WISCONSIN COUNTY OFFICIAL'S HANDBOOK

7th Edition

A Publication of Wisconsin Counties Association, 2020

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This handbook sets forth general information on the topics addressed and does not constitute legal advice. You should contact your county's legal counsel for specific advice.

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7th Edition

The Wisconsin County Official's Handbook: Empowering County Officials through Education

Mark D. O'Connell, Executive Director, Wisconsin Counties Association

As a county official, you are faced daily with the daunting task of understanding a myriad of county issues and implementing complex programs and services. This must be done in a way to best meet the needs of your constituents, while holding the line on tax dollars. Government at any level is a fluid entity and with constantly changing issues and emerging trends, this is not always an easy task.

In your hands is the 7th edition of the *Wisconsin County Official's Handbook*, the most comprehensive document to date on county operations. It was produced by the Wisconsin Counties Association (WCA) staff in response to members' ongoing requests for additional educational materials.

The handbook is comprised of a collection of information covering topics that county officials handle on a regular basis. From an in-depth review of parliamentary procedures to personnel practices and budgeting, this document brings together all areas of county operations in one centralized place.

It is our intention to keep the information provided within these pages current and make any necessary revisions to the content. In an attempt to provide you with the most useful document possible, please review it, use it often, and give us feedback on its effectiveness. Your thoughts are welcome and should be directed to Jennifer L. Bock, WCA managing editor at 608.663.7188, *bock@wicounties.org*.

WCA hopes this document will become the standard reference document on county government for all county government officials. As with any project, there were many players that made the *Wisconsin County Official's Handbook* possible. WCA is fortunate to be surrounded with outstanding individuals who are experts in their field. Their work can be seen within the pages of this document and even more importantly, their contributions toward effective governing will be felt in the years ahead.

The association would like to specifically recognize UW-Madison Division of Extension's Local Government Education program for not only their continued support in lending their time and expertise to produce this document, but also for their generous sponsorship of this edition. The financial contributions from both Local Government Education and von Briesen & Roper, s.c. has allowed this publication to remain the printed piece you now hold.

Without the support of WCA's general counsel, Atty. Andrew Phillips with von Briesen, this document would not be possible. His contribution of the firm's professional resources to the production of many of the chapters of this handbook has resulted in a document that has exceeded our expectations.

With effective governing as the ultimate destination, it is our hope that the *Wisconsin County Official's Handbook* may be the map to get you there. Enjoy the journey.

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Getting Started on the County Board

Jon Hockhammer, Outreach Manager, Wisconsin Counties Association (retired)

So, you have been elected to serve on the county board. Now what? You likely have a few specific issues or personal experiences that prompted you to run for office that are near and dear to your heart. You may also have initiatives you want to accomplish right away. In your attempt to positively impact county government and the citizens it serves, there are things you should know before you get started.

First, it is important to understand that county government authority comes from the Wisconsin Constitution and Chapter 59 of the Wisconsin State Statutes. For your reference, these governing laws are available online at *docs.legis.wisconsin.gov*. County government authority is fundamentally different from the authority of cities and villages. While cities and villages have constitutional home rule authority, counties are limited to statutory administrative home rule authority. This means that while counties may exercise any organizational or administrative power in conducting county business, counties remain subject to the constitution, as well as to any enactment of the Legislature that is (1) of statewide concern, and (2) uniformly affects every county. Simply put, counties can only act as the state statutes and constitution allow. Cities and villages have unlimited authority unless specifically prohibited by state statute or Wisconsin's Constitution. The limited authority given to counties reinforces the original intent of the state's founders in forming the partnership between the state and county government – counties act as the local presence of the state and carry out certain critical functions of state government. For example, clerks of circuit court administer the state court system, county sheriffs apprehend violators of state laws, county clerks manage elections to state offices, treasurers bill and collect state taxes, and registers of deeds keep certain state records, such as birth and death certificates, marriage licenses, and property deeds.

To understand your role as an individual county board supervisor and the role of the full county board, it is important to remember that county government was created in 1870 by the State of Wisconsin, not by the counties themselves. The state has from time to time clarified or amended county authority and structure. Some states have a commissioner form of county government with three to five commissioners (some elected countywide) that are responsible for both creating policy and managing county government. Wisconsin county boards operate under the supervisor form of government and are larger in size – ranging from 7 to 38 members. A county board in Wisconsin is considered a legislative body that sets policy. Its members, county board supervisors, serve in a legislative role. The county board's authority is collective rather than individual. No operational control resides with individual county board supervisors; however, the board is responsible for holding accountable the people who have been appointed to operate county government.

Getting Started

Some of the basic county board functions are as follows:

- Involve, represent, and be accountable to the public.
- Determine which services are to be provided.
- Adopt the annual budget and levy taxes.
- Hire, evaluate, and retain good administrators.
- Regulate county provided programs within statutory authority.
- Cooperate with other levels of government.
- Focus on the long-term rather than the past or short-term.
- Conduct strategic planning addressing key issues and opportunities.

Like the state legislature, Wisconsin counties utilize a strong committee structure to conduct its business. The majority of the policy formation work is done by committees prior to debate by the full county board. Committees routinely hold hearings and consider input from the public and county staff before making recommendations to the full board. Any new initiative should first be referred to the appropriate committee where it can be reviewed by committee members and staff who have the expertise necessary to fully study the issue. Just like the board, a committee has collective authority. No individual committee member, chair or otherwise, has individual authority or responsibility with respect to the committee's official business.

The county board is not responsible for managing the day-to-day operation of the county. It is responsible for establishing policy, which in turn provides the framework for county staff to run the day-to-day operation of the county. The county board enacts policy by adopting plans, budgets, ordinances, and resolutions. For example, policy can be established by adopting farmland preservation, capital improvement, comprehensive, and transportation plans to name a few. These plans generally provide guidance for the long term – five, ten, fifteen years or longer – and can be amended as the board sees fit.

The annual budget is probably the most important policy document the county board adopts. While it is technically a financial document, it is also the primary policy document in county government as the budget determines what services are provided, the level of funding allocated, and the source of revenue. Understanding where the money comes from will assist you in your decision-making process – namely, the various taxes and fees your county collects, as well as where the money goes, i.e., to mandated versus non-mandated programs. Detailed information on county budgeting is included in the chapter, *County Budgets & Financial Management*, on page 141.

The county board also establishes policy by approving ordinances and resolutions. Ordinances are local laws prescribing rules of conduct and are enforced by county officials. Ordinances become a permanent part of the governmental code and the board may amend them as needed. Ordinances can also be regulatory, dealing with issues such as licensing, zoning, peace, and order. Most counties include their county board rules in an ordinance. Unlike ordinances, resolutions are not a permanent feature of the county code. Resolutions are often used to provide an official record of board action, grant special

privileges, express opinions, or communicate with other governmental bodies. Once the county board of supervisors approves policy, it is the responsibility of county staff to implement the decisions of the board. In sum, the basic function of a county board is to (1) adopt policy; and (2) hold those responsible for implementing policy accountable according to established criteria.

Department heads (non-elected) and staff serve in an operational and advisory role to the county board. County employees have the obligation to carry out duties in a manner consistent with the policy direction of the board. Department heads have a leadership role in their departments within the guidelines of the policies and procedures set by the board of supervisors. The procedures are then clarified through directives from the county executive, county administrator, or county administrative coordinator. Staff makes recommendations and gives professional advice, but generally does not make policy other than internal department policies as authorized. In sum, the basic function of county staff is to (1) carry out the board's policy directives; and (2) provide the board with information and advice so as to allow the policy-makers the opportunity to make informed decisions.

Understanding board and staff roles and responsibilities is critical to forming an efficient partnership between the county board and county staff. A successful partnership results in the efficient delivery of critical services to the citizenry. An instance where the partnership between county board and staff is critical is the process of strategic planning. More and more counties are engaging in strategic planning efforts to ensure long-term success in achieving their vision and goals. Strategic planning is a road map for getting from where you are today, to where you desire to be in the future. It is a method for creating order, organization, and improvement, both internally and externally. Strategic planning should involve all stakeholders because it provides the county board, staff, and the public the opportunity to clearly define their objectives and opinions about the future of the county. Strategic planning is becoming more important as the state sees a higher level of turnover in elected officials and county staff. Ask the county clerk if a detailed "job description" for the county board supervisor position is available in your county. An example from the Dunn County Board of Supervisors can be found following this article on page 13.

Beyond the discussion of county board roles and authority, it is important for you to learn and understand how to use parliamentary procedure. Understanding procedural rules and appropriate motions will be a useful asset in moving your initiatives forward. Detailed information on parliamentary procedure is included in the chapter, *A Few FAQs on Parliamentary Procedure,* on page 119. It is also important for you to understand that as a county elected official, you are required to follow state rules that prohibit certain activities in order to comply with ethics and conflicts of interest statutes. Detailed information on ethics and conflict of interest rules is included in the section, *Laws of Governing,* starting on page 73.

Last, but certainly not least, become familiar with the Wisconsin Counties Association (WCA). WCA is an association of county governments assembled for the purpose of serving and representing counties. The association's primary mission as stated in state statute is representing the interests of counties at the state and federal level. In an effort to keep county and state officials and the public

Getting Started

informed, WCA provides a monthly magazine (*Wisconsin Counties*), two electronic newsletters (*WCA eNews* and *WCA Capitol Watch*), and a website (*www.wicounties.org*). Member counties also receive free access to several media outlets to keep them informed on the latest state and local government news (*The Wheeler Report*, *WisPolitics.com*, and *WisconsinEye.com*). Ongoing training and educational opportunities through seminars, webinars, the legislative exchange, and the annual statewide conference are other resources that are available to county officials. WCA staff is available to do additional outreach and training for your county board, committees, and departments. Finally, WCA is able to offer services to county governments through the WCA Group Health Trust, Wisconsin County Mutual Insurance Corporation, and WCA Services, Inc.

The quest for change seldom comes without difficulty. If history is any sort of guide, your career in public service will likely be filled with both success and failure. Educating yourself on the information in this handbook will get you headed down the right path and hopefully provide opportunity for more successes while limiting the chances for failure. Congratulations on your election, and thank you for your service to county government.

DUNN COUNTY

Supervisor "Job Description"

Dunn County is a body corporate of the state of Wisconsin. The County Board of Supervisors is the governing body of Dunn County. Dunn County has twenty-nine districts, and the voters in each district elect one supervisor to serve on the county board. The term of office is two years. To be elected as a supervisor, a candidate must be 18 years of age or older and be a resident of the supervisory district within which they are a candidate at the time election papers are taken out. The duties, powers and responsibilities of the County Board of Supervisors are defined by the laws of the state of Wisconsin and the Rules of the Board, contained in Chapter 2 of the Dunn County Ordinances.

County supervisors are expected to individually contribute to a collaborative effort to set strategic mission goals and make broad policy decisions that support the strategic mission and advance the priorities of the county. Examples of such activities, include, but are not limited to:

- Taking part in the activities of the board and serving on one or more standing committees or special committees, boards and commissions enumerated in sections 2.05 and 2.055 of the Rules of the Board, as appointed by the county board chairperson;
- Participating in the process of debate and voting on proposed ordinances, resolutions and motions in county board and committee meetings;
- Providing oversight and advice to the management of the county regarding delivery of county services while refraining from the delivery, management or administration of daily operations of the county;
- Being responsive to the needs of their constituency through effective communication;
- Establishing priorities for the delivery of county services through the annual budget and tax levy.

Service as a county supervisor is an honor and a trust, which compels the office holder to serve the public through use of his or her judgment for the benefit of the public, and binds him or her to uphold the Constitution of the United States, the Constitution of the state of Wisconsin, and to carry out impartially the laws of the nation, state and county.

County supervisors, being representatives drawn from society at large, are recognized to hold different views, values, and loyalties that may result in personal conflict. Personal integrity, courtesy and a willingness to work toward consensus on commonly accepted goals are essential traits as we acknowledge that the county board of supervisors' influence and authority comes from collective action and not from individual action.

Getting Started

County Supervisors:

- Are dedicated to the democratic ideals of honesty, openness and accountability in all matters involving county government;
- Are willing to accept responsibility for decision-making that can affect many;
- Understand the county's mission, priorities, challenges, needs and demographics;
- Understand the difference between governance and management and accept that their role is to set policy while management carries out policy;
- Understand the importance of distinguishing between personal opinions and county board positions when communicating with the public and the media, exert a good faith effort to communicate the full truth about county matters and avoid structuring information to achieve a personal advantage;
- Are good listeners and will speak to issues, but also recognize when discussion must conclude and a decision must be made;
- Are committed to building community partnerships;
- Actively practice and support stewardship of the county's fiscal and natural resources by supporting public policy for the best use of land, water and air consistent with the public interests, community need and a vision for the future and adopt fiscal policies that promote the most effective, efficient and ethical use of public funds;
- Perform the duties of their office with fairness and impartiality to build public confidence in government;
- Support the principle of equal employment and oppose discrimination in all county operations;
- Strive to seek and consider citizen input; and
- Strive for excellence through continuous learning, seek opportunities to acquire skills and knowledge, and dedicate the time necessary to adequately attend to the assignments and duties of the office.

Printed with permission from Rules of the Dunn County Board of Supervisors, Appendix A – County Board Supervisor (Appendix A adopted January 15, 2014).

County Government Structure

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Local Government Education

THE COUNTY BOARD OF SUPERVISORS

The governing body of the county is the county board of supervisors. Supervisors are elected from geographic districts, not at large. After each decennial census, county boards are required to draw up new district boundaries based on a uniform number of residents per district. Supervisory elections are conducted in the April general elections of even-numbered years. In cases where three or more candidates file in the same district for the office, primaries are held on the third Tuesday of February in the same year. Supervisors serve two-year terms. Each board meets after each election to select a board chairperson and up to two vice-chairpersons. The board chairperson conducts meetings, may make committee appointments as authorized by the board, and represents the board by virtue of being the chief elected board official of the county.

The maximum number of supervisors allowed for each board is prescribed in Wis. Stat. § 59.10(3) and is based on the latest census population for each county.[1] Counties with populations of 100,000 to 749,999 are allowed up to 47 board members. Counties with 50,000 to 99,999 may have a maximum of 39 members; those with 25,000-49,999 are limited to 31; and those with 25,000 residents or less may have up to 21. In most of the 72 counties, boards have reduced their membership to below statutory limits. Adjustments to board size can be made after each decennial census to coincide with redistricting, and one time between each decennial census by the board or through a citizen petition and referendum process.

Wis. Stat. § 59.10(3)(cm) allows further reductions during the decade based on the most recent census. It also provides for citizen petition and referendum to reduce board size. Using the authority of Wis. Stat. § 59.10(3)(cm), several Wisconsin county boards have opted to reduce their size.

COUNTY BOARD COMMITTEES

Wis. Stat. § 59.13 states "the board may, by resolution designating the purposes and prescribing the duties thereof and manner of reporting, authorize their chairperson to appoint before June 1 in any year committees from the members of the board, and the committees so appointed shall perform the duties and report as prescribed in the resolution."

A county board may establish as many standing and advisory committees as it deems necessary to conduct the business of the county. These are usually created by ordinance or resolution. Due to the size of county boards, preliminary business and most public hearings are conducted by committees, which then make referrals or recommendations to the full board for final action. State law requires that county committees be established for major social service programs, such as developmental disabilities and

County Government Structure

mental health programs.[2] It also requires a separate highway committee to oversee road maintenance and other public works. Additional standing committees usually include those dealing with finance, personnel, general administration, and intergovernmental matters. Wisconsin county boards often have standing committees assigned to major subject areas, such as public safety and planning/zoning matters. County boards also create numerous advisory committees that are often composed of both citizens and board members. Advisory committees may vote on resolutions, ordinances, or financial matters, but their recommendations are only advisory to standing committees and the board, which then make the final decisions. Advisory committee terms may be set for shorter time periods than standing committees and may "sunset," or cease to exist, after they complete their assigned tasks. Subsequent to the reductions provided for by Wis. Stat. § 59.10(3)(cm), many county boards have consolidated many of their committees to significantly reduce their meeting load.

In addition to committees that the board may create at its own discretion, state statutes require certain committees be created. Required committees include:

- Wis. Stat. § 83.015 – county highway committee
- Wis. Stat. § 323.13(1)(a) – emergency management
- Wis. Stat. § 59.56(3) – extension committee
- Wis. Stat. § 46.82 – commission on aging
- Wis. Stat. § 251.04 – local board of health
- Wis. Stat. § 92.06 – land conservation committee
- Wis. Stat. Ch. 46 & 51 – community programs/social services/human services
- Wis. Stat. § 59.54(8) – local emergency planning committee
- Wis. Stat. § 45.81 – veterans service commission

It is worth remembering that counties have Administrative Home Rule authority and, other than the required committees, they can add, consolidate, restructure, or eliminate committees as they deem necessary.

COMMITTEE ASSIGNMENTS

Generally, the county board chair appoints a committee chair, as well as individual members, of each committee after surveying board members regarding their particular interests and strengths. Individual members may make requests for specific committee appointments directly to the chair at appropriate times before the committees' memberships are officially set. This is typically done in April or May of years members are elected. Committee chairs and members may or may not be removed from their duties during the middle of their terms of appointment depending on each county board's adopted rules. Standing committees usually are created by resolution or ordinance and may be dissolved or re-created every two years following the biennial spring elections. These committees usually consist solely of county board member appointees. Short-term or long-term advisory committees may also be appointed by a chair, county executive, or administrator to study and report on specific issues.

SELF-ORGANIZED COUNTY OPTIONS

Often it is said that a county board has little control over its own affairs, policies, and procedures, especially when compared to villages and cities, which operate under constitutional home rule powers. While this may be true in many cases, provisions in the state statutes do permit the county board some flexibility in setting member compensation, board terms, and filling board vacancies.

These provisions, known collectively as "self-organized counties" legislation [Wis. Stat. § 59.10(1)], were passed in the mid-1970s in an attempt to provide flexibility regarding limited and specific county board matters.[3] The major options available to county boards after approving this status are:

- The ability to set staggered terms for supervisors – electing half of them each year, rather than electing them all each even-numbered year.
- The flexibility in setting board member compensation, including the ability to pay fixed salaries and to pay for additional board or committee meetings in excess of current statutory limits based on population.
- The right to fill board vacancies by other means, such as by nomination from the board floor and/or the ability to schedule special elections before vacated terms expire.

Two counties already have specific provisions for self-organization under state statutes without adopting self-organized status and thus have no need to enact further self-organizing ordinances. The Milwaukee County Board of Supervisors, by virtue of being the only county in the state with a population in excess of 750,000, formerly had the right to create four-year terms for the its supervisors and to set its own supervisors' salaries, subject to advance approval before the new supervisors take office. Since 2016 and subsequent elections, Milwaukee supervisors' terms are 2 years. Milwaukee County supervisors are also precluded from accepting additional compensation over their annual salaries "for serving as a member of any committee, board or commission appointed by the county board or by the county executive," however, the board may provide for some limited exceptions.[4]

Menominee County is also specifically exempted from state laws regarding terms of office and appointments to vacancies by virtue of being the only county with one town within the county limits. Its town board members and one supervisor representing the only incorporated village in the county also serve as the county board of supervisors and therefore, different provisions apply permitting staggered terms that coincide with town and village elections. However, the board members in Menominee County are still governed by the standard per diem compensation limits mentioned later in this chapter for non-self-organized counties.

HOW IS SELF-ORGANIZATION ACCOMPLISHED?

The county board may choose at any time to become a "self-organized county." This is done by passing an ordinance stating its intent to self-organize and citing its authority to do so under Wis. Stat. § 59.10(1). If the board enacts such an ordinance, the county clerk must file a certified copy with the Wisconsin Secretary of State. Following this filing, the county board may adopt policies it desires

County Government Structure

Table 1: Self-Organized Counties*

County	Year	County	Year	County	Year
Adams	1991	La Crosse	1997	Richland	1991
Calumet	1990	Lafayette	2001	Rock	1985
Chippewa	2002	Langlade	2015	Rusk	1993
Crawford	2005	Lincoln	2004	Sawyer	2016
Dane	1984, 1974	Manitowoc	1987	St. Croix	2004
Dodge	1991	Marathon	1975	Shawano	1997
Douglas	1999	Marinette	1990	Sheboygan	1985
Dunn	1997	Marquette	1991	Taylor	1978
Grant	2009	Monroe	2000	Vilas	2004
Green	1990	Oneida	1991	Walworth	2009
Green Lake	1990	Pierce	2004	Washington	2004
Iowa	1995	Polk	2014	Waukesha	2009
Iron	2004	Portage	1995	Waupaca	1999
Jefferson	2003	Price	2010	Wood	1997
Juneau	2003	Racine	2001		

** As of February 2018; Source: Wisconsin Secretary of State.*

regarding staggered terms, compensation for board members, and the method for filling county board vacancies. This is usually accomplished through the board's adoption of a series of individual ordinances; each ordinance requires approval by a majority of the entire board membership. While the secretary of state's office maintains a file of all ordinances passed by counties enacting their self-organized status, the office does not verify the facts behind such documents, nor does it ever withhold approval of any county's claim of such status after the appropriate filing is made. It also does not exercise any ongoing oversight of counties' use of such powers. Once the self-organized status is obtained, the board is not required to enact ordinances enabling any or all of these provisions under any particular time schedule.

County boards have had the option to self-organize for over 40 years; 43 of 70 eligible counties have passed a local ordinance and are officially listed with the secretary of state's office as "self-organized" (see Table 1 above). The earliest county to take advantage of this provision was Dane County in 1974. It was followed in 1978 by Taylor County. The most recent counties to enact such an ordinance were Vernon, Pepin and Sawyer Counties, which joined the list in 2016. The 45 self-organized counties are fairly evenly distributed, both geographically and in population.

TERMS OF OFFICE FOR BOARD MEMBERS

Non-self-organized counties must hold an election of the entire county board every two years on the first Tuesday in April in even-numbered years. All terms run simultaneously. In the 2016 election, the Wisconsin Counties Association reported that 19% of supervisory seats across the state changed hands. Self-organized counties are permitted to hold elections in one half of their supervisory districts in April of even-numbered years, and in the other half in April of the odd-numbered years.

COMPENSATION FOR BOARD MEMBERS

Unless a county is "self-organized," a board member's compensation is to be paid on a per diem basis and must be based on actual board meetings attended by each member. Members who are absent due to illness, family emergencies, business obligations, or other legitimate reasons may not be paid for meetings missed.

In many counties, members must submit monthly per diem request forms to the clerk's office in order to be compensated after attending meetings. The board sets its members' per diem at rates it determines. Typical per diem range from $15 to $50 per meeting. State statutes limit the total number of days in which a county board member can claim the per diem regardless of whether additional meetings are required. Specifically, Wis. Stat. § 59.10(3)(h) limits the county from paying supervisors per diem for more than 20 days in a calendar year if the county's population is less than 25,000; for more than 25 days if the county population is 25,000 to 99,999; and for no more than 30 days total per year if it is between 100,000 and 749,999.

Similar limitations on additional compensation for committee meetings are applied to non-self-organized counties under Wis. Stat. § 59.13(2)(a) & (b). In counties of less than 25,000 population, supervisors are limited to no more than 20 days of per diem pay for committee meetings annually, of which not more than 10 days can be for services on any one committee. An exception is that the board may increase the number of committee meetings for which a member can be compensated by a two-thirds majority vote. In counties with a population of 25,000 or more, board members are limited to no more than 30 days of extra pay for committee duties unless the board increases the number by the same two-thirds vote. In addition, an attorney general's opinion states that counties may not pay multiple per diem for committee meetings held on the same day as board meetings or for multiple committee meetings on the same day, unless the county is self-organized.[5]

In counties with a population of less than 750,000, the board may elect to pay members an annual salary through approval of a two-thirds majority of the members, without declaring itself self-organized. State law permits higher compensation for the county board chair and for up to two vice chairs. Under no circumstances may county boards adjust the compensation of their members or officers during the course of the members' term.

REIMBURSEMENT FOR TRAVEL TO MEETINGS

County board members are entitled to mileage reimbursement for actual miles traveled to county board and committee meetings. The allowable manner for calculating member mileage reimbursement is stipulated in Wis. Stat. § 59.10(3)(g). A member shall be compensated for actual mileage based on the "usual traveled route"…. "in going to and returning from" board or committee meetings. Wis. Stat. § 59.22 adds that the rate at which mileage is compensated shall be determined by the county board itself and may be any amount deemed reasonable. The rate is set by resolution or ordinance by the governing body.

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In many counties, this means that the county sets a per mile reimbursement rate at or below the IRS maximum allowance as the standard for both employee and board member reimbursement. Amounts over that figure are subject to personal income tax reporting and taxes. The provisions related to "usual traveled routes" do not apply to counties with self-organized status where the board may elect to pay members for routes that contain mileage over and above present statutory limits.

FILLING BOARD VACANCIES

From time to time, due to resignation or death, a vacancy occurs on the county board of supervisors. In self-organized counties, the board may determine the procedure for filling a vacancy. Without self-organizational status, the county board chairperson, with the approval of the board, appoints a qualified elector who is a resident in the vacated supervisory district. The appointed person then serves for the remainder of the term, unless the board orders a special election to fill the vacancy. If a vacancy occurs before June 1 in the year preceding expiration of the term of office, the board may order a special election to fill the vacancy. In the case that the board orders such a special election, the appointed person serves until a successor is elected and qualified. The person that is elected in a special election serves for the remainder of the unexpired term.

EXECUTIVE AND ADMINISTRATIVE OPTIONS

Prior to 1960, Wisconsin county boards functioned as both the legislative branch and the executive branch for counties. However, as county government became more complex and the population became more urbanized, state statute was amended to permit the creation of a separate, elected position of county executive to administer and monitor county departments and exercise other specified powers. This position first was mandated for Milwaukee County in 1960. In 1969, the authority to create an executive position was extended to all counties, regardless of size (Wis. Stat. § 59.17). County executives are elected in the general nonpartisan election on the first Tuesday in April and serve four-year terms.

In 1985, the legislature specified the powers of appointed county administrator. The county administrator is responsible for the annual budget, providing oversight to county department heads, and reporting to the county board.[6] Wisconsin currently has 12 elected county executives and 27 appointed administrators. Wis. Stat. § 59.19 required all counties no later than January 1,1987 that do not choose to create either an administrator or an executive position to designate an administrative coordinator. The administrative coordinator is "responsible for coordinating all administrative and management functions of the county government not otherwise vested by law in boards or commissions, or in elected officers." Thirty-three counties have selected this form of administration.

FORMS OF COUNTY GOVERNMENT IN BRIEF

Wisconsin law provides for three forms of county government. Those are the county executive, county administrator, and county administrative coordinator. All counties have an elected board of supervisors

Table 2: County Administrative Options

TOPIC	EXECUTIVE (Wis. Stat. § 59.17)	ADMINISTRATOR (Wis. Stat. § 59.18)	ADMIN. COORDINATOR (Wis. Stat. § 59.19)
How Created	Board resolution or citizen petition/referendum	Board resolution or citizen petition/referendum	Board resolution or ordinance
How Chosen	Spring election every four years (nonpartisan)	Appointed by majority vote of county board	Appointed by majority vote of board
Qualifications	U.S. citizen, 18 years of age, county resident	Training, experience, education (no consideration for residence, nationality or political affiliation)	Elected or appointed county official and other qualifications set by board
Source of Powers	State statutes	State statutes	Limited state statutes and board resolution/ordinance
Removal	By governor for cause	By county board majority	By county board majority
Budget Authority	Prepares & presents to board	Prepares & presents to board	Only as authorized by board
Veto Board Actions	Yes	No	No
Department Heads	Appoints (subject to board confirmation), removes at pleasure	Appoints (subject to board confirmation), removes at pleasure	No authority unless granted by board
Advisory Committees/ Boards	Appoints, removes subject to board confirmation unless waived or made under civil service	Appoints, removes subject to board confirmation unless waived or made under civil service	No authority unless granted by board
Coordinate Depts.	Yes	Yes	Only management functions not assigned departments by ordinance or law

comprised of members of the electorate with powers authorized by Section 22, Article IV of the Constitution and specified in Chapter 59 of the statutes. The Wisconsin county board is unlike the commission form of government found in some states in which individual county commissioners are directly responsible for the operational aspects of any county department

The Wisconsin State Legislature and statutes chose the supervisor form of government. Unfortunately, the use of the term "supervisor" appears to be a source of misinterpretation of the duties of Wisconsin county boards of supervisors. Supervisors do not directly "supervise" under Wisconsin law; they "oversee" through their policy making and budgeting authority. The term "supervisor" is historical, not descriptive.

County Executive (Wis. Stat. § 59.17). In this form of county government, a county executive is elected by the citizens specifically to act in the capacity of Chief Executive Officer (CEO) of the county. While Milwaukee County is required to have a county executive, any county in the state may choose this form of executive structure. This structure is often chosen for reasons such as political climate, complexity of governmental issues in that county, projected growth, or some other issue that compels the citizenry to elect a full-time CEO who answers directly to them.

The county executive coordinates and directs all administrative and management functions, appoints members to boards and commissions (subject to county board confirmation); supervises department heads; submits the annual budget; and holds veto authority over county board decisions, ordinances, resolutions, and appropriations. The county board can override vetoes of the county executive with a two-thirds majority vote. In short, the county executive is the highest level administrative leader in the county with powers and a relationship with the board that can be generally equated to

County Government Structure

those between a mayor and city council or the governor and legislature. While the county board of supervisors is restricted to legislative duties and oversight, the county executive manages and supervises all departments and activities, both day-to-day and long-term through planning. This includes every county action and service except those performed by constitutional officers, such as the sheriff, where the county executive's authority is essentially limited to budgetary control.

County Administrator (Wis. Stat. § 59.18). The county administrator form of government is optional. It can be chosen but its adoption is not required anywhere by statute. A county administrator form of government is very closely related to the city manager form at the municipal level. It is often chosen because population, growth, and/or complexity of government issues within the county are seen to require a full-time professional manager/administrator to ensure efficient service provision. The county administrator is the chief administrative officer (CAO) of the county. The administrator is appointed by a county board and Wis. Stat. § 59.18(1), requires the appointment be "solely on merit" with due regard for training, experience, administrative ability and experience with no weight or consideration given to residence, nationality religious or political affiliation. The county administrator coordinates and directs all administrative and management functions of a county government and appoints and supervises department heads subject to county board confirmation.

The county administrator appoints members to boards and commissions, and where statutes give appointment authority to the county board or its chairperson, subject to board confirmation. The county administrator is responsible for preparing and submitting the annual budget, which requires the board of supervisor's approval before becoming official. The county administrator answers to the county board of supervisors as a whole, not to the county board chairperson. A key point here is that the county administrator "supervises" versus "coordinates." Department heads work for, report to, and are evaluated by the county administrator, except for elected constitutional officers such as the county clerk or the sheriff. Through this supervisory authority, the county administrator is expected to manage or administer the daily business of county government. The county administrator has hiring authority (subject to county board approval) and firing authority over department heads unless that authority is revoked by local ordinance by the board of supervisors.

However, constitutional officers and elected department heads do not fall into this category. They do not "work for" the county administrator. Nevertheless, they must recognize the administrator's authority regarding coordination between departments; resource allocation; and management issues outside of the non-supervised department, which require coordination and support from other county departments. Essentially, the county administrator must foster a relationship of trust and cooperation with those officers and department heads not under his/her supervisory control to effectively manage county operations. County administrators commonly assume additional duties, especially in smaller populated and rural counties, such as human resources director, emergency management director, media spokesperson, which further exemplifies the need for a broad education and experience level for prospective county administrators.

Administrative Coordinator (Wis. Stat. § 59.19). County administrative coordinator is the third form of county government and the least defined by statutes; consequently, it is probably the most misunderstood form. The law provides that if a county has not adopted the county executive or county administrator form of government, it must adopt the administrative coordinator form of government. The law provides that an elected official, such as the county clerk, or an appointed official may be designated administrative coordinator, almost as an additional duty.

Historically, some counties utilizing the administrative coordinator option designated the chair of the county board as administrative coordinator. However, the Wisconsin attorney general's office issued a formal opinion in 2011 stating that a sitting county supervisor is precluded from accepting any other office or position, including the position of administrative coordinator, because the additional positions are legally incompatible.[7] Under Wisconsin law, any supervisor holding an incompatible position automatically vacates their board membership as a matter of law.[8] Hence, neither the county board chair nor any other member of the board can hold the position of administrative coordinator without resigning his/her position as an elected member of the county board.

The law provides that the administrative coordinator "is responsible for coordinating all administrative and management functions." The duties and authority of an administrative coordinator are similar to a county administrator. The administrative coordinator's duties are comparable to those of a city or village administrator who works under a mayor or village board. A village administrator coordinates daily municipal operations but must defer to the village board for final decisions on non-routine matters. The county administrative coordinator performs in a similar manner with the county board holding final approval authority over non-routine decisions. With Administrative Home Rule authority, the position of administrative coordinator can be made as strong or as weak as the board chooses via local ordinance. Although the statutes do not give the administrative coordinator supervisory authority over department heads, there are valid reasons for a board of supervisors to give a limited amount of such authority to the administrative coordinator.

The administrative coordinator could, like the county administrator, be assigned additional duties that need to be performed and no other position exists to perform them. The administrative coordinator reports and answers to the board of supervisors and the board chair. When a county comes to the conclusion that a full-time professional is required to perform the duties of either county administrator or administrative coordinator, there are a number of criteria commonly considered essential for that person to be qualified for the position. Persons selected for these positions are generally expected to possess at least a bachelor's degree in Public Administration, Business Administration, Finance, Planning, or some other closely-related field. A Master's Degree is often listed as "preferred" on advertisements for such positions. Experience in a staff position and/or as an assistant administrator or coordinator is commonly expected. A period of five years of such experience is often required before entering that primary administrative position. Candidates for either of these positions are routinely screened via background checks, criminal history checks, financial records checks, and reference checks prior to an

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offer being made for the position. The county with a county administrator or full-time administrative coordinator should be able to count on an experienced, well-educated manager and leader to keep daily operations and service provision running and operating at an optimal level of efficiency, allowing the board of supervisors to concentrate on long-term visioning and policy.

