplated for Dane County/Madison would have the authority to accomplish its public health goals.

Mark Miller
48th Assembly District
Capitol Room 112 North
P.O. 8953, Madison, WI 53708
608-266-5342, 608-282-3648 Fax
Rep.Miller@legis.state.wi.us

Kennedy, Debora

From: JAMES RYDER [James.Ryder@co.eau-claire.wi.us]
Sent: Tuesday, February 20, 2001 10:23 AM
To: debora.kennedy@legis.state.wi.us
Cc: KEITH ZEHMS; Stephen Nick
Subject: Proposed State Statute Log rc:city-county health depts

Thanks for spending time discussing the latest e-mail and information from State Rep Mark Miller regarding crafting state legislation for city-county health departments. In this case to make changes that "fit" the needs of Dane County and the City of Madison. Appreciate your notes from Ted Fischer, Eau Claire City Attorney and Keith Zehms, Eau Claire County Corporation Counsel back in Sept 20-21, 2000 as it relates to a grandfathering clause in your REDRAFT. If legal questions, please don't hesitate to call Keith Zehms (715-839-1836) or Stephen Nick, City Attorney for Eau Claire (715-839-6006). Thanks for your time and sensitivity to Eau Claire's perspective on this important matter. Jim

Jim Ryder
Eau Claire City-County Health Dept
720 Second Ave
Eau Claire, Wi 54703
Phone (715) 839-4721
FAX (715) 839-1674

This is a new email address
james.ryder@co.eau-claire.wi.us



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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P. O. BOX 2037
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STEPHEN R. MILLER
CHIEF

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REFERENCE FAX: (608) 266-5648

March 6, 2001

MEMORANDUM

To: Representative Mark Miller

From: Debora A. Kennedy, Managing Attorney *DAK*

Subject: City-county health department; Eau Claire concerns

Attached is a memorandum of September 21, 2000, from Keith Zehms (the Eau Claire County Corporation Counsel) to Ted Fischer (then the City Attorney for Eau Claire) and to Mr. James Ryder (the health officer for the Eau Claire City-County Health Department). After receiving this material, which Mr. Ryder sent me after phoning me, I called both Mr. Fischer and Mr. Zehms and discussed the points specified in the memorandum. The following is my recollection of the conversations:

1. The reference in the draft to s. 66.0301 (1) (a), stats., is correct; section 66.30, 1999 stats., was renumbered to be s. 66.0301, stats., under 1999 Wisconsin Act 150.
2. The fact that Eau Claire and Eau Claire County do not have a written agreement is probably irrelevant as regards the situation between Madison and Dane County, where an explicit agreement appears to be necessary to effect change that is acceptable to both parties.
3. It is very important that a provision be added to the bill that exempts the Eau Claire City-County Health Department from the requirement specified under s. 251.02 (1m) for the joint agreement. This could be easily accomplished by inserting the phrase "after the effective date of this subsection [revisor inserts date]" after the word "subsection" in the third sentence of s. 251.02 (2m) (intro.). Inserting this phrase in the third sentence makes the requirement for an agreement inapplicable to Eau Claire; moreover, it does not affect the rest of s. 251.02 (1m) (the general authorization for establishment of a city-county health department and the jurisdiction of any city-county health department established).
4. Mr. Fischer's concern about whether the powers and duties of the city-county health department, of the city-county board of health, and the city and county (in s. 251.02 (1m)) gibe with the pre-existing powers and duties of health departments and boards is answered by the phrase "in conformity with this chapter" that is included in the third sentence of s. 251.02 (1m) (intro.; that is, as structured, the powers and duties that are agreed upon must conform to pre-existing powers of health departments and boards. This requirement also applies to Mr. Fischer's concern about the pre-existing ability of the board of health to adopt regulations, e.g., under s. 254.69 (2) (g), stats.

If these explanations are satisfactory to you, and if you have no further concerns about the draft, I will be happy to proceed in drafting it in introducible form, adding the phrase that is specified in 3., above; since there is so little change to the draft, that can be accomplished in just a few hours. Please let me know if I should proceed or if there is any additional matter that I should address in the draft.



Eau Claire City-County

Health Department

720 Second Avenue, Eau Claire, WI 54703-5497

715-839-4718

Fax: 715-839-1674

FAX COVER SHEET

Fax #:

(608) 264-8522

Date:

9-21-00

To:

Debra A. Kennedy, Managing Attorney

Dept:

Legislative Reference Bureau

From:

Jim Byler

Number of pages (including this one):

4

Notes:

Is it possible to be "grandfathered" as
Keith Johns suggests?

Also, a little history on city-county health
departments May 1941. Thought you'd like
to see this perspective.

I:\WP51\DOCUMENT\ADMIN\FAXCOVER

JAMES RYDER - Re: Proposed statutory changes

Page 1

From: KEITH ZEHMS
 To: Fischer, Ted; RYDER, JAMES
 Date: 9/21/00 8:33AM
 Subject: Re: Proposed statutory changes

Eau Claire Corporation Council
 (715) 839-4836

I have 2 major concerns which echo Ted's comments. First, A joint agreement specifying the powers and duties is not necessary since the authority is derived from the statutes and the policy from the board of health. Second, our City-County Health Department should be grandfathered and not subject to a turf battle between Madison and Dane County.

