A faint, stylized illustration of the Wisconsin State Capitol dome is centered in the background. The dome is rendered in a light gray tone, showing its characteristic ribbed structure and the central lantern with a weather vane. The building's base is also visible, though less detailed.

WISCONSIN LEGISLATOR BRIEFING BOOK 2017-18

CHAPTER 24 – MUNICIPAL AND COUNTY GOVERNMENT

Wisconsin is comprised of 72 counties, 1,255 towns, 190 cities, and 407 villages. They are commonly referred to as “general purpose units of local government.” While there are similarities and differences across each type of general purpose local unit of government in Wisconsin, they all exist to provide general governmental services to their residents. In an effort to decrease costs and improve these services, municipalities and counties often work together through intergovernmental cooperation agreements to provide such services.

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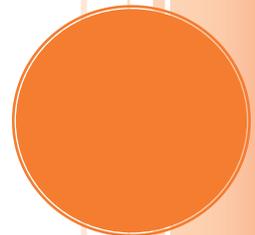


TABLE OF CONTENTS

OVERVIEW OF GENERAL PURPOSE LOCAL UNITS OF GOVERNMENT	1
Counties.....	1
Towns	3
Cities and Villages	5
INTERGOVERNMENTAL COOPERATION.....	8
General Authority	8
County Provision of Services to Cities, Villages, and Towns	9
Revenue Sharing.....	9
Area Cooperation Compacts	10
BOUNDARY ISSUES.....	10
Annexation	11
Municipal Incorporation	12
Consolidation.....	13
Detachment.....	14
Boundary Agreements	15
COMPREHENSIVE PLANNING	16
STATE MANDATES	18
ADDITIONAL REFERENCES	19
GLOSSARY	19

OVERVIEW OF GENERAL PURPOSE LOCAL UNITS OF GOVERNMENT

General purpose local units of government are divided into two tiers: counties and municipalities (towns, villages, and cities). They are all creatures of the state in that their existence depends on laws enacted by the state Legislature.¹ The Legislature also largely determines their powers and duties, although the Wisconsin Constitution confers “home rule” authority to cities and villages for them to determine their local affairs and government. General purpose local units of government are distinct from special purpose local government units such as school districts, sanitary districts, and inland lake districts.

County government is the oldest form of local government in Wisconsin, dating back to 1818 when it was still part of the Michigan Territory.

Counties

Wisconsin’s 72 counties serve dual functions, being both general purpose units of local government and administrative arms of the state. The counties vary in size from 232 square miles (Ozaukee County) to 1,545 square miles (Marathon County) and cover the entire territory of the state. Estimated county populations range from 4,236 (Menominee County) to 949,741 (Milwaukee County). County boundaries are generally established by the Legislature; however, the statutes also provide mechanisms by which a county may be consolidated with an adjoining county. [ss. 2.01 and 59.08, Stats.] Additionally, the Wisconsin Constitution restricts counties with an area of 900 square miles or less from being divided or made smaller without a favorable referendum by the voters of the county. [Wis. Const. art. XIII, s. 7.]

Q: What is administrative home rule authority?

A: Administrative home rule authority allows a county to decide for itself how to organize or consolidate its administrative departments and is conferred by statute.

Administrative Home Rule

The Wisconsin Constitution authorizes the Legislature to establish one or more systems of county government. It states that the Legislature may confer on county boards powers of a “local, legislative, and administrative

¹ Chapter 66, Stats., relates to general municipal law; statutes specific to counties are found in ch. 59; those related to towns are in ch. 60; those related to villages are in ch. 61; and those related to cities are in ch. 62. Statistics regarding counties and municipalities cited in this chapter are from the 2013-14 *Wisconsin Blue Book*.

character.” [Wis. Const. art. IV, ss. 22 and 23.] Consequently, county powers are not derived from the State Constitution, but from what is specifically authorized by state statutes and what can reasonably be implied from them. Thus, unlike cities and villages, counties have no general constitutional or statutory home rule authority, discussed later in this chapter. Instead, they have “administrative home rule” authority to organize their own departments. [s. 59.03, Stats.]

Role in Local Government and Administration of State Programs

Counties are considered local units of government because they have local governmental powers.

The local functions exercised by counties vary widely, but generally include the powers to levy and collect property taxes, construct and maintain county highways, engage in land use planning, and maintain parks and recreational facilities.

Counties are also considered an administrative arm of the state because they are required to carry out or enforce certain state laws. For example, counties are required to maintain judicial court records, manage state elections, keep vital statistics and property records (birth and death certificates, marriage licenses, and property deeds), and enforce and prosecute state criminal laws. Counties are also required to carry out various state programs, such as health and human services programs. [s. 46.23, Stats.]

Counties administer the state’s health and welfare services, court system, and highway maintenance programs, as well as many other state programs.