THE JUDICIAL BRANCH

The 1977 Court Reorganization Act merged Wisconsin circuit courts and county courts into one trial court system under the administration of the Wisconsin Supreme Court and 10 district administrators. The circuit courts are divided into branches within counties, and at least one branch exists in every county, with the exception of six counties that are paired off and share a single judge. The paired counties are: Buffalo/Pepin, Florence/Forest, and Shawano/Menominee. Judges' and court reporters' salaries are paid by the state, but most court staff salaries and court facilities are funded by county taxpayers. Circuit court judges are elected to a six-year term in the spring general election by the residents of the counties they serve. Circuit courts are a necessary part of state law; thus judges have implied authority to require local county boards to fund the courts at a level necessary to meet caseloads. The county Register of Probate is appointed by the chief circuit court judge for that county.

OTHER ELECTED AND KEY APPOINTED OFFICIALS

Under state law, county residents elect certain other county officials. These are the clerk, treasurer, sheriff, clerk of circuit court, register of deeds, and district attorney. These officials are elected in partisan, general elections that are held on the Tuesday after the first Monday in November in even-numbered years and are referred to as Wisconsin's Constitutional Officers. Sheriffs, clerks of circuit court, district attorneys, elected surveyors, registers of deeds, treasurers, county clerks and coroners are elected to four-year terms. The popular election of a county surveyor and coroner is a local option that is on the decline in Wisconsin counties. When a county chooses not to have an elected coroner, the office is appointed and is called a medical examiner. When no candidates file for county surveyor, the board usually hires a state certified land surveyor to perform the duties.

People wishing to hold these offices must be legal residents of the county, U.S. citizens, and at least 18 years of age. Other department head positions are appointed by the executive or administrator, and in rare cases by the administrative coordinator, and are confirmed by the county board. Wis. Stat. § 83.01 requires each county board must elect a highway commissioner, whose term is for two years, unless otherwise set by local ordinance. Appointment of a head of emergency management services is also required by law (Wis. Stat. § 323.14(1)(a)2.). A county social or human services director must also be appointed to oversee each county or multi-county department of social or human services. Many counties also have a finance director, corporation counsel, parks director, general services administrator, human resources director, and other professional managers to perform other specific duties. Counties often contract with private attorneys to provide corporation counsel services.

FUNCTIONS AND DUTIES OF WISCONSIN COUNTIES

Unlike Wisconsin cities and villages, counties do not have broad constitutional "home rule" authority. This means that while cities and villages have broad authority to act for the health, welfare, and safety of their citizens, counties may only undertake functions that are expressly granted by state statutes. This has resulted in counties being assigned increased tasks on behalf of the state, but having limited authority to address specific local priorities. Major responsibilities required of the county include the provision of most social service programs (i.e., child welfare, juvenile justice, services, for the aged and disabled, public health, mental health, jail, developmental disabilities, etc.) and for local and state road maintenance. Counties also provide cultural and recreational amenities (e.g., parks, libraries and snowmobile trails), law enforcement, health services, zoning, and road maintenance for citizens in rural, unincorporated areas within their borders. Some of these same services are also provided to cities and villages through joint agreements.

Home rule authority has allowed county government to expand gradually as a regional government in areas such as recycling, water quality management, transportation planning and zoning review, but only in cases where a municipality or group of municipalities have requested the county to do so on their behalf through voluntary agreements.

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- *Opinion of Wis. Att'y Gen. to Bradley Lawrence, Price County Corp. Counsel, OAG 1-11 (October 27, 2011).*
- *Opinion of Wis. Att'y Gen. to Dennis Kenealy, Ozaukee County Corp. Counsel, OAG 1-10 (January 28, 2010).*

Endnotes

1 Exceptions to state limits are Milwaukee County, which may establish its own number of supervisors (currently 18), and Menominee County, which is also a town and has the same seven members on both its town and county board, Wis. Stat. §59.10(2) & (5).
2 Wis. Stat. § 51.42.
3 UW-Extension Local Government Center, *Fact Sheet #8: Self-Organized Counties.*
4 Wis. Stat. § 51.10(2)(c).
5 79 Op. Att'y Gen. 122 (1990).
6 Wis. Stat. § 59.18.
7 *Opinion of Wis. Att'y Gen. to Bradley Lawrence, Price County Corp. Counsel, OAG 1-11 (October 27, 2011).*
8 *State ex rel. Stark v. Hines*, 194 Wis. 34, 215 N.W. 447 (1927), 73 *Op. Att'y General* 83, 85 (1984).

ISSUE FOCUS

County Board Rules

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After the April elections, Wis. Stat. § 59.11(1)(c) requires the county board to meet on the third Tuesday of April to organize and transact business. The organizational meeting provides an opportunity for counties to elect leadership and establish the rules that will govern the board for the next two years. This *Issue Focus* will address a component of that biennial county organizational process critical to the effective operation of the county board – the county board rules.

COUNTY BOARD RULES

State statutes, local rules, and *Robert's Rules of Order* all provide guidance on how county business is conducted. There is no statute that requires counties to adopt county board rules. However, there are a few statutes that require county boards to conduct business in a specified manner. For example, Wis. Stat. § 19.81, *et seq.*, Wisconsin's Open Meetings Law, requires that meetings of county boards and committees of the board be open to the public consistent with certain notice requirements. Beyond Open Meetings Law requirements, other statutes require that county boards maintain certain committees, such as the county highway committee, and specify committee membership and the method for appointing members to the committee. Still other statutes identify required county board officers and the method for electing those officers, such as board chair. With the exception of these relatively few required procedures, counties are free to organize and conduct business in a manner similar to any other deliberative assembly.

PROCESS

To begin the process of reviewing and suggesting modifications to the current board rules, the current board or a committee should review the rules and propose amendments, as necessary, prior to the organizational meeting. In addition, counties should consider codifying the rules in ordinance such that they become a permanent feature of the county code.

CONTENT

There are three basic components to a set of county board rules: (1) county board officers; (2) organization of the county board; and (3) county board rules of procedure. Common drafting considerations for each of these three categories are discussed below.

County Board Rules

COUNTY BOARD OFFICERS

The statutes require counties to elect a chair and vice chair. However, counties should consider whether additional officer positions, such as 2nd vice chair or sergeant-at-arms, are desirable. A 2nd vice chair is beneficial when the chair and vice chair are absent or they both wish to speak on an issue and need to step down as the presiding officer. Once the officer positions are established, any rules and duties relating to the particular office should be codified.

The statutory duties of the board chair and vice chair are contained in Wis. Stat. § 59.12; however, the statute only provides the minimum duties. Counties are free to add to those duties at the discretion of the board. For example, the rules could specify whether the board chair is an automatic member of a committee or committees, whether the board chair is able to fill in for absent committee members at committee meetings, how the vice chair assumes chair responsibilities in the absence of the chair, and what happens in the event the chair seat is vacated. In addition, the rules should specify that the board chair maintains the right to vote (not just on tie votes) and whether the board chair makes committee appointments, serves as chair of other committees, and sets the county board agenda.

Some of the duties of a board chair as described in Wis. Stat. § 59.12 are as follows:

- Perform all duties required of the chair.
- May administer oaths to persons required to be sworn.
- Countersign all ordinances of the board.
- Preside at meetings and when directed by ordinance.
- Countersign all county orders.
- Transact all necessary board business with local and county officers.
- Expedite all measures resolved upon by the board.
- Take care that all federal, state, and local laws pertaining to county government are enforced.

Some of the duties of the vice chair as described in Wis. Stat. § 59.12 are to perform the chair's duties when the chair is unable due to disability or absence, as well as attend official events representing the county in the absence of the chair. Other rules to consider are whether the vice chair should receive the chair's salary if the chair is disabled or incapacitated for any length of time. Additionally, in the event of death or resignation, if the vice chair becomes chair or whether a special election is held.

Similarly, if a county establishes the position of sergeant-at-arms, the board rules should provide guidance on the powers of the sergeant-at-arms. A sergeant-at-arms may be used to gather members for the start of a meeting, remove unruly members of the board or public as directed by the chair, notify board members or the public of special events or procedures, contact department heads, or distribute materials to board members relevant to agenda topics.

A process and rules for removal of board officers should also be stated. A motion filed with the clerk, introduction of a resolution, majority versus two-thirds vote of the members, and cause such as inefficiency, neglect of duty, official misconduct or malfeasance in office are all points to consider. However,

the attorney general's office opined that a board chair may be removed at will by a simple majority of the members and it is advisable that a county consider the same process for other board officers. The process for removal of committee officers or committee members, if allowed, should specify the responsible party – be it the board, board chair, or committee.

ORGANIZATION OF THE BOARD

The second part of the rules relates to how the board is organized.

Standing committees. These are the "permanent" board committees. In some cases, the statutes require that the board establish certain committees, e.g., the county highway committee. In other instances, the board may want to establish a permanent committee even if not required by statute, e.g., the finance committee. Some of the duties and responsibilities may include:

- Provide policy oversight.
- Provide policy direction and make program recommendations.
- Recommend policy and planning initiatives.
- Monitor certain activities.
- Act as a liaison.
- Advise the county board.

The rules should specify:

- The number of members, odd number if possible, and how members are appointed whether it is the board chair, board election, or a committee on committees;
- If members are allowed to serve on multiple committees;
- The officers of each committee and whether they are elected by the committee or appointed by the chair;
- If the board chair is a member, ex-officio member, voting member or allowed to fill in for absent members;
- The removal process of officers and members, whether by the board chair, the county board or the committee, by a majority or super majority and with or without cause; and
- The authority of the chair to preside at meetings, set agendas, schedule meetings, and make reports on behalf of the committee.

All of the board's standing committees and each committee's duties or charge should be contained within the rules.

Other committees. The rules should specify how additional "ad hoc" committees are created and populated. In addition, the rules should specify that "ad hoc" committees are automatically discharged once the purpose for the committee's creation is satisfied.

County Board Rules

Committee procedure. All committees should follow a uniform set of procedural rules. The procedural rules should likely address: (a) meeting minutes; (b) staff involvement; (c) budget involvement; (d) process for introducing and considering items of business; (e) responsibility for the agenda (coordinate posting and notice form with county clerk); (f) committee officer elections or appointment and removal; (g) any rules for "ex officio" members; (h) meeting schedule; (i) ability to call special meetings and similar matters.

Public appearances. While the Open Meetings Law allows the public access to public meetings, it does not require public participation in meetings. Certain matters, such as matters related to zoning, require public hearings. In other cases, committees will allow public comment on matters appearing on the meeting agenda. The board rules should specify the process for public hearings and public comment. Common considerations for public participation include the following:

- Should the public be limited to speaking to a specific agenda item?
- Should members of the public be encouraged to speak at the committee level?
- Specify time period, e.g., three, four, or five minutes.
- Clarify if board members are allowed to speak as a matter of right at committee meetings.
- Specify that board members should not be allowed to discuss or participate in debate, if not a member of the committee.
- Should members of the public be required to register?
- Are members allowed to ask questions?
- Are the rules different for a public hearing versus a public comment?

Meeting Minutes. It is important to coordinate with the county clerk's office on the form, content, and responsibility for minutes given the clerk's responsibility under Wis. Stat. § 59.23. While the county clerk is responsible for the minutes, the clerk may delegate functions to staff related to taking and filing the minutes.

PROCEDURAL RULES

The final section of the board rules relates to how the board conducts its business.

Board Meetings. The board rules should specify the following as it relates to meetings of the county board:

- Specify meeting dates and times.
- Specify if the chair may cancel meetings or call special meetings.
- Allow the chair to designate special budget meetings during the budget process with no other business.
- Specify rules for committee of the whole.
- Allow the chair to schedule public hearings.

Form of Resolutions. The transaction of official business should be in ordinance or resolution format. All resolutions and ordinance amendments should be sponsored by a supervisor and allow for co-sponsors. Drafting of certain resolutions and ordinances can be limited to certain departments such as the corporation counsel preparing ordinance amendments, and the finance director preparing budget amendments. The rules should define the introduction process; i.e., submit to county clerk, board chair, committee, by certain date, etc. Likewise, if there is a preferred review process for the corporation counsel or finance director, that process should be codified.

Referral of Resolutions. Resolutions and ordinance amendments should proceed before a committee before going to the county board. The rules could authorize the chair or committee to refer a resolution to an appropriate standing committee, board, or commission. The matter's primary sponsor should be invited and allowed to speak at the committee meeting.

Board Action on Resolutions. The rules should define the process for placing resolutions and ordinance amendments on the agenda once the committees have acted. A motion before the board could be the committee recommendation (there is no need for formal motion or second). Consider requiring all amendments to resolutions and ordinance amendments to be in writing.

Seating Arrangements for Board Meetings. The rules should designate the process for supervisor seat selection. Likewise, the rules should designate seating for the public, press, staff, corporation counsel, county clerk, administrator, department heads, and a place for the public to address the board.

Agenda - Order of Business. The rules should specify the order of business for all county board meetings. The order of business could include:

- Call to order.
- Roll call.
- Pledge of Allegiance.
- Special matters & announcements.
- Approval of bills & accounts.
- Approval of county board minutes.
- Consent calendar.
- Reports on zoning petition.
- Motions from previous meetings.
- Ordinances.
- Award of contracts.
- Resolutions.
- Special order of business.
- Adjournment.

County Board Rules

Conduct at County Board Meetings. This is a very important part of the rules as it establishes the foundation for an orderly, deliberative process. The rules should specify that:

- Committees should not meet when the board is in session.
- Supervisors, visitors, staff, and others shall at all times conduct themselves in a respectful manner.
- No conversation is allowed on the board floor or in the visitor's section.
- All electronic devices shall be kept in the silent mode.
- Supervisors shall use county-provided electronic devices in accordance with policy.
- A designee should be chosen to distribute literature – supervisors, county board staff, sergeant-at-arms, county clerk, administrator, etc. – not the general public.

County Board Voting. The rules should indicate that any supervisor should be able to request a roll call vote as long as it is done prior to the next order of business. The vote should be recorded in the minutes. Roll call votes should, if possible, be taken in a rotating fashion per meeting so that the same supervisor is not always casting the first ballot. Supervisors should be in their seats when voting.

Defining a "Session." A session determines when business can be brought back before the assembly. A session may be one meeting, one year, the term of supervisors, or as determined in the rules.

Parliamentary Procedure. The rules should specify the latest edition of *Robert's Rules of Order, Newly Revised*, 11th Edition (RONR) as the rules governing the board. In addition, to the extent the board adopts rules that vary from the procedure in RONR (as is expressly allowed in RONR), those variations should be codified in the board rules. It is also a good idea to provide basic information concerning *Robert's Rules* within the board rules as an easy reference for supervisors.

CONCLUSION

Codifying county board rules may seem like a daunting task. However, by breaking the task into the sections identified above, the task becomes much more manageable. In addition, there are a variety of resources available to assist counties in the process. If you would like additional information relating to board rules or the process for adopting board rules, please do not hesitate to contact the authors at 1.866.404.2700.

County Departments & Offices

Wisconsin's county governments provide a wide array of services. While many of these services are mandated by state law, counties are statutorily authorized to provide certain discretionary services as well. The Wisconsin Counties Association (WCA) enlisted the assistance of members of a variety of county-related organizations in an effort to identify the many functions performed by county government.

The following pages include a compilation of county departments, including a description of their duties, structures, funding mechanisms, statutory authorities, etc. Please keep in mind when reading this section that each of Wisconsin's 72 counties is unique in its delivery of services to the citizens of this state; therefore, your county may provide the service through an alternative structure or not provide the service at all.

For additional reference, a comprehensive list of services grouped by county department is printed in Appendix III on page 237.

County Departments & Offices

Aging

Aging & Disability Professionals Association of Wisconsin (ADPAW)

The development of a comprehensive and coordinated aging service system, as well as the functions and responsibilities of the Aging Network, are outlined in Title III of the Older Americans Act of 1965, as Amended. The creation of county/tribal aging units is further clarified in the Wisconsin Elders Act – 1991 Wisconsin Act 235, Wis. Stat. § 46.82 and Wis. Stat. § 59.53(11). The Wisconsin Elders Act outlines the county/tribal process for establishing, by resolution, a county or tribal aging unit to administer and provide the services funded under 42 USC 3001 to 3057n, 42 USC 5001, and 42 USC 5011(b).

Funding for county/tribal aging units comes from a variety of sources, including property taxes; fees; donations; and federal, state, and local grants.

Duties/Services:

- Ensure that all older individuals, regardless of income, have access to information, services, and opportunities available through the aging unit and have the opportunity to contribute to the cost of services.
- Plan for, receive, and administer funds allocated under the state and area plan on aging.
- Provide a visible access point of contact for individuals to obtain accurate and comprehensive information about public and private community resources that can meet the needs of older adults.
- Provide older individuals with the services of a benefit specialist (Wis. Stat. § 46.81).
- Organize and administer congregate programs that shall include nutrition and may include senior center(s), adult day care, or respite programs.
- Secure a county/tribal-wide transportation system that makes community programs/opportunities accessible to, and meets the needs of, older adults.
- Ensure that programs and services for older individuals are available to home bound, disabled, and non-English speaking persons and to racial, ethnic, and religious minorities.
- Identify and publicize gaps in services needed by older adults and provide leadership in developing services/programs, including recruitment and training of volunteers.
- Work cooperatively with other organizations to enable their services to function effectively for older adults.
- Incorporate and promote the participation of older individuals in the preparation of a local comprehensive plan for aging services.
- Provide information to the public about the aging experience and about resources for and within the aging population.
- Assist in representing the needs, views, and concerns of older individuals and assist older individuals in expressing their views.
- Advocate on behalf of older individuals to assist in enabling them to meet their basic needs.

In addition, the following duties may also be performed by an aging unit, "if designated:"

- Administer the long-term support community options program under Wis. Stat. § 46.27(3)(b)6.
- Administer pilot projects for home- and community-based long-term support services under Wis. Stat. § 46.271.
- Administer the elder abuse reporting system under Wis. Stat. § 46.90.
- Administer the Alzheimer's family and caregiver support program under Wis. Stat. § 46.87.
- Operate the specialized transportation assistance program for a county under Wis. Stat. § 85.21.

Aging & Disability Resource Center (ADRC)

Aging & Disability Professionals Association of Wisconsin (ADPAW)

Beginning in 1998, some aging units applied for and received contracts from the Wisconsin Department of Health Services to operate Aging & Disability Resource Centers (ADRCs) under Wis. Stat. § 46.283. ADRCs are service centers that provide a place for the public to receive accurate, unbiased information on all aspects of life related to aging or living with a disability. The public can contact ADRCs to receive information and assistance regarding not only the public benefits that may be available, but all of the programs and services available throughout the area. Individuals, concerned families or friends, or professionals working with issues related to aging, physical disabilities, developmental disabilities, mental health issues, or substance use disorders, can receive information specifically tailored to each person's situation. ADRC services can be provided either at the center, via telephone, or through a home visit, whichever is more convenient to the individual seeking help.

ADRCs may be operated by aging units, by human/social service agencies, or by newly created public entities. An ADRC can serve a single county or multiple counties.

Duties/Services:

- Engage in a marketing, outreach, and public education program to make ADRC services known to members of its target populations.
- Provide information and assistance to members of the target populations and their families, friends, caregivers, advocates, and others asking for assistance on their behalf.
- Provide long-term care options counseling and elderly and disability benefits counseling.
- Provide access to publicly funded long-term care programs and services.
- Provide access to mental health and substance abuse services.
- Provide access to other public programs and benefits.
- Short-term service coordination.
- Provide access to emergency services.
- Provide access to elder abuse/adults-at-risk and adult protective services.
- Provide transitional services for young adults with disabilities entering the adult long-term care system and for adults with disabilities transitioning into aging services.
- Provide prevention and early intervention services.
- Provide client advocacy.
- Conduct community needs assessments.

County Departments & Offices

Child Support Program

Wisconsin Child Support Enforcement Association (WCSEA)

Wisconsin's Child Support Program is coordinated by the Wisconsin Department of Children and Families (DCF), which contracts with 71 county child support agencies to administer the program on a day-to-day basis at the local level. Wisconsin also has several tribal child support agencies that administer the program for cases involving tribal members.

The Wisconsin Child Support Program contributes to the well-being of children and families through the establishment of paternity and the establishment and enforcement of court-ordered child support and medical support obligations. The caseload consists of non-aid applications and public assistance referrals. The child support program also establishes and enforces support orders when children are placed out of the home by DCF. The program uses several tools to enforce child support orders and obtain payments for the family such as tax intercept, property liens, account seizures, license suspensions, contempt motions, and criminal non-support. For every dollar spent on the program, $5.80 is collected. In 2017 alone, county child support agencies collected $934 million in child support payment, 95% of which went directly to Wisconsin children and families. In addition, in many counties, unemployed child support payers are referred to the Children's First Program to conduct work search activities and find employment. Child support represents 58% of family income for children living in poverty in Wisconsin.

Duties/Services:

- Establishment of paternity.
- Establishment and enforcement of court-ordered child support and medical support obligations.
- Establishment and enforcement of support orders when children are placed out of the home.

Circuit Court Commissioner

Wisconsin Association of Judicial Court Commissioners

While all counties must have at least one part-time family court commissioner, some counties choose to appoint attorneys with all the powers of a circuit court commissioner. In Milwaukee County, several court commissioner positions are established by statute. In many cases the litigants will never see a circuit court judge, but they always have the option to request review of the commissioner's decision by a judge. In addition to family law matters, these judicial officers perform the duties and services listed below.

Duties/Services:

- Handle probate, guardianship, and mental commitment proceedings.
- Hear small claims trials.
- Conduct initial appearances and set bail on traffic and ordinance civil cases, misdemeanors and felonies.
- Conduct preliminary hearings in felony matters to determine whether the case shall proceed.
- Handle juvenile hearings that are not open to the public.

Clerk of Circuit Court

Wisconsin Clerks of Circuit Court Association (WCCCA)

Clerks of circuit court are public officials elected in partisan, countywide races. They are statutorily responsible for various record-keeping functions of the courts. As custodians of the courts' records, clerks of circuit court play a significant role in Wisconsin's judicial system.

Duties/Services:

- Custodian of the record. Record keeping for the courts is governed by state statute and Wisconsin Supreme Court rule. These require that clerks maintain records of all documents filed with the courts; keep a record of court proceedings; and collect various fees, fines, and forfeitures ordered by the court or specified by state statute. Clerks of circuit court must also establish and promote procedures for reasonable access to court records, as well as maintain the confidentiality of records as set forth by statute and court order.
- Jury management. Jury management is also a responsibility of clerks of circuit court. Automation in the courts has made the process of selecting and notifying potential jurors more efficient and has improved record keeping for jury management. Improvements include decreasing the amount of time Wisconsin citizens are obligated to serve to no more than one month of jury service in a four-year period. Clerks work with the director of state courts and the Legislature to continue to improve jury management.
- Court finances. Millions of dollars in fees, fines, and forfeitures are paid through clerks' offices annually. Clerks of circuit court work to meet this fiscal responsibility with accurate, efficient, and effective accounting practices. Financial software, designed in accordance with generally accepted accounting principles, assists clerks in efficiently handling this money.
- Court administration. As local court administrative personnel, clerks of circuit court are at the center of a wide variety of activities and work daily with many different people. Law enforcement; the legal community; local, state and federal agencies; businesses, and the general public depend upon the office of the clerk of circuit court to solve a wide range of problems. Clerks of circuit court provide an administrative link between the judiciary and the county boards and the public. Clerks also work closely with other court staff to ensure that the courts run smoothly and efficiently. The administrative responsibilities at the circuit court level involve a variety of tasks. These include budgeting and administering trial court resources, developing effective policies and procedures, and recruiting and maintaining competent staff.

Coroner/Medical Examiner

Wisconsin Coroner and Medical Examiners Association (WCMEA)

The Wisconsin Constitution mandates an office of coroner or medical examiner in each of the 72 counties in the state. Each county, except those over 500,000 in population, may choose to elect a coroner or appoint a medical examiner dependent upon county board action. A county under a coroner system may not transition to a medical examiner system while the office of coroner is occupied unless permission is granted by the elected coroner. Once nomination papers have been filed during an election year,

transition may not occur until after the election and with the permission of the newly elected coroner. Counties with a population greater than 500,000 must use a medical examiner system. The duties and responsibilities of either the coroner or medical examiner are equivalent. Neither the coroner nor medical examiner needs to be a physician; however, a strong understanding of disease process, pathology, and investigative process is desirable. Both offices are governed by Wis. Stat. §§ 979.01, 979.10, Ch. 59 (excerpt), Ch. 69, 146.71, 146.82(a)18.

The coroner, medical examiner or their designee (chosen among deputies) is responsible for responding to death scenes that meet reportable criteria. They initiate an investigation, examine and photograph the deceased, and document the circumstances of death. Further, they determine the need for further investigation via autopsy or some other form of physical examination in a clinical setting. Often this requires traveling through unfamiliar regions of the county in all types of weather at any time of day or night. The job requires the ability to access the body in the location found. This may require the need to walk long distances, climb terrain, or use special equipment, such as snowmobiles or ATVs.

Duties/Services:

- Initiate an investigation on all deaths reportable under Wis. Stat. Ch. 979 and contact the appropriate agencies for assistance.
- Interact with next of kin of deceased, law enforcement personnel, attorneys, and physicians.
- Interview witnesses.
- Order medicolegal autopsies.
- Obtain lab samples for testing or screening by the Wisconsin State Laboratory of Hygiene or an independent laboratory.
- Record facts, observations, and conclusions pertaining to the death scene.
- Determine the cause and manner of death, as well as testify regarding such opinion if requested.
- Sign death certificates, cremation permits, and any other required documents.
- Complete reports of inquests and investigations.
- Prepare a budget, develop department policies, and enforce existing standard operating policies.
- Interact with funeral homes, hospitals, and other coroners/medical examiners throughout the state.

CORPORATION COUNSEL

Wisconsin Association of County Corporation Counsel (WACCC)

The office of the corporation counsel is authorized by Wis. Stat. § 59.42 to provide necessary civil legal services to county government and its boards, commissions, committees, departments, employees, officers, and officials with respect to their official duties. The corporation counsel is appointed by the county executive or administrator, subject to confirmation by the county board. In counties without an executive or administrator, the county board appoints the corporation counsel.

Duties/Services:

- Prosecute and defend civil legal actions involving the county; coordinate and supervise outside counsel, including counsel assigned by insurance carriers; assist the treasurer in the foreclosure of tax liens; prosecute violations of health, zoning, and other ordinances.
- Research and provide advice on civil matters, including ethics, open meetings, parliamentary procedure, and public records issues; draft and issue legal opinions; draft and review ordinances and resolutions; prepare or review contracts, deeds, leases, real estate documents, and other legal papers.
- Work with county departments to secure reimbursement of government expenditures, protect county subrogation rights, and collect delinquent accounts.
- Prosecute mental health, alcohol and drug commitments.
- Provide legal services in certain cases relating to guardianships for minors and in certain cases relating to guardianship and protective placement that arise because of degenerative brain disorders, serious and persistent mental illness, developmental disabilities, or other like incapacities incurred at any age.
- Prosecute or assist with the prosecution of certain matters relating to the determination of paternity and the establishment, modification, and enforcement of court-ordered child support obligations.
- Provide legal services in certain cases arising under the Children's Code (Wis. Stat. Ch. 48) for children who are in need of protection and services. *Note: In some counties these duties are performed by the district attorney.*
- Prosecute certain actions to terminate parental rights when it is in the best interests of the child to do so. *Note: In some counties these duties are performed by the district attorney.*

COUNTY CLERK

Wisconsin County Clerks Association (WCCA)

County clerks are elected constitutional officers established under Article VI, Section 4 of the Wisconsin Constitution. Historically, the county clerk was strictly a clerk for the board of supervisors. In Rev. Stats. 1858, the clerk was called the clerk of the board of supervisors. Duties were primarily to keep a record of the proceedings of the board, to make its entries of all resolutions and decisions, to record its votes, to sign its orders for payment and keep an account thereof, and to preserve and file the accounts acted upon by the board. In 1882, the position was then referred to as county clerk. The clerk of each county performs vital and invaluable services in those areas designated by the Legislature in Wis. Stat. § 59.23. However, the county clerk has been designated with additional duties per legislative approval under various state statutes. Some of these duties include issuing marriage licenses, acting as the secretary and official record keeper of the county board, administering the elections process, and filing/recording some financial transactions. Funding for the county clerk's office comes primarily from permit fees and the property tax levy.

County Departments & Offices

Duties of the office vary greatly from county to county. In some counties, the county clerk's office is responsible for accounting, payroll, personnel, and data processing functions. Several clerks also act as the county's administrative coordinator. In larger counties, however, these areas have become separate departments. Other duties clerks may perform include issuing conservation licenses, processing passport applications, administering the property and liability insurance for the county, processing tax deeds, and serving as purchasing agent.

Duties/Services:

Services to the County Board

- Serve as recording secretary.
- Prepare and publish agendas for county board and committee meetings.
- Record meeting minutes for county board and committee meetings.
- Provide certification of county board actions.
- Publish official proceedings.
- Ensure compliance with open meetings law.
- Ensure compliance with records retention laws.
- Ensure compliance with freedom of information requests.
- Compile/publish/maintain current county directory.
- Sign contracts, deeds, and agreements as approved by the county board.

Election Administration

- Serve as election officer of the county.
- Receive and file the official oaths and bonds of all county officers.
- Serve as the filing officer for county candidates and referenda questions.
- Prepare and publish election notices.
- Prepare/print/distribute ballots and supplies to municipal clerks.
- Program election tabulation equipment.
- Maintain statewide voter registration services for general, judicial, and special elections.
- Provide voter registration services for local municipalities.
- Tabulate and report election results.
- Conduct Boards of Canvass and recounts.
- Issue Certificates of Election.
- Election training for municipal clerks and school districts.

Licenses and Permits

- Issue marriage licenses and maintain index.
- Issue domestic partnership terminations and maintain indexes.
- Distribute state dog license and supplies to municipal treasurers.
- Administer dog license fee accounts.
- Process passport applications.
- Issue conservation licenses.
- Issue hayrack and sleigh ride permits.
- Issue pawnbroker and secondhand dealer licenses.
- Issue temporary and/or permanent vehicle license plate and registration renewals.
- Issue work permits for minors.

Financial Functions

- Sign all orders for payment of money directed by the board.
- Budgeting.
- Apportionment of taxes.
- General accounting.
- Bonding/borrowing.
- Payroll.
- Purchasing liability, property, and other insurances.
- Insurance maintenance.
- GASB reporting.
- Asset inventory.
- Sale of tax deed property.

Other Statutory Duties

- Annually compile and transmit list of municipal officers to secretary of state.
- Zoning matters.
- Farmland preservation.
- Library reimbursement requirements.
- Timber harvest notices.
- Miscellaneous highway department records.
- Contracts, leases, and agreements.
- Claims against the county.
- Historical Society.

Other Non-Mandated Functions

- Administrative coordinator.
- Personnel.
- Data processing.
- Purchasing.
- Facilities maintenance.
- Insurance.
- Redistricting.
- Website maintenance.
- Other duties specific to local office.

County Forests

Wisconsin County Forests Association (WCFA)

Wisconsin's county forests were originally established in the 1920s when farmlands and woodlands went tax delinquent and became a burden on local governments. Government leaders created a system to provide financial stability for counties and public access to forest lands for Wisconsin's citizens. A state statutory revision created a permanent county forest program in 1963. Even today, counties continue to purchase lands from willing sellers and enter these lands into the county forest program to ensure future public access and sustainably manage and protect these lands.

County forests are governed by the County Forest Law, Wis. Stat. §§ 28.10 & 28.11, which requires the lands be managed for forestry purposes including timber production, recreation, wildlife habitat, and watershed protection. Currently, 29 Wisconsin counties own and manage a total of more than 2.4 million acres of public forest lands.

Each county forest is managed by a professional forest administrator and staff who are accountable to county residents through their county board. These foresters and resource managers have access to assistance from the Wisconsin Department of Natural Resources (DNR) and the University of Wisconsin system. County foresters work cooperatively with the DNR, the U.S. Forest Service, the National Park Service, and forest-based industries, as well as a number of private conservation and recreation groups. The majority of county forests are third-party certified under the Forest Stewardship Council (FSC) and/or Sustainable Forestry Initiative (SFI) forest certification standards. Wisconsin's county forests truly are "unique to the nation" and counties manage the largest public forest ownership in the state.

County Departments & Offices

Income from the sale of forest products on county forest land is used to run county forestry departments, fund recreational opportunities for Wisconsin's citizens, and provide relief to county taxpayers through budgetary funding. In 2018, income from the sale of forest products from Wisconsin's county forests was over $46 million.

Duties/Services:

- County forests provide a steady reliable source of raw material for Wisconsin's $24 billion timber industry.
- County forestry departments protect and manage over 62,500 acres of county-owned lands containing unique, rare, threatened and endangered or special species and ecosystems.
- County forests provide over 3,300 campsites, more than 400 miles of cross country ski trails, and hundreds of miles of hiking trails for public use.
- County forests manage over 1,700 miles of summer ATV trails, 370 miles of horse trails, 390 miles of mountain bike trails, 730 miles of designated hiking trails, and over 9,000 miles of snowmobile trails for public use.
- There are snowshoe trails, disc golf courses, parks, boat landings, and shooting ranges located throughout the county forest system.
- County forests surround and help to protect thousands of lakes and hundreds of miles of rivers and streams. Canoe trails on wild and scenic rivers meander through county forests.
- County forests provide landscape scale management opportunities for floral and faunal species.
- County forests provide access to over 2 million acres of land and water for recreational hunting, fishing, trapping, and wildlife viewing.

