State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–2690/2
JK:wlj:jf

# 2009 ASSEMBLY JOINT RESOLUTION 65

July 28, 2009 – Introduced by Representatives NEWCOMER, HINTZ, PASCH, TOWNSEND, BROOKS, JORGENSEN, LOTHIAN, MOLEPSKE JR., BERCEAU, MURTHA, KNODL, ZIPPERER and SPANBAUER, cosponsored by Senators LEHMAN, LEIBHAM and KEDZIE. Referred to Committee on State Affairs and Homeland Security.

***To renumber and amend*** section 1 of article VIII; and ***to create*** section 1 (1) (e) of article VIII of the constitution; **relating to:** different property tax levy rates for parts of cities, villages, towns, counties, and school districts added by attachments to school districts, consolidations, and boundary changes under cooperative agreements (first consideration).

---

### *Analysis by the Legislative Reference Bureau*

This proposed constitutional amendment, proposed to the 2009 legislature on first consideration, excepts from the requirement of the uniformity clause parts of cities, villages, towns, counties, and school districts added by attachments to school districts, by consolidations, and by boundary changes under cooperative agreements with other cities, villages, towns, counties, and school districts. The proposed constitutional amendment permits the governing body of the city, village, town, county, or school district to set different property tax levy rates on the parts for not more than 12 years, but the rates for each part must be uniform within that part.

The general statement of the Wisconsin Constitution that the "rule of taxation shall be uniform" is subject to other exceptions: real estate taxes may be collected in more than one way, and forests, minerals, agricultural land, undeveloped land, and certain kinds of personal property may be taxed differently than is other property.

In addition to the substantive changes, this joint resolution makes a stylistic change and breaks section 1 of article VIII of the constitution into subsections to

facilitate future amendments and to avoid conflicts if other amendments to the section are proposed.

A constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

---

***Resolved by the assembly, the senate concurring, That:***

**SECTION 1.** Section 1 of article VIII of the constitution is renumbered section 1 (1) (intro.) and amended to read:

[Article VIII] Section 1 (1) (intro.) The rule of taxation shall be uniform ~~but the~~ except as follows:

(a) The legislature may ~~empower~~ by law authorize cities, villages, or towns to collect and return taxes on real estate located therein by optional methods.

(b) Taxes shall be levied upon such property with such classifications as to forests and minerals including or separate or severed from the land, as the legislature ~~shall prescribe~~ prescribes by law.

(c) Taxation of agricultural land and undeveloped land, both as defined by law, need not be uniform with the taxation of each other nor with the taxation of other real property.

(d) Taxation of merchants' stock–in–trade, manufacturers' materials and finished products, and livestock need not be uniform with the taxation of real property and other personal property, but the taxation of all such merchants' stock–in–trade, manufacturers' materials and finished products, and livestock shall be uniform, except that the legislature may provide by law that the value thereof shall be determined on an average basis. ~~Taxes may also be imposed~~

(2) The legislature may by law impose taxes on incomes, privileges, and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.

**SECTION 2.** Section 1 (1) (e) of article VIII of the constitution is created to read:

[Article VIII] Section 1 (1) (e) If all or a portion of a city, village, or town becomes part of another city, village, or town; if all or a portion of a county becomes part of another county; or if all or a portion of a school district becomes part of another school district, pursuant to agreement, consolidation, or other law that includes approval of each of the governing bodies of the political subdivisions involved, the governing body of the political subdivision may annually establish an amount of taxes on property for the additional part so that the property tax rates for that part are different from the rates in the remainder of the political subdivision or, if a new political subdivision is formed, the governing body may annually establish an amount of taxes on property for those parts previously in different political subdivisions so that the property tax rates for those parts are different from each other, but the rates for each part shall be uniform within that part. Different rates may apply for not more than 12 years, beginning with the year the different rates could first apply.

**SECTION 3. Numbering of new provisions.** (1) The new subsection (1) of section 1 of article VIII of the constitution resulting from the renumbering and amendment of section 1 of article VIII of the constitution by this joint resolution shall be designated by the next higher open whole subsection number in that section in that article if, before the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment has created a subsection (1) of section 1 of article VIII of the constitution of this state. If one or more joint resolutions create a subsection (1) of section 1 of article VIII simultaneously with the ratification by the people of the amendment proposed in this joint resolution, the subsections created shall be numbered and placed in a sequence so that the subsections created by the

joint resolution having the lowest enrolled joint resolution number have the numbers designated in that joint resolution and the subsections created by the other joint resolutions have numbers that are in the same ascending order as are the numbers of the enrolled joint resolutions creating the subsections.

(2) The new subsection (2) of section 1 of article VIII of the constitution resulting from the renumbering and amendment of section 1 of article VIII of the constitution by this joint resolution shall be designated by the next higher open whole subsection number in that section in that article if, before the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment has created a subsection (2) of section 1 of article VIII of the constitution of this state. If one or more joint resolutions create a subsection (2) of section 1 of article VIII simultaneously with the ratification by the people of the amendment proposed in this joint resolution, the subsections created shall be numbered and placed in a sequence so that the subsections created by the joint resolution having the lowest enrolled joint resolution number have the numbers designated in that joint resolution and the subsections created by the other joint resolutions have numbers that are in the same ascending order as are the numbers of the enrolled joint resolutions creating the subsections.