Structure of County Government

A county’s legislative power is exercised by the county board of supervisors, generally through the enactment of ordinances and the adoption of resolutions. In most counties, the county board carries out executive functions as well. County board supervisors are elected to two-year terms in the spring nonpartisan election held in odd-numbered years. Each county board consists of supervisors elected from individual supervisory districts drawn by the county board after each federal decennial census. The statutes establish the maximum number of supervisors a county may have, based on population, except for Milwaukee County. Milwaukee County currently has no statutorily prescribed maximum number of county board supervisors. Menominee County is also unique in that it currently consists of only one town. As such, elected town board members automatically serve as county board members. If the county ever has one or more villages, then the county board must also have one supervisor from each village in the county. [s. 59.10 (2) (a), (3) (a), and (5), Stats.]

In any county other than Menominee, the size of the county board may be adjusted only after each federal decennial census. The procedures to do so are specified in the statutes. [s. 59.10 (2), (3), and (5), Stats.]

To assist in carrying out administrative and executive functions, the statutes require counties to provide for either a county executive, a county administrator, or a county

administrative coordinator. The most powerful of these is the county executive, who is elected for a four-year term and serves as the chief executive officer of the county. The county executive has veto authority, including partial veto of appropriation measures. There are 12 counties with a county executive, including Milwaukee County, which is required to have a county executive. [ss. 59.17 to 59.19, Stats.]

A county administrator is appointed by the county board to coordinate county operations. Twenty-five counties employ a county administrator. Since 1987, state statutes have required a county board in a county with no county executive or county administrator (half of the counties) to designate an elected or appointed county official as administrative coordinator. The administrative coordinator is responsible for coordinating all administrative and management functions of county government not vested by law elsewhere. [s. 59.18, Stats.] Thirty-two counties have an administrative coordinator.

Several other county offices are required by the Wisconsin Constitution. For example, the constitution requires each county to have the elective offices of a sheriff, district attorney, clerk, treasurer, register of deeds, judge, and a clerk of circuit court. Counties with a population of less than 500,000 are also required to have a surveyor and may choose to have either an elective office of coroner or a medical examiner system. [s. 59.20, Stats.]

Towns

Wisconsin's 1,255 towns cover those areas of the state that are not included within the corporate boundaries of cities and villages. While many towns continue to maintain their original rural character, a number of towns have become urban in character.

As a result, there is a wide disparity among towns in population, industry, commerce, and level of governmental services. Estimated town populations vary from 38 (Town of Wilkinson, Rusk County) to 21,787 (Town of Grand Chute, Outagamie County).

Town Uniformity

Towns do not have statutory or constitutional home rule authority to determine their own local affairs through charter ordinances. Instead, Wis. Const. art. IV, s. 23 requires that: “the legislature shall establish but one system of town government, which shall be as nearly uniform as practicable” This constitutional provision, commonly referred to as the “town government uniformity requirement,” means that laws affecting towns may not provide for differences in the basic structural or organizational scheme, or “system,” of town government. However, state laws may provide for variations in the way the details of town government affect different towns, to the extent it is impractical for the details to be uniform.

Q: Do towns have any type of home rule authority?

A: No. Towns, similar to counties, only possess powers expressly given to them by state statutes. However, unlike counties, towns do not have administrative home rule.

Thus, like counties, towns possess only those powers expressly delegated to them; the language of the statutes, and what can necessarily be implied from the statutes, determine the structure, method, and scope of town government. For example, the Legislature has given towns the power to provide for law enforcement, fire protection, and roads; levy taxes; and exercise zoning authority if the town is located in a county that has not enacted a county zoning ordinance. Also, towns may elect to exercise village powers. It is important to note, however, that if a town elects to exercise village powers, the structure of the town government does not change. [ss. 60.10 (2) (c) and 60.22 (3), Stats.]

Town Meetings

Town electors (eligible voters residing in the town) directly affect the governance of their town through town meetings. A town meeting has authority specified in statutes over various town matters, including the town's property tax levy. The annual town meeting must generally be held on the third Tuesday in April. The

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

town electors may, however, vote to delegate some town meeting powers to the town board. Additional town meetings, referred to as special town meetings, may also be convened if called by a town meeting, upon written request of at least 10% of the town's electors, or if called by the town board under limited circumstances. [ss. 60.10 to 60.12, Stats.]

The town meeting is specifically granted the following three different types of powers: (1) direct powers, including the power to levy taxes; (2) directives or grants of authority to the town board, including the power to levy taxes, purchase land, and exercise village powers, as discussed below; and (3) authorizations to the town board to appropriate money for specific purposes, including conservation activities, civic functions, and animal, insect, and weed control. [s. 60.10, Stats.]

Town Boards

An elected town board, generally consisting of three or five members, handles town government matters that are not under the jurisdiction of the town meeting, along with any powers delegated from the town meeting. (The Town of Menominee in Menominee County may have up to seven members on its town board.) [ss. 60.20 and 60.21, Stats.] Town board supervisors serve two-year terms and are elected in the spring election of odd-numbered years. [s. 60.30, Stats.] The town board chair has a number of statutory powers and duties that can be characterized as administrative or executive. For example, the town chair must preside over town meetings and town board meetings. The town chair must also act on behalf of the board in various matters, including seeing that town orders and ordinances are obeyed. [s. 60.24, Stats.] Towns are also authorized, but not required, to

create the position of town administrator to carry out duties assigned by the town board. [s. 60.37 (3), Stats.]