>>> Ted Fischer 09/20/00 02:44PM >>>

You sent Keith and me information about legislation that is under consideration with regard to city-county health departments. It wouldn't do any harm to clarify the statutes as they pertain to city-county departments--however, it occurs to me that we've gotten along just fine for all these years under the statutes as they are.

Some comments on the draft legislation:

--The reference in the draft bill to "66.0301(1)(a)" is wrong. It should be "66.30(1)(a)."

--It appears that under the new legislation the only way to create a city-county health department would be through a joint agreement between the city and the county under s. 66.30, Wis. Stats. (see new s. 251.02(1m)) Two thoughts on this:

1) This is a different process than now exists. The City and County of Eau Claire don't have an agreement to operate as a city-county department. They simply operate under the existing statutory authority. Under the legislation a city and county would have to have a written agreement to form and operate a joint department. While practically speaking under existing law the city and county have to agree to operate a joint department a written agreement is not required. Why this is necessary is unclear to me. Why not have the only agreement be the one where the city and county agree to operate under a city-county department. The rest--the powers and duties of the department and the board--could be (and probably already are) spelled out in the statutes.

2) The legislation doesn't spell out what effect the agreement requirement would have on our city-county health department. Would we be grandfathered in--meaning that we won't have to enter into such an agreement? Or would the agreement requirement apply to us as well? The bill is silent on this point.

--Under the new legislation the 251.02(1m) agreement prescribes the powers and duties of the health department and board of health and the relative governing authority of the city and county. See s. 251.02(1m)(a), (b) and (c) in the new bill. I wonder how this gibes with the statutory imposition of powers and duties on health departments and boards that already exists under 251.04 and 251.05.

--The legislation doesn't explicitly affect the ability of the board of health to adopt regulations such as under s. 254.69(2)(g). However, again, the legislation provides that the city and county are to agree as to the "powers and duties" of the board of health. 251.02(1m)(b). I wouldn't think that this would override the specific grant of authority in statutes such as 254.69(2)(g) but this is unclear. It would be good if the legislation clarified this point.

Generally speaking, it's probably a good idea to clarify the statutes as they relate to city-county departments. It's always seemed to me as though the statutes treated city-county departments as kind of an afterthought. They should be dealt with as full-fledged health department on a par with city and county departments and this kind of a law would accomplish that.

You'll want to keep your eye on this one--it could significantly affect the way our health department operates.



The Municipality

Published by the
LEAGUE OF WISCONSIN MUNICIPALITIES.

The Job of Civilian Defense

Defending Personal Injury Claims

City-County Health Department

JULY



1942

THE NEW EAU CLAIRE CITY-COUNTY HEALTH DEPARTMENT

Urban and Rural Health Activities Combined

By DR. C. K. KINCAID
Director, City-County Health Department, Eau Claire

A YEAR has elapsed since the birth of an experiment in economical government—a union of city and county health departments in the interest of financial economy through co-ordinated effort.

Organization

• In May, 1941, the city council and the county board of supervisors of Eau Claire passed a joint resolution abolishing the county health unit and the city board of health and setting up a joint city-county health department governed by a nonpolitical seven-man board with membership as follows:

- One councilman, 5-year term, appointed by mayor
- One county board member, 5-year term, appointed by board chairman
- One physician, 5-year term, appointed by mayor
- One dentist, 4-year term, appointed by county board chairman
- One layman (clergy), 3-year term, appointed by mayor
- One layman (teaching profession), 2-year term, appointed by county board chairman
- One woman (women's organization), 1-year term, appointed by mayor.

This board acts without pay or compensation and has full authority of local boards of health.

Objectives

• Predicated on the theory that public health problems disregard city limit signs and affect a community as a whole, the joint city-county organization of public health workers is a progressive example of a city and a county joining hands in an effort to render better service to the public. The Eau Claire department is unique in Wisconsin, as this is the only area in which school, city, and county health workers are combined

Objectives of the health department as set out in the original resolution will improve the:

1. Administration of vital statistics.
2. Communicable disease control, including tuberculosis and venereal disease.
3. Public health nursing services.
4. Maternal and infant health.
5. Sanitation of community, including sanitation of water, food, milk, and waste disposal.
6. Health educational activities.

Here and there throughout the United States there can be found a few other communities in which this combination of urban and rural health work has been established. Some of these are of small population, though one, the city of Louisville, Kentucky, is quite large.

When in operation, such plans utilize the health staff in part or as a group in the city or in the county, wherever the need occurs. Milk sanitarians already follow this principle, seeking to improve sanitation on the farm and in the city pasteurization plant. Milk, our one most important food, is thus safeguarded all the way from the grass-roots to the consumer's dinner table.

Disposal of a city's wastes, especially garbage, frequently becomes a source of irritation between urban and rural dwellers. The joint health department can function as a clearing house for this type of vexatious problem.