(3) The new paragraph (e) of subsection (1) of section 1 of article VIII of the constitution created in this joint resolution shall be designated by the next higher open whole paragraph letter in that subsection in that section in that article if, before the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment has created a paragraph (e) of subsection (1) of section 1 of article VIII of the constitution of this state. If one or more joint resolutions create a paragraph (e) of subsection (1) of section 1 of article VIII simultaneously with the

ratification by the people of the amendment proposed in this joint resolution, the paragraphs created shall be lettered and placed in a sequence so that the paragraphs created by the joint resolution having the lowest enrolled joint resolution number have the letters designated in that joint resolution and the paragraphs created by the other joint resolutions have letters that are in the same ascending order as are the letters of the enrolled joint resolutions creating the paragraphs.

***Be it further resolved, That*** this proposed amendment be referred to the legislature to be chosen at the next general election and that it be published for 3 months previous to the time of holding such election.

**(END)**

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–1776/1
MES:nwn:rs

# 2009 ASSEMBLY BILL 312

June 9, 2009 – Introduced by Representatives ZIEGELBAUER, HINTZ, KESSLER, ROYS, A. WILLIAMS, BALLWEG, BIES, GOTTLIEB, MASON, GUNDERSON, GUNDRUM, KAUFERT, KNODL, LEMAHIEU, LOTHIAN, MONTGOMERY, NASS, RIPP, SPANBAUER, TOWNSEND, VAN ROY, VOS and WOOD, cosponsored by Senators COWLES, DARLING, KAPANKE, A. LASEE, LAZICH and SCHULTZ. Referred to Committee on Urban and Local Affairs.

AN ACT ***to amend*** 40.02 (48) (am) 22., 40.02 (48) (c), 60.57 (1) (c), 61.66 (1) (a) and (b) and (2), 62.09 (1) (a), 62.09 (13) (a), 62.09 (13) (b), 62.13 (2s) (a), 62.13 (3), 62.13 (6) (a) 1., 62.13 (6) (a) 2., 62.13 (6) (a) 3., 62.13 (6m) (intro.), 62.13 (7m), 62.13 (7n), 62.13 (10m), 62.13 (11), 62.13 (12), 66.0925 (14), 111.70 (1) (a), 425.2065 (1), 891.45 (1) (b), 891.455 (1), 951.01 (3f), 990.01 (7g), 990.01 (7m), 990.01 (7r), 990.01 (28g), 990.01 (28m) and 990.01 (28r); and ***to create*** 60.55 (1) (a) 5., 60.553, 60.56 (1) (a) 4. and 62.13 (2e) of the statutes; **relating to:** authorizing cities and towns, and expanding the authority of villages, to create combined protective services departments.

---

***Analysis by the Legislative Reference Bureau***

Generally under current law a village with a population of at least 5,000 is required to provide police protection services by creating its own police department, by contracting for police protection services with a city, village, town, or county or by creating a joint police department with another city, village, or town. Also under current law, in general, a village with a population of at least 5,500 is required to provide fire protection services by creating its own fire department, by contracting for fire protection services with a city, village, or town, or by creating a joint fire department with another city, village, or town.

Current law also authorizes any village to provide police and fire protection services in one of two additional ways. The first way is by using a combined protective services department, which is neither a police department nor a fire department, which was created before January 1, 1987, and in which the same person may be required to perform police protection and fire protection duties, subject to some limitations on consecutive hours that may be worked in police protection. The second way is by requiring persons in a police department or fire department, alone or in combination with persons designated as police officers or fire fighters, to perform police protection and fire protection duties, subject to some limitations on consecutive hours that may be worked in police protection and subject to the limitation that those persons were required to perform those duties before January 1, 1987. In either case, the village may designate any person required to perform police protection and fire protection duties as primarily a police officer or fire fighter for purposes related to presumptions related to certain employment–related diseases.

Generally under current law, 2nd, 3rd, and 4th class cities (presently all cities other than Milwaukee) with populations of at least 4,000 must have police departments and fire departments, and may have joint departments with other cities, villages, or towns. Such cities are generally required to have a board of police and fire commissioners, which appoint the police and fire chiefs who, in turn, appoint subordinates subject to approval by the board. Current law also authorizes a city to abolish its police department if it enters into a contract with a county under which the sheriff provides law enforcement services to the city.

Under a decision of the Wisconsin Supreme Court, *Local Union No. 487, IAFF–CIO, v. City of Eau Claire*, 147 Wis. 2d 519 (1989), cities may not create combined protective services departments or require persons in a police department or fire department, alone or in combination with persons designated as police officers or fire fighters, to perform police protection and fire protection duties.