As previously mentioned, the town meeting may grant the town board the power to exercise all village powers. This allows the town board to exercise village powers under ch. 61, Stats., except those village powers “that conflict with statutes relating to towns and town boards.” Subject to the latter limitation, the exercise of village powers expands the town board’s regulatory and land use authority. It extends to various powers, including police powers for regulating the public’s health, safety, and welfare, as well as expanded land use planning authority. A town that is granted authority to exercise village powers is not required to exercise any of these powers, nor does this authority make the town become a village, or give it annexation authority. [ss. 60.10 (2) (c) and 60.22 (3), Stats.]

Cities and Villages

Wisconsin’s 190 cities and 407 villages are sometimes referred to as “incorporated” municipalities or “municipal corporations.” This reflects to some extent their legal status. Early in state history, villages and cities were incorporated by special acts of the Legislature. In 1871 and 1892, constitutional amendments were adopted prohibiting the Legislature from incorporating any city, village, or town by special act. As a result, cities and villages are

now incorporated according to general incorporation laws, and the basic outline of city and village government is now set forth in the statutes (sometimes referred to as “general charter” laws). [Wis. Const. art. IV, s. 31, and chs. 61 (villages) and 62 (cities), Stats.]

While cities and villages are often thought of as urban centers, there are wide differences in population among cities and villages and a relatively high number of cities and villages with modest populations. Estimated city populations vary from 595,993 in Milwaukee to 480 in Bayfield. Likewise, estimated village populations vary from 35,726 in Menomonee Falls (Waukesha County), to 65 in Stockholm (Pepin County).

Not all Wisconsin cities and villages are urban. For example, the smallest city is the City of Bayfield, with a population of 480. The smallest village, the Village of Stockholm, has a population of 65.

Classes of Cities

The Wisconsin statutes divide cities into four classes, based on population, as follows:

- First class cities, with a population of 150,000 or over.
- Second class cities, with a population of at least 39,000, but less than 150,000.
- Third class cities, with a population of at least 10,000, but less than 39,000.
- Fourth class cities, with a population of less than 10,000.

[s. 62.05 (1), Stats.]

Changing from one class of city to another is not automatic. In addition to having the requisite population, the city must make any necessary changes in government and the mayor or city manager must make a proclamation and publish this change according to law. For example, the City of Madison has an estimated population of 240,153, which is a sufficient population size to become a first class city, but has not taken the necessary steps to do so. For purposes of statutes relating to cities, Madison remains a city of the second class.

Distinctions among second, third, and fourth class cities are few; the primary distinctions are between first class cities (currently, only the City of Milwaukee) and the other three classes. Over time, special provisions have been enacted in the statutes with the City of Milwaukee in mind, and these provisions only apply to first class cities. For example, special provisions apply to first class city police and fire departments and eminent domain procedures. [See subch. II, ch. 62, Stats.]

Constitutional and Statutory Home Rule Authority

Under Wis. Const. art. XI, s. 3 (1), cities and villages may determine their local affairs and government, subject only to the Wisconsin Constitution and to legislative enactments of statewide concern that uniformly affect every city or village. This is referred to as “constitutional home rule” authority. Cities and villages implement home rule by enacting charter ordinances under s. 66.0101, Stats.

Constitutional home rule authority authorizes cities and villages to act both in the absence of legislative enactments and, in some cases, even in the face of a contrary legislative enactment. Regarding the latter, if a statute addresses a subject matter entirely of a local character, the city or village may elect not to be bound by the statute if it exercises its constitutional home rule authority. If a statute is of a mixed character, the constitutionality of the statute depends on whether it is “primarily or paramourntly” a matter of local affairs and

government or of statewide concern. If the statute is primarily a matter of statewide concern, the city or village is bound by the statute. [*State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526-528 (1977).] Some argue that the courts have construed constitutional

Q: What is “constitutional home rule” authority?

A: Constitutional home rule authority allows a village or city to determine its local affairs and governance, which is done through a charter ordinance. This authority is subject, however, to the Wisconsin Constitution and legislative enactments of statewide concern that uniformly apply to every city or village.

Unlike “constitutional home rule” authority, “statutory home rule” authority is conferred through state statutes, not limited to matters of local affairs, and may be implemented through various measures such as ordinances and regulations.

home rule authority narrowly and that its primary value lies in serving to limit the reach of state legislation into local policymaking.

Often confused with constitutional home rule is the broad statutory authority of cities and villages to exercise police powers, sometimes referred to as “statutory home rule.”

Statutory home rule is a broad grant of authority to be exercised for the good order of the city or village, commercial benefit, and public health, safety, and welfare. The exercise of statutory home rule can be preempted, either expressly or impliedly, by state legislation. [ss. 61.34 (1) and 62.11 (5), Stats.]

City and Village Governments

While the powers of cities and villages are similar, there are differences in how their governments are organized. There are two different governmental structures for cities and two for villages: for cities, the mayor-council structure and the council-manager structure; for villages, the president-village board structure and the village board-manager structure. While each governmental structure has an elected legislative body, the executive may either be elected or appointed by the legislative branch. Cities and villages decide for themselves which governmental structure to use. [ss. 61.195, 61.24, 62.09 (1) (b) and (3) (c), and 64.01, Stats.]