Of even more concern is the health problem created by the seasonal movements of groups of urban population to rural areas during the summer recreation season. Sanitation of the recreation areas, tuberculosis and other communicable diseases among the people themselves, all these conspire to mingle and interweave the health problems of urban and rural residents. The needs created by these interwoven problems can best be met by a department which functions in the rural as well as in the

Costly duplication of administrative and staff workers, as seen in separate city and county organizations, is saved the taxpayer who supports the joint department. Cooperation of urban health worker and rural worker is automatically guaranteed.

A perspective of a community's health problems and needs is here available to the administrator and will result in more value in disease prevention and lives saved per dollar of the tax funds invested.

Operation

• Joint space is provided for the new department in the recently erected city safety building, which also houses the police department, the fire department, the Visiting Nurse association, and the Family Service association. One department has moved into the new building, and the others will soon follow.

Up to the present, the health department has continued to function in its four separate offices as in past years, with the difference that in the past nine months the administration of the various units has been centralized. Thus the advantages of joint functioning are already being observed, but the full advantage of combined forces working from one central office are yet to be seen.

The supporting agencies, the city council and the county board of supervisors, have steadfastly and confidently supported the new organization even though the financial benefits of increased efficiency still await in part the actual combination in one office space. The seven-man board is growing more and more keenly interested in the function and development of the infant organization. Associated agencies, community organizations, service clubs, and the like, are all observing the growth of the infant with friendly concern. They give us who work here in the department a feeling that they are quite certain that some day Eau Claire will have a health department of which they can be proud; a health department operating efficiently and economically in the protection of the health of every citizen in our city and county.

Kennedy, Debora

From: Miller, Mark
Sent: Wednesday, March 07, 2001 5:10 PM
To: Kennedy, Debora
Subject: RE: Public Health Unification

Actually, I had hoped that the requirement for a written agreement was an option, but not a requirement. I seem to recall that you indicated this was difficult to draft. If that is the case, keep the requirement as generally applicable into the future.

-----Original Message-----

From: Kennedy, Debora
Sent: Wednesday, March 07, 2001 4:14 PM
To: Miller, Mark
Subject: RE: Public Health Unification

One other thing occurred to me (after I had written and sent the memo, of course). As I had proposed the language, it would affect any other city-county health department that is created after passage of the bill. Is that okay with you, or would you want the requirement for the agreement (in the last sentence under s. 251.02 (1m) and pars. (a) to (c) under that subsection) to be somehow time limited so that the effect would be that it applies only to Madison-Dane County?

Debora A. Kennedy
 Managing Attorney
 Phone: (608) 266-0137
 debora.kennedy@legis.state.wi.us

-----Original Message-----

From: Miller, Mark
Sent: Wednesday, March 07, 2001 3:52 PM
To: Kennedy, Debora
Cc: Kuhn, Jamie
Subject: Public Health Unification

Debra,
 Thank you for your memo of March 6. Please make the changes identified in paragraph 3 of that memo that makes these changes applicable to city-county departments created after the effective date of the legislation.
 Mark

Mark Miller
 48th Assembly District
 Capitol Room 112 North
 P.O. 8953, Madison, WI 53708
 608-266-5342, 608-282-3648 Fax
 Rep.Miller@legis.state.wi.us

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1 AN ACT to repeal 251.01 (2); to renumber and amend 251.01 (1); to amend
2 46.56 (3) (b) 6., 66.0301 (1) (a), 111.70 (1) (j), 250.01 (4) (a) 2., 251.01 (3), 251.02
3 (1), 251.02 (3), 251.04 (1), 251.08, 251.11 (1), 251.11 (2) and 251.15 (2); and to
4 create 251.01 (1g) and 251.02 (1m) of the statutes; relating to: city-county
5 health departments.

Analysis by the Legislative Reference Bureau

INSERT A

~~This is a preliminary draft. An analysis will be provided for a subsequent version.~~

INSERT ANALYSIS

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

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

6 SECTION 1. 46.56 (3) (b) 6. of the statutes is amended to read:
7 46.56 (3) (b) 6. Representatives of the county health department, as defined in
8 s. 251.01 (2) established under s. 251.02 (1) or city-county health department
9 established under s. 251.02 (1m).

SECTION 2

1 SECTION 2. 66.0301 (1) (a) of the statutes is amended to read:

2 66.0301 (1) (a) In this section "municipality" means the state or any
3 department or agency thereof, or any city, village, town, county, school district, public
4 library system, public inland lake protection and rehabilitation district, sanitary
5 district, farm drainage district, metropolitan sewerage district, sewer utility district,
6 solid waste management system created under s. 59.70 (2), local exposition district
7 created under subch. II of ch. 229, local professional baseball park district created
8 under subch. III of ch. 229, local professional football stadium district created under
9 subch. IV of ch. 229, a local cultural arts district created under subch. V of ch. 229,
10 family care district under s. 46.2895, water utility district, mosquito control district,
11 municipal electric company, county or city transit commission, commission created
12 by contract under this section, taxation district ~~or~~, regional planning commission, or
13 city-county health department.