This bill authorizes 2nd, 3rd, and 4th class cities, and towns, to provide police and fire protection services in the same two additional ways that villages may do so, either by creating a combined protective services department which is neither a police department nor a fire department and in which the same person may be required to perform police protection and fire protection duties, or by requiring persons in a police department or fire department, alone or in combination with persons designated as police officers or fire fighters, to perform police protection and fire protection duties. The bill also removes the limitations on villages relating to the creation of a department, and the requirement relating to the performance of duties, before January 1, 1987.

Under the bill, cities, villages, and towns may designate any person who is required to perform police protection and fire protection duties as primarily a police officer or fire fighter for purposes relating to rest days, consecutive hours worked, hours of labor, rules for leaving the city, and presumptions related to certain employment–related diseases. These requirements and limitations that apply to persons designated as primarily a police officer or fire fighter under the bill apply to police officers and fire fighters under current law. If a city creates a combined

protective services department, the city must create a chief of the department and must abolish the offices of chief of police and fire chief. The chief of a combined protective services department has the same authority as the chief of police and fire chief had.

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

For further information see the ***state and 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:***

**SECTION 1.** 40.02 (48) (am) 22. of the statutes is amended to read:

40.02 **(48)** (am) 22. A person employed under s. 60.553 (1), 61.66 (1), or 62.13 (2e) (a).

**SECTION 2.** 40.02 (48) (c) of the statutes is amended to read:

40.02 **(48)** (c) In s. 40.65, "protective occupation participant" means a participating employee who is a police officer, fire fighter, an individual determined by a participating employer under par. (a) or (bm) to be a protective occupation participant, county undersheriff, deputy sheriff, state probation and parole officer, county traffic police officer, conservation warden, state forest ranger, field conservation employee of the department of natural resources who is subject to call for forest fire control or warden duty, member of the state traffic patrol, state motor vehicle inspector, University of Wisconsin System full–time police officer, guard or any other employee whose principal duties are supervision and discipline of inmates at a state penal institution, excise tax investigator employed by the department of revenue, person employed under s. 60.553 (1), 61.66 (1), or 62.13 (2e) (a), or special criminal investigation agent employed by the department of justice.

**SECTION 3.** 60.55 (1) (a) 5. of the statutes is created to read:

## Consolidation and Collective Bargaining

Collective bargaining agreements (CBA) and other employee and union issues often arise during any local government consolidation. Under New York's Public Employees Fair Employment Act (Taylor Law), public employers have a statutory duty to negotiate in good faith with the unions representing their employees regarding the terms and conditions of employment. Both the Public Employment Relations Board (PERB)[1] and the courts have held that the decision to transfer work that has historically been performed exclusively by employees of one bargaining unit (unit work) to persons outside of the bargaining unit is a mandatory subject of negotiation in many circumstances.[2] This is true whether the transfer would be to a private contractor or to employees of another public employer.

### Consolidating Services

Various types of consolidation or shared services between local governments raise the issue of whether such arrangements, and the decision to enter into them, must be negotiated. Subcontracting and the reassignment of unit work is generally recognized as a mandatory subject of bargaining, although there are exceptions. While it is by and large a management prerogative of a local government to decide what level of service to provide to its citizens, practically speaking, this means that in order to lower costs through unilateral action, the level of a service must be reduced or eliminated. For example, in one case, an employer's decision to abolish a position was lawful, but when it assigned that unit work at about the same time to non-unit employees the employer was held to have violated the Taylor Law.[3] Thus, reassignment of unit work generally must be negotiated; the practical effect being that consolidation of services or subcontracting in an effort to save tax dollars normally must be agreed to by the appropriate employee bargaining unit, especially where levels of service remain about the same, before being implemented.[4]

A current example of an effort at consolidation is in the Town of Clay in Central New York. There, the Town is proposing to merge its police department into the Onondaga

---

[1] PERB is the NYS agency established pursuant to the Taylor Law to administer that law.

[2] The Taylor Law gives little guidance as to what issues must be collectively bargained. The statute imposes a duty to negotiate "terms and conditions of employment," which is loosely defined as "salaries, wages, hours, and other terms and conditions of employment." Thus, one must look to case law for any further detail on what subjects are "mandatory" (i.e., a term or condition of employment such that either party must negotiate upon demand); "non-mandatory" or "permissive" (i.e., a party may request to include such a subject in a CBA, however, neither party is under any duty to negotiate these subjects or to include them in a CBA); or "prohibited" (i.e., a subject that cannot be negotiated since enforcement would be either illegal or against public policy. NYS pension benefits are one example).

[3] City of Poughkeepsie, 15 PERB ¶ 3045

[4] *Public Sector Labor and Employment Law, 3rd Ed.*, Edited by Jerome Lefkowitz, Esq., Jean Doerr, Esq., and Sharon Berlin, Esq., § 7.13.

County Sheriff's Department, which would in turn patrol the town. This initiative would save the taxpayers an estimated 20% on their town tax bill. As noted, significant impediments exist under the current system. The affected union has alleged a violation of the Taylor Law for failure to negotiate the decision to consolidate. Of course, every group will naturally seek to protect their own interests; however, if this initiative is blocked through litigation the enthusiasm for future consolidation efforts may be jeopardized. The Commission's recommendations herein are meant to alleviate these impediments.

