

Informational Paper 92

Fire Department Dues Program

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Introduction

The state administers a fire department dues program, which uses revenues collected from insurers doing a fire insurance business in the state to fund state and local fire prevention and fire protection programs. The program is often referred to as the "2% fire dues program" because the revenue collected by the state from insurers to support the program is equal to 2% of the fire insurance premiums received by the insurers.

The Department of Commerce (Commerce) distributes most of the 2% fire department dues revenues to each city, village or town maintaining a local fire department that complies with state law. Municipalities must use the fire dues payments they receive from the state only for eligible activities related to operation of a fire department. In addition, state revenues received under the fire dues program are used for Commerce administration of statewide fire prevention and fire protection programs, state administration of fire dues eligibility and payments, and Wisconsin Technical College System (WTCS) support of fire-fighter training programs.

This paper describes fire department dues program revenues collected by the state. It also describes expenditures made from fire department dues revenues, including: (a) Commerce distribution of fire dues payments to local governments that maintain fire departments; (b) Commerce administration of fire prevention and fire protection programs; (c) WTCS administration of fire fighter training programs; and (d) WTCS fire fighter school training program local assistance (tuition payments for fire fighters).

Revenue

Any insurer doing a fire insurance business in Wisconsin must pay to the state, under s. 601.93 of the statutes, fire department dues equal to 2% of the amount of all Wisconsin based premiums paid to the company during the preceding calendar year for insurance against loss by fire, including insurance on property exempt from taxation. In addition, under s. 101.573(1) of the statutes, fire department dues also include 2% of the premiums paid to the local government property insurance fund for the insurance of any public property, other than state property.

Fire department dues revenues are collected by the Office of the Commissioner of Insurance (OCI). Every insurer doing a fire insurance business in the state is required to file a statement with OCI by March 1 each year. The statement must show the amount of premiums for fire insurance for the preceding calendar year. The insurer is required to make quarterly payments for the current calendar year on or before April 15, June 15, September 15 and December 15. The insurer pays any additional amount due for the preceding calendar year when the insurer files the March 1 statement. Any overpayments for the preceding calendar year are credited to the estimated payment due April 15.

Before May 1 of each year, OCI reports to Commerce on the amount of fire department dues received from insurers during the prior calendar year. Table 1 shows the amount of fire department dues reported by OCI to Commerce for the past 10 fiscal years. Wisconsin domiciled companies are known as "domestic" insurers and account for approximately half of the total fire insurance

Table 1: Fire Department Dues Revenues Reported by the Office of the Commissioner of Insurance

Fiscal Year	Amount	Percent Change
1996-97	\$8,280,600	
1997-98	8,300,900	0.2%
1998-99	9,587,900	15.5
1999-00	9,554,000	-0.4
2000-01	10,297,900	7.8
2001-02	11,239,600	9.1
2002-03	13,340,000	18.7
2003-04	14,767,800	10.7
2004-05	15,034,700	1.8
2005-06	16,151,300	7.4

coverage in the state, and thus for approximately half of the total fire department dues revenues received by the state. Companies based in other states are termed "nondomestic" or "foreign" companies and pay the remainder of the fire dues.

In addition to the fire dues assessed on insurance companies, Wisconsin imposes taxes on insurance companies. (See the Legislative Fiscal Bureau informational paper entitled, "Taxation of Insurance Companies" for more information.) Wisconsin taxes on insurance premiums employ both "retaliatory" and "reciprocal" provisions, intended to equalize the state tax treatment of insurers operating in more than one state. The 2% fire dues are included in the calculation of retaliatory and reciprocal taxation. Most other states utilize retaliatory taxation but do not provide reciprocity. The retaliatory statute specifies that Wisconsin may impose higher taxes than its statutory rate on a foreign insurer doing business in the state, to the extent that the insurer's home state imposes a tax on Wisconsin firms operating there that is higher than Wisconsin's statutory rate. The reciprocal statute provides that foreign (non-Wisconsin) insurers doing business in the state shall pay no additional and no higher taxes, fees or other charges than their home state imposes on similar Wisconsin insurers operating there. This provision allows a foreign insurer to be taxed at rates lower than those specified in the Wisconsin

statutes, if its home state imposes a lower tax. Under the retaliatory statute, if, for example, the fire dues rate would be increased, it could potentially trigger retaliatory tax provisions in other states that would increase the taxes Wisconsin domiciled insurers pay in the other states. However, it could be argued that such a response would be improper, if Wisconsin would impose the fee uniformly on domestic and foreign insurers. In addition, if an increase were included under the reciprocal statute, a fire dues rate increase levied against foreign insurers in Wisconsin could potentially be offset by lower general fund revenue collections under Wisconsin's other insurance taxes.