14 SECTION 3. 111.70 (1) (j) of the statutes is amended to read:

15 111.70 (1) (j) "Municipal employer" means any city, county, village, town,
16 metropolitan sewerage district, school district, family care district ~~or~~, any other
17 political subdivision of the state, or a city-county health department that engages
18 the services of an employee and includes any person acting on behalf of a municipal
19 employer within the scope of the person's authority, express or implied, but
20 specifically does not include a local cultural arts district created under subch. V of
21 ch. 229.

22 SECTION 4. 250.01 (4) (a) 2. of the statutes is amended to read:

23 250.01 (4) (a) 2. A city-county health department established under s. 251.02

24 (1) (1m).

Insert 2-22

1 SECTION 5. 251.01 (1) of the statutes is renumbered 251.01 (1r) and amended
2 to read:

3 251.01 (1r) "County board of health" means a board of health for a single county
4 health department or for a multiple county health department.

5 SECTION 6. 251.01 (1g) of the statutes is created to read:

6 251.01 (1g) "City-county board of health" means a board of health for a
7 city-county health department.

8 SECTION 7. 251.01 (2) of the statutes is repealed.

9 SECTION 8. 251.01 (3) of the statutes is amended to read:

10 251.01 (3) "County health officer" means the position of a local health officer
11 in a single county health department or in a multiple county health department.

12 SECTION 9. 251.02 (1) of the statutes is amended to read:

13 251.02 (1) In counties with a population of less than 500,000, unless a county
14 board establishes a city-county health department under sub. (1m) jointly with the
15 governing body of a city or establishes a multiple county health department under
16 sub. (3) in conjunction with another county, the county board shall establish a single
17 county health department that meets, which shall meet the requirements of this
18 chapter. The county health department shall serve all areas of the county that are
19 not served by a city health department that was established prior to
20 January 1, 1994, by a town or village health department established under sub.
21 (3m), or by a multiple municipal local health department established under sub. (3r).
22 No governing body of a city may establish a city health department may be
23 established after January 1, 1994, but a city-county health department may be
24 established after that date.

25 SECTION 10. 251.02 (1m) of the statutes is created to read:

1 251.02 (1m) In counties with a population of less than 500,000, the county
2 board and the governing body of a city may jointly establish a city-county health
3 department, which shall meet the requirements of this chapter. A city-county health
4 department shall serve all areas of the county that are not served by a city health
5 department that was established prior to January 1, 1994, by a town or village health
6 department established under sub. (3m), or by a multiple municipal local health
7 department established under sub. (3r). A city-county health department
8 established under this subsection is subject to the control of the city and county
9 acting jointly under an agreement entered into under s. 66.0301 that specifies, in
10 conformity with this chapter, all of the following:

11 (a) The powers and duties of the city-county health department.

12 (b) The powers and duties of the city-county board of health for the city-county
13 health department.

14 (c) The relative powers and duties of the city and county with respect to
15 governance of the city-county health department and the city-county board of
16 health.

17 SECTION 11. 251.02 (3) of the statutes is amended to read:

18 251.02 (3) A county board may, in conjunction with the county board of another
19 county, establish a multiple county health department in conjunction with the
20 county board of another county, which shall meet the requirements of this chapter.
21 A multiple county health department shall serve all areas of the respective counties
22 that are not served by a city health department that was established prior to January
23 1, 1994, by a town or village health department established under sub. (3m), or by
24 a multiple municipal local health department established under sub. (3r).

25 SECTION 12. 251.04 (1) of the statutes is amended to read:

*after the effective date
of this subsection ...*

*[revisor
inserts date]*

1 251.04 (1) ~~A city or county board of health shall govern each local health~~
2 ~~department other than a local health department~~ Except as authorized in s. 251.02
3 (3m) and (3r) and a, a city board of health shall govern a city health department, a
4 county board of health shall govern a county health department or multiple county
5 health department, and a city-county board of health shall govern a city-county
6 health department. A city or board of health, a county board of health, a city-county
7 board of health, or a board of health for a local health department as authorized in
8 s. 251.02 (3m) and (3r) shall assure the enforcement of state public health statutes
9 and public health rules of the department as prescribed for a Level I local health
10 department. A local board of health may contract or subcontract with a public or
11 private entity to provide public health services. The contractor's staff shall meet the
12 appropriate qualifications for positions in a Level I local health department.

13 **SECTION 13.** 251.08 of the statutes is amended to read:

14 **251.08 Jurisdiction of local health department.** The jurisdiction of the
15 local health department shall extend to the entire area represented by the governing
16 body of the county, city, village or town that established the local health department,
17 except that the jurisdiction of a single or multiple county health department or of a
18 city-county health department does not extend to cities, villages and towns that
19 have local health departments. Cities, towns and villages having local health
20 departments may by vote of their local boards of health determine to come under the
21 jurisdiction of the county health department. No part of any expense incurred under
22 this section by a county health department may be levied against any property
23 within any city, village or town that has a local health department and that has not
24 determined to come under the jurisdiction of the county health department.