In addition to the municipal employer's bargaining obligation that may attach to the decision to transfer unit work, there is also a duty to bargain, upon demand, the "impact" or effects of that decision upon the terms and conditions of employment. So, even where the local government is able to unilaterally implement a decision regarding unit work, the "impact" on the terms and conditions of employment must still be negotiated upon demand. For example, where a municipality decides unilaterally to eliminate certain positions and not replace them, this curtailment of services for economic reasons is a management prerogative. However, the municipality would still be obligated to negotiate the effect of the decision to layoff employees on the terms and conditions of employment (wages, hours, workload, and other mandatory subjects) of the affected employees. In cases of layoffs, the employer's obligation to negotiate impact extends to laid off employees as well as those retained in employment.[5]

**Consolidating Local Governments**

Full municipal or governmental consolidation (such as two towns consolidating) will involve a change in the employing unit. The legal obligations of these municipalities to their present, new, and former employees, and the unions that represent them, are issues that must be resolved during a consolidation. There is a large body of successorship law in the private sector since there are frequent changes in corporate ownership; however, there is little precedent under New York's Taylor Law because of an absence of similar changes with respect to local governments. Depending on the circumstances, a successor employer may or may not be bound by substantive provisions of a CBA. Generally, PERB has held that a successor employer is not bound by the substantive provisions of a CBA negotiated by its predecessor which has not been agreed to or assumed by the successor.[6] Nevertheless, the successor employer may have a duty to continue to recognize and bargain with the union that represented its predecessor's employees. Whether or not this duty exists has been determined simply by which is more appropriate, bringing the employees into the successor employer's union or continuing to recognize the union from the previous employer. Where various obligations of the successor public employer are not controlled by a

[5] Baldwinsville Cent. School Dist., 15 PERB ¶ 3032 (1982).

[6] Matter of Cuba-Rushford Cent. School Dist., 182 AD2d 127 (4th Dept 1992) -- Where a school district dissolved and was annexed by a neighboring district, the CBA of the dissolved district does not travel with any employees that are subsequently hired by the annexing district. The CBA is not a "property right" such that the annexing public entity would have to accept it as it would other outstanding debts and liabilities.

CBA, many are determined by the Civil Service Law, which provides for the orderly appointment of employees during a consolidation or dissolution and annexation.

Municipal officials are understandably hesitant in these areas because of the scarcity of legal authority to offer guidance regarding employee bargaining rights with respect to municipal consolidation. When a simple service sharing arrangement can bring grievances and improper practice charges, which come with expensive and time consuming arbitrations and litigation, it could be expected that the unions will wage an even more vigorous battle where a municipal consolidation would bring a reduction in wages and benefits or even layoffs.

**Removing the Impediments**

The US Constitution Article 1, §10 provides that "No state...shall pass any law that...impairs the obligation of contracts...." While the New York State Constitution has no similar Contract Clause, the due process clause (Article 1, § 6) of the State Constitution has been construed to impose a similar limit on legislative action. However, the prohibition is not absolute, and a central question is whether the State law has operated as a "substantial impairment of a contractual relationship."[7] If the State law constitutes a "substantial impairment," the State, in justification, must have a significant and legitimate public purpose behind the statute, such as the remedying of a broad and general social or economic problem, and the means chosen must be reasonable and appropriate.[8]

There are statutory schemes that have successfully superseded areas of collective bargaining rights. For example, the basic authority within the Education Law for districts to subcontract programs to BOCES for various services, subject to the approval of the Commissioner of Education, has been held to be within the discretion of the district and outside the scope of mandatory collective bargaining. Another example is the Judiciary Law, amended in 1977, to include an entire plan of annexing local government employees into State employee status are part of the new State Unified Court System:

> Notwithstanding any other provision of law...commencing April first, nineteen hundred seventy-seven all justices, judges, and non-judicial officers and employees of the courts and court-related agencies of the unified court system set forth in subdivision one of this section shall be employees of the state of New York and the salaries, wages, hours and other terms and conditions of their employment shall be determined in accordance with the provisions of this section. (*see* Judiciary Law § 39)

[7] *See* Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244 (1978).

[8] The Buffalo wage freeze cases are an excellent illustration of this rationale. *See* Buffalo Teachers Federation v. Tobe, et al., 464 F.3d 362 (2nd Cir. 2006).

However, there are limits to State action. It should be noted that the Judiciary Law amendments did grandfather in all the existing unions of the local employees. Also, as a result of those amendments, it was held by the Court of Appeals that certain provisions did unconstitutionally infringe upon employees' vested contract rights. As a result, the statutory provisions had to be interpreted as being optional rather than mandatory and former county employees had the option of accelerated payments from their former employers for certain accumulated leave cash-outs.