Summary of Expenditures

Commerce is required to calculate, by May 1 each year, the proper amount of fire dues to be paid to each qualifying city, village or town. The statutes direct Commerce to calculate this by adding unexpended funds from the prior year to the fire department dues revenues reported by OCI. Then Commerce subtracts the appropriated amounts for the Commerce administrative appropriation and the two WTCS fire fighter training appropriations. Finally, Commerce withholds 0.5% of the remaining fire dues funds. The resulting amount is distributed to municipalities. The 0.5% of fire dues funds that is withheld from distribution is disbursed in the following fiscal year if needed to correct errors of Commerce or OCI, or to correct payments to municipalities. Any of the 0.5% of revenues that is withheld but not distributed is added to the revenue available in the subsequent year for distribution to municipalities.

Any unencumbered funds at the end of the fiscal year in the annual Commerce administrative appropriation or the WTCS fire fighter school training program local assistance appropriation revert back to the fire dues distribution

appropriation and are available for distribution to municipalities in the subsequent year. Any unencumbered funds at the end of the fiscal year in the annual WTCS operations appropriation remain in that appropriation account and are not available for distribution to municipal fire departments in the subsequent year. However, WTCS is only authorized to expend the appropriated amounts, and is not authorized to expend the unencumbered balance. On July 1, 2006, the unencumbered balance of the WTCS appropriation account was \$308,000.

Table 2 illustrates the calculation made by Commerce of the fire department dues revenues available for distribution to municipalities in 2005-06.

Table 3 shows the actual expenditures of fire dues revenues for the four appropriations from fiscal years 1996-97 through 2005-06, and the budgeted amounts for 2006-07. The annual expenditures differ from the revenues reported by

OCI in Table 1 because of the impact of withholding 0.5% of revenue each year for subsequent corrections of expenditure and expenditure of prior year's unspent funds.

**Fire Dues Distribution
to Municipalities**

Commerce is responsible for the distribution of fire department dues under ss. 101.573 and 101.575 of the statutes to cities, villages and towns that maintain fire departments or contract for fire protection if the municipalities meet specific criteria. The Department of Commerce distributes a proportionate share of the revenues based on the equalized valuation of real property improvements on land within the qualifying towns, villages and cities. If a municipality had 1% of the equalized value of real property improvements in the state, the municipality would receive 1% of the fire dues distributed in that year. However, qualified municipalities may not receive less than they received in fiscal year 1978-79 for calendar year 1978 (a total of \$3.5 million statewide). In 2005-06, a total of \$26,100 was distributed to 20 municipalities under the hold harmless provision.

OCI reported to Commerce by May 1, 2006, on the amount of 2005 fire dues paid by insurers. Commerce then calculated the fire dues distribution to municipalities to be paid in 2005-06. The January 1, 2005, equalized valuation was used to calculate the fire dues distributed from the 2005-06 appropriation. The Department of Administration paid the amounts determined by Commerce by August 1. Fire dues payments to local governments for calendar year 2005 were compiled in May, 2006, and paid in June, 2006, from the 2005-06 appropriation. The

Table 2: Fire Dues Revenues Available for Distribution to Fire Departments, Calculation on May 1, 2006 for 2005-06 Distribution