25 **SECTION 14.** 251.11 (1) of the statutes is amended to read:

1 251.11 (1) The local board of health of every multiple county health department
2 established under s. 251.02 (3) and of every city–county health department
3 established under s. 251.02 (1) (1m) shall annually prepare a budget of its proposed
4 expenditures for the ensuing fiscal year and determine the proportionate cost to each
5 participating county and city on the basis of equalized valuation. A certified copy of
6 the budget, which shall include a statement of the amount required from each county
7 and city, shall be delivered to the county board of each participating county and to
8 the mayor or city manager of each participating city. The appropriation to be made
9 by each participating county and city shall be determined by the governing body of
10 the county and city. No part of the cost apportioned to the county shall be levied
11 against any property within the city.

12 **SECTION 15.** 251.11 (2) of the statutes is amended to read:

13 251.11 (2) The local board of health of every a multiple county health
14 department established under s. 251.02 (3) ~~and of every city–county health~~
15 ~~department established under s. 251.02 (1)~~ shall, under this section, determine the
16 compensation for the employees of the multiple county health departments ~~and~~
17 ~~city–county health departments.~~ The local board of health of a city–county health
18 department established under s. 251.02 (1m) shall, under this section, determine the
19 compensation for the employees of the city–county health department.

20 **SECTION 16.** 251.15 (2) of the statutes is amended to read:

21 251.15 (2) A city that had established a local health department prior to
22 deciding to participate in a city–county health department established under s.
23 251.02 (1) (1m) may withdraw from the city–county health department if the

1 common council of the city gives written notice to the county board of the
2 participating county.

3 (END)

INSERT A

Under current law, in a county with a population of less than 500,000 (any county except Milwaukee County), a local health department may be in the form of a county health department, a multiple county health department, a city health department (if established by the common council of a city before January 1, 1994), a city-county health department, or, in Racine County only, a village, town, or multiple municipal health department. Although no explicit procedures are specified for formation of a city-county health department, a county health department is defined to include a city-county health department. The local board of health of a city-county health department must annually prepare a budget of proposed expenditures for the next fiscal year and determine the proportional cost to each participating city and county on the basis of equalized valuation. The appropriations to be made by each participating city and county must be determined by the governing body of the city and county; no part of the county's cost may be levied against any city property. A city that established a local health department before deciding to participate in a city-county health department may withdraw from the city-county health department if the city's common council gives written notice of the withdrawal to the county board.

This bill eliminates the definition of a county health department and, instead, in a county with a population of less than 500,000, authorizes the county board and the governing body of a city to establish jointly a city-county health department. A city-county health department that is established after the date that the bill becomes an act is subject to the control of the city and the county acting jointly under an agreement that specifies the health department's powers and duties, the powers and duties of the city-county board of health for that health department, and the relative powers and duties of the city and county concerning governance of the health department and the board of health. The city-county health department must meet the requirements of laws relating to public health, must serve all areas of the county that are not served by a city, town, village, or multiple municipal health department, and is governed by a city-county board of health. Further, the city-county board of health must determine the compensation for the employees of the city-county health department. ~~As a result~~ the bill includes a city-county health department in the definition of "municipality" under the municipal laws, in order to permit the health department to enter into intergovernmental cooperation agreements. ↗

no 9 ↗ The bill clarifies that any multiple county health department that is established by a county board in conjunction with the county board of another county must meet the requirements of laws relating to public health and serve all areas of the respective counties that are not served by a city, town, village, or multiple municipal health department.

lastly

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2560/linsrc
RAC:.....

Insert Analysis:

Under current law, any employee of a city, county, village, town, metropolitan sewerage district, school district, family care district, or any other political subdivision of the state, other than, with certain exceptions, an employee who is a supervisor, manager, or executive employee, is eligible to participate in the collective bargaining process under the municipal employment relations act (MERA). Under MERA, employees may bargain with their employer over wages, hours, and conditions of employment. This bill clarifies that any such employee who is employed by an instrumentality of one or more political subdivisions of this state, such a city-county health department, is also eligible to participate in the collective bargaining process under MERA.

Insert 2-22:

SECTION 1. 111.70 (1) (j) of the statutes is amended to read:

111.70 (1) (j) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district, family care district, or any other political subdivision of the state, ~~or instrumentality of one or more political subdivisions of the state,~~ that engages the services of an employee and includes any person acting on behalf of a municipal employer within the scope of the person's authority, express or implied, but specifically does not include a local cultural arts district created under subch. V of ch. 229.

STBT:
leave
comma
as
typed

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672.

Kennedy, Debora

From: Kennedy, Debora
Sent: Monday, March 12, 2001 5:43 PM
To: Miller, Mark
Subject: RE: Public Health LRB2560/1
Representative Miller:

You're probably right; "that was established..." is probably not necessary.