To facilitate municipal consolidation, dissolution, and sharing of services, the Commission recommends amending the Taylor Law and other applicable statutes to **provide that when municipalities consolidate operations collective bargaining agreements shall be subject to renegotiation with the newly created entity taking over the consolidated function.**

Moreover, in order to smooth the progress of both sharing of services and consolidation of departments between local governments, as well as the consolidation of local governments themselves, these statutory amendments should provide that when municipalities consolidate operations or services (or consolidate local governments entirely) the decision to transfer, consolidate, or reassign exclusive bargaining unit work and the impact of the decision, would be non-mandatory subjects of negotiation, i.e., management prerogative.

Amendments made to the Taylor Law or other statutes in order to accomplish the goals of this proposal would likely be upheld by the courts as constitutional, even where collective bargaining agreements are in place. However, there are certain vested contractual rights that have been preserved by the Court of Appeals; these rights should be addressed in any statutory amendments. In addition, other areas of uncertainty should be clarified such as a mechanism to decide what union will represent and bargain for employees of a successor entity upon a municipal consolidation or dissolution.

Source: New York State Commission on Local Government Efficiency and Competitiveness Staff Brief 2008

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–3948/1
JK
JK:bjk:ph

# 2009 ASSEMBLY BILL 661

January 21, 2010 – Introduced by Representatives GOTTLIEB, ZIEGELBAUER, ZIGMUNT, STRACHOTA, LEMAHIEU, BROOKS, VOS, KLEEFISCH, KESTELL, TOWNSEND, A. OTT, PETROWSKI, RIPP, HONADEL, GUNDERSON and KNODL, cosponsored by Senators ELLIS, OLSEN, DARLING, LAZICH and GROTHMAN. Referred to Committee on Urban and Local Affairs.

AN ACT ***to repeal*** 79.07 of the statutes; **relating to:** county and municipal expenditures for emergency services.

---

***Analysis by the Legislative Reference Bureau***

Under current law, beginning in 2010, the amount that each county and municipality spends each year for emergency services that are funded from county and municipal aid payments (shared revenue) must be no less than the amount that the county or municipality spent in 2009 for emergency services funded from shared revenue. This bill repeals that requirement.

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:***

**SECTION 1.** 79.07 of the statutes, as created by 2009 Wisconsin Act 28, is repealed.

**(END)**

*Perspectives on Planning*

Department of Urban and Regional Planning • University of Wisconsin-Madison/Extension
Old Music Hall, 925 Bascom Mall, Madison, WI 53706 (608) 262-8990 • FAX (608) 262-9307

**October, 1996**

**Volume 2, Number 7**

# Understanding Tax Base Sharing

by Brian W. Ohm, J.D.

Property tax base sharing can remove some of the fiscal considerations which drive local land use decisions that often lead to intergovernmental disputes. The potential strengths of property tax base sharing were recognized by Governor Thompson's Interagency Land Use Council. The recent report issued by the Council, entitled *Planning Wisconsin,* includes several proposals recommending tax base sharing as a mechanism to address issues of intergovernmental cooperation.

Property tax *base* sharing should not be confused with the tax *revenue* sharing law passed this past spring by the Wisconsin Legislature. The revenue sharing law allows cities, villages, towns and American Indian tribes to *voluntarily* enter into municipal revenue sharing agreements. This law is codified at section 66.028 of the Wisconsin Statutes. The revenue shared may be from taxes as well as certain special charges. The law is meant to encourage intergovernmental cooperation, facilitate the cooperative provision of services, and help resolve annexation disputes.

The revenue sharing law, however, is limited in its scope. It does not apply to counties, school districts and other special districts which also need to raise tax revenue and are impacted when new development locates in one community and not another. In addition, the revenue sharing law is limited to communities which have contiguous boundaries even though intergovernmental disputes may involve communities which are not contiguous. Other than requiring that the term of the agreement be for a minimum of 10 years, the law does not specify a formula for determining the amount of revenue to share. The details of the revenue sharing formula are left for the cooperating communities to negotiate. A challenge for communities will be to pro-actively negotiate agreements within the context of a comprehensive framework which insures some level of consistency between agreements rather than allowing the agreements to haphazardly reflect numerous battles to annex individual parcels of land.

## The Objectives of Tax Base Sharing

Tax base sharing, in theory and practice, is very different from the revenue sharing law recently passed by the Legislature. Tax base sharing is a much more pro-active approach to achieving tax equity. The following summarizes what are generally perceived as the benefits of tax base sharing:

❑Tax base sharing diminishes the incentives of fiscal zoning. "Fiscal zoning" refers to local zoning practices which are meant to attract certain kinds of development and discourage or prohibit other kinds of development in order to develop a more favorable property tax base.

❑Tax base sharing preserves the autonomy of local taxing units (cities, towns, counties, school districts, etc.) to set their own local tax rates because it is the local tax base that is shared, not the local tax revenue.

❑Tax base sharing can reduce competition between communities for certain development to increase the local tax base.