Revenues	
Remaining 0.5% funds withheld in the prior year	\$53,052.94
Prior year unexpended administrative funds - Commerce	49,830.66
Prior year unexpended funds - WTCS	17.54
Fire Department Dues Reported by OCI	<u>16,151,329.58</u>
Total Program Revenue	\$16,254,230.72
Less Program Appropriations	
Commerce fire prevention and fire dues administration	- \$643,517.00
WTCS fire schools local assistance	- 600,000.00
WTCS fire schools administration	<u>- 434,200.00</u>
Total Program Appropriations	- \$1,677,717.00
Gross Amount Available for Distribution	\$14,576,513.72
Less 0.5% Withheld	- \$72,882.57
Final Amount Available for Distribution to Municipalities	\$14,503,631.15

Table 3: Expenditures of Fire Department Dues Revenues

Fiscal Year	Fire Dues Distribution to Municipalities*	Percent Change in Distribution	Commerce Fire Prevention and Fire Dues Administration	WTCS Fire Schools Local Assistance	WTCS Fire Schools Administration	Lapse to General Fund	Total Fire Dues Expenditures
1996-97	\$7,240,700		\$480,500	\$440,800	\$262,700		\$8,424,700
1997-98	7,084,800	-2.2%	598,500	445,400	222,600		8,351,300
1998-99	8,215,300	16.0	593,500	473,200	304,800		9,586,800
1999-00	8,224,900	0.1	622,100	418,500	369,100		9,634,600
2000-01	8,964,400	9.0	623,200	432,700	302,400		10,322,700
2001-02	9,970,300	11.2	455,700	499,200	303,700		11,228,900
2002-03	12,016,300	20.5	552,800	499,900	245,800	\$700 **	13,315,500
2003-04	13,137,400	9.3	717,000	599,800	269,700	12,500 ***	14,736,400
2004-05	13,332,500	1.5	640,700	600,000	290,800		14,863,900
2005-06	14,503,600	8.8	642,000	600,000	435,000		16,180,600
2006-07 est.	14,881,800	2.5	639,100	600,000	434,200		16,555,100

* Fire Dues are distributed for municipality eligibility in the preceding calendar year. For example, the 2005-06 fire dues were distributed for calendar year 2005 activities.

** \$700 was lapsed from the Commerce administrative appropriation to the general fund under 2001 Act 25, which required agencies to lapse certain amounts related to membership dues to the general fund.

***\$12,500 was lapsed from the Commerce administrative appropriation to the general fund under 2003 Act 33 provisions for allocation of state operations reductions related to information technology cost savings, state employee health insurance costs, and other compensation costs.

distribution of 2005-06 (calendar year 2005) fire dues to 1,852 municipalities was \$14.5 million.

Table 4 shows the fire dues payments distributed in every county in the three most recent fiscal years of 2003-04 (calendar year 2003 dues), 2004-05 (calendar year 2004) and 2005-06 (calendar year 2005). The table shows the number of towns, villages and cities in every county that received fire dues payments in 2005-06, and the total amount of payments distributed.

Eligibility Requirements

Every city, village or town that maintains a fire department that complies with statutory requirements is entitled to receive a proportionate share of fire department dues. Commerce is responsible for determining whether a local government is entitled to receive a fire dues payment. However, under 2001 Act 109, Commerce was directed to make the fire dues distribution without regard to eligibility for calendar years 2000 (fiscal year 2000-01) through

2004 (fiscal year 2004-05). On August 1, 2005, the eligibility requirements began to apply again. This section describes the eligibility requirements that exist after calendar year 2004.

Any city, village or town may receive fire dues if it has a fire department which meets all of the following requirements:

- a. Is organized to provide continuous fire protection in the city, village or town and has a designated chief;
- b. Singly, or in combination with another fire department under a mutual aid agreement, can ensure the response of at least four fire fighters, none of whom is the chief, to a first alarm for a building;
- c. Provides a training program in accordance with Commerce rules;
- d. Provides facilities capable, without delay, of receiving an alarm and dispatching fire fighters

Table 4: Fire Dues Payments to Municipalities, by County (Fiscal Years 2003-04 through 2005-06)