The two forms of city government are mayor-council and council-manager. The two forms of village government are president-village board and village board manager.

The vast majority of Wisconsin cities use the mayor-council form of government organization, where the mayor is elected. Only 10 cities use the council-manager (or city-manager) form, where the city manager is appointed by the city council. Under the mayor-council form of government, the common council consists of

alderpersons typically elected by alder districts and the mayor, who is elected at large, to be the city’s chief executive officer. The mayor votes in the event of a tie vote in the city council and has veto power. [s. 62.11 (1), Stats.] Wisconsin cities operating under the mayor-council form generally have a “weak” mayor. This is because instead of concentrating administrative responsibilities in the mayor’s office, administrative responsibilities are spread among the mayor, elected administrative officers, boards and commissions, and independent appointed officials.

Most Wisconsin villages utilize the president-village board form of government. Only nine villages operate under the village board-manager form of government. The board of trustees, or village board, which acts as the legislative branch for the village, is generally elected at large. The village president is also elected at large. The village president is assigned certain administrative responsibilities but has no veto power and generally is not considered the chief executive officer of the village. [s. 61.32, Stats.]

The manager form of government for both cities and villages is set forth in ch. 64, Stats.

The manager form of government provides a strong executive, serving at the pleasure of the

legislative body. The manager is typically professionally trained in municipal management and is responsible for policy implementation and administration, including preparation of the budget. The manager form of government usually has a relatively small legislative body.

INTERGOVERNMENTAL COOPERATION

Wisconsin law offers considerable opportunity for cooperation at the local government level on a voluntary basis. In addition to the general cooperation provisions summarized below, other statutes contain authority for counties, towns, villages, and cities to cooperate in specific areas, such as police and fire protection and library services. The following is an overview of statutory provisions that authorize intergovernmental cooperation.

General Authority

The statutes authorize municipalities (broadly defined to include both general purpose and special purpose units of local government) to contract with other municipalities and with American Indian tribes for the receipt or furnishing of services or the joint exercise of power or duty. The general limitation on this authority is that each may act under the contract only to the extent of its lawful powers and duties. The law provides that a cooperation contract may provide a plan for administration of the function or project, including proration of expenses, deposit and disbursement of funds, submission and approval of budgets, creation of a commission, selection and removal of commissioners, and formation and letting of contracts. Further, the law must be “interpreted liberally in favor of cooperative action ...” [s. 66.0301, Stats.]

General purpose and special purpose units of local government have broad authority to cooperate with each other and with Indian tribes and bands in Wisconsin through procedures specified in s. 66.0301, Stats.

The cooperation statute also expressly allows a commission created under a cooperation contract to finance the acquisition, development, remodeling, construction, and equipment of land, buildings, and facilities for “regional projects.” Several means of financing these regional projects are provided in ch. 67, Stats.

Wisconsin municipalities may contract with municipalities in other states to provide or receive services. These contracts must be approved by the Wisconsin Attorney General. [s. 66.0304, Stats.]

A similar statute authorizes municipalities of this state to contract with municipalities of another state for the receipt or furnishing of services or the joint exercise of any power or duty. These agreements generally must be approved by the Attorney General. [ss. 66.0304, Stats.]

County Provision of Services to Cities, Villages, and Towns

A county may provide local government services to a city, village, or town that requests the county to do so. Under this provision, counties, cities, villages, and towns are not limited by the extent of their lawful powers and duties, as is the case under the general authority for cooperation. Thus, for example, even though county boards have no independent authority to provide fire protection, counties may provide such services upon the request of a city, village, or town located within the county. The broad statutory language authorizes county boards to provide local government services throughout the county; in specific cities, villages, and towns within the county; or within districts that comprise all or portions of cities, villages, and towns within the county. Powers under the section may be exercised exclusively by the county or jointly by the county and the town, city, or village. The procedures for both requesting and approving the furnishing and financing of services are prescribed by statute. [s. 59.03 (2), Stats.]

Revenue Sharing

Counties, towns, villages, and cities may enter into agreements to share revenues from taxes and special charges with other counties, towns, villages, or cities and with Indian tribes and bands. A county, town, village, or city that enters into a revenue sharing agreement must be contiguous to at least one other county, town, city, or village also entering into the agreement. The revenue sharing agreement may be used to permit a city or village to share in the expanded tax base of an adjacent town which is experiencing growth that is essentially an extension of growth in the city or village. Originally enacted in 1996, this provision was intended, among other things, to assist in eliminating disputes over municipal boundaries. [s. 66.0305, Stats.]

Counties, towns, villages, and cities may share revenue with each other and federally recognized American Indian tribes and bands in this state through procedures specified in s. 66.0305, Stats.

Revenue sharing agreements may include various appropriate matters, but must have a minimum term of 10 years and must specify each of the following:

- The boundaries of the area within which the revenues are to be shared.
- The formula or other means of determining the amount of revenues to be shared.
- The date upon which revenues agreed to be shared shall be paid to the appropriate county, town, village, or city.
- The method by which the agreement may be invalidated after the 10-year minimum duration has expired.