❑Tax base sharing helps even out the peaks and valleys which are part of the normal cycle of community development. Communities build, go through a period of maturity, and then rebuild. The fiscal demands associated with this cycle arise unevenly as the tax base of a community changes over time. Tax base sharing can ease the fiscal crisis of both growing and declining communities by allowing them to share the tax base from communities which are at a different phase in this cycle.

❑Tax base sharing can provide "compensation" to communities with a high percentage of tax exempt property such as parks and public buildings, or a high percentage of undevelopable land because of natural features or market forces.

❑No additional taxes or taxing authorities need to be created. The program does not generate revenue but rather redistributes tax base.

**Minnesota's Tax Base Sharing Programs**

Perhaps the most well-know tax base sharing plan is the fiscal disparities program for the seven county metropolitan area of Minneapolis and St. Paul. Under that program, all taxing jurisdictions in the metropolitan area (school districts, counties, towns, cities, etc.) share forty percent of the growth of commercial-industrial tax base since 1971 (the year the program was passed by the Minnesota Legislature). This growth in commercial industrial tax base is contributed to an area-wide pool and redistributed to communities on the basis of population and the market value of property within the community.

While it is difficult to measure the overall impact of the program, the Twin Cities fiscal disparities program has been successful in reducing the disparities between the commercial-industrial tax base of communities in the metropolitan area. In 1995, among the 187 communities in the Twin Cities metropolitan area, the ratio of high to low in commercial-industrial tax base without tax base sharing would have been 171 to 1. Tax base sharing reduced those disparities to 33 to 1.

Even though the fiscal disparities program of the Twin Cities remains controversial within Minnesota, earlier this year the Minnesota Legislature passed another fiscal disparities program for the Iron Range region of northern Minnesota. The Iron Range fiscal disparities program follows the same redistribution formula as the Twin Cities program. Minnesota's experiment with tax base sharing for the urbanized portion of the state therefore provided the model for addressing tax equity issues for a major rural region in the state.

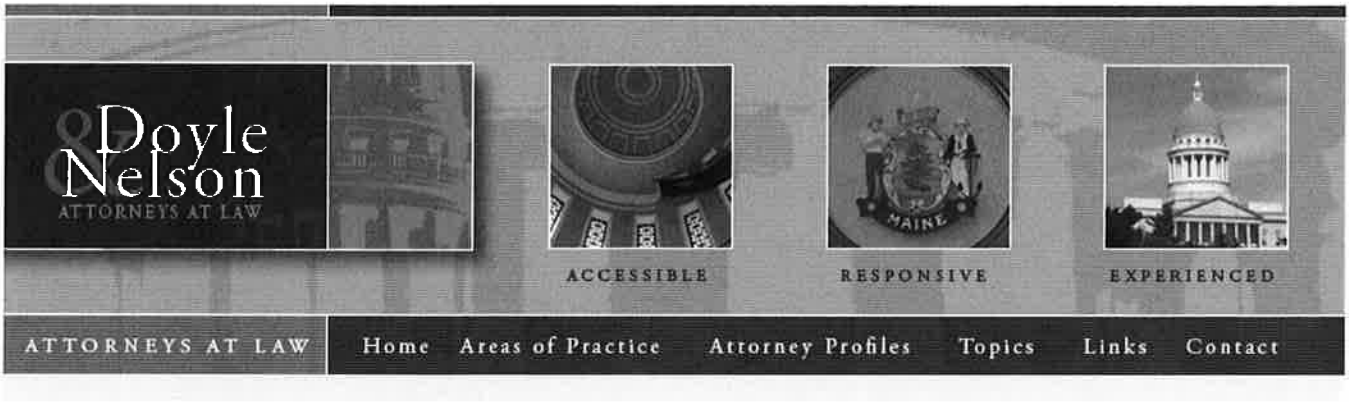
**Mismatch of Needs and Resources**

Many observers have recognized that one of the major problems with the fiscal disparities program in the Twin Cities is that growth in commercial-industrial tax base is an imperfect indicator of overall fiscal needs. In areas of the Twin Cities where the overall tax base is accelerating rapidly, social needs and their related costs are stable or declining. Yet in areas where the social needs and related costs are growing rapidly, the tax base is declining or not increasing at a rate sufficient to meet these costs. Minneapolis, for example, which has high concentrations of poverty and increasingly strong fiscal needs, has gained property tax base under the program in some years and has lost property tax base under the program in other years.

A growing mismatch between needs and resources is also evident in Wisconsin. For example, between 1980 and 1990, the City of Madison experienced a 34.5 % increase in the number of households living below the federal poverty level. The remainder of Dane County, however, saw a 4.4 % *decrease* in the number of households living below poverty for the same period. During this period the population of the City of Madison grew by 4.6 % while the remainder of Dane County grew by 10.2 %.

Many policy makers recognize that the Twin Cities fiscal disparities program should be redesigned so the formula for distributing the shared tax base focuses more on a community's expenditure needs, rather than just tax-base capacity. To this end, bills have been introduced in recent legislative sessions which would expand the tax-base pool to include the growth in value of all residential property over $200,000 in market value. These bills, however, have been vetoed by Minnesota's governor. As public officials in Wisconsin grapple with issues of tax equity, important lessons can be learned from Minnesota's experiences with tax base sharing.