County	Number of 2005-06 Recipient Municipalities	2003-04 (CY 2003)	2004-05 (CY 2004)	2005-06 (CY 2005)	County	Number of 2005-06 Recipient Municipalities	2003-04 (CY 2003)	2004-05 (CY 2004)	2005-06 (CY 2005)
Adams	19	\$52,740	\$50,521	\$58,134	Manitowoc	30	\$174,645	\$168,040	\$173,782
Ashland	15	27,667	27,525	30,003	Marathon	57	271,272	276,725	294,253
Barron	35	100,267	102,107	111,213	Marinette	25	88,758	87,796	95,482
Bayfield	28	49,041	49,628	52,510	Marquette	19	37,656	37,994	40,378
Brown	24	547,136	553,178	594,128	Menominee	1	7,794	7,570	8,278
Buffalo	23	21,657	21,586	26,866	Milwaukee	19	1,846,075	1,883,930	2,092,229
Burnett	24	58,772	58,003	62,653	Monroe	34	64,537	64,848	72,264
Calumet	16	71,062	73,393	80,208	Oconto	28	90,389	90,131	96,461
Chippewa	31	113,505	103,861	124,286	Oneida	21	147,554	145,413	159,701
Clark	44	50,985	50,775	54,165	Outagamie	31	412,961	413,087	442,396
Columbia	34	130,441	134,053	148,781	Ozaukee	14	299,777	301,366	322,139
Crawford	21	26,697	26,382	29,499	Pepin	11	13,874	14,582	16,164
Dane	59	1,252,606	1,299,935	1,430,547	Pierce	25	93,434	95,478	106,276
Dodge	41	164,429	164,392	174,755	Polk	35	115,238	121,203	133,731
Door	19	164,122	161,927	169,346	Portage	27	143,819	142,535	151,374
Douglas	22	84,813	86,795	92,895	Price	22	32,411	32,732	35,178
Dunn	31	80,801	83,631	89,293	Racine	18	424,461	445,221	434,455
Eau Claire	18	204,469	205,905	215,530	Richland	22	28,468	28,168	30,637
Florence	8	12,252	12,373	12,917	Rock	28	298,465	294,731	317,790
Fond du Lac	32	200,157	199,233	208,378	Rusk	33	24,352	25,558	27,308
Forest	15	23,090	22,843	23,890	St. Croix	33	204,734	216,154	241,716
Grant	52	72,696	72,486	83,585	Sauk	37	159,134	166,702	183,923
Green	23	73,320	76,176	83,083	Sawyer	21	58,988	61,232	68,156
Green Lake	16	54,426	55,925	59,736	Shawano	36	76,615	77,194	81,502
Iowa	25	49,320	49,327	53,616	Sheboygan	28	260,767	259,447	281,989
Iron	12	17,533	17,745	16,817	Taylor	27	33,716	32,958	35,008
Jackson	27	30,082	29,564	32,223	Trempealeau	26	42,559	43,627	48,396
Jefferson	24	190,220	191,502	208,019	Vernon	32	40,665	40,771	45,586
Juneau	28	46,033	45,140	50,915	Vilas	15	132,970	130,357	144,481
Kenosha	12	383,633	398,876	442,079	Walworth	27	320,984	325,654	367,754
Kewaunee	14	44,820	44,456	46,749	Washburn	25	47,472	49,197	55,076
La Crosse	18	206,576	211,500	227,449	Washington	20	361,145	368,164	404,299
Lafayette	26	24,627	24,640	26,734	Waukesha	37	1,376,022	1,401,626	1,555,961
Langlade	20	44,959	45,035	45,783	Waupaca	34	111,282	112,849	119,464
Lincoln	18	62,112	59,731	64,008	Waushara	25	61,021	60,121	64,180
					Winnebago	21	353,433	354,089	374,774
					Wood	34	142,859	145,062	150,304
					Total	1,852	\$13,137,370	\$13,332,461	\$14,503,631

and apparatus; and

e. Maintains either a voluntary fire department that holds a meeting at least once each month or a paid or partly paid fire department with sufficient personnel ready for service at all times.

The city, village or town maintaining a fire

department may only use fire dues for the direct provision of the following four activities:

- a. The purchase of fire protection equipment;
- b. Fire inspection and public education;
- c. Training of fire fighters and fire inspectors performing public fire education and fire

inspection duties; and

d. Whole or partial funding of fire fighters' pension funds or other special funds for the benefit of disabled or retired fire fighters.