I eliminated the definition for "county health department" both to take out "city-county health department" and because it isn't necessary; the draft affects every statutory reference to "county health department" to clarify whether the reference is to a single or multiple county health department or both. No other kind of health department is defined, so the definition itself was inconsistent. If you want it kept in, I can, but I thought it would be clearer and a more uniform treatment to treat it as I did.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
debora.kennedy@legis.state.wi.us

-----Original Message-----

From: Miller, Mark
Sent: Monday, March 12, 2001 5:02 PM
To: Kennedy, Debora
Cc: Kuhn, Jamie
Subject: RE: Public Health LRB2560/1

Debora,
Thanks for the prompt response. The possibility of a city "shoehorning" a city health department into a city-county health department seems rather far-fetched, but I was struck by the clarity with which that seemed a possibility under the proposed language (although such a possibility is equally stark in the existing statute). In your proposed revision, is it necessary to include "that was established before January 1, 1994?" It seems redundant since a city health department can not have been created after that date. Deleting that part of the proposed revision would make the sentence somewhat less cumbersome. I think the clause should be clarified to indicate that "shoehorning" is not a possibility. You are the expert in statutory language. Use your best judgement as to the language that will accomplish this result.

I had suspected that the reason that you specified that a county board of health is the governing body for a multi-county health department was located elsewhere in the bill, I just couldn't find it. Thanks for clarifying. However, now that I study that portion of the bill more carefully, I'm curious about eliminating the definition for county health department since the term remains in the statutes.

I apologize for not asking these questions last fall, but sometimes things strike you differently depending on how recently you studied the issue.
Mark

-----Original Message-----

From: Kennedy, Debora
Sent: Monday, March 12, 2001 10:51 AM
To: Miller, Mark

03/13/2001

Subject: RE: Public Health LRB2560/1

1. I believe your criticism of the first sentence of s. 251.02 (1m) (p. 5, lines 1-3) is apt - you have pointed out something that I missed. Even though, under s. 251.02 (1), stats., a city can't establish a new city health department, it had not occurred to me that a city could, under s. 251.02 (1m) "shoehorn" in a kind of new city health department in conjunction with a county. I think the solution would be to redraft the first sentence to be something like "In counties with a population of less than 500,000, the governing body of a city that has a city health department that was established before January 1, 1994, and the county board may jointly establish a city-county health department, which shall meet the requirements of this chapter." It's a pretty lengthy sentence, and awkward, but it fixes the problem.

2. I drafted the amendments to s. 251.04 (1), stats., (p. 6, line 5) as I did for several reasons:

a. The current language is not specific enough; it does not indicate all the kinds of local health departments that can be governed, including multiple county health departments and city-county health departments.

b. The current language is ambiguous; it would seem to allow a city board of health to govern a county health department; the language you propose would, I am afraid, permit the same result.

c. I wanted to clarify the fact that a county board of health governs a multiple county health department, in order to follow the amendment to s. 251.01 (1r), stats. (the definition of "county board of health").

Would you like for me to redraft the bill to fix s. 251.02 (1m)? I'd be happy to. If you have any questions, or would like the redraft, please let me know.

Debora A. Kennedy
 Managing Attorney
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 debora.kennedy@legis.state.wi.us

-----Original Message-----

From: Miller, Mark
Sent: Monday, March 12, 2001 7:45 AM
To: Kennedy, Debora
Subject: Public Health LRB2560/1

Debora, Thanks for completing the draft.

Re: page 5, lines 1-3. This language seems to imply that a city that does not have a city health department (created before January 1, 1994) may jointly establish a city-county health department. It is not my intent to allow for the creation of city-county health departments, except as a unification of services measure. Do you interpret the deleted language on page 4, lines 23-24, to allow for the creation of a city-county health department where there was no pre-existing city health department? I never understood this language to allow that possibility.

On page 6, line 5, I'm curious about the rationale of designating all the kinds of boards of health rather than saying something like, "Except as...a local health department shall be governed by a local board of health." In itemizing the various boards of health, it would seem necessary to include: "...a multiple county board of health shall govern a multiple-county health department..."

Mark

Mark Miller

48th Assembly District

Capitol Room 112 North

P.O. 8953, Madison, WI 53708

608-266-5342, 608-282-3648 Fax

Rep.Miller@legis.state.wi.us



FRIDAY a.m., please

State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2560/22

DAK/MES/RAC:cjs:kpr



2001 BILL

Only changes are pp. 2 + 5

1 AN ACT to repeal 251.01 (2); to renumber and amend 251.01 (1); to amend
2 46.56 (3) (b) 6., 66.0301 (1) (a), 111.70 (1) (j), 250.01 (4) (a) 2., 251.01 (3), 251.02
3 (1), 251.02 (3), 251.04 (1), 251.08, 251.11 (1), 251.11 (2) and 251.15 (2); and to
4 create 251.01 (1g) and 251.02 (1m) of the statutes; relating to: city-county
5 health departments.