[s. 66.0305 (4) (a), Stats.]

A public hearing must be held before a revenue sharing agreement may be entered into by the interested municipalities. The governing body of a participating municipality or county or interested electors may also call for an advisory referendum. [s. 66.0305 (3) and (6), Stats.]

Area Cooperation Compacts

State law requires each city, village, or town located in a federal standard metropolitan-statistical area to enter into an “area cooperation compact” with at least two other municipalities or counties in that region. A “federal standard metropolitan statistical area” is a geographical region defined by the U.S. Office of Management and Budget to meet certain high population density criteria and to have high economic ties within the area, as measured by worker commuting. The intent behind area cooperation compacts is to reduce the cost of local governmental services. The compact must perform at least two specified services which may include: law enforcement; fire protection; emergency services; public health; solid waste collection and disposal; recycling; public transportation; public housing; animal control; libraries; recreation and culture; human services; and youth services. A cooperation compact must be structured to provide significant tax savings and provide a plan for collaboration, benchmarks to measure progress, and outcome-based performance measures to evaluate success. [s. 66.0317, Stats.]

BOUNDARY ISSUES

DOA’s Municipal Boundary Review Section:

608-264-1602

www.doa.state.wi.us

Municipal boundaries are often a source of tension and conflict, particularly in developing areas. As an urban area grows, the core city or village may want to annex newly developed territory outside its borders in order to provide consistent services over the expanding urban area and to capture the tax base that will allow it to provide those services, among other reasons. The towns in which the new development takes place often resist annexation, preferring to retain their individual identity rather than being subsumed within the city or village, and to keep that tax base to finance their own governmental services. The residents and property owners in urbanizing areas may have diverging interests, as well. Some town residents may want the area in which they live to be annexed to the adjoining city or village to take advantage of municipal services. Other property owners in the town may oppose annexation if, as is commonly the case, the town property tax levy is less than the levy would be if annexed.

The statutes provide detailed procedures for annexation as well as for municipal incorporation, consolidation, and detachment. Other statutes seek to avoid conflicts over municipal boundaries by promoting cooperative plans and intergovernmental agreements to specify boundaries in areas of urban growth. Included in these procedures is the requirement that the Department of Administration’s (DOA’s) Municipal Boundary Review Section provide assistance and review most of these boundary changes (all but detachment).

The principal statutes relating to these topics are in subch. II of ch. 66, Stats. Annexation, incorporation, consolidation, detachment, and boundary agreements are described below.

Annexation

Annexation is the process of transferring local jurisdiction of land from unincorporated areas (towns) to incorporated areas (cities and villages). Usually, annexation is designed and initiated by property owners rather than directly by the city or village itself. Often landowners wish to have their property annexed to take advantage of city or village services. In this case, a city or village can only accept or reject a landowner petition for annexation. Consequently, cities and villages argue that they have less authority to control annexation than is commonly perceived.

Annexation is a process whereby town territory becomes part of a village or city, usually initiated by owners of the town property proposed to be annexed.

Several annexation procedures are available. The most commonly used procedure is direct annexation by unanimous approval. Under this procedure, the owner or owners of the property involved (and any other resident electors) petition for annexation. The land must be contiguous to the annexing city or village. The city or village governing body may approve the annexation by adoption of an ordinance by 2/3rds vote; there is no provision for a city or village residents to approve or reject the annexation by referendum. Also, a town is prohibited from bringing an action on any grounds to contest the validity of a direct annexation by unanimous approval. [s. 66.0217 (2), Stats.]

Other general annexation procedures include direct annexation by less than all the electors and property owners in the territory; annexation by referendum; and annexation initiated by a city or village with a court-ordered referendum. These procedures either allow or require a referendum of the electors of the territory to be annexed and are used infrequently. Another annexation procedure allows the annexation of land owned by a city or village but located in a town if the land is nearby, but not necessarily contiguous to, the city or village. Finally, special procedures govern how a city or village may annex “town islands,” or create town islands when annexing other portions of a town. [ss. 66.0217 (3), 66.0219, 66.0221, and 66.0223, Stats.]

In counties with a population of 50,000 or more, annexations initiated by electors and property owners require an advisory review by the state. The review is conducted by the Municipal Boundary Review Section in DOA. While the review is advisory, it must be considered by the annexing city or village before an annexation ordinance may be passed. DOA’s advisory review consists of a determination as to whether the proposed annexation

DOA’s Municipal Boundary Review Section must conduct an advisory review of annexations initiated in counties with a population of 50,000 or more. [s. 66.0217 (6), Stats.]

is in the public interest, based on:

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

[s. 66.0217 (6), Stats.]

Describing the purpose of DOA review, the Wisconsin Court of Appeals has stated that the review is “in consideration of the objectives recognized by the Legislature - to prevent haphazard, unrealistic and competitive expansion of municipalities which disregards the overall public interest.” [*Incorporation of the Town of Pewaukee*, 186 Wis. 2d 515, 525 (Ct. App. 1994).]

Municipal Incorporation

Municipal incorporation is the process of creating a new village or city from town territory.