Emergency Management

Wisconsin Emergency Management Association (WEMA)

As authorized under Wis. Stat. Ch. 323, it is the role of the county emergency management director to develop and implement an emergency response plan (ERP) that is consistent with the Wisconsin Emergency Response Plan. The plans allow counties to successfully mitigate, plan for, prepare for, and respond to any hazards that may affect our communities. These hazards range from acts of terrorism to severe weather. In the event the President makes a Federal Disaster Declaration under the Robert T. Stafford Act, it is the county emergency management director's responsibility to administer the federal assistance at the local level.

In addition, the county emergency management director is responsible for creating plans in the event of a release of hazardous chemicals in the county. The emergency off-site plans are done in accordance with the Emergency Planning and Community Right to Know Act (EPCRA), which is also known as SARA Title III. The plans are essential for informing first responders and citizens of the hazards that exist within their communities, and to prepare for an emergency response to a hazardous chemical spill.

Beyond emergency situations, there are many duties and responsibilities that the director attends to on a daily basis. Along with the duties listed below, additional roles and responsibilities can vary greatly from county to county.

Duties/Services:

- Administer state and federal grants (EMPG grant, EPCRA grant, EPCRA-Computer and Hazmat Response Equipment Grant, Homeland Security grants, etc.).
- Create and/or update emergency plans: Emergency Operation Plan, All Hazards Mitigation Plan, Strategic HazMat Plan, Off-Site Facility Plan, and Specialty Plans (e.g., heat, severe cold, power outage, etc.).
- Prepare and administer the department's budget.
- Develop public education programs.
- Develop training programs for emergency response personnel and the public.
- Develop tabletop, functional, and full-scale exercises to test the response capabilities of local responders.
- Provide guidance for emergency communications systems (i.e., outdoor warning sirens).
- Keep an inventory of public and private resources that would be available during a disaster.
- Establish, maintain, and inventory the county's emergency operations center.

To accomplish these tasks, emergency management directors work closely with all of the first responders in their communities (fire; law enforcement; EMS; public health; public works; human services; volunteer agencies; hospitals; private industry; utilities; mapping professionals; federal, state, and local officials; etc.).

FAMILY COURT COMMISSIONER

Wisconsin Family Court Commissioners Association

A circuit court commissioner is appointed in each county by the judge(s) of that county to supervise the office of the family court commissioner. A commissioner is a judicial officer who has powers similar to a judge. Those powers, duties, and responsibilities are set by state statute and by the Wisconsin Supreme Court, since a commissioner is part of the judicial branch of government. A commissioner must be a licensed attorney.

The commissioner handles a variety of family law matters and, in many counties, handles other types of cases as well. Family law cases include divorces, the establishment of paternity and setting orders for placement and support of children of unmarried or separated parents, and the enforcement and modification of orders previously rendered in family law cases. In some counties, the commissioner also supervises mediators who assist parents in family law cases with resolving disagreements about the custody and placement of their children. Throughout all his or her duties, a commissioner exercises oversight of the conduct of all who take part in family law cases; this includes the parties to the case, witnesses who may testify at hearings, attorneys (including attorneys appointed as guardian *ad litem* for children) and court staff. A commissioner may also perform weddings.

Funding for the office is received from a variety of sources, including property tax revenue, fees and state grants.

County Departments & Offices

Duties/Services:

- Grant divorces to parties who have appropriate written agreements.
- Conduct court hearings and render decisions on issues in family court cases:*
  - Paternity, custody, and placement of children.
  - Support for children, including responsibility for health insurance, medical expenses, and other related financial issues.
  - Assignment of tax dependency exemptions between the parents.
  - Use of and division of property.
  - Responsibility for payment of debts.
  - Maintenance (alimony).
- Administrative responsibilities to ensure efficient yet fair administration of justice.

**except a final, contested divorce trial, which must be held before a judge.*

Finance Department/Financial Services

Wisconsin Government Finance Officers Association (WGFOA)

Financial services departments are responsible for accurately recording the revenues and expenditures of all county funds according to generally accepted accounting principles. Finance departments are required to report the utilization of the revenues and expenditures to the operating departments, the public, and other governmental agencies. The department also provides assistance to the county in preparing and administering the annual budget, as well as provides financial analysis and advice to aid in the policymaking process.

Duties/Services:

- Complete financial analysis for management and the county board.
- Coordinate and implement the payroll function for the county.
- Coordinate and implement the general accounts payable and general accounts receivable functions.
- Coordinate and implement the purchasing functions of the county.
- Prepare the countywide budget.
- Prepare the countywide annual financial reporting to the state and federal governments.
- Oversee the annual audit process for the county.
- Manage long-term debt for the county.
- Coordinate and implement the risk management and insurance coverage for the county and its departments.

Highway & Transportation/Public Works Department

Wisconsin County Highway Association (WCHA)

The mission of the county highway department is to construct and maintain the county trunk highway system and maintain the state trunk highway system for the state of Wisconsin on a contract basis. Additionally, the department provides road and bridge maintenance services to local units of govern-

ment upon request on a cost charge-back basis. The goal is to provide safe, effective, and efficient transportation services for the traveling public throughout the state of Wisconsin. The head of the department is the highway commissioner or public works director.

The highway department fulfills its responsibility to maintain a safe, effective, and efficient transportation system for the public by performing construction, as well as general and winter maintenance activities. Wisconsin county highway departments are unique within the nation because each of the 72 county highway departments has a yearly contract with the Wisconsin Department of Transportation to provide all maintenance on the state trunk system (numbered highways).

County government's involvement in transportation services often extends beyond highways, providing a wide array of services to county citizens. The public works department in some counties manages county facilities and property, such as parks and landfills. Many counties own and operate a county airport, while some counties provide assistance to municipal-owned and operated airports within their respective county. Further, counties are instrumental in providing elderly and disabled transportation services. All 72 counties provide this service to their county residents. In addition, some counties provide a countywide mass transit or commuter express service.

Duties/Services:

- General maintenance including patching, crack filling, and seal coating of pavement; shoulder maintenance; vegetation control; bridge and culvert maintenance; litter and trash pickup; guard rail installation and repair; signing; pavement marking; and traffic control.
- Winter maintenance including installation and removal of snow fence, application of sand and salt, plowing, de-icing, shoveling, and hauling snow.
- Road construction activities, along with pavement resurfacing (blacktopping), bridge and culvert installation.
- Maintenance and repair of numerous "park and ride" lots and several waysides on the state trunk highway system. To effectively accomplish these activities, the department maintains numerous storage and maintenance facilities at various locations throughout the county. There are main shops in each county and numerous "satellite" or outlying shops in strategic locations throughout the county. The satellite locations provide effective and efficient salt storage.
- Various planning, engineering, and administrative functions, ensuring taxpayers receive the full benefit of quality transportation services throughout Wisconsin.
- Operation of county-owned airports or assistance to municipal airports.
- Assistance to rail infrastructure, as well as harbor infrastructure.
- Countywide mass transit services or commuter express services.
- Transportation services to elderly and disabled county residents.
- Maintenance of county-owned bike trails.

County Departments & Offices

Human Resources Department

Wisconsin Public Employer Labor Relations Association (WPELRA)

The human resources (HR) department helps the county manage its relationships with county employees from hiring through retirement. It is an internal service department that exists to provide support to other county departments, as well as the county board, committees, and the county executive or administrator regarding personnel matters, wages, and benefits. Wages and benefits often comprise more than half of the county's total operating budget.

Some counties use the term "personnel" or "employee relations" instead of "human resources," but the terms all mean the same thing (although one must be careful to distinguish human "resources" from human "services," which is an altogether different department). In some counties, the HR function may be combined with other functions.

Policy development and enforcement is an area the county's HR department continuously monitors and updates as legislation or internal practices change. Most counties have administration manuals and employee handbooks that are maintained through the HR department. In addition, internal county departmental policies are reviewed with the HR department to make sure they are not in conflict with overall county policies.

An HR department provides services as determined by the county board, but services typically include most of the duties listed below.

Duties/Services:

- Develop, administer, and enforce county personnel policies.
- Negotiate with unions to develop collective bargaining agreements that determine wages, and for public safety employees wages, hours of work and working conditions.
- Assist county departments in interpreting, enforcing, and applying the policies or collective bargaining agreements.
- Administering employee classification and compensation systems.
- Developing and administering employee performance evaluation systems.
- Investigate and resolve grievances.
- Administer the county's insurance programs for employees (health, life, dental, disability, etc.).
- Manage employee leave benefits, such as paid time off, vacation time, sick leave, holidays, and retirement.
- Ensure that the county complies with legal requirements that affect its procedures with employees, such as the Fair Labor Standards Act, Family and Medical Leave Act, and the Americans with Disabilities Act.
- Recruit and hire new employees.
- Oversee compliance with federal and state equal opportunity laws.
- Assist other departments in investigating and handling employee disciplinary issues, including terminations when necessary.

- Manage workers' compensation and unemployment compensation programs.
- Draft job descriptions for county positions and advise the board when it considers adding or deleting county positions.
- Maintain personnel files for all employees.
- Handle employee payroll functions in some counties.
- Provide training programs for county employees.
- Coordinate safety and loss control programs for the county.

Human Services

Wisconsin County Human Service Association (WCHSA)

The majority of Wisconsin counties have human services departments (HSD), as defined in Wis. Stat. § 46.23, while other counties have separate social services departments (SSD) and departments of community programs (DCP). An SSD provides juvenile justice services (Wis. Stat. Ch. 938); child protective services (Wis. Stat. Ch. 48); social services in general, foster care, and long-term care programs for the elderly and physically disabled (Wis. Stat. Ch. 46); adult protective services (Wis. Stat. Ch. 55); guardianships (Wis. Stat. Ch. 54); and economic support, such as FoodShare, Medical Assistance, and the Wisconsin Home Energy Assistance Program (WHEAP).

Separate DCPs provide inpatient and outpatient mental health and substance abuse services, including outpatient counseling, emergency detentions for the mentally ill, Comprehensive Community Services (CCS), inpatient detoxification for the chemically dependent, as well as services for the chronically mentally ill (Community Support Programs – CSP). Aging and Disability Resource Centers are available in every county, and may be operated within a HSD, SSD, or DCP in some counties (see page 39 for more information on ADRCs.) The majority of counties have Family Care available to serve eligible elderly and disabled citizens. Others operate the Community Integration Program (CIP) and Community Options Program (COP) Medicaid waiver programs.

By statute, an HSD must include those programs that would otherwise be in an SSD or DCP. Some counties have also chosen to include functions that would otherwise be in a county health department, a county department of aging, and even child support. Many human services departments provide mental health and substance abuse services directly, while others contract for these services. Even departments that provide direct services typically spend a significant proportion of their funds on purchased services.

Human services departments are regulated and overseen by, and receive funds from, the state through the Wisconsin Departments of Health Services, Children and Families, Corrections, and Administration. Third-party funding comes from a mixture of state GPR, federal funding, and program revenues from services billed to health insurance or participants. Below are the most prominent services provided and purchased to serve clients in the particular program areas.

County Departments & Offices

Juvenile Justice
- Intake
- Assessment
- Court-ordered supervision
- Case management
- Foster care
- Group care
- Residential treatment
- Restitution
- Public service
- Juvenile detention

Child Protective Services
- Intake
- Investigation
- Court-ordered supervision
- Case management
- Foster care
- Termination of parental rights
- Pre-adoption planning

Mental/Behavioral Health
- Outpatient counseling
- Emergency detentions
- Court commitment
- Case management
- CBRF placement
- Intoxicated driver program
- Community support program
- Detoxification
- State institutional placements

Adult Services
- Intake and assessment
- Guardianships
- Personal care
- Adult family home
- Community-Based Residential Facilities
- Court-ordered protective services
- Day services
- Case management
- Home care

Economic Support
- FoodShare
- Child care
- Energy assistance
- Medical assistance
- Fraud Prevention/Investigation

LAND CONSERVATION

Wisconsin Land and Water Conservation Association (WI Land+Water)

Land conservation committees (LCC) and land conservation departments (LCD) were created in 1982 under Wis. Stat. Ch. 92 to develop and encourage implementation of conservation programs. They are the primary local delivery system of natural resource programs. The following are the statutory responsibilities of land conservation committees:

- Provide cost-sharing, technical, and planning programs.
- Distribute and allocate funds for conservation activities.
- Actively solicit public participation in planning and evaluation of soil and water conservation programs.
- Adopt and administer soil and water conservation standards.
- Prepare and implement workplans to address local conservation priorities.

Duties/Services:

Duties and services of an LCC/LCD may vary county by county. The following are examples of what these services might include:

- Agricultural runoff control through soil conservation and nutrient management planning.
- Farmland Preservation programming.
- Groundwater, lakefront, and river protection.
- Urban stormwater runoff management.
- Forestry management projects.
- Invasive species awareness and control.

Library Services

Winding Rivers Library System

Counties have a varying degree of responsibility for public library service, but all counties in Wisconsin assist in the provision of library services to their citizens. The county's relationship to libraries is defined in Wis. Stat. §§ 43.11, 43.12, 43.15, 43.19, 43.21, 43.57, 43.58, 43.60, and 43.64. This relationship can range from (1) the mandatory reimbursement of local libraries in or out of a county for use made by county residents living in municipalities within a county that do not operate libraries (Wis. Stat. § 43.12), to (2) the voluntary establishment of a consolidated county library whose operations are funded primarily by county taxes and which serves all residents of the county (Wis. Stat. § 43.57(1)) or, (3) a county library service, also funded by county taxes, which has the specific charge of serving the needs of residents who do not live in communities with libraries (Wis. Stat. § 43.57(3)).

Given the significant level of county reimbursements to local libraries for non-resident use, it is important for county boards to be aware of their opportunity to appoint additional trustees to local library boards. Wis. Stat. § 43.60 presents formulas that specify how many trustees a county is allowed to appoint to a local library board. Essentially, if the proportion of county funding to local funding for library services is high enough, a county board chair, with the approval of the county board, can appoint from one to five additional trustees. Appointments can include up to one county supervisor per local library board, with other authorized appointments being citizens-at-large. This direct representation provides county government with the chance to monitor and influence the way in which county support enhances library service for county residents, particularly those in municipalities without libraries.

In the case of a consolidated county library, the county board chair, with the approval of the full board, appoints individuals to a county library board that oversees the administration of the county library. The county library board must include one school district administrator from a district located in whole or in part in the county, and one or two county board supervisors. For a county library service, a similar board is authorized by the county board, but must also include representatives of existing local library boards.

In addition to these relationships, every county in Wisconsin has chosen to participate in a single or multi-county federated public library system, as provided by Wis. Stat. § 43.19. This is funded primarily by state aid payments, but might also be funded in part by county taxes. Federated systems are charged with assisting local libraries (including consolidated county libraries or county library services) by providing three things: assurance that each member library will offer a meaningful level of service to all residents of the member counties at whatever location is convenient for the citizen; support for resource sharing among libraries to assure that public funding provides the optimum benefit without undue duplication of resources; and professional assistance and support for local library staff and trustees in their effort to operate their libraries in the most effective way possible. Federated library systems are governed by citizen boards that are appointed by boards of supervisors of the counties that have

joined together to create and maintain the federated system. In order to participate in a federated public library system, county boards are required to prepare and adopt county library service plans that must be updated on a periodic basis according to Wis. Stat. § 43.11. County library service plans may include county library standards if they have been developed in cooperation with the local libraries within the county.

When requested by municipalities, counties must provide exemptions from the county library tax for residents of municipalities that operate libraries and fund those libraries according to the criteria specified in Wis. Stat. § 43.64.

Duties/Services:

- Encourage citizens to be knowledgeable about and actively involved in all levels of their government.
- Assist citizens in obtaining information in various formats on various topics.
- Inform citizens about all aspects of issues relating to social, political, and economic concerns.
- Provide community centers to support discussion among citizens.
- Support the development of general library services for all ages.
- Support life-long learning for all county residents.

Local Public Health Department

Wisconsin Association of Local Health Departments and Boards (WALHDAB)

Local public health departments are established by Wis. Stat. Ch. 251. A local health department may be established at the county, municipal, city-county, or multi-county level. All local health departments are governed by a board of health that consists of not more than nine members and includes at least one physician and one nurse.

Local health departments provide population health services to promote health and prevent disease. Wisconsin's local health departments vary in size and services offered. Wis. Stat. Ch. 251 and HFS 140 define the scope of services for three different levels of health departments. Level I departments must provide public health nursing services, community assessment, communicable disease prevention and control, chronic disease prevention services, health promotion services, and human health hazard abatement or removal. Level II departments provide all of the above services, but in more areas as defined by the state's 10-year health plan. Level III departments provide all of the above services and conduct licensing and inspection programs, comprehensive environmental health services, and assure access to a public health laboratory.

Funding for local health departments comes from a variety of sources. The largest single source is the local property tax levy. Other funding sources include fees, state and federal grants, Medical Assistance revenue, and private grants.

Duties/Services:

Specific services vary from department to department. The following list provides examples of common health department services:

- Childhood and/or adult immunizations.
- Communicable disease follow-up.
- WIC (Women Infant and Children) nutrition services.
- Prenatal care coordination.
- Tobacco education or cessation classes.
- Community assessments.
- Health education.
- Public health emergency preparedness and response.
- Restaurant and hotel inspections.
- Lead poisoning screening and education.

NURSING HOMES

Wisconsin Association of County Homes (WACH)

County nursing homes throughout the state have been serving the needs of Wisconsin residents for over 150 years. Currently, there are thirty-one counties that own and operate healthcare facilities, serving over 5,000 residents. These communities provide services for varying levels of care: skilled nursing care, assisted living, group homes, and other types of supportive care environments. These counties have remained steadfast to their mission to provide services to those with limited care options and limited financial means. Most often these residents have limited choices of care facilities outside of county homes due to the challenging nature of their care or source of payment. Many county-owned facilities have established themselves as experts in the field of long-term care and have become specialists in areas of care that few providers are able or willing to offer.

The Wisconsin Medical Assistance (Medicaid) program is the primary payer source for many county homes. Cost of care and services is not covered by the current payment system requiring counties to plan a budget to offset the financial loss. A few counties have expanded services to offset the loss with services that require little to no county tax levy. These types of services include designated short-term rehabilitative care following a hospital stay for conditions such as a hip fracture, knee replacement surgery or stroke and/or other services such as residential care apartment complexes, community-based residential facilities (assisted living), and senior apartments.

County-owned facilities have a reputation for employee retention and satisfaction. There are over 14,500 community members who come to work every day in their respective service profession. The workforce stability and employee satisfaction has consistently led to positive clinical outcomes overall. County homes have consistently outpaced the private sector in their employee retention rates, which has resulted in the undeniable results of consistent care delivery and quality standards rated above industry standards. The relevancy of these statistics becomes greater when one considers that in

nearly every county home across the state, residents with complex medical and behavioral needs can be found. The healthcare landscape remains in a constant state of uncertainty with challenges faced by the reimbursement system and regulatory demands. However, the demand for county services has been on the rise in the areas of post-acute care, dementia care, end of life care, and specialty programs, such as bariatric care and behavioral care.

Some counties have entered into agreements or consortiums with one or more host counties that provide facilities to use for emergency protective placement or special behavioral issues. In such arrangements, counties share resources to offset the cost of the host county for accepting out-of-county residents. Such arrangements offer a unique and invaluable service to Wisconsin communities and counties. The Wisconsin Association of County Homes supports and appreciates the continued provision of county nursing homes and their missions of service.

Planning & Zoning Departments

Wisconsin County Code Administrators Association (WCCA)

County planning and zoning functions are authorized under Wis. Stat. § 59.69. Planning authority is granted under Wis. Stat. § 59.69(3) through the preparation and adoption of a county development plan. After the year 2010, if the county wishes to continue to engage in said land use administrative programs, the development plan process is further defined and described in Wis. Stat. § 66.1001. The county zoning function is prescribed in Wis. Stat. § 59.69(5) if the county desires, or has, a county zoning ordinance applicable to unincorporated towns. All counties in the state are required to enact a shoreland and wetland protection program, as a result of the Water Quality Management Act of 1965. Counties are required to adopt said shoreland regulations under Wis. Stat. § 59.692 for unincorporated shoreland pursuant to NR 115 of the Wisconsin Administrative Code. As part of that responsibility, most, if not all, of the counties have a sanitary code enforcement responsibility, which is authorized in Wis. Stat. § 59.70(5)(a), and those responsibilities were a major part of the shoreland regulation enacted in the late 1960s. Some of the zoning code enforcement offices in counties also have responsibility for construction site erosion and stormwater management, as specified in Wis. Stat. § 59.693. However, many have separate land conservation agencies responsible for this function. Counties are required to regulate land uses in floodplains, pursuant to Wis. Stat. § 87.30 and NR 116 of the Wisconsin Administrative Code. Further, as part of the administrative procedures for the regulation of zoning, pursuant to Wis. Stat. § 59.694, a county board of adjustment is required to be in place to consider and decide upon appeals, special exceptions, and variances to the terms and conditions of the zoning ordinance and shoreland and floodland ordinance. Counties are required to regulate non-metallic mines pursuant to Wis. Stat. § 295.13 (1) and NR 135 of the Wisconsin Administrative Code.

Most counties also exercise subdivision plat review authority under Wis. Stat. Ch. 236, whereby subdivisions throughout the county, including incorporated areas, are reviewed pursuant to the provisions of that statute. Some counties, though not many, have also elected to perform building inspection services for the jurisdictional area of their zoning codes authorized under Wis. Stat. § 59.698. In some

counties, the land information and county survey functions, set forth in Wis. Stat. §§ 59.72-59.75, provide for a county surveyor function, land information, land records and for the relocation and perpetuation of section corners and section lines.

Duties/Services:

- Administer and enforce provisions of county zoning ordinances, including regular county zoning, shoreland and floodplain zoning.
- Provide assistance and information to the public regarding land use regulatory controls.
- Prepare comprehensive land use plans for the county, or for individual communities in some cases, and assist in their adoption and implementation.
- Monitor and update comprehensive land use plans as required.
- Evaluate land use decisions based upon adopted comprehensive land use plans.
- Review and approve subdivision plats.
- Review and approve certified survey maps and county plats.
- Receive and prepare applications and provide recommendations for rezoning activities and conditional uses.
- Receive applications for variances, appeals, and special exceptions for the board of adjustment; make recommendations for zoning, and keep records, prepare hearing notices and other administrative duties.
- Prepare notices for public hearings for rezonings, conditional uses and, in some cases, plats.
- Issue zoning and land use permits, plan of operation and site plan permits, and conditional use permits.
- Receive and issue sanitation permits for new septic systems.
- Receive applications and issue permits for erosion and stormwater management activities where applicable.
- Issue building permits and make site inspections where applicable.
- Make field and site inspections for zoning and land use permits, board of adjustment variance applications, conditional use applications, site plan/plan of operation, and other enforcement activities.
- Administer floodplain ordinances and make post-flooding site inspections for submittal of damage estimates to FEMA.
- Administer nonmetallic mining and reclamation ordinances mandated by Wis. Stat. Ch. 295 for NR 135.
- Administer the county land records modernization program.
- Coordinate the county geographic information system (GIS) functions.

Public Service Answering Point (PSAP)

Wisconsin Chapters, National Emergency Number Association (NENA) & Association of Public-Safety Communications (APCO)

While the organization of a PSAP is built around the concept of the emergency number and the need to respond to calls for service through 911, counties and municipalities throughout the state have used different models to respond to needs. A PSAP may be an independent department or a branch of a larger department, such as the sheriff's department, police department, fire department, or emergency management department.

Under the provisions of Wis. Stat. § 256.35 you will find one or more PSAPs in each of the counties in Wisconsin. The solutions developed by each PSAP have been as varied as the locations and governmental bodies that are responsible for them. Often referred to as a dispatch center or communications center, the telecommunicator at a PSAP will answer 911 calls, non-emergency calls, and provide the radio communications required to dispatch appropriate emergency and non-emergency services.

Next Generation 911 (NG911) Digital technology has made the PSAP the hub of communication for all public safety needs. At the same time, each change in technology, such as cell phones and Voice over Internet Protocol (VoIP), texting, vehicle telematics, GPS and advance medical systems like AEDs have made it more challenging for the PSAP to provide a service that is consistent with the expectations of the public. The advancement of technology has prompted Wisconsin to create a Governor appointed 911 Subcommittee to assist with deployment, education, and training needed to keep pace with the rapidly changing technology.

The mission of the 911 Subcommittee is to promote, assist, and make recommendations for the implementation of a public safety system where anyone can use one number, on any device, at any time, from anywhere, using any media to obtain a standard level of emergency service.

Duties/Services:

- Answer 911 calls in varying formats (landline, cell phone, text messages).
- Coordinate mutual aid (such as via the MABAS system for fire events).
- Provide CPR instruction over the phone (mandated by state statute).
- Some PSAPs provide Emergency Medical Dispatching EMD (providing medical assistance over the phone while EMS is en route).
- Coordinate with schools, hospitals, and other organizations during life-threatening events.
- Plan and prepare for schedule events in communities where large groups of people gather.
- Answer non-emergency calls.
- Record phone and radio conversations.
- Dispatch appropriate services (police, fire, EMS).
- Operate state TIME system for police (drivers' records/warrants).
- Operate Computer Aided Dispatch (CAD) system.
- Work with GIS information.

- Use electronic investigation to assist police.
- Maintain and verify warrant records.
- Provide public education.

Regional Planning Commissions

Association of Wisconsin Regional Planning Commissions (AWRPC)

Counties form the foundation and boundaries of Wisconsin's regional planning commissions. Local governments petitioning the governors during the period of 1959 through 2007 created the nine regional planning commissions that exist today. Once authorized by the Governor and their local governing bodies, a regional planning commission provides planning and coordination services for the physical, social, and economic development of its region. Counties participating in a regional planning commission appoint commissioners and, in some cases, the Governor and other local governments make appointments as well.

Under Wis. Stat. § 66.0309 regional planning commissions may undertake the following:

- Conduct all types of research studies; collect and analyze data; prepare maps, charts and tables; and conduct all necessary studies for the accomplishment of its other duties.
- Make plans for the physical, social, and economic development of the region.
- Publicize and advertise its purposes, objectives, and findings.
- Provide advisory services on regional planning problems to the local governmental units within the region and to other public and private agencies in matters relative to its functions and objectives.
- May act as a coordinating agency for programs and activities of local units and agencies as they relate to its objectives.
- Contract with any local unit within the region to make studies and offer advice on land use, thoroughfares, community facilities, public improvements, and encouragement of economic and other developments.

Duties/Services:

- Prepare multi-county comprehensive regional plans and individual county, city, village, and town comprehensive plans.
- Prepare plans that address special local government concerns, such as parks and recreation; downtown development; hazard mitigation; pavement management; capital improvement; lake management; coastal zone management; economic development; housing assistance; solid waste; sewer service area; and waterfront, harbor, and transportation system plans.
- Provide business and housing revolving loan administrative services, business incubator services, venture capital investment management, civil engineering assistance, forest resource management, air and water quality management, traffic engineering, and technology zone business tax credit administration.

- Administer Metropolitan Planning Organization, economic development district, water quality planning, coastal zone management, and State Data Service Center duties as specified by various federal and state acts.
- Serve as a resource provider, facilitator, or liaison on cost-sharing and resource-pooling projects among governments involving shared administrative positions, delivery of government services, and joint projects.
- Write grants for public facilities, industrial parks, transportation access, park and recreation facilities, lake and river management projects, economic development projects, recreation trails, and brownfield clean up.

Register of Deeds

Wisconsin Register of Deeds Association (WRDA)

The office of the register of deeds was established in 1836, before statehood, to protect the integrity of land ownership. The 1848 Wisconsin Constitution, Article VI, Section 4, established the elected constitutional office as a permanent element of the county-level governmental structure. Vital records duties were statutorily added in 1907. Each county in Wisconsin is required to have a register of deeds whose duties are outlined in in Wis. Stat. 59.43, Chapter 69 and other duties which are dispersed throughout the statutes.

The register of deeds is elected every four years during the same term as the President of the United States. Vacancies within the register of deeds offices are filled by appointment of the Governor of Wisconsin. The person appointed to fill the vacancy shall hold office for the unexpired term to which appointed and until a successor is elected.

The records maintained in the register of deeds office are used by many internal and external business partners. Every constituent utilizes some record within the office at one time or another during their lifetime.

The real estate records housed in the office of register of deeds are the cornerstone of the county's economic system. Every parcel of land is represented by a recorded document that the office protects and guards.

Statutory Duties - mainly Wis. Stat. §59.43(1):

- Every register of deeds shall appoint one or more deputies, who shall hold office at the register's pleasure; the deputies shall perform the duties in the register's absence (Wis. Stat. 59.43(3) and 69.07(3)).
- Review, record, e-record, scan and permanently maintain all documents authorized by law to be recorded in the office of the register of deeds (Wis. Stat. 59.43(1c)(d)).
- Endorse upon each document the day, hour, and minute of reception which shall be used as evidence of such fact for Race Notice and must be recorded in the order in which they are received (Wis. Stat. 59.43(1c)(e)). Race Notice statute: A recording act that gives priority of title to the

party that records first, but only if the party also lacked notice of prior unrecorded claims on the same property.

- Collect recording and real estate transfer fees as required, state on the face of conveyance documents any real estate fee paid or reason for exemption from fee (Wis. Stat. 59.43(1c)(c) and 59.43(2)).
- Implement quality control and establish procedures to permanently store and back-up documents (Wis. Stat, 59.43(4)).
- Make and deliver to any person, on demand and upon payment of proper fees, certified and uncertified copies of recorded documents (Wis. Stat. 59.43(1c)(i)).
- Record subdivision, cemetery, condominium plats, certified survey maps, firm names and related documents as authorized by law to be recorded (Wis. Stats. 59.43).
- Record/file, index and maintain military discharges. Prepare certified copies for county service veteran's office, veterans or their dependents required to receive military benefits (Wis. Stat. 45.05, 59.535(1)(b) and 59.53(1c)(k)).
- Record and index documents pertaining to security interests in real property, crops or fixtures (Wis. Stat. 409.501, 59.43(1c)(l)).
- Record and index marital property agreements (Wis. Stat. 59.43(1c)(r), 766.58(11)).
- Record and index all conveyances of mineral rights (Wis. Stat. 59.43(1c)(s), 706.057(7)).
- Record and index statements of non-profit authority (Wis. Stat. 59.43(1c)(v), 184.05).
- Safely keep and return documents to the party entitled thereto (Wis. Stat. 59.43(g)).
- Perform all other duties that are required of the register of deeds by law (Wis. Stat. 59.43(1c)(p)).
- Perform the duties related to vital records (Wis. Stat. 59.43(1c)(b)).
- Preserve, amend and certify vital records as directed by the state registrar (Wis. Stat. 69.05).
- Review and accept marriage, death and domestic partnership termination into the State Vital Records System (Wis. Stat. 69.07).
- Determine direct and tangible interest for disclosure of vital information (Wis. Stat. 69.20).
- Issue certified or uncertified copies of birth, marriage, divorce, domestic partnership, and domestic partnership termination and death records (Wis. Stat. 69.21).
- Serve as a statutory member of the County Land Information Council (Wis. Stat. 59.72(3m)).

Administrative Duties:

- Directs, develops and executes the department's business strategies. Promote the department's success by implementing county's vision, mission and long-term goals by being well informed of the county's affairs. Remain current on County, State and Federal laws as they affect the department.
- Appoint, manage, hire and assist in training procedures to ensure the office goals are met, facilitate and encourage training opportunities, mentor department staff.

County Departments & Offices

- Prepares, implements, forecasts and monitors departmental budget and business plan; establish cost-reduction initiatives; identifies strengths, weakness, and opportunities to best implement departmental and county goals and files monthly reports with various state agencies.
- Analyze problematic situations and provide solutions, responsible for the consequences of the decisions made for the department.
- Delegate responsibilities and supervise department staff, provide guidance and motivation to achieve maximum performance.
- Develop policies and procedures, establish standards and expectations.
- Ensure permanent, efficient, safe and effective methods are utilized through technology advancements.
- Engage, collaborate, communicate and maintain trust relationships with business partners, authorities and the public; build productive and long term relationships with relative associations, local, state and federal agencies.
- Exercise independent judgment, not subordinate to the will of others, strict confidentiality requirements; interprets and give the final decision for department operations.
- Adhere to the constitution of Wisconsin, interpret statutes and administrative rules; review and submit statutory changes to the legislature; personally subject to the Constitution of Wisconsin, must follow strict moral and ethical conduct.
- Assist staff in daily duties including document acceptance, prepping, processing, posting, balancing and reporting; vital records and customer service.
- Act as a liaison with the county board, other elected officials, county departments, professional customers and groups, such as title insurance company representatives, attorneys, surveyors, appraisers, realtors, clergy, funeral directors and the general public.
- Attend and host meetings, conferences, workshops and classes as needed to improve department efficiencies, continuous quality improvement, understand and remain current with changing and emerging technologies and economic trends to position the department in the best financial and strategic position.
- Actively participate and volunteer in community functions with business partners and constituents to promote county and register of deeds initiatives outside of normal business hours.

Register in Probate Office

Wisconsin Register in Probate Association (WRIPA)

Pursuant to Wis. Stat. § 851.71(1), the judge(s) of each county shall appoint a register in probate. Appointment may be made only with the approval of the chief judge. Registers in probate are statutorily responsible for various record-keeping functions of the court. As custodians of the courts' records, registers in probate play a significant role in Wisconsin's judicial system.