Brian Ohm is an Assistant Professor and UWEX Land Use Law Specialist at the UW-Madison Department of Urban & Regional Planning.




# REGIONAL STRATEGIES: INTERLOCAL REVENUE SHARING AND COLLABORATION

*by: Craig Nelson*
*cnelson@doylenelson.com*

**THE PROBLEM**

As a result of a number of events which have occurred recently with respect to federal and state budget and fiscal policies, recessionary economic conditions, together with ever increasing demands for public services, have put local governmental units under ever increasing pressure to attempt to identify alternative sources of revenue. This negative impact is especially felt by those communities that have structurally weak fiscal bases. These are often the same communities that are experiencing the highest tax rates and have the greatest number of residents who are intense consumers of essential public services. This group of fiscally weak communities are often referred to as "service centers".

Any of these problems which are facing structurally weak local governments could be addressed by states through various approaches, including the assumption of certain major service responsibilities, such as education and welfare, state operated fiscal assistance programs targeted to those communities with the greatest need or the possible development of state mandates and policies that would either require or encourage interlocal revenue sharing arrangements. Because most state governments today are already experiencing significant problems with their own budgetary/fiscal structures, it appears unlikely that state assistance of one form or another is a realistic mechanism for addressing these problems.

**INTERLOCAL REVENUE SHARING**

Various forms of local revenue sharing have been identified in recent years as an effective and politically acceptable means of reducing interlocal fiscal disparities among municipal governmental units, without specifically disturbing the overall principles of municipal home rule.

Interlocal revenue sharing programs have been employed in order to counteract the fiscal and economic inequities that result from concentration of economic growth, which tends to be self-perpetuating in certain metropolitan areas. In many instances, local governmental units establish their own land use and zoning policies, which are directed to the realities of the fiscal consequences of different forms of economic development. Consequently, various governmental units attempt to attract development that brings in tax dollars and attempt, through various means, to generate economic development that produces more revenue than the public services that they require. This type of local activity tends to reinforce traditional parochial barriers and philosophies and the "community against community" inefficient competition that exists with respect to typical single-community based economic development models and projects. The State of Maine is a good example where there exist 489 separate municipal government units in a state with a total population of 1.2 million people. Maine's Commissioner of Economic and Community Development, Steven Levesque, recently referred to the Maine situation as the "tax base chase" and noted that the local home rule control most Mainers deem important comes at a very high cost to local taxpayers.

Interlocal revenue sharing programs have proven that they can significantly reduce the negative impacts of this type of intergovernmental economic competition and policy. In many instances, existing revenue sharing programs have not been developed specifically as a means of redistributing revenue among local communities. They have traditionally been established for the purpose of achieving less ambitious and more politically acceptable objectives, such as the reduction of interlocal competition for tax rich and commercial activity, the protection of particular regions from the effects of sprawl development and from development pressures in environmentally sensitive areas, and promotion of interlocal collaboration on economic development projects of regional significance.

As a result of reduced federal and state aid to local governmental units, the many negative impacts that have resulted from the competition that has arisen among local communities in a common region and the significant and growing problems which local governmental units are experiencing in connection with raising sufficient revenue to meet the ever increasing demand for public services, there is a growing interest in pursuing interlocal revenue sharing in one form or another as a politically acceptable means of attempting to address the increasing disparities in local fiscal conditions and structures.

**THE MAINE MODEL**

One recent and unique example of interlocal revenue sharing was the creation in 1998 by the Maine Legislature of The Kennebec Regional Development Authority (KRDA). It is a quasi-municipal self-governing entity having 24 separate and distinct municipal communities as its participating members. The KRDA has as its focused economic development purpose the creation of a 300-acre high technology-based business park known as FirstPark, located adjacent to Interstate 95 in the community of Oakland, Maine. One of the unique features of the KRDA is the fact that the 24 participating communities vary is size from a population of 530 to more than 20,000. The 24 communities as a whole do not comprise a contiguous cluster of communities.

The Town of Oakland has entered into an Interlocal Revenue Sharing Agreement, permitted under a Maine statute, with each of the other 23 participating communities that provides for the Town of Oakland to share in perpetuity the real estate and personal property tax revenue that will be generated from the development of the property within the FirstPark project. It is projected that over the next 20 years, the increased tax base valuation resulting from the development of the FirstPark project will generate between $25 and $30 million of real estate and personal property tax revenues to the Town of Oakland, all of which will be shared by that community with the other 23 member communities of the KRDA.

Under existing Maine law, there were three negative impacts to the Town of Oakland as the host community for FirstPark, which were addressed in the Interlocal Revenue Sharing Agreement. These negative impacts are that, as a community's tax valuation base increases, the amount of local revenue sharing and local school subsidy it receives from the State of Maine decreases and the amount of its share of the Kennebec County tax increases. In order to hold Oakland harmless with respect to these negative impacts, the Interlocal Revenue Sharing Agreement permits the Town of Oakland to retain sufficient tax revenue to offset these negative impacts in any given year as the valuation of the FirstPark property increases.