Analysis by the Legislative Reference Bureau

Under current law, in a county with a population of less than 500,000 (any county except Milwaukee County), a local health department may be in the form of a county health department, a multiple county health department, a city health department (if established by the common council of a city before January 1, 1994), a city-county health department, or, in Racine County only, a village, town, or multiple municipal health department. Although no explicit procedures are specified for formation of a city-county health department, a county health department is defined to include a city-county health department. The local board of health of a city-county health department must annually prepare a budget of proposed expenditures for the next fiscal year and determine the proportional cost to each participating city and county on the basis of equalized valuation. The appropriations to be made by each participating city and county must be determined by the governing body of the city and county; no part of the county's cost may be levied against any city property. A city that established a local health department before deciding to participate in a city-county health department may withdraw from the

BILL*that has a city health department*

city-county health department if the city's common council gives written notice of the withdrawal to the county board.

This bill eliminates the definition of a county health department and, instead, in a county with a population of less than 500,000, authorizes the county board and the governing body of a city to establish jointly a city-county health department. A city-county health department that is established after the date that the bill becomes an act is subject to the control of the city and the county acting jointly under an agreement that specifies the health department's powers and duties, the powers and duties of the city-county board of health for that health department, and the relative powers and duties of the city and county concerning governance of the health department and the board of health. The city-county health department must meet the requirements of laws relating to public health, must serve all areas of the county that are not served by a city, town, village, or multiple municipal health department, and is governed by a city-county board of health. Further, the city-county board of health must determine the compensation for the employees of the city-county health department. The bill includes a city-county health department in the definition of "municipality" under the municipal laws, in order to permit the health department to enter into intergovernmental cooperation agreements. Lastly, the bill clarifies that any multiple county health department that is established by a county board in conjunction with the county board of another county must meet the requirements of laws relating to public health and serve all areas of the respective counties that are not served by a city, town, village, or multiple municipal health department.

Under current law, any employee of a city, county, village, town, metropolitan sewerage district, school district, family care district, or any other political subdivision of the state, other than, with certain exceptions, an employee who is a supervisor, manager, or executive employee, is eligible to participate in the collective bargaining process under the municipal employment relations act (MERA). Under MERA, employees may bargain with their employer over wages, hours, and conditions of employment. This bill clarifies that any such employee who is employed by an instrumentality of one or more political subdivisions of this state, such a city-county health department, is also eligible to participate in the collective bargaining process under MERA.

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

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

- 1 **SECTION 1.** 46.56 (3) (b) 6. of the statutes is amended to read:
- 2 46.56 (3) (b) 6. Representatives of the county health department, as defined in
- 3 s. 251.01 (2) established under s. 251.02 (1) or city-county health department
- 4 established under s. 251.02 (1m).

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1 **SECTION 2.** 66.0301 (1) (a) of the statutes is amended to read:

2 66.0301 (1) (a) In this section “municipality” means the state or any
3 department or agency thereof, or any city, village, town, county, school district, public
4 library system, public inland lake protection and rehabilitation district, sanitary
5 district, farm drainage district, metropolitan sewerage district, sewer utility district,
6 solid waste management system created under s. 59.70 (2), local exposition district
7 created under subch. II of ch. 229, local professional baseball park district created
8 under subch. III of ch. 229, local professional football stadium district created under
9 subch. IV of ch. 229, a local cultural arts district created under subch. V of ch. 229,
10 family care district under s. 46.2895, water utility district, mosquito control district,
11 municipal electric company, county or city transit commission, commission created
12 by contract under this section, taxation district ~~or~~, regional planning commission, or
13 city-county health department.

14 **SECTION 3.** 111.70 (1) (j) of the statutes is amended to read:

15 111.70 (1) (j) “Municipal employer” means any city, county, village, town,
16 metropolitan sewerage district, school district, family care district, or any other
17 political subdivision of the state, or instrumentality of one or more political
18 subdivisions of the state, that engages the services of an employee and includes any
19 person acting on behalf of a municipal employer within the scope of the person’s
20 authority, express or implied, but specifically does not include a local cultural arts
21 district created under subch. V of ch. 229.

22 **SECTION 4.** 250.01 (4) (a) 2. of the statutes is amended to read:

23 250.01 (4) (a) 2. A city-county health department established under s. 251.02
24 ~~(1)~~ (1m).

BILL**SECTION 5**

1 **SECTION 5.** 251.01 (1) of the statutes is renumbered 251.01 (1r) and amended
2 to read:

3 251.01 (1r) "County board of health" means a board of health for a single county
4 health department or for a multiple county health department.

5 **SECTION 6.** 251.01 (1g) of the statutes is created to read:

6 251.01 (1g) "City-county board of health" means a board of health for a
7 city-county health department.

8 **SECTION 7.** 251.01 (2) of the statutes is repealed.

9 **SECTION 8.** 251.01 (3) of the statutes is amended to read:

10 251.01 (3) "County health officer" means the position of a local health officer
11 in a single county health department or in a multiple county health department.

12 **SECTION 9.** 251.02 (1) of the statutes is amended to read:

13 251.02 (1) In counties with a population of less than 500,000, unless a county
14 board establishes a city-county health department under sub. (1m) jointly with the
15 governing body of a city or establishes a multiple county health department under
16 sub. (3) in conjunction with another county, the county board shall establish a single
17 county health department that meets, which shall meet the requirements of this
18 chapter. The county health department shall serve all areas of the county that are
19 not served by a city health department that was established prior to
20 January 1, 1994, by a town or village health department established under sub.
21 (3m), or by a multiple municipal local health department established under sub. (3r).
22 No governing body of a city may establish a city health department may be
23 established after January 1, 1994, but a city-county health department may be
24 established after that date.