Duties/Services:

- Custodians of the Record. Record keeping for the courts is governed by statute and Wisconsin Supreme Court Rule. These require that registers in probate maintain court records of every proceeding in court so that the court record is a complete index or brief history of each proceeding from beginning to final disposition, including records of all proceedings of the court during its sessions. Registers in probate are responsible for the processing and model record keeping of all case types under their supervision, as well as maintaining the confidentiality of those records as set forth by statute and court order.
- Court Finances. Millions of dollars in fees and reimbursements are receipted and disbursed through the Registers' offices annually. Registers in probate strive to maintain this fiscal responsibility with accurate, efficient, and effective accounting practices.
- Court Administration. Registers in probate have various administrative duties and work daily with a variety of people. District attorneys; law enforcement; the legal community; local, state, and federal agencies; businesses; corporation counsel; and the general public rely upon the office of the register in probate to answer questions and assist in the administrative process of the various case types that fall under the jurisdiction of the register in probate office. Registers in probate provide an administrative link between the judiciary, the county board, and the public. Registers also work closely with other court staff to ensure that the courts run smoothly and efficiently.
- The administrative, fiscal, and public relations responsibilities of the registers in probate involve a variety of tasks. These include, but are not limited to, budgeting and administering county and court resources; developing policies and procedures; recruiting, training, and maintaining competent staff; acting as liaison between local and state agencies; and assisting the public.

More information can be found on the Wisconsin Register in Probate Association's website at www.wripa.org.

Sheriff

Badger State Sheriff's Association (BSSA)

The office of sheriff is created by the Wisconsin Constitution, Article 6, Section 4. Duties of the sheriff are set forth by Wis. Stat. §§ 59.26 - 59.33. The sheriff is an elected office in each Wisconsin county. Elections for sheriff are held every four years and coincide with the years Wisconsin elects a Governor.

The sheriff is the chief law enforcement officer in each county. The sheriff has the authority and duty to enforce state statutes throughout the county regardless of municipal boundaries. The sheriff operates the jail, attends to the circuit court(s), and attends to the service of court papers. Funding for the sheriff's office comes from a variety of sources, including property tax revenue, fees, and state grants.

Duties/Services:

- Keep and preserve the peace in their respective counties.
- Conduct criminal investigations.
- Provide traffic enforcement.

County Departments & Offices

- Respond to citizen calls for service, both emergency and non-emergency.
- Maintain and operate the county jail.
- Transport inmates.
- Attend upon the circuit court(s).
- Serve and execute all processes, writs, subpoenas, and orders from the courts issued or made by lawful authority and delivered to the sheriff.

SOLID WASTE DEPARTMENTS

Wisconsin County Solid Waste Management Association (WCSWMA)

In the late 1970s, Wisconsin counties were given the authority and statutory obligation to conduct solid waste management planning. However, the law did not require that a county have a formal structure or governing body for the implementation and administration of a solid waste plan; many counties opted instead to allow private sector firms to meet the waste management needs of its citizens.

Today, counties across the state are teaming up with each other and with cities, villages, and towns to provide Wisconsin residents with state-of-the-art waste management programming and facilities. From landfill disposal to recycling education, county solid waste departments are focused on protecting human health and the environment, reducing waste, and recycling more.

Most county solid waste departments are enterprise funds and use no county tax dollars. They use earnings to invest in a wide variety of community programs, such as hazardous waste clean sweeps and old medication collections/disposal. Because county solid waste facilities accept waste from all waste haulers, small and large, they serve as catalysts for economic development and allow even the smallest business access to affordable, convenient services.

Duties/Services:

- Operate county landfills.
- Operate landfill-gas-to-energy facilities.
- Operate a port authority.
- Operate a waste-to-energy incinerator program.
- Construction and demolition recycling facility.
- Operate waste diversion programs, such as shingle recycling.
- Provide waste/recycling collection services.
- Serve as the WI Admin. Code NR 544 Responsible Unit of Recycling for recycling programs and services.
- Conduct recycling and environmental education programming.
- Operate yard waste composting sites.
- Provide collection and proper disposal services of household hazardous waste, including pharmaceutical waste.

- Collaborate with the UW System campuses on research to advance waste resource management and provide employment opportunities for students.
- Conduct advocacy focused on waste reduction, recycling, product stewardship, and 21st century waste disposal options.

Surveyor

Wisconsin County Surveyors Association (WCSA)

The county surveyor position was one of the original constitutional offices in county government. Today in Wisconsin, counties can appoint, elect, or leave vacant the position of county surveyor. As of November 2019, Wisconsin had 61 county surveyors – 34 counties have a full-time county surveyor (all appointed) and 27 counties have a part-time county surveyor. Four counties (Iowa, Portage, Sauk, and Vilas) elect their county surveyor – all four serving on a part-time basis. The duties and responsibilities of the county surveyor vary greatly from county to county depending on whether the position is full- or part-time. Statutorily, the duties of the county surveyor are set forth in Wis. Stat. § 59.45. The county surveyor may appoint and remove deputies at will by filing a certificate with the county clerk. The county surveyor plays a critical role in creating and maintaining accurate tax parcel mapping. In addition, the county surveyor may also serve as a department head, administrator, or manager of other county departments or offices, such as real property listing, geographic information systems (GIS), or the land information office. Currently, 7 county surveyors serve as the land information officer for their respective county. The county surveyor may also be a part of another county department, such as highway, land information, zoning, planning, or land conservation.

The responsibilities of the county surveyor position can be broken down into five main components:

- Re-establishment, maintenance, and preservation of the corners of the Public Lands Survey System: This network of corner markers – set at roughly half mile intervals – is the key component in nearly every property description in Wisconsin. This network serves as the foundation of all parcel mapping projects. County surveyors also provide protection for other geodetic survey marks.
- Maintain survey records: These unique records have been filed with the county surveyor's office since Wisconsin became a state in 1848. Today, survey maps continue to be submitted to the county surveyor for filing. In many instances, these maps are being digitized and made available on county websites.
- Survey map review: In most counties, the county surveyor reviews subdivision plats and certified survey maps. These maps are checked for compliance with Wisconsin State Statutes and Administrative Code, as well as local codes and ordinances.
- Provide services and assistance to other county departments: This work includes providing survey services in the field (verification of existing monuments, field measurements, installation of new monuments, and marking lines), as well as in the office (computations, analysis and writing real property descriptions, and drafting of maps).

County Departments & Offices

- Assist general public, private sector businesses, and government agencies with land surveying and land ownership questions: The county surveyor is uniquely qualified to provide professional assistance when it comes to these varying and often complex and difficult questions.

Duties/Services:

- Remonumentation of Public Land Survey System corners.
- Preservation/maintenance of all established Public Land Survey System corners.
- Preservation of other geodetic monuments.
- Index, file, and maintain all survey records.
- Certified survey map review/subdivision plat review.
- Provide support and assistance to other county departments.
- Conduct surveys for other county departments.
- Accident and reconstruction surveys.
- Prepare legal descriptions.
- Testify in court as an expert witness.
- Volumes and quantities acquisition and construction staking.
- Oversight of/assistance with GIS development.
- Assist and prepare parcel mapping.
- Provide ground control for orthophotography and LiDAR projects.
- May serve as the Land Information Officer (LIO) for the Land Records Modernization Program.
- Assist the public and other entities with land surveying and land ownership questions.

Treasurer

Wisconsin County Treasurers' Association (WCTA)

The duties of the county treasurer are set forth by Wis. Stat. § 59.25, which includes receiving all monies from all sources belonging to the county, such as real estate taxes, state and federal aids, credits, grants and fees for services provided.

The treasurer's office pays out all monies belonging to the county on the order of the county board, including disbursement for expenses incurred, debt payment, and the county's payroll.

Duties/Services:

- Receipt and deposit of all money; keeping daily balances of bank accounts.
- Imprint signatures of treasurer, county clerk, and county board chair and distribute all checks, including payroll for all county employees.
- Invest excess funds to maximize earnings while minimizing risk.
- Maintain record of all paid and delinquent taxes.
- Take tax deed on delinquent properties or assisting county clerk with same.
- Assist local municipal treasurers with January and February tax settlements.
- Furnish complete and balanced tax settlement sheets to the Department of Revenue by March 15.

- Settle with all taxing jurisdictions in August for all taxes collected and uncollected.
- Maintain all tax records in the county, print assessment rolls, tax rolls, and assist local clerks to balance the same.
- Maintain current lottery credit file, seeking all eligible taxpayers.
- Administer ag-use penalty.
- Serve as treasurer for drainage districts.
- Issue tax certificate to parcels with unpaid taxes September 1 each year.
- Imprint signatures and mail all disbursements.
- Distribute national forest income to municipalities.
- Forward fines and forfeitures, court fees, real estate transfer fees, and WLIP recording fees to the appropriate state department.
- Reconcile all bank accounts monthly.
- Report and publish unclaimed funds.
- Prepare and mail delinquent tax notices.
- Certify and maintain lottery credit files on real and personal property.
- Report and pay to DNR managed forest land and private forest crop settlement.
- Print tax sale book.
- Prepare and file sales and use tax reports.
- Certify and sign off that there are no unpaid taxes on properties for purpose of recording plats.
- Certify and sign off that there are no tax certificates or tax deeds on properties for timber cutting.
- Prepare yearly budget.
- Serve as treasurer for the Land Council.
- Prepare financial reports for the finance committee/county board.
- Collect tax payments for municipalities as contracted.
- Research tax and property information for public upon request.
- Forward probate and vital records fees to the state.

University of Wisconsin-Madison Extension

UW-Madison

The University of Wisconsin-Madison Division of Extension is the *Wisconsin Idea* in action. Extension extends the knowledge and resources of the University of Wisconsin-Madison to people where they live and work. Extension offers quick and convenient access to university research and knowledge through educators in each of Wisconsin's 72 counties and through three tribes – Lac du Flambeau Tribe in Vilas County, Menominee Nation in Menominee County, and Lac Courte Oreilles in Sawyer County.

Educational programs include the areas of agriculture, natural resources, community development, health and well-being, human development, and positive youth development. In addition, Extension houses the Wisconsin Geological and Natural History Survey and the Leadership Wisconsin program.

County Departments & Offices

Working with local, state, and federal partners, Extension offers educational programs that address the learning needs of individuals, families, and communities. Extension works closely with communities on complex problems that require unbiased, research-based information and easy-to-understand programming that addresses real-world issues. More information about Extension educational programs and county offices is available online at *www.ces.uwex.edu*.

Duties/Services:

- Provide educational programs and research services in the following areas:
  - 4-H and positive youth development.
  - Agriculture, natural resources, agribusiness, and horticulture.
  - Community development.
  - Health and well-being.
  - Human development, relationships, parenting, nutrition, and finances.

Veterans Services

County Veterans Service Officers Association of Wisconsin (CVSOAWI)

The duties and responsibilities of the County Veterans Service Officers (CVSOs) are set forth in Wis. Stat. § 45.80. The CVSO is elected by the county board or appointed by the county executive/county administrator. All CVSOs have served in the United States military and are professional representatives accredited by the United States Department of Veterans Affairs. Their primary function is to act as an advocate for veterans, their dependents, and survivors. In Wisconsin, the CVSO serves as the state's frontline representative in its efforts to assist veterans and their families. County Veterans Service Officers, by statute, are to perform their duties "separately and distinctly" from any other county department.

Duties/Services:

- Advise persons living in the service officer's county who served in the U.S. armed forces regarding any benefits to which they may be entitled, and assist in any complaint or problem arising out of such service and render to veterans and their dependents all possible assistance.
- Make reports to the county board as the county board requires.
- Cooperate with federal and state agencies that serve or grant aids and benefits to former military personnel and their dependents.
- Furnish information about veterans' burial places within the county.
- Apply and manage case files for federal and state Veterans' Service programs that may include compensation, pension, education, burial, survivor benefits, VA loans, grants, insurance, and Dependency Indemnity Compensation (DIC).
- Work independently to apply state and federal policy and procedures to dynamic situations in order to ensure accurate benefit determinations.
- Work in a fast-paced environment handling multiple interactions daily covering a wide variety of topics and benefits.

- Handle urgent inquiries relating to health, home, and family needs in a time sensitive manner.
- Assist with application for the Veterans Service Commission emergent needs program.
- Assist with applications for Wisconsin G.I. Bill education benefits for veterans and eligible dependents.
- Assist with vocational rehabilitation benefits for disabled veterans.
- Assist with federal VA home loan Certificate of Eligibility (COE).
- Assist with application for burial benefits (e.g., cemeteries, markers, burial flags, funeral honors, etc.).
- Assist dependent and survivor's in applying for benefits (e.g., healthcare, education, pensions, etc.).
- Assist with the enrollment of veterans into the VA healthcare system.
- Register discharge papers/DD-214 with county register of deeds.
- Assist military retirees and their surviving families with U.S. Department of Defense (DOD) benefits and services.
- Assist with the transportation of veterans to and from medical care.
- Help determine eligibility and complete paperwork for veterans' homes and long-term care.
- Provide and/or refer veterans to appropriate federal, state, and non-governmental emergency financial aid.
- Assist homeless veterans and those at risk of becoming homeless.
- Assist with applications for Wisconsin Department of Veterans Affairs (WDVA) benefits.
- Assist with applications and verification for 100% disabled veterans and their surviving spouses in receipt of DIC to receive their property tax credit.
- Assist with applications and approve the Wisconsin Department of Natural Resources Veterans Free State Park/Forest/Trail Pass.
- Assist with applications and approve the Wisconsin Department of Motor Vehicle WI/ID License Veterans Identifier.

Victim/Witness Services

The Wisconsin Victim/Witness Professionals Association (WVWP)

In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with the criminal justice system, Wis. Stat. Ch. 950 seeks to ensure that all victims and witnesses of crimes are informed of their rights and are provided assistance in the exercise of those rights. County-based victim/witness service programs, with support from the Wisconsin Department of Justice, are tasked by the county board with providing information and services to crime victims and witnesses as they progress through the criminal justice system.

A bill of rights for victim and witness rights (with additional citations) is outlined in Wis. Stat. §§ 950.04, 950.06, and Wis. Stat. § 950.055. These statutes provide a general description of the minimum level of services to be provided to crime victims and witnesses. Additionally, Wis. Stat. § 950.07

County Departments & Offices

requires that the county board, district attorney, local law enforcement agencies, local social service agencies, victim and witness offices, and courts all cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled under this chapter.

In order to receive partial reimbursement by the state for program-related costs, counties must adhere to the administrative rules outlined in JUS 12 and provide all of the services outlined by statute. Additionally, victim/witness programs are encouraged to provide services specifically tailored to child victim/witnesses. By providing assistance to crime victims and witnesses and keeping them informed about their rights, available resources, and the criminal justice system in general, victim/witness programs contribute to successful prosecutions and case dispositions by the local district attorney. Victim/witness programs also provide efficient, streamlined referrals to needed resources and an easily accessible point of contact for the criminal justice system. County victim/witness programs ensure that community members who are affected by crime receive services in a manner that is professional, compassionate, and fiscally responsible.

Duties/Services:

Wis. Stat. Ch. 950 & 949, JUS 12

General

- Court appearance notification services, including cancellation of appearances.
- Victim compensation and social services referrals, including witness fee collection, case-by-case referrals, and public information.
- Escort and other transportation services related to the investigation or prosecution of the case if necessary or advisable.
- Case progress notification services.
- Assistance in providing the court with information pertaining to the economic, physical, and psychological effect of the crime upon the victim of a felony.
- Employer intercession services.
- Expedited return of property services.
- Protection services.
- Family support services, including child and other dependent care services.
- Waiting facilities.

Child Victims & Witnesses-Specific Services

- Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.
- Advice to the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. The services may include providing assistance in determinations concerning the taking of depositions by audiovisual means under Wis. Stat. §§ 908.08 or 967.04 (7) and (8) and the duty to expedite proceedings under Wis. Stat. § 971.105.

- Advice to the district attorney concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.
- Information about and referrals to appropriate social services programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

Wisconsin Technical College District Boards

Wisconsin Technical College District Boards Association

While not a formal county department or office, Wisconsin State Statutes provide an important role for almost all county board chairs in assuring Wisconsin technical colleges are well-governed. Wisconsin was the first state (1911) to create local schools for vocational, technical, and adult education. When the Legislature transformed those schools into a system covering the entire state (laws of 1965), counties largely organized and petitioned for the creation of districts that would become today's Wisconsin Technical College (WTC) System. As the petitioning authority, counties continue to play a major role in shaping the governing bodies of most WTCs.

County officials serve as the appointing authority for WTC district board members in 14 of the state's 16 districts. County board chairs serve as the appointing authority for 13 districts. The Milwaukee Area Technical College's appointing authority includes its three county board chairs plus the Milwaukee County Executive. Any county having territory within these WTC districts is part of the district's appointing authority, ranging from two to 12 counties. School board presidents serve as the appointing authority in two college districts, Fox Valley and Southwest Wisconsin (Wis. Stats § 38.10). While it is common for technical and community college boards to be appointed, Wisconsin is unique in that the nine members are specifically selected to represent district employers, employees, a school district administrator, and a local elected official (Wis. Stat. § 38.08). In addition to these categories, board members are appointed based on a "plan of representation" that is established by the appointing county officials. The plan serves to balance board representation according to county population and other demographic factors.

The appointment process takes place beginning on or about March 1 annually or when required to fill a mid-term vacancy. WTC System district board members serve for staggered three-year terms. The appointment committee holds public hearings to consider the plan of representation and the appointments themselves. Candidates – whether first-time or incumbent – must submit applications and references, and must be interviewed in person by the appointment committee.

Information about the WTC System and links to local technical colleges are available at *www.wtcsystem.edu*.

Wisconsin Open Meetings Law

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POLICY (WIS. STAT. § 19.81)

The Open Meetings Law begins by recognizing that a representative government depends on an informed electorate. An informed electorate needs access to information. The Wisconsin State Legislature declares that the policy of the Open Meetings Law is to:

- Enable the public to have "the fullest and most complete information regarding the affairs of government as is compatible with the conduct of government business;"
- Ensure that meetings of governmental bodies are held in places reasonably accessible to the public; and
- Ensure that such meetings are open to the public unless otherwise expressly provided by law.

The Open Meetings Law is to be "liberally construed" (i.e., broadly interpreted) to achieve the purpose of open government.[1] The law ensures that there is public access and open decision making. Open decision making includes the information gathering stages, discussions, and voting.[2]

The policy provisions of the Open Meetings Law are not idle rhetoric. Almost all court decisions enforcing the law begin by invoking the explicit policies stated in Wis. Stat. § 19.81.[3] To implement these policies, the law requires advance notice of meetings and that those meetings be open and accessible to the public. Closed sessions are limited to exceptions specifically provided by statute.[4]

COVERAGE

"Governmental bodies" subject to the Open Meetings Law

The definitions in the Open Meetings Law not only explain terms used in the statute, they also determine which bodies are covered and what gatherings constitute a "meeting" under the law. A "governmental body" under the Open Meetings Law includes any state or local agency, board, commission, committee and council created by law, ordinance, rule or order.[5] "Rule or order" includes motions, resolutions, formal and informal directives by a governmental body or officer that sets up a body and assigns it duties.[6] At the local level, bodies covered include county, village, and town boards, city councils, school boards, as well as all their committees, commissions, and boards. It is how the body is created, not its members or authority that is the determining factor. Thus, a citizen study or advisory committee created by a county board is considered a governmental body.[7]

A committee could be a governmental body under the Open Meetings Law even if it is not a typical sub-unit of the county board, including one set up by administrative staff. If the committee takes the form of a body with defined membership, is created by "rule," and has the power to take collective action, then it is considered a governmental body under the Open Meetings Law.[8] The key element

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is whether it is created by "rule." A rule can be a statute, ordinance, resolution, or policy, including handbooks or by-laws, that creates or authorizes the committee. The Wisconsin Counties Association recommends reviewing ordinances, by-laws, policies, and handbooks that are approved by the county board to determine what committees are created by rule.[9]

In addition, the term "governmental body" under the law includes governmental and quasi-governmental corporations, as well as other specified entities.[10] A governmental or quasi-governmental corporation includes corporations created by the legislature or by other governmental bodies under statutory authorization. Quasi-governmental corporations are not just those created by a governmental body, but are those corporations that resemble governmental corporations.[11] Determining if an entity resembles a governmental corporation depends on the total facts and circumstance about the entity and is determined on a case-by-case basis.[12] Thus no single factor is determinative, but courts consider several factors: (1) whether the entity performs or serves a public function, as opposed to a purely private function, even if public function is merely recommending action to a governmental body;[13] (2) the degree of public funding;[14] (3) government access to the entity's records;[15] (4) express or implied representations that the entity is affiliated with government;[16] and (5) extent government controls the entity's operation, such as appointing directors, officers or employees, or officials serving in those positions.[17] No one factor will determine the outcome, but a primary consideration will be the funding source.[18]

If a citizen body creates itself by its own authority (independent of any governmental unit or statute, ordinance, rule or order) and sets its own charter, bylaws, membership requirements, or rules, most likely it is not a quasi-governmental corporation. In order to constitute a governmental corporation or quasi-governmental corporation, the organization must in fact be incorporated, and not another type of entity such as a nonprofit association.[19]

The Open Meetings Law still provides that a local governmental body conducting collective bargaining is not subject to the law. However, this in not as significant a provision of the law as it was before the Act 10 public union reforms. Nonetheless, notice of reopening a collective bargaining agreement must be given under the Open Meetings Law and final ratification of the agreement must be done in open session under such law.[20]

"Meetings" under the Open Meetings Law

A meeting is defined as a gathering of members of a governmental body for the purpose of exercising responsibilities and authority vested in the body.[21] The courts apply a purpose test and a numbers test to determine if a meeting occurred. The law applies to a meeting when both the numbers and purpose tests are met.[22]

Purpose and Numbers Tests

The purpose test is met when there is discussion, information gathering, or decision-making on matters over which the governmental body has authority. Social or chance gatherings where there is no discus-

sion on the topics over which the body has jurisdiction are excluded. The numbers test asks if there are enough members to determine the outcome of an action. The statute presumes that a gathering of one-half of the membership is a meeting, because one-half could determine the outcome of a vote by preventing a majority in favor of a proposal. Thus less than a majority could determine the outcome of an issue. This is called a "negative quorum," and can meet the numbers test. Use caution when gathering with other members, because less than half can also be a negative quorum. There could be less than half the county board together, but a quorum or a negative quorum of a committee may exist. Votes requiring a two-thirds majority, like a budget amendment, can meet the numbers test if one-third plus one of the members are together discussing the amendment.[23]

There are other special cases where a meeting exists for the purposes of the law. A series of conversations, phone calls, or emails to "line up votes" or conduct other business is known as a "walking quorum," which violates the law.[24] Such conduct addresses the business of the governmental body without public notice, information, or participation. An essential feature of the "walking quorum, is the agreement, whether express or tacit, to act uniformly in enough numbers to reach a quorum.[25] Telephone conference calls among members are also considered a meeting when the two tests are met and therefore, must be held in such a manner as to be accessible to the public.[26]

Emails, instant messages, blogs, social media sites, and other electronic message forms could also create a meeting. While no court decision has clarified the Open Meetings Law on this issue, the state attorney general's office advises that if the communications are like an in-person discussion with a prompt exchange of viewpoints by members, then it raises the possibility of an Open Meetings Law violation. If the communication is more like written communication on paper, which is not an Open Meetings Law violation, then the communication is less likely a violation. To avoid the risk of violating the law and excluding the public, the attorney general's office discourages the use of electronic messages between members to discuss issues within the authority of the body. Certainly, avoid the "reply" or "reply all" email functions.[27]

If enough members of one government body satisfy the numbers test and attend the meeting of another government body in an effort to gather information on a subject over which the body has authority, a meeting under law may occur. Unless the gathering is by chance, it should be treated as a meeting of both bodies and notice must be given.[28] The attorney general's office recommends giving notice of when a body is attending the meeting of another body and to be as specific as possible. It is further recommended to avoid stock or boilerplate language such as that "a possible quorum may attend." Instead, be specific as to which bodies will attend the other's meeting and include when it is scheduled to occur.[29]

Not all gatherings of members become a meeting under the law. As previously mentioned, the Open Meetings Law does not require notice for social gatherings, gatherings by chance, or at a conference if there is no business conducted (that is, the purpose test is not met).

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The place of meeting must be reasonably accessible to the public, including persons with disabilities.[30] Accordingly, the facility chosen for a meeting must be sufficient for the number of people reasonably expected to attend.[31]

PUBLIC NOTICE REQUIREMENTS

If the public did not know the subjects of a governmental meeting or were not made aware of location, date, and the time of the meeting, a meeting open to the public would be almost meaningless. Thus, public notice is required before every governmental meeting.[32] Further, separate notices must be given for each meeting.[33]

Notice can be given by posting notice in places where the public is likely to see it; a minimum of three places is recommended.[34] The Open Meetings Law does not require paid published newspaper notices, but other statutes may require a published notice. If a paid newspaper publication is used to give notice, it should be ensured that it was in fact published in a timely fashion before the meeting convenes.[35] Posting online is a good supplement to other methods, but it is not recommended as a substitute for other means of notice to the public.[36] Recent legislation allows publishing legal notices on the governmental body's website; however, it did not change the requirement that notice "be given in a manner reasonably likely to apprise the public," and the policy favoring full and complete information (see Wis. Stat. § 985.02 regarding electronic posting of legal notices).

The Open Meetings Law also requires providing notice to the news media.[37] Notice may be in writing, by telephone, voice mail, fax or email. Written methods are best because doing so creates a record of the notice that can later be used as proof of compliance with the notice to news media requirement. Notice must be given to any news media that has made a written request, as well as to the official newspaper for the governmental unit. If there is no official newspaper, then notice must be sent to the newspaper that is likely to give notice in the area. The newspaper does not have to print the notice and you do not have to pay to publish the notice, but you must send the notice to the newspaper whether they publish it or not.[38]

The notice must state the time, date, and place of the meeting. If a closed session is anticipated, the notice must include the item to be considered and a citation to the particular statute justifying the closed session (see "Permitted Exemptions for Holding Closed Sessions," below).[39]

The notice must also state the subject matter of the meeting. Discussion on any action or matter is limited to the topics specified in the notice (there is a limited exception for a public comment period, which is discussed below). The content of the notice must be "reasonably likely to apprise the public" of what will be addressed at the meeting.[40] In other words, the subject matter must be specific enough to let people interested in a subject matter know that it will be addressed at the meeting.

Courts reviewing and enforcing compliance with the Open Meetings Law will determine if the notice is specific enough on a case-by-case basis. That means what may be adequate subject matter notice in one instance may not be adequate in a different instance. For example, a notice stating, "employee

contracts" could be adequate, but if it includes the contract of a controversial employee, then "employee contracts" would not be specific enough to satisfy the Open Meetings Law.[41]

The Wisconsin Supreme Court gave three factors to consider when determining if notice of subject of a meeting is reasonably specific and they include the following:

1. The burden of providing more detailed notice. This factor balances specificity with the efficient conduct of public business.
2. Whether the subject matter is of particular interest to the public. This factor considers the number of people interested and the intensity of interest.
3. Whether the subject involves a non-routine action that the public would be unlikely to anticipate. This factor recognizes there may be less need for specificity with routine matters and more need for specificity where novel issues are involved.[42]

The attorney general's office advises that any generic notice that contains expected reports or comments by a member, official, or presiding officer should state the topics that will be addressed in the report. The attorney general's office further advises that generic subjects, such as "old business," "new business," "agenda revisions," or "such other matters as authorized by law," and fail to include further subject matter identification are inherently insufficient notice.[43]

A separate notice is required before each meeting of the governmental body. A general notice that is meant to cover a period of time (i.e., a week, a month) is not allowed. Notice must be given at least 24 hours prior to the meeting. The Open Meetings Law says that for "good cause" a shorter time for notice may be given; however, it must be at least two hours in advance of the meeting. Forgetting the notice or negligence is not good cause. Remember that the purpose of the law is a well-informed public, so any doubts about good cause should be resolved in favor of the public.

The presiding officer of the governmental body is responsible to give notices under the Open Meetings Law, or someone he or she designates.[44] Because putting the meeting agenda into the notice is the most common means of giving notice of the subject matter of the meeting, this part of law can be misunderstood to state that the presiding officer "controls" the agenda. That is neither the language nor the intent of the statute. The statute only assigns responsibility and accountability for meeting notices to the presiding officer, but agenda setting procedure is more properly the subject to the body's local procedural rules.

The Open Meetings Law does not require public participation in a meeting. A governmental body may, but is not obligated to, provide for a period of "public comment" during a meeting. During that period, the governmental body may receive information from members of the public, but only limited responses or discussion is permitted if comments are on a subject matter not included in the notice.[45]

Meetings must be open to all persons, except when closed for a specific permitted purpose (see below). An open meeting means that it is reasonably accessible to members of the public.[46] Accessible also means "reasonable effort" to accommodate persons who want to record, video, or photograph the meeting, provided that those activities do not interfere with the meeting or rights of other participants.[47]

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PERMITTED EXEMPTIONS FOR HOLDING CLOSED SESSIONS

Some subjects if discussed in an open meeting could actually be adverse to the public interest. Consider if the meeting subject is purchasing a parcel of real estate the county needs, and the board wants to consider acceptable terms to authorize for negotiation. Typically, an administrator or staff person is given an acceptable range of prices to use in negotiation, but if the possible terms and prices are discussed in open session, bargaining power will be compromised as the seller will know the highest price the county has authorized. To avoid possible harm to the public interest, the Open Meetings Law sets forth specific exceptions that permit conducting business on limited subject matter in a closed session.

Remember that the purpose of the Open Meetings Law is providing the public with "the fullest and most complete information regarding the affairs of government as is compatible with conduct of government business," and the Open Meetings Law is to be construed liberally in favor of achieving that purpose.[48] Another general requirement of the Open Meetings Law is that all governmental business shall be conducted in open session.[49] Considering these requirements of the statutes, the exemptions in Wis. Stat. § 19.85 must be construed strictly and narrowly.[50] If there is any doubt of whether a closed session exemption applies to the meeting subject matter in question, whether to close the meeting should be resolved in favor of openness.[51]

A closed session may be held for one or more of 11 specified exemptions in the statutes. The following exemptions are of interest to local government bodies.

- "Case" deliberations - Wis. Stat. § 19.85(1)(a). This narrow exemption considers a "case" to be the subject of a quasi-judicial hearing that has many aspects of a court case: adversaries, witnesses, direct, and cross examination of witnesses.[52]
- Employee discipline, licensing, tenure, and employee evaluation- Wis. Stat. § 19.85 (1)(b) & (c). Two open meeting exemptions involve one or more public employees. Closed sessions are permitted under Wis. Stat. § 19.85 (1)(b), when the subject is the dismissal, demotion, licensing, tenure, or discipline of a public employee. Wis. Stat. § 19.85 (1)(c), permits closed session when considering employment, promotion, compensation, or performance evaluation. These two exemptions do not include all employee related subjects, but facts and information about a specific employee(s). It does not grant an exemption when discussing policies involving a department or all employees in general.[53] Neither can consideration of action to fill a vacancy on the governmental body or appointments to committees be in closed session.[54]

  If a closed session is to consider employee dismissal, demotion, or discipline and there is an evidentiary hearing or final action is contemplated, then the employee may demand that the hearing or meeting be in open session. Employees must be given notice of such closed hearings or sessions, and be advised of their right to have it take place in open session. However, the employee does not have the right to demand the meeting be in closed session.[55]

- Criminal matters - Wis. Stat. §19.85(1)(d). This exemption allows closed sessions to consider strategies for crime prevention or detection. It also allows closed session to consider probation or parole, but this is not a local government function.
- Purchases and competitive bargaining - Wis. Stat. §19.85(1)(e). This is the exemption mentioned in the introduction to this segment of this chapter. Closed sessions are allowed when deliberating or negotiating the purchase of public property, investment of public funds, or other specified public business, when competitive or business reasons require a closed session. The competitive or bargaining reasons must relate to reasons benefiting the governmental body, not a private party's desire for confidentiality.[56]
- Burial sites - Wis. Stat. § 19.85(1)(em). Deliberating on a burial site if discussing it in public would likely result in disturbance of the site.
- Damaging personal information - Wis. Stat. § 19.85(1)(f). Closed session is permitted when considering financial, medical, social or personal histories, or disciplinary data of specific persons. It also includes preliminary consideration of specific personnel problems or investigation of charges against a specific person, except when that person's right to an open meeting applies (see "Employee discipline, licensing, tenure" above). This exception can only be used if discussion in an open meeting would have a substantial adverse effect on the reputation of the person involved. This exemption applies to "specific persons" as compared to a small classification of public employees (see "Employee discipline, licensing, tenure" above.)
- Legal consultation - Wis. Stat. § 19.85(g). Conferring with legal counsel who is giving written or oral advice about strategy to be adopted in litigation in which the governmental body is or is likely to be involved.
- Confidential ethics opinion - Wis. Stat. § 19.85(1)(h). Used to consider a request for confidential written advice from a local ethics board.

CONDUCTING PERMITTED CLOSED SESSION

The Open Meetings Law spells out a specific process to meet in closed session. Notice must be given of a contemplated closed session, and the notice must describe the subject matter and specify the specific statutory exemption(s) allowing the closed session.[57] The notice of the subject matter of a closed session must be specific enough to allow the members voting on a motion for closed session and the public to discern whether the subject is authorized for closed session under Wis. Stat. §19.85(1).