Incorporation requires three separate approvals: the circuit court, the Incorporation Review Board (Review Board) described below, and the electors of the area to be incorporated. Once incorporated, the territory may not be annexed by another village or city. [ss. 66.0201 to 66.0213, Stats.] Consequently, incorporation may be initiated in some cases as a defensive move to prevent annexation by a neighboring village or city.

Municipal incorporation is the process of creating a new village or city from town territory.

Incorporation procedures are initiated by a petition to the circuit court by at least 25 persons who are both electors and property owners in the territory to be incorporated. If the proposed city or village includes 300 or more people, then the minimum number of signatures increases to 50. The court must determine whether specified population, density, and area requirements are met. The requirements vary, depending on the proximity of the area proposed for incorporation to a metropolitan village or city and whether incorporation as a village or a city is sought. If the required standards are not met, the court dismisses the incorporation petition; if the standards are met and the incorporation petition is sufficient, the court refers the petition to the Review Board. [ss. 66.0203 (2) to (8) and 66.0205, Stats.]

Municipal incorporations are approved by the circuit court, the Incorporation Review Board, and then by the residents in a court-ordered referendum. [ss. 66.0201 to 66.0213, Stats.]

The Incorporation Review Board consists of five members: the Secretary of DOA (or designee); two members appointed by the Wisconsin Towns

Association; and one member each appointed by the League of Wisconsin Municipalities

and the Wisconsin Alliance of Cities. With the exception of the DOA Secretary, all board members serve in an advisory capacity. [s. 15.105 (23), Stats.]

In determining whether to approve an incorporation, the Incorporation Review Board looks at certain characteristics of the territory. Specified standards of homogeneity and compactness must be met and the territory must have a well-developed community center, if the petition is for an isolated city or village. For proposed isolated cities or villages, the territory beyond the core area of density must meet certain housing or assessed value criteria. For proposed metropolitan cities or villages, the territory must have the potential for residential or other land use development on a substantial scale within the next three years. In addition, the proposed incorporation must be determined by the Review Board to be in the public interest after considering specified factors relating to tax revenues, level of services, impact on the remainder of the town, and impact on the metropolitan community. [ss. 66.0203 (9) and 66.0207, Stats.]

If an incorporation petition is approved by the Review Board, the circuit court must order a referendum to be held in the territory to be incorporated. A favorable referendum vote is necessary for the incorporation to take place. [ss. 66.0203 (8) and 66.0211, Stats.]

Statutory incorporation standards have been an obstacle in many proposed incorporations. Common reasons for failing to meet the standards include lack of a community identity and negative effects on neighboring communities. Because it is difficult in many cases to meet the general incorporation standards, the Legislature on occasion has enacted special incorporation procedures to address the hurdles to the general incorporation procedures. [See ss. 66.0215 and 66.02162, Stats.]

Consolidation

Consolidation is a procedure that allows a town, village, or city to consolidate with another contiguous town, village, or city. Likewise, a county may also consolidate with another county. The consolidation procedure begins when the governing body of each affected unit of government passes, by 2/3rds vote of all the members of the governing body, an ordinance fixing the terms of the consolidation. After adoption, the ordinances are submitted first to circuit court for a determination of whether the ordinances comply with statutory formalities and then to DOA for a determination of whether the proposed consolidation is in the public interest. (Note that consolidation of contiguous towns is not subject to court or DOA review.) DOA's review is based on the same standards that apply to incorporations. If DOA determines that the consolidation is in the public

Consolidation is a process whereby a town, village, or city merges with a contiguous town, village, or city, or a county merges with a contiguous county. The process is initiated by 2/3 vote of each local governmental unit's governing body.
[s. 66.0229, Stats.]

interest, the consolidation ordinances must be ratified by the electors of both units of government. [s. 66.0229, Stats.]

Town Consolidations With a City or Village

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

- The consolidating town and city or village must adopt identical resolutions describing the level of specified services that will be available to the consolidated city or village, including all of the following services: public parks; public health; animal control; library; fire and emergency rescue; and law enforcement.
- The town and the city or village must adopt identical resolutions that relate to the ownership or leasing of government buildings.
- The city or village must execute separate boundary agreements with each city, village, and town that borders the proposed consolidated city or village.
- The consolidating town and city or village must agree to adopt a comprehensive plan for the consolidated city or village.
- At least some part of the consolidated city or village must receive sewage disposal services.

[s. 66.0230, Stats.]

Consolidating Counties

The statutory procedure for consolidating counties authorizes the county boards of two or more adjoining counties to enter into a joint consolidation agreement, containing specified provisions. The question of consolidating under the consolidation agreement is submitted to the electors at a referendum. If a majority of the votes cast in each county favors the

The consolidation of counties may be initiated by either the county boards or the counties' electors. [s. 59.08, Stats.]

consolidation, the consolidation takes place; otherwise the consolidation fails. The procedure also allows electors on their own to initiate the consolidation process in the absence of such action by the county board. [s. 59.08, Stats.]

Detachment

Detachment is the process by which territory is transferred from one municipality to another. For example, territory can be detached from one city or village and attached to

another contiguous city, village, or town. Most commonly, detachment is used to transfer city or village territory back into an unincorporated town.