25 **SECTION 10.** 251.02 (1m) of the statutes is created to read:

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that has a city health department

1 251.02 (1m) In counties with a population of less than 500,000, the county
2 board and the governing body of a city may jointly establish a city-county health
3 department, which shall meet the requirements of this chapter. A city-county health
4 department shall serve all areas of the county that are not served by a city health
5 department that was established prior to January 1, 1994, by a town or village health
6 department established under sub. (3m), or by a multiple municipal local health
7 department established under sub. (3r). A city-county health department
8 established under this subsection after the effective date of this subsection ...
9 [revisor inserts date], is subject to the control of the city and county acting jointly
10 under an agreement entered into under s. 66.0301 that specifies, in conformity with
11 this chapter, all of the following:

12 (a) The powers and duties of the city-county health department.

13 (b) The powers and duties of the city-county board of health for the city-county
14 health department.

15 (c) The relative powers and duties of the city and county with respect to
16 governance of the city-county health department and the city-county board of
17 health.

18 SECTION 11. 251.02 (3) of the statutes is amended to read:

19 251.02 (3) A county board may, in conjunction with the county board of another
20 county, establish a multiple county health department in conjunction with the
21 county board of another county, which shall meet the requirements of this chapter.
22 A multiple county health department shall serve all areas of the respective counties
23 that are not served by a city health department that was established prior to January
24 1, 1994, by a town or village health department established under sub. (3m), or by
25 a multiple municipal local health department established under sub. (3r).

BILL**SECTION 12**

1 **SECTION 12.** 251.04 (1) of the statutes is amended to read:

2 251.04 (1) ~~A city or county board of health shall govern each local health~~
3 ~~department other than a local health department~~ Except as authorized in s. 251.02
4 (3m) and (3r) ~~and a~~, a city board of health shall govern a city health department, a
5 county board of health shall govern a county health department or multiple county
6 health department, and a city-county board of health shall govern a city-county
7 health department. A city or board of health, a county board of health, a city-county
8 board of health, or a board of health for a local health department as authorized in
9 s. 251.02 (3m) and (3r) shall assure the enforcement of state public health statutes
10 and public health rules of the department as prescribed for a Level I local health
11 department. A local board of health may contract or subcontract with a public or
12 private entity to provide public health services. The contractor's staff shall meet the
13 appropriate qualifications for positions in a Level I local health department.

14 **SECTION 13.** 251.08 of the statutes is amended to read:

15 **251.08 Jurisdiction of local health department.** The jurisdiction of the
16 local health department shall extend to the entire area represented by the governing
17 body of the county, city, village or town that established the local health department,
18 except that the jurisdiction of a single or multiple county health department or of a
19 city-county health department does not extend to cities, villages and towns that
20 have local health departments. Cities, towns and villages having local health
21 departments may by vote of their local boards of health determine to come under the
22 jurisdiction of the county health department. No part of any expense incurred under
23 this section by a county health department may be levied against any property
24 within any city, village or town that has a local health department and that has not
25 determined to come under the jurisdiction of the county health department.

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1 **SECTION 14.** 251.11 (1) of the statutes is amended to read:

2 251.11 (1) The local board of health of every multiple county health department
3 established under s. 251.02 (3) and of every city-county health department
4 established under s. 251.02 (1) (1m) shall annually prepare a budget of its proposed
5 expenditures for the ensuing fiscal year and determine the proportionate cost to each
6 participating county and city on the basis of equalized valuation. A certified copy of
7 the budget, which shall include a statement of the amount required from each county
8 and city, shall be delivered to the county board of each participating county and to
9 the mayor or city manager of each participating city. The appropriation to be made
10 by each participating county and city shall be determined by the governing body of
11 the county and city. No part of the cost apportioned to the county shall be levied
12 against any property within the city.

13 **SECTION 15.** 251.11 (2) of the statutes is amended to read:

14 251.11 (2) The local board of health of every a multiple county health
15 department established under s. 251.02 (3) ~~and of every city-county health~~
16 ~~department established under s. 251.02 (1)~~ shall, under this section, determine the
17 compensation for the employees of the multiple county health departments and
18 ~~city-county health departments.~~ The local board of health of a city-county health
19 department established under s. 251.02 (1m) shall, under this section, determine the
20 compensation for the employees of the city-county health department.

21 **SECTION 16.** 251.15 (2) of the statutes is amended to read:

22 251.15 (2) A city that had established a local health department prior to
23 deciding to participate in a city-county health department established under s.
24 251.02 (1) (1m) may withdraw from the city-county health department if the

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SECTION 16

1 common council of the city gives written notice to the county board of the
2 participating county.

3 (END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
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STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
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April 12, 2001

MEMORANDUM

To: Representative Miller

From: Debora A. Kennedy, Managing Attorney

Re: LRB-2560/2 City-county health departments

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0137 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.