In order for any city, village or town which contracts with another municipality for fire protection to be eligible for fire dues payments, the contract with the other municipality must be sufficient to provide fire protection to the entire city, village or town. Any city, village or town that contracts for fire protection service must give the fire department dues payments received from the state to the municipality or fire department providing the fire protection service, and that municipality or fire department must use those payments only for the four eligible activities specified above.

In addition to these requirements, the municipality must be in substantial compliance with all program requirements. Before Commerce pays fire department dues to a city, village or town, the Department is required to determine that the city, village, town or fire department is in substantial compliance with the program requirements to: (a) spend fire dues only on permitted uses; (b) comply with program requirements; and (c) provide for fire inspections of every public building and place of employment in the fire department's territory, generally at least once every six months, except in the City of Milwaukee, which establishes its own inspection schedule. Annually, the city, village or town is required to submit a form to Commerce that is signed by the clerk of the municipality and by the chief of the fire department providing fire protection to the municipality, and which certifies that the fire department is in substantial compliance with the program requirements or that Commerce has audited the city, village, town or fire department and determined that it is in substantial compliance.

The requirement of "substantial compliance"

was established by 2003 Act 219 and went into effect December 1, 2004. Prior to December 1, 2004, the statutes required a determination that the city, village, town or fire department "has complied" instead of "is in substantial compliance."

Under 2003 Act 219, Commerce was required to establish by rule the meaning of "substantial compliance" for these provisions. Commerce promulgated administrative rule changes that went into effect on January 1, 2005. Administrative rule Section Comm 14.02 includes the following definition of "substantial compliance":

"(2) "Substantial compliance," means an ample amount of the required activity was performed through a concerted effort aimed at total compliance. A determination of substantial compliance is obtained through a common-sense approach to evaluating whether enough effort was made to comply with the applicable statute or code requirements. Substantial compliance is not a specific number or percent of compliance. A determination of substantial compliance in any one year or regulatory standard does not mean that the same amount of compliance or effort in the following year or in another area of the code automatically equals substantial compliance."

Determination of Substantial Compliance

In 2005-06 and subsequent years, if Commerce determines that a city, village or town does not meet the "substantial compliance" eligibility requirements, Commerce pays the fire dues to the municipality for that calendar year and issues a notice of noncompliance to the chief of the fire department, the governing body and the highest elected official of the municipality. If the municipality does not meet the requirements within one year after receipt of the notice or prior to the next audit by Commerce, whichever is later, the city, village or town will not be entitled to fire dues for that year and for all subsequent calendar

years until the requirements are met. The earliest that Commerce will withhold payment of fire dues to a municipality will be 2006-07 for calendar year 2006 fire dues.

During 2005, Commerce held training sessions across the state for all fire departments to explain the statutory and administrative rule changes related to substantial compliance.

In the spring of 2006, before 2005-06 fire dues payments were calculated, municipalities were required to submit a self-certification form to Commerce that certified the fire department and municipality complied with the substantial compliance requirements of the fire dues statutes. Based on the self-certification forms, Commerce issued 96 notices of noncompliance for 83 municipalities in 2005-06 for calendar year 2005 fire dues. The number of notices of noncompliance was larger than the number of municipalities because some municipalities were served by more than one fire department.

In 2005-06, Commerce made fire dues payments to all eligible municipalities and also paid the municipalities that Commerce issued a notice of noncompliance to. Commerce did not perform on-site audits of municipalities and fire departments before sending out notices of noncompliance for 2005-06 eligibility.

During 2006-07, Commerce plans to audit municipalities and fire departments that self-certified noncompliance for calendar year 2005. Commerce plans to perform these audits between January, 2007, and the time Commerce makes eligibility determinations in the spring of 2007. If, by the time municipalities complete the self-certification process for 2006-07 fire dues payments, a municipality that submitted a self-certification of noncompliance in 2005-06 has not corrected any areas of noncompliance that were identified in 2005-06 for calendar year 2005, the municipality would not be eligible to receive fire dues payments in 2006-07.