The general detachment process is initiated when a majority of property owners of 3/4ths of the taxable property to be detached (or all property owners if there is no taxable property in the territory) publish notice of their intent to circulate a detachment petition. They must then file the petition with the city or village from which detachment is sought. The city or village from which detachment is sought must adopt an ordinance to detach the property. The city, village, or town from which attachment is sought must then adopt an ordinance to attach the property. [s. 66.0227, Stats.]

There is also a detachment process specific for certain farm lands located in a city. The process includes a petition by property owners; a circuit court hearing with notice served on the city, town, and property owners; and a court order. The statutes limit what farm lands qualify for this detachment process. The total territory of farm land must be at least 200 acres, owned by one or more property owners each owning at least 20 acres. Also, the land must have been located in the city for at least 20 years, used exclusively for agricultural purposes, contain no public improvements, and not be platted. [s. 62.075, Stats.]

Boundary Agreements

Cooperative Plans

Any combination of cities, villages, or towns may determine their shared boundary lines under a cooperative plan approved by DOA. The cooperative plan must include, among other things, a description of its consistency with the parties' comprehensive plans (described in the following section), a schedule and description of boundary changes and freezes, and provision for delivery of

There are three types of boundary agreements allowed under state statutes: cooperative plans; intergovernmental agreements; and stipulations by court order.

municipal services to the territory covered by the plan. Local procedures for adopting a cooperative plan consist of an authorizing resolution, a public hearing, adoption of the final version of the plan (an extraordinary vote may be required), an optional advisory referendum, and submittal of the plan to DOA for approval. The duration of a plan is 10 years, but it may be longer if agreed to by the parties and approved by DOA. [s. 66.0307, Stats.]

DOA must approve a cooperative plan if the plan meets statutorily specified criteria concerning all of the following: (1) the plan's consistency with applicable laws; (2) the plan's provision for municipal services; (3) the compatibility of any affected boundary with the characteristics of the surrounding community; (4) the shape of any affected boundary; and (5) the consistency of the plan with each participating municipality's comprehensive plan. Once a plan is approved, provisions in the plan to maintain existing boundaries, any

boundary changes in the plan and the schedule for those changes, and the service delivery plan and schedule are binding on the parties to the plan and have the force and effect of a contract. Also, DOA may provide mediation services under a mediated agreement procedure, whereby one municipality may bring an adjacent municipality “to the table” in connection with a common boundary dispute and related issues. [s. 66.0307 (4m) and (5), Stats.]

Intergovernmental Agreements

Common municipal boundaries may also be determined by a general intergovernmental agreement. No state approval is necessary and the maximum term of such an agreement is 10 years. These agreements might be used by municipalities that, for example, wish to make minor changes in their common boundaries or by municipalities that wish to enter into an initial, shorter-term agreement before developing a cooperative plan, as described above. [s. 66.0301, Stats.]

Stipulations by Court Order

If annexation is challenged in court, the parties to the litigation may enter into a written stipulation, compromising and settling the litigation and determining the portion of the boundary that is the subject of the annexation. The court having jurisdiction of the litigation may enter a final judgment establishing the boundary as specified in the stipulation. [s. 66.0225, Stats.]

Comprehensive planning implementation guides can be found on DOA’s website: <http://www.doa.state.wi.us>

Additional information on preparing comprehensive plans can be found on the following websites:

The Department of Natural Resources:
<http://dnr.wi.gov/>

The Department of Transportation:
<http://www.dot.wisconsin.gov>

The State Historical Society:
<http://www.wisconsinhistory.org/>

The Local Government Center, UW-Extension
<http://lgc.uwex.edu/>

[s. 66.1001 (3), Stats.]

COMPREHENSIVE PLANNING

Wisconsin’s comprehensive planning law potentially affects every general purpose local unit of government in the state. This stems from the fact that the law includes a “consistency requirement,” which states that in order for a county, town, village, city, or regional planning commission to enact or amend any of the following types of land use ordinances, these ordinances must be consistent with the comprehensive plan:

- Official mapping ordinances.
- Local subdivision ordinances.
- County, town, village, or city zoning ordinances.
- Shoreland or wetlands in shoreland zoning ordinances.

A comprehensive plan that is adopted by a county, town, village, city, or regional planning commission must include nine specified elements:

- Issues and opportunities.
- Housing.
- Transportation.
- Utilities and community facilities.
- Agricultural, natural, and cultural resources.
- Economic development.
- Intergovernmental cooperation.
- Land use.
- Implementation.

[s. 66.1001 (2), Stats.]

While the required content of each element of a comprehensive plan is delineated in general terms in the statutes, DOA has prepared guides for implementing most of the required elements, which are available on its website.

The law provides for public participation in the development of a comprehensive plan and that the plan must be adopted by ordinance.

Adopting the plan by ordinance has been a source of confusion. As such, the law was amended in 2010 to clarify that a comprehensive plan is a guide to the physical, social, and economic development of a local governmental unit and that the enactment of a comprehensive plan by ordinance does not make the comprehensive plan by itself a regulation. [s. 66.1001 (1) (a), Stats.] This language clarified that adopting a comprehensive plan is only one step in the process and a plan is not a self-implementing document; a comprehensive plan is implemented through other decisions made by the community following the guidance provided in the plan.