To go into a closed session, the meeting must begin in open session. The body's presiding officer must announce the authority and subject of the proposed closed session. The announcement must be included in the meeting minutes or record. A motion to go into closed session must be made and seconded, followed by a vote so that each member's vote can be determined. The motion, the second, and the vote must be part of the meeting record.[58] Once a body goes into closed session it cannot reconvene in open session for 12 hours, unless public notice was given in the original notice of its intent to return to open session.[59]

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If the need arises, the body can go into closed session on an item specified in the public notice.[60] In such a case, the closed session item should be placed at the end of the agenda because the body cannot reconvene in open session when there was not a notice of the closed session. This is a very narrow provision, and whenever time allows, 24-hour notice must be given, or if there is good cause, at least two-hour notice could be used to give an amended notice that includes an indication that a closed session was not originally contemplated.

As with open sessions, motions and votes in closed session must be recorded. Whenever feasible, votes should be taken in open session, unless voting is an integral part of the closed session and the reason for going into closed session would be defeated or compromised by votes in open session.[61]

Only matters for which the session was closed may be considered in closed session.[62] All governmental body members may participate in closed session, including those that voted against closed session. This includes a committee meeting in closed session, even if members are not on that committee, unless the governing body has a formal rule or ordinance allowing for the exclusion of members who are not serving on the committee.[63] The body has discretion to admit anyone to a closed session that they deem necessary to conduct the business of the closed session.[64]

VOTING & RECORDS

Generally, motions, seconds, and any roll call votes must be recorded, preserved, and made available to the extent prescribed by the Public Records Law (see the "Wisconsin Public Records" chapter of this handbook).[65] Certain statutes require each member's vote to be recorded; for example, Wis. Stat. § 19.85, discussed above, requires each member's vote to be recorded in order to convene into closed session. Wis. Stat. § 59.23(2)(a), and the Open Meetings Law provide that any supervisor may require a roll call vote.[66]

PENALTIES & ENFORCEMENT (WIS. STAT. §§ 19.96 & 19.97)

Violations of the Open Meetings Law are punishable by a court imposing a civil forfeiture penalty or a fine of $25 to $300 against members who attended a meeting in violation of the law, or a presiding officer who violated the notice requirement. These amounts are the base penalty and, with mandatory court costs and assessments,a $300 forfeiture can reach over $500. Any forfeiture imposed must be paid by the members themselves and cannot be reimbursed by the governmental unit.[67] If the enforcement involves an improper closed session, members who voted against convening in closed session have a defense to the charge.[68]

In addition, a court enforcing the Open Meetings Law has the power to void any action taken at a meeting in violation of the Open Meetings Law. There may be other remedies, such as an injunction, that the court may order.[69] A court also can order that the reasonable costs of prosecuting the violation can be recovered.

To start an enforcement action, any person may file a complaint under oath, known as a "verified complaint," with the county district attorney (DA). If the DA does not bring an enforcement action within 20 days, the person may bring his or her own enforcement action in the name of the state. If successful, violators can be required to pay the actual costs and reasonable attorney fees of bringing the court action. In some cases, the attorney general's office may bring an enforcement action.

These penalties are serious, but even allegations of Open Meetings Law violations often have a devastating effect on public trust in the governmental body and its members. There is also the personal embarrassment to the members. On the other hand, being mindful of the purpose and requirements of the Open Meeting Law is a means to build public trust.

REFERENCE & ADVICE

Refer to Wis. Stat. §§ 19.81-19.98 for the specific wording of the law. The Wisconsin Department of Justice has created the Office of Open Government, which has a website where you will find Open Meetings Law statutes, *Wisconsin Open Meetings Law, A Compliance Guide (2019), and other resources: https://www.doj.state.wi.us/office-open-government/office-open-government-resources.* Advice on the Open Meetings Law is available from the county corporation counsel, a municipal attorney, or the Wisconsin Department of Justice. The UW-Extension Local Government Center (LGC) has a fact sheet and a video on the law and is available through the LGC's website, *http://lgc.uwex.edu*.

Endnotes

1 Wis. Stat. § 19.81 (3).
2 *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis.2d 77, 79 (1987); *.State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis.2d 553, 571 (1993).
3 For example: *Badke*, 173 Wis.2d 553 at 570 (1993); *Journal Times v. City of Racine Bd. of Police and Fire Comm'rs*, 2015 WI 56 ¶ 46.
4 *Citizens for Responsible Development v. City of Milton*, 2007 WI App 114, ¶6.
5 Wis. Stat. § 19.82(1).
6 78 Op. Att'y Gen. 67.
7 *Open Meeting Law Compliance Guide, p. 2-4 (2019).*
8 *Krueger v. Appleton Area School District*, 2017 WI 70, ¶¶24-26.
9 *Wisconsin Supreme Court Interprets "Governmental Body" Broadly in Latest Ruling*, Christine V. Hamiel and Andrew T. Phillips, von Briesen & Roper, s.c., *Wisconsin Counties*, September 2017, p.12.
10 Wis. Stat. § 19.82(1).
11 *State v. Beaver Dam Area Development Corp.*, 2008 WI 90, ¶44.
12 *Beaver Dam, ¶45.*
13 *Beaver Dam, ¶72.*
14 *Beaver Dam, ¶66.*
15 *Beaver Dam, ¶78.*
16 *Beaver Dam, ¶¶73,74.*
17 *Beaver Dam, ¶75.*
18 *State ex rel. Flynn v. Kemper Ctr., Inc., 2019 WI App 6,* ¶¶15-16.
19 *Wis. Prof'l Police Ass'n, Inc. v. Wis. Counties Ass'n*, 2014 WI App 106.
20 Wis. Stat. §§ 19.82(1) & 19.86.
21 Wis. Stat. § 19.82(2).
22 *See note 2, above.*
23 This was the situation in the *Showers* case, above.
24 *Showers,* 135 Wis.2d at 92, 100 (quoting *State ex. rel. Lynch v. Conta*, 71 Wis.2d 662, 687 (1976)).
25 *State ex rel. Zecchino v. Dane Cnty.*, 2018 WI App 19, ¶10.
26 *69 Op. Att'y Gen. 143 (1980).*

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27 *Open Meeting Law Compliance Guide, p. 11 - 12 (2019).*
28 *Badke*, 173 Wis.2d 553, 561.
29 July 26, 2016, correspondence from Assistant Attorney General Paul Ferguson to John Bodnar, Winnebago County Corporation Counsel, and Scott Ceman, Winnebago County District Attorney.
30 Wis. Stat. § 19.82(3).
31 *Badke*, 173 Wis.2d 553, 580-81.
32 Wis. Stat. §§ 19.83 & 19.85.
33 Wis. Stat. § 19.84(4).
34 66 *Op. Att'y Gen*. 230, 231 (1977); *Martin v. Wray*, 473 F. Supp. 1131. 1137 (E.D. Wis. 1979).
35 *Open Meeting Law Compliance Guide, p. 15 (2019).*
36 *AG-Peck Informal Correspondence,* April 17, 2006.
37 Wis. Stat. § 19.84(1)(b).
38 Wis. Stat. § 19.84(1)(b).
39 Wis. Stat. § 19.85(2).
40 Wis. Stat. §19.84(2).
41 *State ex rel Buswell v. Tomah*, 2007 WI 71.
42 *State ex rel Buswell*, ¶¶29-31.
43 *Compliance Guide,* p. 17-18 (2019); *AG-Thompson Informal Correspondence*, September 3, 2004.; *AG-Ericson Informal Correspondence*, April 22, 2009.
44 Wis. Stat. §19.84(1)(b).
45 Wis. Stat. § 19.85(2).
46 Wis. Stat. § 19.85(2).
47 Wis. Stat. § 19.90.
48 Wis. Stat. § 19.81(1) & (4).
49 Wis. Stat. §19.83(1).
50 *State ex rel. Hodge v. Town of Turtle Lake*, 180 Wis.2d 62, 70 (1993).
51 The open meeting exemptions permit conducting certain business in closed session, but do not require it. Therefore, they do not create a legal confidentiality privilege protecting disclosure of the content of a closed meeting, such as from discovery in a civil lawsuit. Any confidentiality requirements arise under other laws. *Sands v. Whitnall School Dist.*, 2008 WI 89 (2008).
52 *See Hodge, above.*
53 *Oshkosh NW. Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 486 (Ct. App. 1985).
54 76 Op. Att'y Gen 276 (1987) an 74 Op. Att'y Gen 70, 72 (1985).
55 *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, Ct. App. 1985).
56 *State ex rel. Citizens v. City of Milton*, 2007 WI App 114,¶¶ 14-15.
57 Wis. Stat. §§ 19.84(2) & 19.85(1).
58 Wis. Stat. § 19.85(1).
59 Wis. Stat. § 19.85(2).
60 66 Op. Att'y Gen. 106 (1973).
61 *Open Meeting Law Compliance Guide, p. 30 (2019).*
62 Wis. Stat. § 19.85(1).
63 Wis. Stat. § 19.89(2).
64 *Informal correspondence, December 15, 1988.*
65 Wis. Stat. §§ 19.88 & 985.01(6).
66 Wis. Stat. §19.88(2).
67 66 Op Att'y Gen. 226 (1977).
68 Wis. Stat. § 19.96.
69 Wis. Stat. §§ 19.97(2)&(3).

Wisconsin Public Records Law

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POLICY OF ACCESS

Local governments keep a variety of records dealing with citizens, businesses, and government activities. To further the goal of having an informed public, Wisconsin's policy is to give the public "the greatest possible information regarding the affairs of government. . ."[1] Accordingly, the Public Records Law (Wis. Stat. §§ 19.32-19.37) must "be construed in every instance with a presumption of complete public access, consistent with the conduct of government business." The statute further provides that "denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied."[2]

WHAT IS A PUBLIC RECORD?

A public record is a "record" of an "authority."

Items covered. A "record" is defined as "any material on which written, drawn, printed, spoken, visual or electromagnetic or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, that has been created or is being kept by an "authority" (defined below). The term record includes, "but is not limited to, handwritten, typed, or printed pages, maps, charts, photographs, films, recordings, tapes, optical disks, and any other medium on which electronically stored data is recorded or preserved."[3] A website maintained by a public official about government business is also a public record, and access cannot be restricted.[4] Record also includes emails and other correspondence sent to an elective official.[5]

Items not covered. The term record "does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use, or prepared by the originator in the name of a person for whom the originator is working…" This exception is narrowly interpreted. If a draft or other preliminary document is used as if it were a final document, it is not excluded from the definition of record.[6] Therefore, a so-called draft report used to determine policy, notes circulated outside the chain of the originator's supervision, as well as notes used to memorialize a governmental body's activity, or used to communicate information, are records under the law. Notes used solely to refresh the originator's memory, even if used at a later time, although arguably a document used in government, still are not records.[7]

Record does not include materials that are the personal property of the custodian and do not relate to the custodian's office. Consistent with that, the Wisconsin Supreme Court has determined that

solely personal emails of public employees are not public records.[8] However, the attorney general's office advises that if any part of an email sheds light on governmental functioning, then it is subject to disclosure.[9]

Materials to which access is limited by copyright, patent, or bequest are not public records, although in certain situations copyrighted material may, under the fair use doctrine, be considered a public record.[10] Likewise, published materials of an authority available for sale and published materials available for inspection in a public library are not records.[11]

"Authority." This term is broadly defined in the law to include state and local offices, elective officials, agencies, boards, commissions, committees, councils, departments, and public bodies created by the constitution, statutes, ordinances, rules or orders.[12]

Local governing bodies, offices, elective officials and their committees, boards, and commissions are covered. An "elective official" is an individual who holds an office that is regularly filled by the vote of the people.[13] However, when an elective official leaves office they are no longer an "authority."[14] Authority also includes governmental corporations; quasi-governmental corporations; a local exposition district; a long-term care district; any court of law; and nonprofit corporations that receive more than 50% of their funds from a county, city, village, or town and provide services related to public health or safety to those units. Other factors are applied on a case-by-case basis when determining if a corporation is a quasi-governmental entity, such as whether it performs a governmental function, degree of government access to its records, express or implied representations of government affiliation, and extent of government control of the corporation.[15] Finally, subunits of the above are also authorities.[16]

MANAGEMENT & DESTRUCTION OF RECORDS; REQUESTED RECORDS

Every public officer is the legal custodian of the records of his or her office.[17] The statutes provide standards for retaining records and also provide procedures and timetables for transferring obsolete records to the Wisconsin Historical Society or destroying them. Tape recordings of meetings of local governmental bodies made solely for the purpose of making minutes may not be destroyed sooner than 90 days after the minutes of the meeting have been approved and published (if the body publishes its minutes).[18]

The otherwise legal destruction of records cannot be used to undermine a person's public records request. No record may be destroyed until after a request to copy or inspect has been granted, or until at least 60 days after the date of denial of such request (90 days in the case of a request by a committed or incarcerated person).[19] The right to destroy a record is also not permitted if access to the record is being litigated. However, the records retention law, Wis. Stat. § 19.21, is not a part of the Public Records Law, which provides no remedy for a requester seeking destroyed records, such as deleted emails.[20] Also, it is not a prohibited destruction of a requested public record if an identical copy is destroyed.[21]

WHAT IS A LOCAL PUBLIC OFFICE?

"Local Public Office" is a term used in Public Records Law provisions concerning an authority's posting requirement and a requester's right of access to job applications and to other records with personally identifiable information. Local public office covers elected officers of local governmental units; a county administrator, administrative coordinator, or a city or village manager; appointed local officers and employees who serve for a specified term; and officers and employees appointed by the local governing body, executive, or administrative heads who serve at the pleasure of the appointing authority.[22] The term also includes appointed offices or positions in which an individual serves as head of a department, agency, or division of the local governmental unit.

Local public office does not include persons who perform only clerical or ministerial tasks (i.e., jobs with duties involving little or no discretion), such as non-supervisory clerical support positions or manual laborers. Independent contractors are also not considered a local public office.[23] Thus, contracted municipal assessors are not subject to the law.[24] However, local governments may not avoid responsibilities under the Public Records Law by contracting for collection, maintenance, and custody of public records and directing document requesters to that contractor.[25] Also, the term local public office does not include any "municipal employee" as defined under Wis. Stat. § 111.70(1)(i), the municipal employment relations law. The public records provisions on posting and personally identifiable information also apply to a "state public official."[26]

LEGAL CUSTODIANS (WIS. STAT. § 19.33)

In general. The legal custodian maintains public records and has the duty to make decisions regarding access to the records.[27] Specific statutes outside of the Public Records Law may establish recordkeeping duties. For example, local clerks, including county clerks, are designated as records custodians.

Elective officials. The Public Records Law provides in general that elective officials are the custodians of the records of their offices, unless they have designated an employee of their staff to act as custodian. Chairpersons and co-chairpersons of committees and joint committees of elective officials, or their designees, are the custodians.

Other custodians; designations. If one authority (other than an elective official, committee, or joint committee of elective officials) appoints another authority or provides administrative services for the other authority, the parent authority may designate the legal custodian for such other authority. [28]

State and local authorities (other than elective officials and their committees and joint committees), under the Public Records Law, must designate custodians in writing and provide their names and a description of their duties to employees entrusted with records under the custodian. If the statutes do not designate a custodian and the authority has not designated one, the highest ranking officer and the chief administrative officer, if any, are the authority's custodian. An authority or legal custodian (other than members of local governmental bodies) must designate a deputy legal custodian to respond to requests for records maintained in a public building.

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Records in a public building. The legal custodian of records kept in a public building must designate one or more deputies to act in his or her absence. This requirement does not apply to members of any local governmental body, such as a county board supervisor.

OFFICE HOURS & FACILITIES; COMPUTATION OF TIME

Posted notice required - Wis. Stat. §19.34(1). Each authority must adopt and prominently display a notice describing its organization, the times and locations at which records may be inspected, the identity of the legal custodian, the methods to request access to or copies of records, and the costs for copies. If the authority does not have regular office hours at the location where records are kept, its notice must state what advance notice is required, if any, to inspect or copy a record.[29] The posted notice must also "identify each position of the authority that constitutes a local public office or a state public office" (see "What is a Local Public Office?" above).[30]

The posting requirement, however, does not apply to members of the legislature or to members of any local governmental body, such as a county board supervisor.

Hours - Wis. Stat. § 19.34(2). An authority with regular office hours must, during those hours, permit access to its records kept at that office, unless otherwise specified by law. If the authority does not have regular office hours at the location where the records are kept, it must permit access upon 48 hours written or oral notice. Alternatively, an authority without regular hours at the location where records are kept may establish a period of at least two consecutive hours per week for public access to records, and may require 24 hours advance written or oral notice of intent to inspect or copy a record within the established access period.

If a record is at times taken from the location where it is regularly kept, and inspection is allowed at the location where the record is regularly kept upon one business days' notice, inspection does not have to be allowed at the occasional location.

Computation of time - Wis. Stat. § 19.345. Under the public records provisions in Wis. Stat. §§ 19.33-19.39, when the time in which to do an act (e.g., provide a notice) is specified in hours or days, Saturdays, Sundays and legal holidays are excluded from the computation.

Facilities - Wis. Stat. § 19.35(2). The authority must provide a person who is allowed to inspect or copy a record with facilities comparable to those used by its employees to inspect, copy, and abstract records during established office hours. The authority is not required to provide extra equipment or a separate room for public access. The authority has the choice of allowing the requester to photocopy the record or providing a copy itself.[31] In order to protect the original, the custodian may refuse to allow the requester to use his or her own photocopier to copy the record.[32]

PRIORITY & SUFFICIENCY OF REQUEST

Response to a public records request is a part of the regular work of the office. An authority must "as soon as practicable and without delay" fill a public records request or notify the requester of the decision to deny the request in whole or in part, and the reasons for that decision.[33] In some cases, the custodian may delay the release of records to consult legal counsel. Specified time periods apply for giving notice of the intended release of certain records containing personally identifiable information on employees and individuals who hold public office (see "Personally Identifiable Information" below).

A request must reasonably describe the record or information requested.[34] A request is insufficient if it has no reasonable limitation as to subject matter or length of time represented by the request. For example, a request that would have resulted in 180 hours of audio tape or a request for 3 years of all of a county department's emails were found by courts to be excessive.[35] Although filling a request may involve a large volume of records, at some point a broad request can become so excessive that it may be rejected.[36]

FORM OF REQUEST & RESPONSE; SEPARATION OF INFORMATION

A request may be either oral or written.[37] If a mailed request asks that records be sent by mail, the authority cannot require the requester to come in and inspect the records, but must mail a copy of the requested record, assuming that it must be released and any required prepayment of fees (see "What Fees May Be Charged" and "Limitations on Access" below) has been made.[38] Also, a response that requires unauthorized costs or conditions is considered a denial even though the response does not use words like "deny" or "refuse."[39]

A request that is granted seldom presents a problem. However, denials of requests must be made in accordance with legal requirements. An oral request may be denied orally, unless a demand for a written reply is made by the requester within five business days of the oral denial.[40]

The request must be in writing before an action to seek a court order or a forfeiture may be started. A written request must receive a written denial that must state the reasons for the denial. The denial must also inform the requester that he or she may file a lawsuit called a "mandamus" action (or request the district attorney or attorney general to file such action) in the local circuit court. Further, the denial must include that the court action will review the custodian's denial of access and a court order can be granted to release the record (see "Enforcement and Penalties" below).[41]

If a record contains both information that is subject to disclosure and information that is not, the information that may be disclosed must be provided and the confidential information deleted.[42]

FORM OF RECORD

Photocopies. Many requested records can be photocopied. The authority may either provide a photocopy of such record to the requester or allow the requester to make the copy (as noted above under "Facilities").[43] If the form of the record does not permit photocopying, the requester may inspect the

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record and the authority may permit the requester to photograph the record.[44] If requested, the authority must provide a photograph.

Audio Recordings. For audio recordings, the authority may provide a copy of the recording substantially as audible as the original or a transcript.[45] When an audio recording or handwritten record would reveals a confidential informant's identity, the authority must provide a transcript, if the record is otherwise subject to inspection.[46] A requester has a right to a copy of a video recording that is as substantially as good as the original.[47]

Digital records. An authority must provide relevant data from digital records in "an appropriate format." It is not necessary for a requester to examine the exact information in an authority's electronic database. This is because the data may be at risk of damage or unwitting exposure of confidential information by complete access to the database. For example, providing property assessment information for all properties in the database as PDF documents satisfied a request for all property data from the digital record.[48] However, when a request specifically asked for emails in "electronic form," that the requester was "entitled to the emails in electronic form." [49]

Putting records into comprehensible form. If the record is in a form not readily comprehensible, the requester has the right to information assembled and reduced to written form, unless otherwise provided by law.[50] Except to put an existing record into a comprehensible form, the authority has no duty to create a new record by extracting and compiling information.[51] However, the custodian does have to separate information that may be disclosed from that which is being withheld.[52]

Published records; restrictions on access. A record that has been published, or will be promptly published and available for sale or distribution, need not be otherwise offered for public access.[53] Note that the definition of record above does not include published materials of an authority available for sale and published materials available for inspection at a public library.[54]

Protecting records from damage. Reasonable restrictions may be placed on access to protect irreplaceable or easily damaged original records.[55]

WHAT FEES MAY BE CHARGED?

Fees that do not exceed the "actual, necessary and direct" cost of copying, photographing, or transcribing a record, and mailing or shipping it may be charged to a requester of public records, unless another fee is set or authorized by law.[56] The authority may reduce or waive fees if that is in the public interest. The Wisconsin Department of Justice recommends careful examination of actual cost for copying documents. For example, the Department of Justice in its own 2019 Records Policy that its cost per page for black and white copies was $0.0135 per page.[57] The state attorney general advises that an authority may not profit on its responses to public records requests.[58] The exception is when a statute provides

for a fee other than actual costs. As an example of a statute providing for a different fee, the register of deeds may charge $2 for the first page and $1 for additional pages for copies of records under Wis. Stat. § 59.43(2)(b). Also, the register, with the approval of the county board, may enter into a contract for the provision of records in electronic format at a price set as provided under Wis. Stat. § 59.43(2)(c).[59]

A copy fee may include a charge for the time it takes a clerical worker to copy the records on a copy machine, and it is recommended that the fee be based on the wages of the lowest paid employee in the particular office.[60] Costs associated with locating a record may be passed on to the requester only if the location costs are $50 or more. Computer programming expense required to respond to a request may be charged.[61]

Prepayment of fees may be required only if the fee exceeds $5. However, if the requester is a prisoner who has failed to pay any fee for a previous request, the authority may require prepayment of both the previous and current fee. The cost of a computer run may be imposed as a copying fee, but not as a location fee.[62] The cost of separating confidential parts of a record from the parts to be released may not be charged.[63]

INSPECTION OF PUBLIC RECORDS

Any requester has a right to examine a public record unless access is withheld according to law. As noted above, the presumption is that public records are open. Access to a public record, in accordance with Wis. Stat. §§ 19.35(1)(a) & 19.36(1), may be denied when:

- A state or federal law exempts the record from disclosure.
- The courts have established a limitation on access. This is known as a "common law exemption."
- The harm to the public interest from disclosure outweighs the public interest in inspection. This requires the custodian to perform the "balancing test" (see "Limitations on Access under the Common Law" below), often with the advice of legal counsel. The balancing test is also a common law doctrine.

LIMITATIONS ON ACCESS UNDER THE COMMON LAW; THE BALANCING TEST

The statute provides that common law principles (i.e., the law developed in published court decisions) on the right of access to records remain in effect.[64] For example, the common law provides an exception to public access to a district attorney's prosecution files.[65] Most importantly, the common law has created the concept of the balancing test to weigh the competing public interests in making the disclosure decision. In a 2008 case, the court ruled that the above common law exception for records in the custody of the district attorney's office does not allow another custodian, in this case the sheriff's department, to withhold the same record held by the district attorney's office, although the sheriff's department may withhold the record for a sufficient policy reason after applying the balancing test.[66]

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The balancing test. Often, no statutory provision or common law ruling answers the question of whether access to a public record may be denied. When the custodian has some doubt about whether to release the record, the balancing test must be performed. Under the common law, public records may be withheld only when the public interest in nondisclosure outweighs the public interest in disclosure.[67] Essentially, any reasons for nondisclosure must be strong enough to outweigh the strong presumption of access.[68] The custodian must state specific policy reasons for denying access; a mere statement of a legal conclusion is inadequate.[69] In explaining the denial, it may be helpful to cite statutory provisions (such as the Open Meetings Law exemptions, if applicable) that indicate a public policy to deny access, even if these provisions may not specifically answer the access question.

Before refusing a request in an unclear situation, or granting a request that may invade a person's privacy or damage a person's reputation, the custodian should consult the county corporation counsel or municipal attorney. The attorney general's office may also be consulted (see "Resources," below). With the enactment of legislation on personally identifiable information in 2003, the law is clearer than it had been before on such matters (see "Personally Identifiable Information" below).

Using Open Meetings Law exemptions in the balancing test. The statutory exemptions under which a governmental body may meet in closed session under Wis. Stat. § 19.85(1) of the Open Meetings Law indicate public policy, but the custodian must still engage in the balancing test and may not merely cite such an exemption to justify nondisclosure.[70]

These exemptions include the following: deliberating concerning a quasi-judicial case; considering dismissal, demotion, licensing, or discipline of a public employee; considering employment, promotion, compensation, or performance evaluation of a public employee; considering crime prevention or crime detection strategies; engaging in public business when competitive or bargaining reasons require closure; considering financial, medical, social, or personal histories or disciplinary information on specific persons which would be likely to have a substantially adverse effect on the person's reputation if disclosed; and conferring with legal counsel for a governmental body on strategy for current or likely litigation.

EXAMPLES OF STATUTORY LIMITATIONS ON ACCESS

- Records requested by prisoners & committed persons - Wis. Stat. § 19.32. The definition of "requester" itself results in a limitation on access. Requester does not include any person who is committed or incarcerated unless the person requests inspection or copies of a record that contain specific references to that person, or to his or her minor children, if the physical placement of the children has not been denied to the person. Release of records to a committed or incarcerated person is subject to records that are otherwise accessible under the law.
- Certain law enforcement investigative records - Wis. Stat. § 19.36(2). Access to these records is limited where federal law, as a condition for receipt of aid, provides limitations.

- Computer programs; trade secrets - Wis. Stat. §§ 19.36(4) & (5). The computer program itself is not subject to inspection and copying, although the information used as input is subject to any other applicable limitations. (see also "Digital records" above, under the heading "Forms of Records")
- Identities of applicants for public positions - Wis. Stat. § 19.36(7). Records that would reveal the identities of job applicants must be kept confidential if the applicants so request in writing. However, the identities of final candidates to local public office may not be withheld. A final candidate is an individual who is one of the five most qualified applicants, or a member of the final pool if that is larger than five. If there are fewer than five candidates, each one is a final candidate.
- Identities of law enforcement informants - Wis. Stat. § 19.36(8). Information that would identify a confidential informant must be deleted before a requester may have access to the record.
- Employee personnel records & records of public officers (see below) - Wis. Stat. §§ 19.36(10)-(12).
- Financial identifying information - Wis. Stat. § 19.36(13). Personally identifiable data that contains an individual's account or customer number with a financial institution (such as credit card numbers, debit card numbers, and checking account numbers) may not be released, unless specifically required by law.
- Ambulance records - Wis. Stat. §§ 146.881(4) and 146.82(1). Records made by emergency medical technicians and ambulance service providers are confidential patient healthcare records, although certain information on the run is open to inspection.
- Patient healthcare records - Wis. Stat. §§ 146.81-146.84.
- Law enforcement officers' records of children & adult expectant mothers - Wis. Stat. §§ 48.396 & 938.396.
- Public library user records - Wis. Stat. § 43.30.
- Certain assessment records. Personal property tax returns are confidential, except that they are available for use before the board of review.[71] Property tax income and expense information, used in property valuation under the income method, are confidential.[72] Real estate transfer returns are also confidential, with specified exceptions.[73]
- Personnel files - Wis. Stat. § 103.13. An employer (whether a government or non-government employer) must allow an employee to inspect his or her personnel documents, at least twice a year, within seven working days after the request is made. The employee may submit a statement for the file that disputes information in it. If the employee and employer cannot agree to a correction, the statement must be attached to the disputed portion of the record and included with the record when released to a third party. Exceptions to the employee's right to inspect include the following records: investigations of possible criminal offenses; letters of reference; test documents, other than section or total scores; staff management planning materials, including recommendations for future salary increases and other wage treatments, management bonus plans, promotions and job assignments, and other comments and ratings; personal information that would be a "clearly unwarranted invasion" of another person's privacy; and records relevant to a pending claim in a judicial proceeding between the employee and employer.

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PERSONALLY IDENTIFIABLE INFORMATION

In 1991, the legislature created provisions in the Public Records Law to help preserve the privacy of individuals. Generally, a person who is the subject of a record with personally identifiable information has greater access to that record than is otherwise available under the Public Records Law and may seek corrections to the information contained in the record. Legislation also created a subchapter on "personal information practices." This section covers the legislation that was designed to provide clarification on access to certain records containing personally identifiable information, primarily related to records of employees and local public officers.

- Definitions - Wis. Stat. § 19.32. "Personally identifiable information" means "information that can be associated with a particular individual through one or more identifiers or other information or circumstances."[74] Refer to the following exceptions for what this term does not include. A "person authorized by the individual" means a person authorized in writing by the individual to exercise the rights to access records with personally identifiable information; the individual's parent, guardian, or legal custodian, if the individual is a child; the guardian of an individual adjudicated incompetent in this state; or the personal representative or spouse of a deceased individual.[75]
- Right to inspect: exceptions - Wis. Stat. § 19.35(1)(am). In addition to a requester's general right to inspect public records under Wis. Stat. § 19.35(1)(a)(above), a requester, or a person authorized by that individual, has the right to inspect and copy any record containing personally identifiable information pertaining to the individual that is maintained by an authority. However, this right of access does *not* include the following records:
    - Investigations, etc. Any record with information collected or maintained in connection with a complaint, investigation, or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding, or any record collected or maintained in connection with any such action or proceeding.[76]
    - Security issues. Any record with personally identifiable information that, if disclosed, would:
        - Endanger an individual's life or safety.
        - Identify a confidential informant.
        - Endanger the security of specified facilities and institutions, including correctional, mental health and other secured facilities, centers for the developmentally disabled and for the care of sexually violent persons.
        - Compromise the rehabilitation of a person incarcerated or detained in one of the facilities listed above.
    - Record series. Any record that is part of a record series, as defined in Wis. Stat. § 19.62(7), that is not indexed or arranged so that the authority can retrieve it by use of an individual's name, address or other identifier.
- Contractors' records - Wis. Stat. §§ 19.36(3) & (12). The general right to access records of a contractor produced under a contract with an authority under Wis. Stat. § 19.36(3) does not apply to

personally identifiable information. Such information on an employee of a contracting employer subject to the prevailing wage law cannot generally be accessed, except information on employee work classification, hours of work, and wage or benefit payment information may be released.

- Responding to requests - Wis. Stat. § 19.35(4)(c). The authority must follow a specific procedure when it receives a request from an individual, or a person authorized by the individual, to inspect or copy a record with personally identifiable information pertaining to the individual. In these cases, the requester generally has a right to inspect and copy a record.[77] However, this right does not extend to a number of situations and records (see "Right to inspect; exceptions" and "Contractors' records," above).

  The authority must first determine whether the requester has a right, under the general Public Records Law, to inspect or copy the record with personally identifiable information. If the requester has such a right, the authority must grant the request. This determination may involve the balancing test that is explained above. If the authority determines that the requester does not have the right to inspect or copy the record under the general Public Records Law, then the authority must determine whether the requester has the right to inspect or copy the record under the specific provisions of the law applicable to personally identifiable information, and grant or deny the request accordingly.

  If the requested record contains information pertaining to a record subject other than the requester, or other than the record subject in a situation where the request is by a person authorized by that record subject, the provisions of Wis. Stat. § 19.356 on notice to a record subject apply (see the section below on "Personally Identifiable Information on Employees, Local Public Officers & Other Records Subjects").

- Correction of personally identifiable information - Wis. Stat. § 19.365. An individual or person authorized by the individual may challenge the accuracy of personally identifiable information pertaining to the individual in records to which they have access by notifying the authority in writing of the challenge. The authority must then either correct the information or deny the challenge. If the challenge is denied, the authority must notify the challenger of the denial and allow the individual or person authorized by the individual to file a concise statement with the disputed portion of the record setting forth the challenge to the information. Only a state authority is required to give reasons for a denial of a challenge. The challenge provision does not apply to records transferred to an archival depository or when a specific state or federal law governs challenges to the accuracy of the record.

- Personal information practices - Wis. Stat. §§ 19.62-19.80. Wis. Stat. § 19.65 provides that an authority must develop rules of conduct for employees who collect, maintain, use, provide access to or archive personally identifiable information, and must ensure that these persons know their duties relating to protecting personal privacy.

  Wis. Stat. §§ 19.65-19.80 also have provisions concerning the accuracy of data collection and the sales of names or addresses. An authority that maintains personally identifiable information that

may result in an adverse determination against an individual's rights, benefits, or privileges, must collect the information directly from the individual, or verify the information to the greatest extent possible, if obtained from another person to the greatest extent possible.[78] Also, an authority may not sell or rent a record containing an individual's name or address of residence, unless specifically authorized by state law.[79]

PERSONALLY IDENTIFIABLE INFORMATION ON EMPLOYEES, LOCAL PUBLIC OFFICERS & OTHER RECORD SUBJECTS

The release of records affecting the privacy or reputational interests of public employees has involved a good deal of legal uncertainty. Under Wisconsin Supreme Court decisions, custodians have been required to notify the subject when such records were requested and proposed to be released in order to give the record subject an opportunity to seek judicial review.[80] However, those cases did not establish criteria for determining when privacy and reputational interests are affected or for giving notice to affected parties. These cases also did not address the issue of whether the same analysis applies to records of private employees.