In the fall of 2006, Commerce was in the process of promulgating administrative rule changes that would establish an appeals process to be followed if Commerce determines a municipality is not in substantial compliance with the fire dues requirements. The appeals process would not apply in situations where the noncompliance is based on the self-certification by the fire department and municipality. The rule changes would likely not be finalized before Commerce makes eligibility determinations for 2006-07 payments for calendar year 2006 fire dues. Commerce plans to implement an appeals process in the spring of 2007, for 2006-07 eligibility determinations, under the Department's general authority to make determinations.

If Commerce withholds payments of any fire dues to a municipality that would have used the dues for payments into any fire fighter's pension fund or other special funds for disabled or retired fire fighters, the municipality would be required to make a payment to the pension fund or other special fund from any other available fund of the municipality. If no other fund would be available, the municipality would be required to make the payment from the next taxes levied and collected for the city, village or town.

Commerce Administrative Appropriation

The Department of Commerce (Commerce) is responsible for administering a statewide fire prevention program. In each of 2005-06 and 2006-07, Commerce is appropriated \$639,100 from fire dues revenues with 6.6 positions. Commerce uses the funds for activities such as: (a) conducting annual training sessions for local fire inspectors; (b) providing technical assistance to fire department officials and inspectors related to fire prevention and fire safety elements of the state building and fire prevention codes; (c) administering code provisions related to fire prevention; (d)

determining eligibility of municipalities to receive fire dues distribution; (e) calculating payments of fire dues; (f) verifying compliance of fire municipalities with the fire dues program criteria; (g) maintaining a database of fire incident reporting records of all fires occurring in the state; and (h) providing information related to fire safety.

The 6.6 full-time equivalent (FTE) Commerce positions include: (a) 5.0 FTE fire prevention coordinators who audit municipalities for fire dues grant eligibility, assist municipalities and local fire departments to meet state requirements and provide technical support and training regarding fire prevention; (b) 0.1 FTE program supervisor who is responsible for fire prevention, inspection and audit; and (c) 1.5 FTE program support positions who are responsible for entering fire prevention data into databases, providing information related to fire prevention programs, and managing the fire incident reporting and self-certification activities of the fire prevention program.

In 2003 Act 219, Commerce was directed to promulgate an administrative rule that defines "administrative expenses" for expenditures under the administrative appropriation. The state budgetary tracking system categorizes budget authority in several broad categories of expenditures. These include permanent and project position salaries, limited-term employee (LTE) salaries, fringe benefits, supplies and services and permanent property. The biennial budget act establishes a list of appropriations containing the overall amount that can be expended from an annual appropriation in any given year. However, the agency, with the approval of the Department of Administration, may transfer funds from one budget line to another (for example, from LTE salaries to supplies) in a given year.

Commerce implemented 2003 Act 219 by implementing administrative rule changes, which were effective December 1, 2004. Administrative rule Section Comm 14.50 defines "administrative expenses" as expenditures for the direct costs and

indirect costs of administering s. 101.14 (fire inspections, prevention, detection and suppression), s. 101.141 (record keeping of fires) and s. 101.573 (fire dues distribution) of the statutes. Chapter Comm 14.50 includes the following definitions:

a. "Direct costs" means the cost of salaries, limited-term employees, fringe benefits and supplies to administer the three statutes.

b. "Indirect costs" means the cost, determined on a pro rata basis, of management and administrative services provided to administer the three statutes.

c. "Supplies" means equipment, memberships, postage, printing, rent, subscriptions, telecommunications, travel, utilities and similar outfitting and services, directly related to administering the three statutes.

Wisconsin Technical College System Programs

The Wisconsin Technical College System (WTCS) is responsible for fire fighter training programs in the WTCS districts. In each of 2005-06 and 2006-07, \$600,000 of fire dues revenues is appropriated for tuition for members of volunteer and paid fire departments to attend fire fighter training programs. WTCS reimburses technical college districts for their training costs. In 2005-06, funding supported training for 4,798 firefighters in programs conducted by WTCS districts.

In addition, the WTCS was appropriated \$434,200 with 3.0 positions from fire dues revenues in each of 2005-06 and 2006-07 for: (a) development and purchase of curriculum materials; (b) workshops for fire fighters; (c) an annual workshop for WTCS fire fighter instructors and trainers from fire departments; and (d) technical assistance to WTCS districts.