The comprehensive planning legislation also requires each city and village with a population of at least 12,500 to adopt a “traditional neighborhood development” ordinance, which refers to a “compact, mixed-use neighborhood where residential, commercial, and civic buildings are within close proximity to each other.” It also requires such cities and villages to enact a “conservation subdivision ordinance” to address “housing developments in a rural setting that is characterized by compact lots and common open space, and where the neutral features of the land are maintained to the greatest extent possible.” These

A comprehensive plan is a guide to the physical, social, and economic development of a local governmental unit. An ordinance enacting a comprehensive plan, by itself, does not make it a regulation.

ordinances must be similar to model ordinances that have been developed by the University of Wisconsin (UW)-Extension, available on DOA’s website. [s. 66.1027, Stats.]

STATE MANDATES

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

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

A county, town, village, or city may file a request with DOR for a waiver from a state mandate, except for state mandates related to health and safety.

The statutes provide a mechanism by which a county, town, village, or city may appeal to the Department of Revenue (DOR) and receive a waiver from a state mandate. A “state mandate” is defined for this purpose as a state law that requires one of these local units of government to engage in an activity or provide a service or to increase the level of its activities or services. A county, town, village, or city may file a waiver request with DOR and must state its reason for requesting the waiver. [s. 66.0143, Stats.]

Waivers may be granted under the statute from any state mandate except ones related to health or safety. A request for a waiver is handled by the state agency responsible for administering the state mandate; if there is no such agency, DOR handles the request. If granted, a waiver is effective for four years. The responsible agency may renew the waiver for an additional four years. [s. 66.0143 (2) and (3), Stats.]

ADDITIONAL REFERENCES

1. DOA’s Division of Intergovernmental Relations, <http://www.doa.state.wi.us/Divisions/Intergovernmental-Relations>.
2. UW-Extension Local Government Center, <http://lgc.uwex.edu/>.
3. League of Wisconsin Municipalities, <http://www.lwm-info.org>.
4. Wisconsin Towns Association, <http://www.wisctowns.com>.
5. Wisconsin Counties Association, <http://www.wicounties.org>.
6. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers, relating to state programs and local government issues. These Informational Papers are available at: <http://www.legis.wisconsin.gov/lfb>.
7. During the first summer of every biennial legislative session, the Legislative Reference Bureau publishes *State of Wisconsin – Blue Book*, which includes information and statistics about Wisconsin’s counties, towns, villages, and cities, available at: <http://www.legis.wisconsin.gov/lrb>.
8. Paddock, Susan C., “*The Changing World of Wisconsin Local Government*,” pp. 99-172, *1997-1998 Wisconsin Blue Book*.
9. Anderson, Jason, *Counties, Cities, Villages, Towns Forms of Local Government and Their Functions* (Wisconsin Legislative Reference Bureau, October 2005), available at: <http://www.legis.wisconsin.gov/lrb>.
10. Shovers, Marc, *Special Purpose Districts: Types, Powers, and Duties* (Wisconsin Legislative Reference Bureau, January 2006), available at: <http://www.legis.wisconsin.gov/lrb>.
11. Ohm, Brian W., *Wisconsin Land Use and Planning Law*, CLEW Publications, UW Law School (2013, Board of Regents of the UW System).

GLOSSARY

Administrative home rule authority: The authority conferred by statute to counties, allowing them to decide for themselves how to organize or consolidate their administrative departments.

Charter ordinance: The organizational ordinance of a village or city, enacted by a 2/3rds vote of its legislative body. Procedures relating to the enactment of charter ordinances are found in s. 66.0101, Stats.

Constitutional home rule authority: The authority conferred by Wis. Const. art. XI. s. 3, to villages and cities, which allows them to determine their own local affairs and governance. To exercise this authority, the city or village must do so by enacting a charter

ordinance. Constitutional home rule authority is subject to the Wisconsin Constitution and legislative enactments.

General purpose units of local government: Units of local government that provide basic, general services used by all residents. Referred to generally as “local units of government” or “local government,” Wisconsin’s local units of government are counties, towns, villages, and cities.

Special purpose local units of local government: Units of local government that provide special services targeted at specific groups of residents. Also referred to as “special purpose districts” in Wisconsin, these districts include school districts, technical college districts, sewerage districts, Southeast Wisconsin Professional Baseball Park District, Professional Football Stadium District, regional planning commissions, drainage districts, mosquito control districts, and various cultural arts districts, among others.

Statutory home rule authority: The authority conferred by ss. 61.34 (1) and 62.11 (5), Stats., to villages and cities to manage and control their property, finances, highways, navigable waters, and the public service. It also gives villages and cities the power to act for the good order of the village or city, commercial benefit, and for the health, safety, and welfare of the public. Unlike constitutional home rule, statutory home rule authority is not limited to local affairs and government. The authority may be exercised through various means including, ordinances, licenses, regulations, borrowing, money, tax levies, imprisonment, confiscation, and other necessary means.

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