The legislature in Wis. Stat. § 19.356, codified these cases in part, but under this statute the rights apply only to a limited set of records. The statute's procedure for notice and review now applies to four categories of records relating to employees, local public officers, and other record subjects:

- Records of "record subjects" (i.e., persons who are the subject of personally identifiable information in public records) that, as a general rule, do not require notice prior to allowing access.
- Records of employees and other record subjects that may be released under the balancing test only after providing the record subject with notice of impending release of the record and the right to judicial review prior to release of the record.
- Records of local public officers that may be released under the balancing test only after providing notice to the record subject of the impending release of the record and the right to augment the record.
- Records of employees and local public officers that are generally closed to access.

<u>General rule regarding notice & judicial review - Wis. Stat. § 19.356(1)</u>. An authority is not required to notify a record subject prior to allowing access to a record containing information on the person, except as authorized in Wis. Stat. § 19.356 (see following) or as otherwise provided by statute. Additionally, the record subject is not entitled to judicial review prior to release of the record. Of course, a specific statute concerning access may apply and the authority may need to conduct the balancing test. The statute goes on to provide when notice and an opportunity for judicial review are required prior to release of records.

<u>When notice to employee/record subject is required; opportunity for judicial review - Wis. Stat. §§ 19.356(2)-(8)</u>. The authority must provide written notice to the record subject, as specified in the statute, prior to releasing any of the three following types of records containing personally identifiable

information pertaining to the record subject if the authority decides to allow access to the record. The authority in its notice must specify the requested records and inform the record subject of the opportunity for judicial review. The notice must be served on the record subject within three days of deciding to allow access; service is accomplished by certified mail or by personal delivery. The records requiring notice prior to release are as follows:

- Disciplinary matters. A record containing information relating to an employee that is created or kept by the authority and is the result of an investigation into a disciplinary matter involving the employee or the possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer. The attorney general's office interprets this provision to be limited to disciplinary matters or possible employment-related violations by an employee of the employer in which the record was prepared by the employer, rather than by another entity.[81] In addition, if a private employer is involved, the attorney general's office reasons that the private employee may block access to the record, as noted below under "Records of other employers."
- Subpoenas; search warrants. A record obtained by the authority through a subpoena or search warrant. Note that this provision does not limit its applicability to employees; it applies in general to any record subject to whom the record pertains.[82]
- Records of other employers. A record prepared by an employer other than an authority if the record contains information relating to an employee of that employer, "unless the employee authorizes the authority to provide access to that information." The attorney general interprets this provision to mean that an authority may not release personally identifiable information pertaining to the employee of a private employer unless the employee consents.[83]

The requirement of notice prior to release of the above information does not apply to the release of the information to the employee or to the employee's representative under Wis. Stat. § 103.13, relating to an employee's access to his or her own personnel records; nor does the notice requirement apply to release of the information to a collective bargaining representative.

Within 10 days of service of the notice of the intended release of the records, the record subject may start a court action to have the access to the records blocked. The statute provides a procedure for expedited judicial review of the authority's decision to release records and also provides that the records may not be released within 12 days of sending a notice or during judicial review periods.

When notice required to persons holding local public office; opportunity for comments - Wis. Stat. § 19.356(9). A different approach applies to the release of records with personally identifiable information pertaining to a person who holds a "local public office" (e.g., a governing body member, elected or appointed officer, or department head) or a "state public office" (e.g., a district attorney or a judge). Under this procedure, the authority must inform the record subject within three days of the decision to release the records to the requester. This notice is served on the officer by certified mail or personal

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delivery, must describe the records intended for release, and the officer's right to augment the record. Note that the officer (unlike an employee under the previous heading) who is the record subject does not have the right of judicial review. Instead, the officer who is the record subject has the right to augment the record that will be released to the requester with his or her written comments and documentation. This augmentation of the record must be done within five days of receipt of the notice.

Employee/officer records generally closed to public access.

- Employee records closed to public access - Wis. Stat. § 19.36(10). An authority is generally prohibited from releasing the records listed below. However, this general prohibition on release does not apply if another statute specifically authorizes or requires release. Further, the prohibition on release does not apply to an employee, or his or her representative accessing the employee's personnel records under Wis. Stat. § 103.13, or to a collective bargaining representative for bargaining purposes or pursuant to a collective bargaining agreement. The employee records that are not generally open to public access are as follows:
  - Home addresses, home telephone numbers and social security number, unless the employee authorizes the authority to provide access to such information.
  - Current possible criminal or misconduct investigations prior to disposition of the investigation.[84]
  - Employment examinations, except an examination score if access to that score is not otherwise prohibited.
  - Employee evaluations information as to one or more specific employees used by an authority or the employer for staff management planning. Includes performance evaluations, recommendations for future salary adjustments or other wage treatments, management bonus plans, promotions, job assignment, letters of reference, or other comments or ratings relating to employees.
- Local public officers' records closed to public access - Wis. Stat. § 19.36(11). As with employees, certain records on individuals holding a local public office, as broadly defined, may not generally be released to the public. However, this general prohibition on release does not apply if another statute specifically authorizes or requires release. The prohibition on release also does not apply to a local public officer who is an employee accessing his or her personnel records under Wis. Stat. § 103.13. The records on local public officers that may not generally be open to public access are as follows:
  - *Addresses; telephone number; social security number.* Information concerning the individual's home address, home email address, home telephone number, and social security number, unless the individual authorizes the authority to provide access to such information.

- *Exceptions.* This prohibition on release, however, does not apply to the release of the home address of an individual who holds an elective public office or who, as a condition of employment as a local public officer, is required to reside in a specific location. This exception allows the public to verify that its elected officials and other officers or high-level employees (who fill a position that falls under the definition of "local public office") subject to residency requirements actually live in the community or meet the applicable requirement.

ENFORCEMENT & PENALTIES

The Public Records Law provides for forfeitures, court orders, actual and punitive damages to enforce the law. Wis. Stat. § 19.37.

Court order to allow access. A person who has made a written request for access to a public record may bring an action for a writ of mandamus asking the court to order release of withheld information. This procedure does not require following the notice-of-claim law applicable to many lawsuits against the government. In contrast to the procedure under the Open Meetings Law, a person seeking release of a public record does *not* have to initially refer the matter to the district attorney. However, the person may request the district attorney or the attorney general to seek mandamus. A committed or incarcerated person has no more than 90 days after denial of a record request to begin an action in court challenging the denial.

A requester who prevails in whole or substantial part may receive reasonable attorney fees, actual costs, and damages of at least $100. The costs and fees must be paid by the authority or the governmental unit of which it is a part and are not the personal liability of the custodian or any other public official. A committed or incarcerated person, however, is not entitled to the minimum $100 damages, although the court may award damages. Also, in a request for personally identifiable information under Wis. Stat. § 19.35(1)(am) there is no minimum recovery of $100 in damages. Instead, actual damages may be recovered if the court finds that the authority acted in a willful or intentional manner.

The law also provides for the award of punitive damages to the requester if the court finds that the authority or legal custodian arbitrarily and capriciously denied or delayed their response or charged excessive fees. However, punitive damages may only be awarded as part of a mandamus action to compel delivery of records, not as a separate claim for violation of the Public Records Law after documents were released.[85]

Forfeiture. The district attorney or the attorney general may seek a forfeiture against an authority or custodian who arbitrarily and capriciously denies or delays response to a records request or charges excessive fees. The statute provides for a forfeiture of not more than $1,000 along with the reasonable costs of prosecution.

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REFERENCE AND ADVICE

County officials who have questions on the Public Records Law should contact the county's corporation counsel. Also, any person may contact the Wisconsin Attorney General (the Wisconsin Department of Justice) to request advice on the Public Records Law.[86]

Refer to Wis. Stat. §§ 19.31-19.39 for the specific wording of the law. The Wisconsin Department of Justice has an Office of Open Government with a webpage containing many resources on the Public Records Law, including the *Wisconsin Public Records Law Compliance Guide (2019)*, a link to the statute, and other materials. Find it at *https://www.doj.state.wi.us/office-open-government/office-open-government* or search "*Wisconsin Department of Justice Open Government.*"

Also available on the University of Wisconsin - Madison Division of Extension Local Government Center website (*http://lgc.uwex.edu*), is information on new developments in Public Records Law, Factsheets, upcoming programs, or other resources.

Information on public records management and destruction may be found on the websites of the Wisconsin Historical Society and the Wisconsin Public Records Board. Go to *www.wisconsinhistory.org* and enter "Local Government Records Program" in the search box. This links to the *Wisconsin Municipal Records Manual* and other information of interest. The Public Records Board can be found at *publicrecords-board.wi.gov*.

Endnotes

1 Wis. Stat. §19.31.
2 *Ibid.*
3 Wis. Stat.§ 19.32(2).
4 See the *Compliance Guide*, p. 3, cited above under "Reference & Advice". Opinion of Att'y Gen. to Gail Peckler-Dziki, OAG 6-09 (December 22, 2009).
5 *John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 2014 WI App 49.
6 *Fox v. Bock*, 149 Wis. 2d 403 (1989); 77 *Op. Att'y Gen.* 100, 102-03 (1988).
7 *Voice of Wis. Rapids, LLC v. Wis. Rapids Pub. Sch. Dist*, 2014 WI App 53.
8 *Schill v Wis. Rapids Sch. Dist.*, 2010 WI 86, ¶137.
9 Memorandum from J.B. Van Hollen, Attorney General, to Interested Parties (July 28, 2010), available online at *https://www.doj.state.wi.us/sites/default/files/dls/memo-ip-schill.pdf*
10 *Zellner v. Cedarburg School District*, 2007 WI 53, ¶¶ 25-31, 56.
11 Wis. Stat. § 19.32(2).
12 Wis. Stat. § 19.32(1).
13 Wis. Stat. § 19.32(1bd).
14 *AG-Seiser and Bunge Informal Correspondence, October 4, 2010.*
15 *State v. Beaver Dam Area Development Corp.*, 2008 WI 90, ¶¶44-45, 66, 72-75, 78.
16 Wis. Stat. § 19.32(1).
17 Wis. Stat. § 19.21.
18 Wis. Stat. § 19.21(7).
19 Wis. Stat. § 19.35(5).
20 *Gehl v. Connors*, 2007 WI App 238, ¶¶ 12-15.
21 *Stone v. Board of Regents of the University of Wisconsin*, 2007 WI App 223, ¶¶ 11-27.
22 Wis. Stat. § 19.32(1dm).
23 Wis Stat. §§ 19.32(1dm).
24 *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶78.
25 *WIREdata, Inc. at* ¶89.
26 Wis. Stat. § 19.32(4).
27 Wis. Stat. §§ 19.21&19.
28 Wis. Stat. §§ 19.33(5).
29 Wis. Stat. § 19.34(2)(c).
30 *Wis. Stat.* § 19.34(1).

31 Wis. Stat. § 19.35(1)(b).
32 *Grebner v. Schiebel*, 240 Wis.2d 551 (Ct. App. 2001).
33 Wis. Stat. § 19.35(4).
34 Wis. Stat. § 19.35(1)(h).
35 *Schopper v. Gehring*, 210 Wis. 2d 209 (Ct. App. 1997), *Gehl v. Connors*, 2007 WI App 238, ¶¶ 17-24.
36 *Gehl v. Connors*, 2007 WI App 238, ¶¶ 17-24.
37 Wis. Stat. § 19.35(1)(h).
38 Wis. Stat. § 19.35(1)(h).
39 *WIREdata, Inc. v. Village of Sussex*, 2007 WI App 22 ¶57; *application distinguished by WIREdata, Inc. v. Village of Sussex*, 2008 WI 69 ¶55 (*WIREdata II*).
40 Wis. Stat. §19.35(4)(b).
41 *Ibid.*
42 Wis. Stat. § 19.36(6).
43 Wis. Stat. § 19.35(1)(b).
44 Wis. Stat. § 19.35(1)(f).
45 Wis. Stat. § 19.35(1)(c).
46 Wis. Stat. § 19.35(1)(em).
47 Wis. Stat. § 19.35(1)(d).
48 *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶¶ 97-98.
49 *Lueders v. Krug*, 2019 WI App 36 ¶¶15 & 16.
50 Wis. Stat. § 19.35(1)(e).
51 Wis Stats. §19.35(1)(L).
52 Wis Stats. § 19.36(6).
53 Wis. Stat. § 19.35(1)(g).
54 Wis. Stat. § 19.32(2).
55 Wis. Stat. § 19.35(1)(k).
56 Wis. Stat. §19.35(3).
57 See the *Compliance Outline*, *Appendix A*, cited above under "Reference and Advice."
58 *Office of Open Government Advisory: Charging Fees Under the Public Records Law* (Aug. 8, 2018).
59 *Opinion of Att'y Gen. to John Muench, Barron County Corp. Counsel*, 1-03 (October 2, 2003).
60 *Office of Open Government Advisory: Charging Fees Under the Public Records Law* (Aug. 8, 2018).
61 *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, ¶107.
62 72 *Op. Att'y Gen*. 68 (1983).
63 *Milwaukee Journal v. City of Milwaukee*, 2012 WI 65, ¶58.
64 Wis. Stat. § 19.35(1)(a).
65 *State ex rel. Richards v. Foust*, 165 Wis. 2d 429 (1991).
66 *Portage Daily Register v. Columbia Co. Sheriff's Department*, 2008 WI App 30, ¶¶ 15-22.
67 Wis. Stat. § 19.35(1)(a); *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 683 (1965).
68 *Matter of Estates v. Zimmer*, 151 Wis. 2d 122 (Ct. App. 1989).
69 *Village of Butler v. Cohen*, 163 Wis. 2d 819 (Ct. App. 1991).
70 Wis. Stat. § 19.35(1)(a); *Zellner v. Cedarburg School District*, 2007 WI 53, ¶¶ 47-58.
71 Wis. Stat. § 70.35(3).
72 Wis. Stat. § 70.47(7)(af).
73 Wis. Stat. § 77.265.
74 Wis. Stat. §§ 19.32(1r) & 19.62(5).
75 Wis. Stat. § 19.32(1m).
76 *Seifert v. School District of Sheboygan Falls*, 2007 WI App 207, ¶¶ 35-36.
77 Wis. Stat. § 19.35(1)(am).
78 Wis. Stat. § 19.67.
79 Wis. Stat. § 19.71.
80 *Woznicki v. Erickson*, 202 Wis. 2d 178 (1996); and *Milwaukee Teachers' Education Association v. Milwaukee Board of School Directors*, 227 Wis. 2d 779 (1999).
81 *Opinion of Att'y Gen. to James R. Warren*, OAG 1-06 (August 3, 2006).
82 *Ibid.*
83 *Ibid.*
84 *Zellner v. Cedarburg School District*, at ¶ 32-39.
85 *The Capital Times Co. v. Doyle*, 2011 WI App 137.
86 Wis. Stat. § 19.39.

Conflicts of Interest & Ethics

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CONFLICT OF INTEREST

State law prohibits public officials and public employees from using their official position for personal gain. Specifically, Wis. Stat. § 946.13 prohibits a public officer from negotiating, bidding for, or entering into a contract in which he or she has a private monetary interest if, at the same time, he or she has a role to play in an official capacity in the making of that contract or performs in regard to that contract some official function requiring the exercise of discretion. Any public officer or public employee who violates Wis. Stat. § 946.13 is guilty of a Class I felony.

Wis. Stat. § 946.13 is directed not at corruption but at conduct presenting an opportunity for corruption. Because a public officer's judgment may be impaired when the officer transacts government business in which he or she has a personal economic interest, the statute attempts to prevent public officers from succumbing to temptation by making it illegal for them to enter into relationships that are fraught with the potential danger of advancing a private interest rather than a public good.[1]

There are several exceptions to the prohibition in Wis. Stat. § 946.13. The most common exception is contracts that do not involve receipts and disbursements by the state or its political subdivision aggregating more than $15,000 in any year.[2]

Court cases and attorney general opinions addressing various applications of the statute have concluded the following:

- A county board supervisor who votes to pay vouchers for county purchases from a store owned by the supervisor violates Wis. Stat. § 946.13.[3] However, the supervisor can avoid a violation by abstaining from voting on the vouchers related to his business.
- A village board member may not accept a community development block grant program loan in excess of the statutory sum or perform work for a third person who has obtained a loan under the program in excess of the statutory sum.[4]
- A county board supervisor violates Wis. Stat. § 946.13 by selling land owned by the supervisor to the county where the value of the sale exceeds the statutory limit.[5]
- A county board member, employed by a law firm that is retained by a third party to negotiate the purchase of a county facility, may avoid a violation through abstention from acting on the contract in an official capacity and through noninvolvement in negotiating, bidding, or entering the contract with the county on behalf of the third party.[6]
- A contract does not have to be in existence for a violation to occur. Because negotiation ordinarily precedes the formation of a contract, and it is these pre-contractual bargaining relationships that raise the specter of self-interest if one of the parties is also a public official, the negotiation itself may trigger a violation.[7]

Conflicts of Interests & Ethics

A contract entered into in violation of Wis. Stat. § 946.13 is void and the state or the political subdivision on whose behalf the contract was made incurs no subsequent liability.

The attorney general's office has provided guidance on how an official can avoid violating Wis. Stat. § 946.13, such as:

- Abstaining from voting on or debating the contract or any matter relating to the contract;
- Refraining from personally or by agent negotiating or entering into the contract in a private capacity;
- Refraining from performing in regard to the contract some official function requiring the exercise of discretion.[8]

However, abstaining from voting does not avoid a violation of Wis. Stat. § 946.13(1)(a) because a violation only requires authority to act, not actual action.[9] For example, where the county board as a whole must decide whether to purchase land, a county board supervisor would violate Wis. Stat. § 946.13(1)(a) if land owned by the supervisor's partnership was sold to the county for a purchase price in excess of $15,000.[10] Even though the supervisor abstains from all deliberations and voting on the contract, he/she has authority to act on the contract as a supervisor while also having a private monetary interest in the contract. In addition, performance of an official function requiring the exercise of an official's discretion with regard to the contract either before or after execution violates Wis. Stat. § 946.13.[11]

ETHICS FOR LOCAL GOVERNMENT OFFICIALS

Wis. Stat. § 19.59 sets forth a code of ethics for local public officials. A "local public official" is defined as a person who holds "local public office." "Local public office" as defined by Wis. Stat. § 19.42(7w) includes:

- An elective office of a local governmental unit such as a county.
- A county administrator or administrative coordinator.
- An appointive office or position of a local governmental unit in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.
- An appointive office or position of a local government that is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority.[12]

The code of ethics for local public officials prohibits the following actions:

1. A local public official cannot use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself, his or her immediate family, or for an organization with which he or she is associated.[13]

"Immediate family" is defined as an individual's spouse and an individual's relative by marriage, lineal descent, or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.[14]

An individual is "associated" with an organization if the individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.[15]

However, a local public official is not prohibited from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by Wis. Stats. § Chapter 11. A local public official may also receive and retain from the Wisconsin Economic Development Corporation and the Department of Tourism anything of value that the organizations are authorized to provide by Wis. Stats. Chap. 19.[16]

Moreover, public officials may communicate their public role to potential customers or clients in their private capacity. A recent Wisconsin Ethics Commission (WEC) Opinion concluded that an attorney may include a description of their public service in a biography or resume so long as it is in the same style and prominence as the attorney's other positions and experience. However, public officials must still avoid using their position as a significant selling point in advertisements as this would likely qualify as the public official seeking to obtain financial gain by use of their official title (Note: WEC replaced the Government Accountability Board (GAB) on June 30, 2016. GAB also previously replaced the State Ethics Board. Currently, WEC oversees the administration of state government ethics in Wisconsin, and accordingly adopted the ethics opinions previously issued by GAB and WEC).[17]

2. A public official cannot solicit or accept from any person, directly or indirectly, anything of value if it could be reasonably expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local official.[18]
   - "Anything of value" includes money, property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not cover "hospitality" unrelated to government business.
   - A local public official is permitted to engage in outside employment.[19]
   - In interpreting a parallel statute applicable to state officials (Wis. Stat. § 19.45(3)), WEC interprets "expected to influence" in the following manner: "It would be unreasonable to expect a gift of not more than $25 to influence an individual's judgment. It would be unreasonable to expect a favor or service from an individual or from an organization without any special interest in the actions of a public body to influence an official affiliated with that body."[20]

Conflicts of Interests & Ethics

3. No local public official may give or withhold his or her vote or influence or refrain from taking official action with respect to any proposed or pending matter upon condition that any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to a candidate, a political party, or any committee registered under Ch. 11.[21]
4. No local public official may take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.[22]
   - In interpreting parallel state statute applicable to state officials (Wis. Stat. § 19.46(1)(a)), WEC issued a memorandum indicating that a state official may participate in an action "...even though the action will affect the official or an organization with which the official is associated..." as long as:
     - The official's action affects a whole class of similarly situated interests;
     - Neither the official's interest nor the interest of a business or organization with which the official is associated is significant when compared to all affected interests in the class; and
     - The effect of the official's actions on the interests of the official, or of the related business or organization, is neither significantly greater nor less than upon other members of the class.[23]
     - For example, the WEC advised that a state legislator who was also an attorney could vote on a joint resolution regarding a constitutional amendment that would prohibit the Supreme Court from assessing lawyers to pay for legal services for the indigent. WEC concluded that legislator's interest in the subject of the joint resolution is insignificant when compared to the entire class of 15,000 licensed Wisconsin lawyers– all of whom would be equally affected by the proposal.[24]
   - WEC has also advised:
     - If a matter before the board is reasonably likely to have more than a trivial, insignificant, or insubstantial financial impact on a supervisor, then the supervisor should abstain from discussion, deliberation, and votes on the matter.
     - If the matter before the board will have no effect or only a trivial, insignificant, or insubstantial financial effect on a supervisor, then the supervisor may participate.
     - If reasonable people cannot foresee the effect of a board of supervisors' action on a supervisor's financial interests, or disagree about whether the effect will be positive, negative, or will be substantial or insignificant, then the supervisor's financial interest is too speculative to deny the supervisor's participation in related discussion, deliberation, and votes. The supervisor may participate unless, in the supervisor's judgment, to do so would undermine public confidence in the decision or in government.[25]

5. No local public official may use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.[26]

Wis. Stat. § 19.59 does not prohibit a local public official from taking any action concerning the lawful payment of salaries, employee benefits, or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance.[27]

The application of the ethics statute to local officials creates problems in the insurance arena. For example, WEC analyzed the statute in the following manner in dealing with insurance issues:

- 2000 Wis. Eth. Bd. 02 – In the case of a county board supervisor selected as a member of an insurance company's board of directors by the company's organizer, the supervisor should not participate in county board consideration, discussion, or votes to award a contract to the company, or to change county policy to permit the purchase of services from the company.
- 2000 Wis. Eth. Bd. 04 – On the other hand, WEC advises that in the case of a local official who has been elected to serve on the board of directors of a municipal mutual insurance corporation by a government approved process, to represent the local government's interests on the board, Wis. Stat. § 19.59 does not bar the official from participating in the local government's consideration, discussion, or votes to award a contract to, or change government policy to permit the purchase of services from the corporation.

If a local public official violates the ethics code, criminal penalties could apply if the violation is found to be intentional. The penalty for intentionally violating Wis. Stat. § 19.59(1)(a), (b), or (c) is a fine of not less than $100 or more than $5,000; imprisonment of not more than one year in the county jail; or both.[28] Any person who intentionally violates Wis. Stat. § 19.59(1)(br) is guilty of a Class I felony punishable by a fine not to exceed $10,000 or imprisonment not to exceed three years and six months.

One sure way for an official to insulate him or herself from liability under the ethics statute is to take advantage of the mechanism in the statutes that allows for requests for advisory opinions. In short, an individual may request an advisory opinion, in writing, either personally or on behalf of an organization or governmental body pursuant to Wis. Stat. § 19.59(5)(a). Such request should be directed to the county ethics board, if there is one or, in the absence of a county ethics board, a county corporation counsel or attorney for a local governmental unit.

An official is presumed to have complied with Wis. Stat. § 19.59, or any ordinance enacted under Wis. Stat. § 19.59, when the official complies with an advisory opinion that the official received from a county ethics board, a county corporation counsel, or an attorney for a local governmental unit (assuming the material facts presented by the official are accurate).

Conflicts of Interests & Ethics

Pursuant to Wis. Stat. § 19.59(6), WEC must review (but is not required to respond to) opinion requests concerning the statutory local code of ethics submitted by certain requestors:

- Any county corporation counsel.
- Any attorney for a local governmental unit.
- Any "statewide association of local governmental units."

COUNTY ETHICS CODES (WIS. STAT. § 19.59(1M)-(4))

Any county, city, village, or town may enact an ordinance establishing a code of ethics for public officials, employees of the county or municipality, and candidates for county or municipal elective offices.

Any such ordinance must specify the positions to which it applies. The ordinance may apply to members of the immediate family of individuals who hold positions or who are candidates for positions to which the ordinance applies. An ethics ordinance may contain any of the following provisions:

- A requirement for local public officials, other employees of the county or municipality, and candidates for local public office to identify any of the economic interests specified in Wis. Stat. § 19.44.
- A provision directing the county or municipal clerk or board of election commissioners to omit the name of any candidate from an election ballot who fails to disclose his or her economic interests as required by the ordinance.
- A provision directing the county or municipal treasurer to withhold the payment of salaries or expenses from any local public official or other employee of the county or municipality who fails to disclose his or her economic interests as required by the ordinance.
- A provision granting administration and civil enforcement of the ordinance to an ethics board. The ethics board is appointed in the manner specified in the ordinance.
- Provisions prescribing ethical standards of conduct and prohibiting conflicts of interest on the part of local public officials and other employees of the county or municipality, or on the part of former local public officials or former employees of the county or municipality.
- A provision prescribing a forfeiture for violation of the ordinance in an amount not to exceed $1,000 for each offense. A minimum forfeiture not to exceed $100 for each offense may also be prescribed.

INCOMPATIBILITY OF PUBLIC OFFICES

COMMON LAW DOCTRINE THAT EXISTS INDEPENDENT OF ANY STATUTORY CONFLICT OF INTEREST.

Two offices or positions are incompatible if there are potential conflicts of interest between the duties of the offices or positions.

<u>General Tests for Incompatibility</u>

- If one of the offices or a position is subordinate to the duties of the other in one or more significant ways, such as being subject to the disciplinary, appointment, or removal power of the superior office

or position, or the superior office regulates the compensation of the other, then the two may be said to be incompatible.

- The mere physical inability of a person to perform the duties of both offices or the position and the office does not, of itself, have any bearing on incompatibility. Rather, incompatibility is determined based on the character of the offices, not the physical condition or ability of the individual holding the position and the office or the two offices.
- Where the existence of the second office precludes the continued existence of the first office or position, no incompatibility exists. For example, if several school districts were dissolved and consolidated into a newly-created district, a school board member of any of the dissolved districts could ordinarily become a school board member of the newly-formed school district.
- A situation that involves two different persons in two different positions does not raise questions of incompatibility of offices and positions (i.e., one spouse occupies an office or position and the other spouse assumes an apparently incompatible office or position). Although the incompatibility doctrine is not implicated, there may be serious potential conflicts of interest.[29]
- When an individual accepts an office that is incompatible with the one he or she presently holds, the consequences are severe. The individual vacates the first office by operation of law.[30]

Offices Found to be Incompatible

- County supervisor and county employee. Wis. Stat. § 59.10(4) provides that "[n]o county officer or employee is eligible for election or appointment to the office of supervisor, but a supervisor may also be a member of a committee, board or commission appointed by the county executive or county administrator or appointed or created by the county board, a town board, a mosquito control district, the common council of his or her city, the board of trustees of his or her village or the board of trustees of a county institution appointed under s. 46.18."
- County supervisor and county administrative coordinator.[31]
- Public office and a position. Conflict can exist between a public office and a position; for example, the office of alderperson was found to be incompatible with the position of residential appraiser in assessor's office.[32]
- County board member and county/city hospital board member.[33]
- Town clerk and town treasurer.[34]
- School board member and school district employee.[35]
- Town board member and sanitary district commission member.[36]
- Office of coroner and deputy coroner, and the position of city police officer.[37]

Offices Found to be Compatible

- Office of county supervisor and position of assistant state public defender.[38]
- Register of deeds and office of school board member.[39]
- Offices of county assessor and town supervisor.[40]

Conflicts of Interests & Ethics

- Village president and supervisory deputy sheriff.[41]
- School board member and chairperson of town board – probably compatible.[42]
- School board member and position as unpaid coach in the school district – likely compatible.[43]

Endnotes

1 *State v. Venema*, 2002 WI App 202, ¶ 13, 257 Wis. 2d 491, 650 N.W.2d 898.
2 Wis. Stat. § 946.13(2)(a).
3 OAG 42-87.
4 76 Op. Att'y. Gen. 278 (1987).
5 OAG 22-87.
6 75 Op. Att'y. Gen. 172 (1986).
7 *Venema*, 2002 WI App 202.
8 52 Op. Att'y. Gen. 367 (1963).
9 *Venema*, 2002 WI App at ¶ 11, n. 3; 76 Op. Att'y Gen. at 93.
10 76 Op. Att'y Gen. 90 (1987).
11 63 Op. Att'y. Gen. 44 (1974).
12 The statute excludes a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor.
13 Wis. Stat. § 19.59(1)(a).
14 Wis. Stat. § 19.42(7).
15 Wis. Stat. § 19.42(2).
16 Wis. Stat. § 19.56(3)(f)
17 2017 ETH 01.
18 Wis. Stat. § 19.59(1)(b).
19 *Id.*
20 The local ethics code for public officials does not include a provision parallel to Wis. Stat. § 19.56 allowing state elected officials to "retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting" related to a topic of legislative, administrative, executive or judicial processes or proposals.
21 Wis. Stat. § 19.59(1)(br).
22 Wis. Stat. § 19.59(1)(c)1.
23 See Wisconsin Ethics Board memorandum Private Interest in Official Action (November 1, 1989).
24 2008 GAB 02.
25 2007 GAB 09.
26 Wis. Stat. § 19.59(1)(c)2.
27 Wis. Stat. 19.59(1)(d).
28 Wis. Stat. § 19.58(1)(a).
29 See *Otradovec v. City of Green Bay*, 118 Wis. 2d 393, 347 N.W.2d 614 (Ct. App. 1984); 58 Op. Att'y. Gen. 247 (1969); 74 Op. Att'y. Gen. 50 (1985); 76 Op. Att'y. Gen. 156 (1987).
30 *State v. Jones*, 130 Wis. 572, 110 N.W. 431 (1907); but *see also Otradovec v. City of Green Bay*, 118 Wis. 2d 393, 347 N.W.2d 614 (Ct. App. 1984)(the public officer can choose which position to keep).
31 OAG 01-11.
32 *Otradovec v. City of Green Bay*, 118 Wis. 2d 393, 347 N.W. 2d 614 (Ct. App. 1984).
33 66 Op. Att'y. Gen. 145 (1977).
34 68 Op. Att'y. Gen. 393 (1970).
35 Unpublished Op. Att'y. Gen. May 31, 1985; See also *Tarpo v. Bowman Public School District No. 1*, 232 N.W.2d 67 (N.D. 1975); *Vistocky v. City Council of City of Garfield*, 273 A. 2d 597 (1971).
36 69 Op. Att'y. Gen. 108 (1980).
37 78 Op. Att'y. Gen 178 (1989).
38 75 Op. Att'y. Gen. 178 (1986).
39 Unpublished Op. Att'y. Gen. (1977).
40 63 Op. Att'y. Gen. 599 (1974).
41 76 Op. Att'y. Gen. 156 (1974).
42 74 Op. Att'y. Gen. 50 (1985).
43 2006 Wis. Eth. Bd. 01.

Public Bidding Requirements

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Counties, under certain circumstances, are required to put contracts out for bid and award such contracts to the lowest responsible bidder. What follows is an analysis of the statutory bidding requirements for counties.

Enactment of bidding statutes such as Wis. Stat. § 66.0901 (bidding procedure applicable to all political subdivisions) and Wis. Stat. § 59.52 (29) encourage the public policy goals of legitimate competition; guarding against favoritism, improvidence, extravagance, fraud and corruption; and securing the best work or supplies at the lowest price practicable.

There are four classifications of contracts under Wis. Stat. § 59.52(29). The first class consists of those "public work" contracts having a value of less than $5,000. Contracts falling within this classification are not required to be advertised or let in accordance with any competitive bidding structure. The second class consists of those contracts that are not for the provision of "public work." These contracts also do not need to be advertised or let in accordance with any competitive bidding structure under statute. The third class consists of those "public work" contracts having a value between $5,000 and $25,000. While it is not required that these contracts be let to the lowest responsible bidder, the statute mandates that a county publish a class 1 notice prior to awarding the contract or, in the alternative, award the contract to a qualified bidder under Wis. Stat. § 66.0901. The fourth and final class of contracts consists of those "public work" contracts having a value in excess of $25,000.[1] These contracts must be let to the "lowest responsible bidder" in accordance with Wis. Stat. § 66.0901 unless the county board approves by three-fourths vote to have the county perform the public work directly without submitting the same for bids.

The Wisconsin Supreme Court has stated that "the determination of the question of who is the lowest responsible bidder does not rest in the exercise of an arbitrary and unlimited discretion, but upon a bona fide judgment, based upon facts tending to support the determination."[2] In fact, a bidder may ask the court to issue an injunction if the reviewing court determines that the bidding authority acted in an arbitrary or unreasonable manner in deciding to award the contract to one other than the lowest monetary bidder.[3] An unsuccessful bidder could pursue injunctive relief and recover its reasonable and necessary expenditures in preparing its bid, plus the costs of obtaining the bonds required by the specifications, but not its loss of profit.[4]

Notably, Wis. Stat. § 59.52(29)(a), which ordinarily requires competitive bidding on county public work projects, "does not apply to highway contracts which committee or the county highway commissioner is authorized by law to let or make."[5] Instead, Wis. Stat. §§ 83.03 and 83.04 apply to the advertisement of county highway contracts.