The area within the Town of Oakland that comprises the FirstPark project has been designated by the town and the State of Maine as a "tax increment financing district" under an existing state law. This designation permits the Town of Oakland to shelter the development within the FirstPark project from these negative impacts for a period of up to 30 years so that it will not be required to utilize a portion of the tax revenue generated from that development, which is estimated to be between $7 and $8 million over the first 20 years, to offset those negative impacts. The Maine Tax Increment Financing statute permits the Town of Oakland to distribute this additional tax revenue, which it normally would retain to hold itself harmless from the negative impacts of development, to the KRDA so that it may be used for economic development purposes and in promoting the development of the FirstPark project.

In order to promote the creation of the KRDA and the development of the FirstPark project, the State of Maine awarded the KRDA a $1 million community development block grant to be used as part of the funding for the first phase of the infrastructure development of the project. The KRDA was also successful in obtaining a $1 million development grant from the Economic Development Administration and has issued $3.5 million in tax-exempt revenue bonds to fund the $5.2 million cost of acquisition of all of the land comprising the project, permitting and the development of approximately 65% of the infrastructure which includes the underground installation of all utilities, including but not limited to,

state of the art fiber optic based telecommunications technology. The 24 member communities are "investing" in the FirstPark project by supporting the initial operating years operations budget, as well as the debt service on the revenue bonds needed for the development and marketing of the project. Including these 24 communities also had the effect of sharing and thereby reducing the risk involved in the development of the FirstPark project. The KRDA was also successful in negotiating a partnership agreement with Verizon, which resulted in FirstPark being designated a "Verizon Smart Park". The result of this agreement with Verizon is the benefits that will be received from joint national marketing of the FirstPark project by the KRDA and Verizon and the investment by Verizon of approximately $1 million in fiber optic based telecommunications facilities that will serve the businesses located within FirstPark.

Through the FirstPark project, it is expected that approximately 3,000 direct jobs and another 3,000 indirect jobs will be created in the region through the development of the project and the businesses to be located within the Park. The creation of these high-paying, high-quality technology-based jobs, together with the above-described revenue sharing features of the project were clearly the major motivating factors for the votes that were taken by the legislative body of each of the 24 participating communities to enter into this collaborative effort. The presence of the FirstPark project with its resulting creation of jobs and the sharing of the tax revenue generated by the development activity also served as a unifying factor which helped those communities to overcome the existing traditional parochial competitive barriers between them.

**OTHER OPTIONS**

There also exist some other examples of revenue sharing, such as the tax base sharing program that exists in the seven-county Minneapolis/St. Paul area of Minnesota. Tax base sharing is unique in that it involves the actual transfer of a portion of a governmental unit's tax base to a common pool where it is subject to an area wide tax rate. Tax base sharing, through the establishment of a single area wide tax rate on the shared resource space, is intended to reduce the role of local tax differentials with respect to location decisions made by developers. In comparison, revenue sharing involves the sharing of some portion of a governmental unit's revenue receipts with other local governmental units, each of which retain full autonomy over rates applied within their respective jurisdictions.

Because of the various negative fiscal forces presently in play, there also exists a great deal of interest at the present time in various parts of the country with respect to pursuing other types of more limited regionalization short of actual consolidation of existing local governmental units. A group of communities could significantly reduce the impact of the current fiscal forces which they are facing by entering into regional compacts with neighboring local governmental units resulting in greater delivery efficiencies for such public services as education, fire and police protection, public works and emergency 911 call services, supported by a partial sharing of either taxes and/or tax base among the participating communities.

**SUMMARY**

There is a growing interest throughout the country in the concept of interlocal revenue sharing and regionalization of the delivery of governmental services. The motivation for the creation of such programs results from the significant fiscal disparity that has developed among local governmental units, the reduction of the role of the federal government in domestic programs, the significant budgetary problems which most of the states are presently facing, and the overall recognition of the significant advantages that can be realized from promoting economic development projects and the creation of jobs and additional revenue sources for local governmental units on a regionalized basis. Revenue sharing, when combined with the more efficient regionalized delivery of certain local governmental services, is also an attractive means for groups of local governmental units to effectively deal with the fiscal problems they are presently facing.

From a political standpoint, the enactment of state laws which encourage and permit the establishment of local revenue sharing programs and regionalized delivery of governmental services appears to be far more achievable that other more radical solutions, such as governmental unit consolidations/annexations, the establishment of regional governmental units, or the establishment of mandatory revenue sharing programs.

Although interlocal revenue sharing programs will not address all local governmental unit concerns and problems, they do represent a vehicle which can be used to alleviate interlocal fiscal disparities, to reduce interlocal competition and contention and to serve as a basis for regionalized economic development projects, such as the KRDA's FirstPark project, resulting in significant high-quality job creation and new tax revenue sources for the participating communities.