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Wis. Stat. § 83.03 authorizes a county board to construct, improve, or repair any highway or bridge in the county. Wis. Stat. § 83.04 requires that all highway improvements made by the county highway committee need be by contract, unless the committee determines that some other method would better serve the public interest. The manner of advertising for bids and the forms of bids, contracts, and bonds for this class of contracts must be substantially similar to the process used by the Wisconsin Department of Transportation (DOT).[6]

If it is deemed inadvisable to let a contract for highway construction, the county highway committee may direct the county highway commissioner to proceed with the construction as non-contract work, and the commissioner may, under the supervision of the committee, employ and purchase the necessary labor and materials.[7]

DEFINITION OF PUBLIC WORK, MATERIALS AND SUPPLIES

The Wisconsin Supreme Court has held that if a contract falls outside statutory restrictions related to how a contract must be let, a county is free to let its contracts without notice and competitive bidding restraints.[8] This means that if a contract is unrelated to the provision of supplies or materials and is not for the construction, repair, remodeling, or improvement of any public work, a county does not need to follow a competitive bidding process unless the county, by ordinance, requires a competitive bidding process.

In addition, the Wisconsin Court of Appeals has held that contracts for the purchase of "equipment" are not included within the definition of those items that must be let by competitive bid.[9] In reaching this conclusion, the Court of Appeals agreed with the attorney general's long-held opinion that items classified as equipment, as opposed to supplies or materials, are exempt from the statutory bidding requirement even though a municipality may contract for hundreds of thousands of dollars of equipment without competitive bid.[10] The first part of any analysis of a county's obligation to let a contract by competitive bid requires a determination of whether the contract calls for the provision of "equipment," "materials," or "supplies."

The attorney general's office opined that the term "supplies" is "ordinarily considered to mean something that is used or consumed or which is capable of such use."[11] The term "materials" is "usually understood to mean something that enters into or forms part of a finished structure or which is capable of such use."[12]

Given this definitional framework, the attorney general found that the statutory bidding requirements are inapplicable to contracts involving the purchase of a movable diesel engine,[13] the purchase of police cars,[14] or the purchase of FM radio equipment.[15]

In addition, Wisconsin courts have consistently held that the procurement of services requiring professional or technical expertise are not subject to the bidding statutes.[16] For example, counties contracting for the design and implementation of computer systems, programs, and applications are not required to let those contracts according to the competitive bidding statute as these types of contracts clearly involve services requiring technical and professional expertise.

ACQUISITION OR TRANSFER OF REAL PROPERTY

Questions often arise concerning the application of the bidding statute to contracts for the acquisition or transfer of real property. Unlike public work contracts, contracts for the acquisition or transfer of property are not subject to the competitive bidding requirements in Wis. Stat. § 59.52(29). Pursuant to Wis. Stat. § 59.52(6), a county has the authority to acquire, lease, or rent property without regard to the bidding requirements in Wis. Stat. § 59.52(29).[17] In addition, the board may direct the county clerk [18] to "lease, sell or convey or contract to sell or convey any county property, not donated and required to be held for a special purpose, on terms that the board approves" without regard to competitive bidding requirements.[19]

However, it is important to remember that many counties have enacted ordinances regarding bidding on certain contracts. Such ordinances are separate and distinct from the requirements set forth in Wis. Stat. § 59.52(29) and should be consulted prior to making a final determination as to the bidding requirements in a particular situation.[20]

Other than local ordinances, the only constraint upon a county's authority to enter into contracts involving the acquisition or disposition of property is that a county must exercise "reasonable business judgment" when entering into the contract.[21] In determining whether a county has exercised "reasonable business judgment," courts have consistently held that because a county board is a legislative body directly responsible to its electorate, a court will not question a board's exercise of discretion "except for an abuse equivalent to fraud."[22]

Therefore, while a county board is required to exercise "reasonable business judgment" with respect to purchasing or leasing property, if the board has complied with applicable statutes, ordinances and rules, a court will, in all but the most egregious of cases, defer to the board's exercise of discretion.

COOPERATIVE BIDDING AMONG COUNTIES, THE STATE, AND OTHER MUNICIPALITIES

In situations where the contract requires adherence to the procedural mandate of Wis. Stat. § 66.0901, a county must comply with that statute. However, in situations where Wis. Stat. § 66.0901 is inapplicable, Wis. Stat. §§ 16.73 and 66.0301 encourage a cooperative bid-sharing system.[23]

Read in conjunction with one another, these two statutes provide a sound legal basis for counties to cooperate with one another in making purchasing decisions. Wis. Stat. § 66.0301 demonstrates a strong legislative presumption in favor of a cooperative effort in making purchasing decisions. Moreover, Wis. Stat. § 16.73(1) represents an explicit statutory authorization to share purchasing responsibilities for materials that are not subject to the requirements of Wis. Stat. § 66.0901.

USING A REVERSE AUCTION TO LET CONTRACTS

A county may also consider using an online reverse auction system to let contracts. A "reverse auction" is a procedure in which a county seeking to purchase supplies or services advertises the maximum price

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that it is willing to pay for the supply or service. Vendors then are instructed to offer bids at or below the price listed by the county, with the county authorized to select a winning bid from those submitted.

The reverse auction system can be used by a county if the contract is for the provision of: (1) equipment;[24] (2) public work and public work-related materials or supplies, the value of which is less than $5,000; [25] or (3) public work and public work-related materials or supplies, the value of which is between $5,000 and $25,000 if the county has given a class 1 notice of the reverse auction or the person to whom the contract is awarded is a qualified bidder under Wis. Stat. § 66.0901. For a public works contract with a value that exceeds $25,000, a county is subject to the competitive bidding requirements in Wis. Stat. § 59.52(29).

APPLICATION OF THE PUBLIC PURPOSE DOCTRINE

When reviewing a county's authority to enter into a contract, whether through a competitive bidding process or otherwise, it is necessary to consider the impact of the public purpose doctrine. The Wisconsin Supreme Court explained the public purpose doctrine as follows:

> *The course or usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, and the objects and purposes which have been considered necessary for the support and proper use of the government are all material considerations as well as the rule that to sustain a public purpose the advantage to the public must be direct and not merely indirect or remote.*[26]

Therefore, while a county may not be required to follow the bidding statute in a particular situation, it still must ensure that its expenditure passes constitutional muster by having a public purpose.

Endnotes

1 See *Blum v. Hillsboro*, 49 Wis. 2d 667, 671, 183 N.W. 2d 47 (1971) citing McQuillin, Municipal Corporations, 29.29.
2 *Aqua-Tech v. Como Lake Protect. & Rehab. Dist.*, 71 Wis.2d 541, 549, 239 N.W.2d 25 (1976).
3 *Id.*, 71 Wis.2d at 551-52.
4 *Id.* at 553-54.
5 Wis. Stat § 59.52(29)(a); *see also* OAG 5-09.
6 Wis. Stat. §83.04.
7 *Id.*
8 *Cullen v. Rock County*, 244 Wis. 237, 12 N.W.2d 38 (1943). Subsequently, in *Menzl v. City of Milwaukee*, 32 Wis. 2d 266, 145 N.W.2d 198 (1966), the Court reaffirmed this position by holding that "[i]f the contract in question is not subject to the provisions of the bid section, the city is not bound by that type of procedure and . . . may contract on the basis of reasonable business judgment with one who is not the low bidder." *Id.* (citing *Cullen*).
9 *Joyce v. County of Dunn*, 192 Wis. 2d 699, 531 N.W.2d 628 (Ct. App. 1995).
10 *Id.*
11 OAG 86-77.
12 *Id.*
13 OAG 55-77.
14 OAG 86-77.
15 OAG 35-88.
16 *Aqua-Tech*, *supra*, 71 Wis.2d at 546; OAG 43-87.
17 Wis. Stat. § 59.52(6)(a) states that a county board may "acquire, lease or rent property, real and personal, for public uses or purposes of any nature."
18 See Wis. Stat. 59.17(2)(b)3. for special rules surrounding disposition of property in Milwaukee County.

19 Wis. Stat. § 59.52(6)(c). The applicability of the bidding statutes when leasing property was addressed in *Kranjec v. City of West Allis*, 267 Wis. 430, 66 N.W. 2d 178 (1954). The Supreme Court upheld the dismissal of a claim that alleged the City of West Allis was without authority to lease city property without first complying with the competitive bidding process. In its decision, the Court stated:

Our attention is not directed to any statute that requires the city to lease property by the competitive bid method, such as the statute prescribes for contracts for public works. Municipalities have the same right, unless restricted by statute, to convey property as they have to acquire property, and such matters are within the reasonable discretion of the proper municipal authorities.

Id. at 434. Implicit in the Court's decision is the recognition that the statutes regarding competitive bidding do not cover the acquisition or transfer of real property.

20 Importantly, counties may not enact ordinances or other measures requiring a prevailing wage rate for workers on projects of public works or on publicly funded private construction projects. Wis. Stat. § 66.0903(1m)(c). Counties also may not use a bidding method that gives preference to local bidders for county public works projects (unless required to secure federal aid). Wis. Stat. § 66.0901(1m)(b).

21 *Cullen v. Rock County, supra*. at 240.

22 *Joyce, supra*, 192 Wis. 2d at 709.

23 Wis. Stat. § 16.73(1) states (in relevant part):

The [Department of Administration] may enter into an agreement with a municipality or group of municipalities, and municipalities may enter into agreements with each other, under which any of the parties may agree to participate in, administer, sponsor or conduct purchasing transactions under a joint contract for the purchase of materials, supplies, equipment, permanent personal property, miscellaneous capital or contractual services. This subsection does not apply to construction contracts that are subject to s. 16.855 or 66.0901.

Similarly, Wis. Stat. § 66.0301(2) provides as follows:

Subject to s. 59.794 (2) [limiting action by Milwaukee County], and in addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. … This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state.

24 Contracts for equipment and contracts having a value of less than $5,000 are not regulated, as discussed above. Therefore, there is no statutory impediment to implementing a reverse auction system for these two types of contracts.

25 *Id*.

26 *State ex rel. Wisconsin Dev. Authority v. Damman*, 228 Wis. 147, 280 N.W. 698 (1938).

A Few FAQs on Parliamentary Procedure

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Newly elected county board supervisors typically have a desire to make changes in some aspect of county government. Many run for office on a platform to make changes. To do so requires an understanding of the principles of deliberation in a public body.

Most county boards have adopted the latest edition of *Robert's Rules of Order, Newly Revised,* 11th Edition (RONR) as their parliamentary authority. RONR spells out the rules of engagement so that debate, discussion, and decision-making are transacted in an orderly way – balancing the protection of the rights of individual members with the rights of the group. However, county boards also have the authority to create their own procedural rules that take precedence over RONR.

To the uninitiated, RONR can seem complicated and arcane, conjuring images of men in long, black robes and powdered wigs, rigidly restricting participation to obstruct their opponents. The spirit of parliamentary procedure is just the opposite. Used as intended, parliamentary procedure enhances the democratic decision-making process by helping county boards fairly weigh and consider the ideas and opinions of all members.

Nevertheless, if you are going to play the game, you had better know the rules. To that end, here are answers to some of the frequently asked questions covering the basics of parliamentary procedure.

WHAT ARE THE PROCEDURES FOR GETTING A PROPOSAL CONSIDERED BY THE GOVERNMENTAL BODY?

Step 1. *Member obtains the floor.* Depending on the formality of the group, this can be done in a variety of ways. In large, formal groups, the member stands when no one else has the floor, addresses the chair, receives recognition from the chair, and then speaks in debate or makes a motion. In a smaller, less formal group, such as a committee, the member simply raises his/her hand and begins to speak once recognized by the chair.

Step 2. *Member makes a motion*. The member states the proposal for the group to take a specific action or particular stance.

Note: The maker of the motion should agree with it as RONR prohibits the maker of the motion from speaking against it. On the other hand, the maker of the motion may later vote against it.

Step 3. *Another member seconds the motion*. Another member who deems the motion worthy of consideration says – without obtaining the floor – "I second the motion," "I second it," or simply, "Second."

In most circumstances, a motion must be seconded in order to advance. If a motion does not receive a second, the chair should not put the motion before the group for discussion or action.

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The purpose of the second is to make sure that at least two members think the issue is important enough to bring before the body. A member may second the motion for discussion purposes only. In fact, a member may disagree with the proposal but seconds the motion so that the body will be on record as having formally opposed it.

Rarely, a group gets carried away, forgets to second the motion, and inappropriately begins to discuss the motion. In these circumstances, the presiding officer should interrupt and remind the group that the motion has not been seconded. Nevertheless, according to RONR, if a motion does not receive a formal second, but members of the body begin to discuss the merits of the motion, the motion has, in effect, been seconded. Subsequent action on the motion – debate, voting, etc. – is in order.

Step 4. *Chair states the question on the motion*. Once the motion has been made and seconded, the chair restates the motion. Usually, the restatement follows this form, "It has been moved and seconded that…" By restating the motion, the chair formally places the motion before the body and assures that everyone heard the same proposal and can, thereby, keep debate focused on the motion at hand.

Here lies a turning point in the proceedings. Up until the time that the chair restates the motion, the maker of the motion owns the motion and may change it or withdraw it without the consent of the body. Once the motion has been restated by the chair, it belongs to the group and any modifications to the motion, including withdrawal, must have the consent of the body.

Step 5. *Members debate*. It is during this step of the process that the members of the body may undertake a host of possible actions, including discussion of the merits of the proposal, changing the wording of the motion, delaying action on the proposal, and referring the motion to a committee.

The maker of the motion has the right to be the first to address the body. Thereafter, members obtain the floor in the usual way. RONR limits speeches to no more than 10 minutes, with members permitted to speak no more than twice on the same motion in the same day. While each member has the right to speak twice, no member should be allowed to speak a second time when a member who has not yet spoken desires the floor.

During debate members should:

- Address comments to the chair, not toward another member.
- Refrain from referring to the motives of other members.
- Avoid side conversations; speak only when they have the floor.
- Limit their comments to those pertinent to the issue under discussion.

Step 6. *Putting the motion to a vote*. The chair does not have unilateral authority to end debate. However, the chair should pay close attention to the debate and when it is clear that discussion is finished, ask, "Are you ready for the question?" or "Are you ready to vote on the motion?" If any member seeks to continue debate and discussion, the chair should permit it.

Alternatively, a member may make a motion to close debate or "Move the previous question." Because this motion limits members' rights, it requires a supermajority vote of two-thirds to pass.

Step 7. *Members vote*. Once it has been determined that the body is prepared to vote, the chair is ready to put the question to a vote. At this time, the chair should restate the exact wording of the motion that the body will be deciding upon. It is sound practice for the chair to state at this time the effect of an "aye" vote and of a "no" vote.

The presiding officer then tells the members what method of voting will be used – voice vote or counted vote are most typical. (Note: A recorded vote is often required. Most local government decisions should be made by a counted vote. Substantive decisions, such as ordinances, budgets, and resolutions, call for visible, counted votes.)

The chair first asks for those in the affirmative, "aye," and then the negative, "no," responses. Counted votes may be taken by members raising their hands, standing, roll call, signed ballots, or machine. The chair should always call for the negative vote no matter how overwhelming the result may seem. It should be noted that members can change their vote up until the time that the vote is announced by the chair.

Step 8. *Chair announces results.* The chairperson subsequently announces the results of the vote – if known, the number of votes on each side followed by whether the motion passes or fails. The announcement should also include the effect of the vote – "We will purchase the equipment," or "We will not create the proposed new position."

WHAT IS THE PROPER WAY TO MAKE A MOTION?

The proper way to make a motion is, "I move that..." followed by the proposed action. Be precise and specific. To ensure clarity, it is a good idea to write a motion prior to presenting it. The note can then be passed on to the meeting chair.

In most situations, avoid making "negative" motions, a motion **not** to do something. Because motions usually propose that the group take action, whenever possible, state the motion in the affirmative. Motions proposing that the group not take a particular action require that members vote "yes" to oppose taking an action they disagree with. This often leads to confusion.

Above all, avoid the use of the phrase "so moved." While it may seem like an innocent shortcut, making a motion by merely stating "so moved" can create much confusion. Typically, this shortcut is taken in a committee setting after there has been some debate or discussion on a topic. One member proposes an action that the committee should take and another member states "so moved," the motion is seconded, and the chairperson takes the vote. It may not be until the minutes are distributed at the following meeting that the members determine that they had each interpreted the motion in different ways. Do not let the secretary translate your motion for you. Be specific and clear the first time.

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MAY THE PRESIDING OFFICER VOTE?

According to RONR, the presiding officer, as a member of the body:

> *…has the same voting right as any other member. Except in a small board or committee, however-unless the vote is secret-the chair protects his impartial position by exercising his voting right only when his vote will affect the outcome, in which case he can either vote and thereby change the result, or he can abstain.*

RONR further states that in small boards and committees where there are not more than about a dozen members present:

- *The Chairman need not rise while putting questions to a vote.*
- *If the Chairman is a member, he may, without leaving the chair, speak in informal discussions and debate, and vote on all questions.*

The chairperson may not vote twice – once as a member of the board and then again as the chair. Each person, no matter their role on the board or committee, is entitled to only one vote.

WHAT ARE SOME FREQUENT PROCEDURAL ERRORS TO AVOID?

Adoption of informational reports. Reports from officers, department heads, committees, boards, or commissions should not be approved or adopted. Adopting a report creates an expectation that the recommendations included in the report will be enacted. This is usually not the body's intent. To avoid confusion, the presiding officer simply acknowledges the report and thanks the presenter.

"So moved." The use of this phrase, addressed earlier, potentially creates confusion and the adoption of motions with unintended consequences.

Calling the question. A member, tired of debate, rises and states, "Madam Chair, I call the question" and expects debate to end immediately. RONR gives no such power to any one individual. A member who "calls the question" does not simply end debate and require that a vote be taken instantly. A motion "calling the question" should be treated as a motion to end debate or "move the previous question." The motion to end debate requires a second and a two-thirds majority vote to pass. Once passed, the chair must put the motion to a vote.

WHAT IS THE PROPER PROCEDURE FOR AMENDING A MOTION?

At times, a motion is made that is not acceptable in its current form. The body may then amend – alter the wording of – the motion that is already on the floor to make it satisfactory to a majority. The motion to amend takes the form, "I move to amend the motion by…" The member then has three choices: 1) inserting or adding words; 2) striking (deleting) consecutive words; or 3) striking and inserting. In making the motion to amend, the member specifies the location for the deletions and/or insertions. The amendment must relate to the subject of the motion it is amending.

A motion to amend may be amended. In other words, a member may move to amend a primary amendment while it is pending with a secondary amendment. Primary and secondary amendments each require a second, as well as a majority vote to pass. A motion to amend a secondary amendment is out of order.

MAY A GOVERNMENTAL BODY HAVE ITS OWN RULES THAT CONFLICT WITH *ROBERT'S RULES OF ORDER*?

Governmental bodies are encouraged to have their own rules that specifically address certain situations. Local units of government often adopt their own rules related to citizen participation during meetings of the governmental body, participation in debate, absences, procedures for putting items on the agenda, election of officers, and who presides if the chair is absent. Of course, rules adopted by the local unit may not conflict with any state or local law.

In any situation where business is brought before the county board or a committee, it is critical that the chairperson ensure that the business has been properly noticed under Wisconsin's Open Meetings Law or that an exception to the Open Meetings Law applies. Federal and state laws take precedence over local rules and local rules take precedence over RONR.

HOW DO I KNOW IF A MOTION IS "IN ORDER?"

This is perhaps the most complicated of the questions. Nevertheless, if you understand the parliamentary concept of *precedence* you are well on your way to understanding when motions are "in order." (A chart showing the rank of privileged and subsidiary motions can be found in Appendix II on page 235, as well as in most reference books on RONR)

Only one main motion at a time is allowed on the floor. Any main motion should be ruled out of order if it is made while another main motion is pending. Motions have rank and a motion is not in order if another motion of higher rank is pending. Main motions are lowest in rank.

Subsidiary motions relate to the treatment of main motions and other motions. Subsidiary motions are *applied to another motion and, if adopted, do something to the other motion*. They are in order when a main motion is pending. The seven subsidiary motions are ranked among themselves. From highest rank to lowest rank, they are as follows:

- "Lay on the table"
- "Previous question"
- "Limit or extend limits of debate"
- "Postpone to a certain time"
- "Commit (or Refer)"
- "Amend"
- "Postpone indefinitely"

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Privileged motions rank higher than any subsidiary motion or main motion and, as such, are in order when those are pending. Privileged motions are not applied to other motions; rather, they relate to the meeting itself. The five privileged motions are ranked among themselves. From highest rank to lowest rank, they are as follows:

- "Fix the time at which to adjourn"
- "Adjourn"
- "Recess"
- "Raise a question of privilege"
- "Call for the orders of the day"

Incidental motions relate to the conduct of the meeting rather than to other motions. In general, an incidental motion is in order when it relates to the business at hand. Incidental motions are not ranked as are subsidiary and privileged motions. Some common incidental motions are as follows:

- "Point of order"
- "Appeal"
- "Suspend the rules"
- "Division of a question"
- "Withdraw a motion"
- "Parliamentary inquiry"
- "Point of information"

Members chairing meetings should check the rules for each motion. Rules include whether the motion requires a second, is debatable, is amendable, and a vote is required for passage.

HOW SHOULD THE MOTIONS BE HANDLED?

Assume for the moment that the chair has handled his job correctly and there are four motions currently pending – the main motion, a primary amendment, a secondary amendment, and a motion to refer to committee. For example, a main motion is pending to "purchase a backhoe for the parks department." A motion is then made to amend the main motion by "adding the words 'at a cost not to exceed $75,000' after the word 'purchase.'" While discussing the motion to amend, another member moves to make a secondary amendment (amending the amendment) by "striking $75,000 and inserting $150,000." At this point another member moves to "refer this motion to the Parks and Recreation Committee."

All of these motions are in order because each succeeding motion is of higher rank than the previous. The body will then dispose of these motions in reverse order. Think of these motions as nested cups, one inside another. The most recently added cup must be dealt with first.

In the example, the body will vote first on the motion to refer to the Parks and Recreation Committee. If the motion to refer fails, the vote on the secondary amendment is taken up, followed by the amendment to the main motion, and finally the main motion.

The vote on each subsequent motion incorporates the changes enacted by the subsidiary motions. If the secondary amendment passes then the decision on the primary amendment becomes a vote on whether to "add the words 'at a cost not to exceed $150,000' after the word purchase." Assuming this primary amendment passes, the motion before the body is to "purchase at a cost not to exceed $150,000 a backhoe for the parks department."

IN WHAT WAYS CAN THE BODY REVISIT A DECISION?

There are four principle ways that a body can change its mind – rescind, renew, reconsider, and amend something previously adopted. Keep in mind that the Wisconsin Open Meetings Law requires that proper notice must be issued in order to address these main motions. Any action taken to reverse a decision previously adopted does not release the body from any contractual agreements entered into as a result of the original decision.

- Rescind. The motion to rescind nullifies resolutions, policies, and ordinances previously adopted by the body.
- Renew. A motion that failed to pass may be brought up by any member at subsequent meetings of the body. The motion is said to be renewed. RONR allows for motions to come up at subsequent sessions "unless it has become absurd."
- Reconsider. The motion to reconsider is often misunderstood and misused. Members are advised to use the motion to reconsider only when new information presents itself during the course of the same meeting at which the original proposal was acted upon. At subsequent meetings, renew, rescind, and amend something previously adopted are more appropriate. The motion to reconsider may be made only when no other motion is pending before the body. The maker of the motion to reconsider must be a member who voted on the prevailing side of the motion under question.
- Amend something previously adopted. This motion changes a previously adopted motion. Do not confuse this motion with the *subsidiary motion* to *amend*. The motion to amend something previously adopted is handled as a main motion.

HOW CAN A BODY DELAY OR AVOID TAKING ACTION ON A MOTION?

There are three motions that delay action on a pending motion – postpone indefinitely, postpone to a certain time, and table or lay on the table. There is also a fourth, very simple, yet seldom used way to delay or avoid action – withdrawing the motion.

- Postpone indefinitely. Members should use this motion only when their intention is to kill the motion under consideration. Passage of the motion to postpone indefinitely equates to voting the measure down without having to vote against the measure.

Parliamentary Procedure

- Postpone to a certain time. There are occasions when the body needs more information or more time to make a decision. The intent is not to kill the motion, but rather to make the decision when more information is available or the right people are present. The motion should include when the body will address the proposal under consideration. The motion to postpone to a certain time may merit the status of most underemployed parliamentary motion. This is the motion that should be used when members want to make a decision about an issue but need more time before deciding. Many boards use the motion to table (more properly, "lay on the table") when they should be using the motion to postpone to a certain time. The motion to postpone is not proper unless it indicates a specific date or event, e.g., the next board meeting.
- Lay on the table. The motion to lay on the table is properly used only when urgent business presents itself or when something else needs to be addressed while a main motion is on the floor. The intention is to set the discussion of the current motion aside temporarily and resume the debate during the current or next meeting. A motion to table is in order when the work of the group is interrupted. It is not the proper motion to buy time for the body. To resume debate on a motion that has been laid on the table requires a motion to remove the motion from the table. The motion to remove from the table can be made, subject to the Open Meetings Law, when no motion is on the floor during the current or subsequent meeting.
- Withdrawing the motion. Remember that once a motion has been made, seconded, and restated by the chair, it belongs to the body, therefore a motion to withdraw a motion would be subject to a majority vote of the body.

WHAT ARE THE MOST COMMON PARLIAMENTARY ERRORS COMMITTED BY MEMBERS OF GOVERNMENTAL BODIES?

- The motion to "table" when the intention is to "postpone to a certain time."
- The use of the phrase "so moved" when the proposal is something more than a routine matter, such as approving the minutes or adopting the agenda.
- The assumption that debate and discussion must end simply because one member states, "I call the question."

ARE THE RULES THE SAME FOR COMMITTEES OR SMALLER GROUPS?

- Understandably, the rules are less formal for committees and smaller groups. RONR describes a smaller group as one that includes up to "about a dozen members."
- Members may raise a hand instead of standing when seeking to obtain the floor and may remain seated during debate and discussion.
- Members may speak more than twice on the same motion.

- Informal discussion is permitted before a motion is pending. The reality is that in most committee meetings members address an issue by discussing it first. During the course of debate and discussion, a solution or proposal to address the issue arises. This proposal, then, becomes the basis for a motion.
- The chair need not rise when putting a motion to a vote.
- The chair may, without leaving the chair, speak in informal discussions and in debate and vote on all questions.

FOR MORE INFORMATION

1. *Robert's Rules of Order, Newly Revised,* 11th Edition.
2. *Robert's Rules of Order, Newly Revised, In Brief,* 2nd Edition, 2011, Da Capo Press. The only authorized concise guide to *Robert's Rules of Order.*

ISSUE FOCUS
Participation in Meetings via Teleconference

Dan Hill, Local Government Specialist, UW-Extension Local Government Center (retired)

As communication technology advances and becomes more economical and accessible, local government officials should understand the appropriate use of telecommunications for their participation in meetings of local governmental bodies. Conducting meetings electronically – via phone conference, webinar, or videoconference – has many advantages. Participation is convenient, it allows for participation by those who otherwise could not attend, scheduling is easier, it saves money, and the meeting may be archived with the press of a button.

Electronic meetings can present challenges for participants, however. Technical problems could occur during the meeting and limit meaningful participation. Training may be needed to enable all members to make proper use of the technology. Chairing an electronic meeting requires different skills than those needed in a face-to-face meeting. Key messages that are often communicated through body language and voice intonation are lost during an electronic meeting, increasing the likelihood for miscommunication. Finally, participants in electronic meetings miss out on the bonding and relationship building that occurs during meetings when everyone is physically present.

WISCONSIN OPEN MEETINGS LAW IMPLICATIONS

Beyond the advantages and disadvantages of electronic meetings, public officials must also understand the implications of Wisconsin's Open Meetings Law on participation in meetings of governmental bodies via electronic media. The spirit and intent of the Open Meetings Law is captured in its first two paragraphs:

> *19.81(1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.*
>
> *19.81(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.*[1]

ATTORNEY GENERAL'S OPINIONS

As long ago as 1980, the Wisconsin attorney general issued an opinion stating that teleconference calls are acceptable; though not the most desirable way to conduct a meeting of a governmental body; and, should be used sparingly, while keeping in mind the intent of the Open Meetings Law.[2] The opinion makes several critical points.

Teleconference Meetings

The fact that members of a governmental body participating in a conference call are not present together in the same room does not mean that they are not convened. The attorney general notes that to argue otherwise would allow members of a governmental body to circumvent the law merely by conducting their business via any number of electronic media.

The opinion also states that if the public and the media can effectively monitor the proceedings, a teleconference may then be considered to provide reasonable access. What is important here is that the public and media have the same access to the discussion as the members of the governmental body who are participating in the meeting. A meeting conducted via electronic equipment that does not allow for the public and the media to effectively monitor the proceedings is not in compliance with the law.

The attorney general identifies a number of specific kinds of meetings that would be inappropriate for teleconferences. The list includes: hearings that require public input; settings where seeing the demeanor or body language of someone giving testimony might be important; and when complex plans, drawings, and charts are displayed and explained.

This 1980 opinion also cites an earlier attorney general opinion,[3] in which the attorney general provides this broad caution: *The test to be utilized is whether the meeting place is "reasonably accessible," and that is a factual question to be determined in each case.*

Interestingly, the opinion notes that electronic meetings that are properly conducted have the potential to make meetings *more* accessible to the public than the traditional meeting held in a single location where members of the governmental body are physically present. For example, this could be accomplished if the meeting were conducted with multiple public listening sites.

GUIDANCE FOR LOCAL GOVERNMENT

Of course, in 1980 the attorney general could not have envisioned the enormous advances in videoconferencing technology. The opinion only referred to meetings conducted via audio teleconference. Nevertheless, it seems clear that no matter what technology they employ, local units of government should use electronic means only sparingly to conduct meetings, and only when the technology does not interfere with the public's right to effectively monitor the proceedings. Local government bodies who choose to meet via electronic technology should keep these points in mind.

- Need for a Special Local Rule

  Units of government anticipating the need to meet electronically should adopt a local rule that authorizes the body and its committees to conduct meetings electronically. Most local units of government in Wisconsin have adopted RONR as their parliamentary authority. RONR does not authorize electronic meetings unless they are authorized in the bylaws,[4] thus the need for the unit of government to adopt its own local rule.

  If a governmental body adopts local rules authorizing electronic participation in meetings, the body should also consider including rules that address member participation. (Note: There is no

statute that allows a member to *demand* the right to participate electronically. It is a request subject to established local rules.) Local rules might include the following:

- How far in advance of the meeting must a request be made? How will the governmental body respond to a request of a member(s) to participate electronically in a meeting? Who responds to the request – the chair, the clerk?
- The criteria to be used to allow electronic participation. Only to be used to establish a quorum? Only one member of the body? Only emergency/special situations, or is a member who spends winter months in Arizona allowed to participate monthly?
- Any limits on electronic participation.

❑ Limits on Who Connects Electronically

If all members of a governmental body are in separate locations and attend a meeting via speaker phone, it is hard to imagine that a citizen attending the meeting would be able to truly monitor which governmental body member was speaking and how each member voted on an issue of concern to that citizen. In this example, one could question whether the meeting was reasonably accessible to members of the public and whether the public had the fullest and most complete information regarding the affairs of government.

If only one member of the governmental body calls into the meeting and the remaining members are physically located in the same room communicating with the remote member via a speaker phone, the public could more easily monitor the proceedings. It would be clear to all attending who was speaking on the other end of the conference line. In this scenario, it is more likely that the public would have reasonable access to the proceedings.

❑ Meeting Management

- *Need for a Physical Meeting Location.* When a meeting will be held electronically, a central meeting place must also be identified where members of the governmental body and the public may gather.
- *Simultaneous Participation.* The format chosen for the electronic meeting should provide for communication by all of the members at the same time, just as though all the members were present in the same room.
- *Obtaining the Floor.* For small boards and committees meeting face-to-face in a single location, obtaining permission to address the body rarely becomes an issue. Members rely on body language and other cues to note when another member wants to speak and when it is appropriate to speak. These cues are not apparent during electronic meetings, so the presiding officer should let the members know what they should do to obtain the floor.
- *Quorum.* Business cannot be conducted during a meeting of a local governmental body unless a quorum is present. The presiding officer will need to identify ways to assure that a quorum is achieved and maintained throughout the meeting.

Teleconference Meetings

- *Voting.* Voice votes, the most common method of voting among local units of government in Wisconsin, can be confusing when taken during a teleconference meeting. It is nearly impossible to determine if a quorum has voted. It is also difficult to determine how many votes were in favor of the motion and the number opposed. When meeting electronically, the preferred method of voting, albeit a bit slower, is the roll call vote.
- *Closed Sessions.* Closed sessions present another layer of challenges. Officials who meet electronically and need to move into closed session will need to have procedures in place to ensure that unwelcome guests cannot enter or remain in the closed session. Once the body returns to open session from the closed session, non-participants must have a way of being notified that they are welcome to rejoin the meeting.

❑ Choose Appropriate, Reliable Technology

- *Glitches.* Often, local officials choose to meet electronically because it allows the body to achieve a quorum that might not otherwise be achieved. This may occur on small boards or committees if a member suffers an injury that limits travel or a member has to leave town unexpectedly. The members of the governmental body who decide that they want to meet in this fashion will certainly want to have confidence that the equipment will operate properly throughout the meeting. They may decide that it is better to employ a tried and true technology, such as an audio conference, versus a more advanced technology, like a webinar, that without good internet access might fail during the meeting. Technology that becomes inoperable could result in a loss of a quorum when the remote member is disconnected, thereby defeating the original purpose for convening the meeting electronically. It is advisable for the governmental body to have a backup plan in place in the event that a technical problem occurs during the meeting.
- *Volume.* Equipment chosen to broadcast to the public should be sufficient to make the speaker's voice heard everywhere in a crowded meeting room. Certain mobile phones used as a speaker phone would likely be inaudible to the public attending the meeting and thus limit their access to the proceedings.
- *Visibility.* Visibility could become an issue that interferes with the public's access rights if the device in the meeting room does not display images that allow the public to monitor the proceedings. A meeting held via video conference, for example, could present a monitoring problem for the public if the size of the screen in the meeting room is too small or provides insufficient clarity.

CONCLUSION

While the attorney general has opined that teleconferences may be conducted in such a way as to comply with the Open Meetings Law, local government officials would do well to use electronic media sparingly and cautiously. Meetings of governmental bodies that connect members via teleconference,

videoconference, or webinar should be extraordinary occurrences, rather than the ordinary. At the very least, a local rule should be adopted for fair, consistent, and effective use of electronic communications for meetings.

Endnotes

1 Wis. Stat. §§ 19.81(1), 19.81(2).
2 69 Op. Att'y Gen. 143-146 (1980).
3 67 Op. Att'y Gen. 126 (1978).
4 Robert, Henry M. *Robert's Rules of Order, Newly Revised*, 2011, 11th Edition, p 97. Philadelphia: DaCapo Press.

Agendas & Minutes for County Meetings

Jon Hockhammer, Outreach Manager, Wisconsin Counties Association (retired)

Note: While Robert's Rules of Order, Newly Revised, 11th Edition (RONR) provides guidance with regard to agenda setting, counties must comply with the Open Meetings Law; therefore, counties must first consider the Open Meetings Law and then RONR when developing agendas. For more on Wisconsin Open Meetings Law, see page 73.

All county government meetings seem to follow a similar script, but one may wonder why that is. For example, why is it that every meeting of a governmental body has a printed agenda? Why are minutes recorded? Who sets the agenda? What rules must be followed? What information must be included in the meeting minutes? The following information will provide you with guidance and best practices to follow.

It is important to understand the sources of procedural rules governing county meetings. First, counties are required to follow the state Open Meetings and Public Records Laws. Next, most counties have adopted "board rules" or "local rules" governing the conduct of meetings in their ordinances. Finally, most counties also rely on *Robert's Rules of Order, Newly Revised,* 11th Edition (RONR) to provide guidance for determining the agenda, order of business, parliamentary procedure, and what to include in meeting minutes. These three sources of procedural guidelines form the body of rules that prescribe how counties must conduct meetings.

MEETING AGENDAS

The purpose of an agenda is not only to set the expectations for members of the body, but also to alert the public and the media as to what the body will be discussing and acting upon. The public meeting notice must give the "time, date, place and subject matter" of the meeting. It lists each item that will be addressed and the order in which each item will be considered. The agenda gives advance public notice of a meeting. The agenda also informs the public and media as to what will transpire in open session or, if one of the limited exceptions to the Open Meetings Law applies, in closed session.

Typically, unless otherwise prescribed by county board rule, the presiding officer, or designee, is responsible for developing the agenda and noticing the meeting. Wisconsin State Statutes Section 59.23 provides that the county clerk creates the agenda for meetings "under the direction of the county board chairperson or committee chairperson." This ensures compliance with the Open Meetings Law (the county clerk is responsible for noticing all public meetings subject to Wis. Stat. §985.02) and provides consistency across all county meetings. Counties have varying procedures regarding how meeting agendas are developed, particularly for committee agendas. In developing agenda content for board and committee meetings, board rule and custom will dictate what official or group of officials establishes

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the content of an agenda. No matter what approach is taken, it is advisable to have written procedures to avoid any confusion, and to inform county officials of their rights and responsibilities in developing agendas. It should also be noted that a separate notice is required for each meeting. A listing of all meetings occurring on a single day is insufficient notice under the law.

In order to meet the requirements of the Open Meetings Law, an agenda must include relevant information that provides the public with sufficient knowledge of the nature of the business to be discussed or acted upon at a meeting. For example, if the agenda includes an item titled "Reports," the title or subject matter of the report should be listed along with who will be giving the report. An agenda item merely stating "Unfinished Business" or "New Business" is insufficient notice as there needs to be a brief description of the business that would fall under that heading. Any agenda item not including a description of the subject matter is insufficient notice to the public.

Wisconsin State Statutes Section 19.84(3) requires a minimum 24-hours notice for a meeting unless "for good cause" such notice is "impossible" or "impractical;" if good cause exists, notice must be given at least two hours in advance of the meeting. When calculating the 24-hour rule, Sundays and legal holidays are not included. An already-noticed agenda may be revised as long as the amended agenda is noticed according to the Open Meetings Law. When a specific statute prescribes the type of meeting notice the governmental body must give, the body must comply with the requirements of that statute, as well as the notice requirements of the Open Meetings Law. Detailed information on public notice requirements is included in the chapter, *Wisconsin Open Meetings Law*, on page 73.

When allowed by Wis. Stat. § 19.85 (1), the board or committee may convene in closed session to conduct business. There are several specific exemptions in the statutes which allow for closed session meetings. Any closed session meeting must be properly noticed, and the agenda must include the subject matter and the specific statutory exemption allowing for the closed session. The agenda should also indicate if the body will be returning to open session. In order to ensure the agenda item is in compliance with the Open Meetings Law, it is highly recommended that the agenda author consult with corporation counsel any time a closed session meeting will occur.

MEETING MINUTES

The Open Meetings Law requires a governmental body to create and preserve a record of all motions and roll call votes at its meetings. Meeting minutes serve as the official record of proceedings of a governmental body. The minutes capture the "substance" of the official actions taken by the body, but are not a transcript of the meeting. Wisconsin State Statutes Section 985.01 (6) defines substance as "an intelligible abstract or synopsis of the essential elements of the official action taken by a local governing body, including the subject matter of a motion, the persons making and seconding the motion and the roll call vote on the motion [if a roll call vote is taken]." Meeting minutes should focus on what the governing body acted upon, not on what the body's members said.

Robert's Rules of Order, Newly Revised, 11th Edition recommends the following items be included in the meeting minutes:

- Kind of meeting
- Name of the organization
- Date, time, and place of the meeting
- Name of the presiding officer and the secretary or their substitutes
- Members present and the establishment of a quorum
- Action on the minutes of the previous meeting
- Exact wording of each motion, the name of the maker, and whether it passed or failed

  Please note: state statute requires recording the maker of the motion and who seconds the motion.
- Points of order and appeals
- For reports, the name of the committee and the reporting member
- The hour of adjournment

Robert's Rules of Order, Newly Revised, 11th Edition recommends the following items be excluded in the meeting minutes:

- Opinion or interpretation of the secretary
- Judgmental phrases such as "members expressed total confidence" or "lengthy report"
- Discussion
- Motions that were withdrawn
- Detailed reports

Whoever is taking minutes of the meeting should be sure to record the wording of the motion prior to the vote. It is appropriate for the clerk or recording secretary to interrupt if necessary to record the exact wording of a motion to ensure the body is voting on the motion as intended by the maker.

Addressing Frequently Asked Questions About the Minutes

- For reports, the meeting minutes should simply record that the body received the report, who gave the report, and the subject matter. The body should not vote to accept or approve a report from an external source. The minutes should state that the body received the report and place it on file.
- When recording a formal decision of the body, if the decision was by unanimous consent, the minutes should reflect it. However, it is better to record "without negative vote" rather than "unanimous" unless the recording secretary or clerk knows for certain there was no opposition to the motion. If the distribution of votes was not unanimous, the distribution of the votes should be listed (e.g., the motion carried 5-2). All roll call votes must indicate how each person present voted. Decisions made by voice vote should indicate that it was a voice vote and the outcome of the vote (e.g., motion carried, voice vote).
- Closed session meeting minutes must indicate that the presiding officer announced in open session the subject matter and the specific statutory exemption allowing for closure. The motion

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to convene in closed session is a roll call vote and must be recorded in the minutes along with the time the body convened in closed session. A motion to adjourn the closed session must also be recorded. Minutes of what transpired in closed session are not advisable but may be necessary on the rare occasion where official action was taken in closed session. Minutes of what transpired in closed session are kept separate from the open session minutes.

- Approval of meeting minutes is done at the subsequent meeting of the body.
- It is preferred to have the adopted minutes signed by the presiding officer.
- If necessary to correct minutes that have been previously approved, the minutes of meeting B should show what corrections were ordered in the minutes of meeting A. The original minutes of meeting A should be corrected so the error remains apparent. The original version should be retained in the official minute book. Corrections to previously approved minutes can be made at any time. It is not required that the correction occur at the next meeting of the governing body. The minutes should accurately reflect the actions of the body so if an error is noticed, it should be corrected. It should be noted that this correction process is viewed as a best practice so as to identify particular action taken by the body and should be codified in the board rules. According to RONR, the corrections are not noted in the corrected minutes.
- A county clerk or committee secretary may utilize an audio recording device to capture the discussions, actions, and contents of a meeting for the sole purpose of utilizing such record to refresh their recollections when later drafting the official minutes of the recorded meeting.
  - Provided that such recording is used solely for the aforementioned purpose, and provided it is maintained solely by the county clerk or secretary between the time the recording is made and the time the official minutes are ratified by the county board or committee to which the minutes pertain, such recording constitutes a note under Wisconsin's Public Records Law and, therefore, does not constitute an official record.
  - Because such recording does not constitute an official county record under the Public Records Law, the county clerk or committee secretary is authorized to delete, discard of, or otherwise destroy such recording upon the county board's or applicable committee's ratification of the official minutes that were drafted by the county clerk or committee secretary in relation to such recording.
  - Because such recording does not constitute an official county record under the Public Records Law, such recording is not subject to disclosure under the Public Records Law.
  - The county should have a written policy to allow the county clerk or committee secretary to delete, discard, or destroy the audio recording once the minutes are approved. However, if the audio recording is shared with anyone else, the recording is likely a public record that may not be destroyed and is otherwise available for public inspection.

Note: Detailed information on public records requirements is included in the chapter, The Wisconsin Public Records Law, on page 85.

County Budgets & Financial Management

Kyle Christianson, Director of Government Affairs, Wisconsin Counties Association

The preparation and approval of a county budget is probably the single most important duty of local government officials. It determines what services will be provided, to what extent they will be provided, and how they will be funded. This affects every citizen in the county. County leaders prepare budgets in a quickly changing and increasingly difficult environment. Citizens simultaneously ask local leaders to hold the line on taxes and provide the same level of services, while the state limits the amount of taxes the county can levy. This becomes more challenging when considering that most county services are mandated by the state.

This chapter provides county leaders with an overview of budgeting ideas, suggestions, and terms; however, it should not be considered a comprehensive document. Not all county budget processes are the same; use this as a guide in addition to exploring your county's process.

Current law allows counties to levy a property tax and requires every county to prepare a budget. While counties have historically been required to adopt an annual budget, 2019 Wisconsin Act 42 allows counties to adopt and operate under a biennial budget. If a county decides to adopt a biennial budget, it is required to do so in an odd-numbered year. Wis. Stat. § 65.90 sets out the process and documentation requirements for the county budget. The statutory requirements for budget documents, such as public notice and comment, do not differ significantly from the requirements to adopt local ordinances. In effect, this gives the budget document the same authority as law.

Other relevant sections of the Wisconsin State Statutes and Constitution that apply to county budgeting are as follows:

- Wis. Stat. § 59.60. This section explains the budget procedures required for counties with a population of 500,000 or more. Currently Milwaukee County falls under this statute, but any county with an executive or administrator may choose to be subject to this statutory procedure.
- Wis. Stat. § 66.0602. This section establishes limits on the county's operating levy. This limit has changed over the past few years. As of 2020, the levy is not allowed to increase by a percentage that exceeds the greater of 0% or the change in property values due to net new construction. This section of the statutes also outlines exemptions to this rule, such as debt, and outlines the rules for exceeding the limits through referendum. Counties that exceed the limit face penalties, including dollar-for-dollar reductions in state aid for the amount in excess of the limit. However, a county can exceed the levy limit if it goes through the referendum process. The requirements of this referendum exception are outlined in Wis. Stat. § 66.0602 (4).
- Wis. Stat. §§ 67.04(1) and 67.045. These sections detail the conditions and procedures for issuing new debt.

County Budgets

- Art. XI (2), Wis. Const. This article limits the amount of debt principal a county can incur to 5% of the county's equalized value.

PURPOSE OF A BUDGET

- An accounting document (record & control expenditures).
- A management document (determine who can spend how much).
- A decision-making document (basis for sound decision-making by board members and staff).
- A communications document (inform the public of how tax dollars are being spent and policy priorities of county government).

THE BUDGET CALENDAR

The following is a budget calendar for a typical annual county budget process. Each county may take different steps at different times or have different players involved, but Wisconsin state law requires certain steps. Also, the fiscal year for all counties in Wisconsin coincides with the calendar year. When reviewing the following calendar, understand that it is a model intended to provide a basic understanding of the steps taken to approve an <u>annual</u> budget, and the calendar will differ for counties opting to adopt a biennial budget.

JULY

- Budget coordinator* sets up budget worksheets.
- In early July, budget guidelines and revenue estimates are established.
- In mid-July, county departments prepare budget requests.

AUGUST

- County departments review their requests with oversight committee.
- In mid-August, budget coordinator re-estimates proposed tax levy and other revenue sources.
- Wisconsin Department of Revenue (DOR) publishes net new construction report.**

SEPTEMBER

- Week 1 - Departments submit committee-approved budgets to budget coordinator.
- Week 2 - Departments review budgets with budget coordinator.
- Week 3-4 - Finance committee reviews compiled budget requests, requests department information, and makes changes.
- DOR posts levy limit worksheet.

OCTOBER

- In early-October, finance committee submits amended budget proposal to county board for review and changes.

EARLY NOVEMBER

- The county clerk publishes a Class 1 notice for the public budget hearing and a summary of the budget. The budget summary must include: (1) all revenues; (2) all expenditures; (3) percent change between current and proposed budget; (4) beginning and year-end general and proprietary fund balances; (5) total revenues and expenditures by fund type; and (6) notifications of any increase or decrease.
- The county board conducts public hearing on budget before budget is passed.

NOVEMBER

- In mid-November, the county board adopts budget at the board meeting.
- In the end of November, the mill rate worksheets are submitted to county clerk and the levy limit worksheet is submitted to DOR.

DECEMBER

- In early December, the county treasurer provides property tax bills to municipal clerks for mailing to taxpayers.

* *The budget coordinator may be the county executive, administrator, administrative coordinator, finance director, clerk, county board chair, or other officer designated by the county board. If the county has an executive or administrator established by ordinance, state law requires that these individuals present a budget for county board consideration.*

** *All DOR worksheets and reports can be found at www.revenue.wi.gov*

BUDGET STRUCTURE & ACCOUNTING

Government budgets use "fund" accounting methods and are commonly structured in order with the following components: (1) overview; (2) summary; (3) revenues; (4) general fund; (5) special revenue funds; (6) debt service fund; (7) capital fund; (8) proprietary/enterprise funds; and (9) fiduciary funds.

Overview

The overview is a narrative used to give the reader an idea of what the budget hopes to accomplish, what is different from the previous year's budget, and any pertinent information not obvious in the budget.

Summary

Wis. Stat. § 65.90(3) requires a summary to show the percentage difference between the current budget and the proposed budget for (1) general property taxes; (2) total revenues; and (3) total expenditures.

Revenues

The revenues component of the budget shows the projected income for the coming fiscal year and includes all anticipated incoming money, including property tax revenue, state shared revenues, fees for services, sales tax revenue (where applicable – Wisconsin allows counties to collect a 0.5% sales tax, but not all counties have adopted sales tax ordinances), anticipated grants, loans, etc.

County Budgets

Governments do not receive all revenues at the beginning of the year. Both taxes and state shared revenues are received incrementally, making proper cash flow management essential. Major purchases or expenditures must be scheduled to coincide with points when cash will be available unless borrowing is planned or a sufficient reserve exists to cover the expenditure. Property taxes and state shared revenues are received in two payments. Each of these four payments arrives at a different time of the year. Property tax payments are received in December and January; shared revenue payments are received in July (15%) and November (85%). These funds cannot be expended prior to receipt unless the local government does short-term borrowing or uses funds from a general fund reserve.

Government accounting practices generally include the following funds: the general fund, special revenue funds, capital project budget or fund, the debt service fund, proprietary funds, and fiduciary funds. These funds are described in detail below.

General Fund

Day-to-day government operations are budgeted from the general fund and it is usually the largest fund in the budget. Some examples of expenditures under the general fund are payroll, small IT purchases, benefits, electricity, office supplies, vehicle repairs, and fuel.

Another part of the general fund is the general fund reserve. Maintaining a general fund reserve or contingency fund is essential to cover unplanned expenditures, or expenditures that cannot wait for a revenue payment. A typical guideline for a general fund reserve or contingency fund is between 20% and 40% of general fund expenditures.

Special Revenue Funds

Special revenue funds are often considered to be for *insulated departments*. Their funding comes at least partially from special revenues that cannot be used for any other purpose than specified in the fund and by law. They are considered insulated because part or all of their revenue is not subject to general fund reductions or restrictions. Examples of these funds and their revenues are as follows:

- Library Systems - special tax and charges.
- Public Health Department - special tax and state grants.
- Highway Commission - state road aids.

Debt Service Fund

The debt service fund is the portion of a government budget that includes the payments of principal, interest, and fees on loans, bonds, and any other government debt. Proper accountability of debt service is essential for future borrowing. A common error in calculating the debt service amounts is to not include the annual holding or management fee applicable to governmental debts and/or bonds.

Capital Fund

Major capital purchases and projects are planned and budgeted from the capital fund. A commonly used guideline is that any program or purchase of a non-expendable piece of equipment valued at over $10,000 should be listed as a capital budget item. The capital fund is as much about planning as

budgeting. Commonly, capital funds cover five-year periods and relate directly to the government's long-range plan.

Proprietary/Enterprise Accounts

Proprietary funds include both enterprise accounts and internal service funds. Enterprise accounts are the portion of a budget supporting an enterprise, such as a water/sewer utility, a government-owned electric utility, or a business incubator. Enterprise accounts use specialized, restricted-use funds where the government is operating an "enterprise" in a manner similar to a private business. These accounts are considered separate from other governmental operations. Generally, enterprise account activities are expected to be financially self-sufficient, meaning little or no general fund support is needed. Enterprise funds commonly require oversight by a commission that is separate and distinct from the governing body.

Internal service funds are funds within the budget that pay for expenses from a number of departments through a single account. For example, all departments with employees enrolled in the government's health insurance program could contribute the appropriate amount into the internal service fund for the number of employees in its department. The health insurance premiums are paid from the one internal service fund to minimize confusion and staff time. These are sometimes referred to as "pass through funds" or "pass through accounts."

Fiduciary Funds

Fiduciary funds are special funds that cover accounts such as public pension trusts, private purpose trusts, investment trusts, and agency funds. All fiduciary funds are restricted-use funds. Monies in those funds cannot be used to cover deficiencies in the general fund unless the action is done as a loan, with a formal payback schedule, and done by resolution of the governing body. To knowingly violate this provision can be prosecuted as a criminal action.

Undesignated or "slush" funds are not allowed. In local governments, all incoming revenue must be shown in budget documents and assigned to a fund, and all expenditures must be accounted for in the budget.

TYPES OF BUDGETS

There are various ways that budget coordinators approach a budget. Local government budgets are normally organized according to Governmental Accounting Standards Board (GASB) recommendations and should also comply with Generally Accepted Accounting Principles (GAAP). The process of developing a budget, as well as the responsibility for managing that budget, varies from county to county. To have an understanding of the county budget, it is important to know the parts of the budget, the process of the budget, the types of budgets, and the primary budget players. You should check with your county colleagues to understand the details of the local budget process. In general, the person who bears the responsibility for the budget dictates the form. However, a county may have an adopted budget ordinance that outlines the process. The following is a list of the major forms that a budget may take.

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Line-Item Budget. The line-item budget is perhaps the most commonly used form as it is relatively easy to prepare and implement. Additionally, it provides for financial accountability and control. Each expenditure that a department may make in a year is grouped so that it can be reported on one line. These expenditures are independent from the programs for which the resources are budgeted. Examples include salaries, postage, supplies, travel, training, and equipment. There are limitations inherent to a line-item budget because it does not show how expenditures are divided among various programs. It is also difficult to compare the results of a program with the resources the program was given as many services are provided through the collaboration of one or more departments.

Incremental Budget. Another popular method of preparing a budget that works hand-in-hand with line-item budgeting is incremental budgeting. Whether making cuts or providing increases, this form treats every area of the budget the same by applying the same percentage increase or decrease to each line item. Increases or decreases are often tied to county indexes, such as percentage growth in personal income, the consumer price index, equalized property values, or a combination of the above. Although this method can be efficient, effective, and fair, it provides for little debate on what priorities the county should consider in terms of service delivery.

Program Budget. Program budgeting is an attempt to eliminate the separation between program planning and budget planning inherent in line-item budgets. Instead of organizing the budget based on uniform expenditures, program budgeting organizes it based on individual programs. Funds are allocated along program, rather than department, lines. It focuses on goal attainment and effectiveness in demonstrating desired outcomes. The problem with this type of budgeting is the complexity it generates. There is a heavy reliance on analytical techniques, such as cost-benefit analysis, to determine the best allocation of resources. Performance-based budgeting works best with a program budget as its starting point.

Performance Budget. Performance budgets are based on the assumption that presenting performance information alongside budget numbers will improve budget decision-making by focusing funding choices on program results. Performance budgets focus on missions, goals, and objectives to explain why money is being spent and provide a way to allocate resources to achieve specific results. This form focuses on the outputs that the resources deliver, or the return on investment.

The performance budget is a contract for desired levels of service that are evaluated based on how the programs are achieving their pre-stated goals. Programs or functions that perform well receive larger increases and those that perform below agreed upon goals receive small increases or even decreases. The weaknesses of this budget type lie in the objectivity of the desired performance level, as well as how to handle underperforming departments that are vital to public safety, health or welfare, or are mandated by state or federal law.

Performance-based budgeting cannot begin until a system of performance measures are instituted. Further, a functional performance-based budgeting system cannot be expected to produce the long-term desired results in the first year of its inception. Positive, valid decision-making data will commonly take three to five years to collect.

Zero-Base Budget. The premise of zero-base budgeting is to promote cost-efficiency of services through the ranking of each service. Each department starts with no budget and then performs the exercise of determining, for each service they provide, what they would do if they had to cut, expand, or keep the service at the same level of funding as the prior year. Departments order by rank each addition or subtraction in order to give decision makers an accurate picture of what is important and what could be cut. This process can be time consuming, but it gives budget preparers the opportunity to propose the elimination of a long-standing, but not necessarily essential, public programs.

Decision Packages. An alternative approach to zero-based budgeting is organizing information into decision packages, more specifically incremental spending levels that reflect varying levels of effort and cost. In theory, each department prepares at least three packages:

- Base-level funding: meeting the program's minimum requirements.
- Current-level funding: maintaining the program's existing levels.
- Enhanced funding: addressing the program's unmet needs.

Packages from all departments are then ranked according to perceived need for the package. This methodology relies on subjective judgment of decision-makers in ranking packages. Packages are then either adopted for funding or rejected in total. In theory, the decision-makers may decide not to renew funding for an existing program and shift those funds to another, possibly entirely new, program. In reality, this reallocation rarely occurs.

Target-Base Budget. During times of cutting the overall budget, target-base budgeting can prove useful. Instead of calculating the property tax levy after department heads have submitted their budgets, it is done at the beginning of the process and available resources are allocated based on historical allocations. Often leaders set aside a discretionary amount of funds to provide additional funding to certain areas based on justification from the department. Although target-base budgets can prove to be useful in budget-cutting situations, it does not provide for much vision on the part of department heads or decision makers.

Government efficiency approaches, i.e., the concepts within Lean Government, Lean Six Sigma, and other efficiency methodologies, can also be adapted to the budgeting process with significant success.

OPERATING *VS.* CAPITAL BUDGETS OR GENERAL FUND *VS.* CAPITAL FUND

Generally, there are two different kinds of annual budgets that counties prepare – the operating budget and the capital budget.

The operating budget appropriates dollars to fund general government services and purchases for a number of programs or functions. This is the primary budget and is in effect for one fiscal year. Operating budgets are based on statutorily required and discretionary services that are reviewed and evaluated on a program or line item basis. Various examples of programs and departments in this budget include parks, elections, general government, sheriff's operations, highways, and libraries. Each funding

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area consists of items such as wages, benefits, and other compensation; supplies, travel, and training for staff; insurance; certain equipment purchases; contracted services; and debt repayment.

Funding for the operating budget is provided through general revenues that the county may take in, such as taxes, fees, intergovernmental aids, and other general revenues. Individual departments or offices may not retain unspent revenues in the general fund budget at the end of the fiscal year. Instead, they will lapse into the county's general fund reserves. These funds must then be approved by the county board for reallocation before use in the following year's budget.

The other budget that counties may prepare is the capital budget or capital fund. This budget is prepared for multi-year projects, such as land acquisition, building or construction projects, equipment purchases, and infrastructure maintenance. The typical time frame for funding these capital improvement projects is five years. County boards need to review this capital budget plan periodically to make modifications and shift resources as necessary. The plan outline in a capital budget is used as a visionary tool for the county. In contrast to the operating budget, capital projects can be funded through "pay as you go" funds, debt financing, build to lease, or public trust fund loans. For debt financing, the most common way to fund capital projects is to sell general obligation bonds on the private bond market. Debt financing allows local decision-makers to spread the cost out over the useful life of the project.

SOURCES OF REVENUE

Property Taxes. Property taxes are the largest source of local tax revenue for Wisconsin's counties ($2.2 billion in 2018). Since 2005, the state has regulated how much counties and municipalities can raise through the property tax by limiting "levy" increases to a certain "allowable percentage" or the percentage change in net new construction, whichever is greater. The "allowable percentage" is determined by the state legislature and has changed from year to year, as have the allowable adjustments (e.g., debt, previous year unused levy). For 2020, the allowable percentage increase is 0%. In other words, the allowable levy increase is the change in property values due to net new construction. The only way to exceed the levy limit without a penalty of state aid loss is through a referendum.

Sales Taxes. Another source of revenue for counties is the local sales tax. Wisconsin law allows counties to collect a 0.5% sales and use tax on goods and services purchased within that county. The 0.5% is added to, or "piggy-backed" onto, the state sales tax rate of 5% and applies to the same goods and services as the state tax. Not all counties impose a local sales tax. Currently, 68 of 72 counties have approved ordinances authorizing the DOR to collect the additional 0.5% on their behalf. In 2019, the 66 counties imposing the optional sales tax collected $445.3 million; Outagamie County became the 67th county and Menominee County the 68th county to impose a local sales tax effective January 1, 2020.

Intergovernmental Revenues. Intergovernmental revenues include direct federal aid, state aid, federal aid paid through the state, and aid from other local governments. The rationale behind state aid to local governments includes: (1) spreading the costs of government to people who do not pay local property

taxes, but use government services; (2) tax base equalization; (3) replacing lost tax base; (4) reducing the burden of local taxes; and (5) funding for local mandates imposed by state government. The best example of this is county and municipal aid, formally known as "shared revenue payments," that the state makes to counties and other local units of government.

Permits/Fees/Fines. This category of revenue is made up of major non-property tax-related, locally generated revenues. The following is a list of the other miscellaneous sources of revenues, with examples, that a county may receive and use at its discretion in the annual operating budget:

- Fines and forfeitures – traffic fines.
- Certificates – birth, marriage, death.
- Special fees – court filings, health.
- User fees – parks, snowmobiles.
- Contracts for services – town road, jail space.
- Sale of materials – asphalt, salt, sand.
- Permits – building, zoning.
- County operations – revenue from enterprise funds.

In general, these special revenue sources should be distinguished from taxes to avoid any legal challenges. In other words, the fees should be a payment for a service with connections to the use and cost of service.

AREAS OF SPENDING

Counties provide many different services to residents. Created by the state, counties often provide services mandated or controlled by state officials. Counties are only able to budget for items that they are mandated or authorized to provide. Below are some examples of both mandated and discretionary areas of spending. This list is not meant to be comprehensive, but to provide a starting point for understanding mandated and authorized areas of spending.

State-Mandated Areas of Spending: Human services programs; juvenile justice services; courts and related costs; constitutional officers' responsibilities; jail maintenance; and public health.

State-Authorized Discretionary Areas of Spending: Parks and conservation; transportation; county administration; planning and zoning; UW-Extension and educational services; airports, parking, and convention facilities.

FREQUENTLY USED BUDGETING TERMS

There are numerous terms and phrases used in budgeting that are not commonly used in everyday life. Below are several of the most common terms, including their definitions.

- *Appropriation* – a legal authorization of a governing body to allow public officials to spend a specified amount of money, during a specified amount of time, on a specified program.

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- *Capital Asset* – items such as buildings, machinery, and equipment that have a useful life of many years and cost a significant amount of money.
- *Capital Improvement Plan* – a plan for the acquisition of capital items over a number of years. The plan details timing, cost, and financing methods for the purchases.
- *Capital Outlay* – money spent on new capital items.
- *Debt Service* – money spent for the repayment of principal and interest owed to outside lenders.
- *Depreciation* – the portion of the total capital asset charged as an expense to a particular period of time. For example, a police car bought this year will have a useful life of a certain number of years. Each year a portion of the total value of that car is accounted for until the county no longer uses the vehicle.
- *Encumbrance* – commitments to pay for equipment, goods, or services without the payment being made. Often this is for contracts that have yet to be performed.
- *Enterprise Fund* – a way of accounting for the expenditures and revenues of an activity in which the county partakes. This is run like a private business enterprise because it is expected to be self-supporting with minimal support from the general fund. Common enterprise funds include county farms, airports, parking garages, expo centers, zoos, healthcare centers, and nursing homes.
- *General Fund* – basic fund accounted for in the annual budget that keeps track of each of the department accounts.
- *Unreserved Fund Balance* – money from previous year budgets that have been determined by auditors to be free to be used for any legitimate county purpose.

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Introduction to County Personnel Practices

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County government is responsible for providing efficient and effective services to its citizens. As such, a county's most important resource is the personnel who provide those services. County boards play a critical role in establishing personnel policies that impact whether the county can attract and retain high-quality personnel to provide high-quality county services. Therefore, it is important that county board supervisors be familiar with the basic concepts surrounding personnel systems in order to provide effective policy direction to county employees.

Since the enactment of 2011 Wisconsin Act 10, the terms and conditions of employment for most county employees are set by the county board directly or through policy delegation. Counties typically adopt an employee handbook that contains guidance on the county's policies surrounding terms and conditions of employment, such as paid leave benefits, hours of work, discipline and discharge, technology use, and workplace harassment. An employee handbook is an important device for setting expectations of employees, and provides consistency in county personnel practices. Employee handbooks should be reviewed and updated at least every two years to ensure compliance with current law. Regular review of the handbook also confirms that the handbook reflects current personnel practices and presents an opportunity to revise policies that have proven to be inefficient or ineffective.

Administrative manuals are another useful means of ensuring that county operations and services are consistently high-quality, cost-efficient, and in compliance with federal, state, and local laws. Administrative manuals set forth county administrative policies and practices for managerial employees to follow. Administrative polices include areas such as budget procedure, approval process for creating new positions or filling vacant positions, hiring procedures, job descriptions, employee orientation, performance evaluations, employee disciplinary procedure, harassment and discrimination investigations, and procurement practices. Administrative policies can be established in any area or situation where the county wants to follow a standard practice to achieve a consistent and more effective outcome.

Although the county board sets the terms and conditions of employment for most employees, a limited number of county employees maintain collective bargaining rights that require a county to bargain over terms and conditions of employment. Transit employees (i.e., positions that are supported by federal transit funds that prevent changes to collective bargaining) and public safety employees (i.e., deputy sheriffs and EMT workers) have the right to bargain over wages, hours, and conditions of employment with two exceptions. Public safety employees cannot bargain over health plan selection and design (i.e., co-pays or deductibles), but can bargain over health insurance premiums. Also, counties cannot bargain to pay the required employee contribution to the Wisconsin Retirement System (WRS) for public safety employees hired on or after July 1, 2011.

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Nonsupervisory employees who are not "public safety employees" or "transit employees" (as defined by Wis. Stat. § 111.70) have very narrow bargaining rights. If these employees, known as "general municipal employees," are included as part of a collective bargaining unit, the county is prohibited from bargaining with employees in the collective bargaining unit over any term or condition of employment other than "total base wages." Total base wage bargaining involves (1) bargaining over an increase to the total wages of all employees in the bargaining unit, and (2) bargaining the distribution of the wage increase among the employees in the unit. The right to bargain total base wage increases is limited. Total base wage increases cannot exceed the change in the consumer price index for all urban consumers (CPI-U) unless authorized by referendum. In addition, total base wage agreements cannot be longer than one year.

Given the limited nature of collective bargaining for general municipal employees, many general municipal employees have chosen not to form collective bargaining units. If a general municipal employee is not included in a collective bargaining unit, then the employee is considered "non-represented" and the county is not constrained by the CPI-U limitation in terms of wage increases.

General municipal employees who are included in a collective bargaining unit are required to certify their exclusive bargaining representative (typically a union) in a certification election each year. If a majority of employees in the bargaining unit vote in favor of certifying the representative, then the representative is certified to represent the unit for an additional year. If a bargaining unit chooses not to go through the annual certification process, or the representative does not receive a majority vote in the certification election, then the exclusive bargaining representative is decertified and the employees in the bargaining unit become non-represented employees. The general municipal employees then cannot be included in a substantially similar collective bargaining unit for 12 months from the date of decertification.

The following chapter is a brief overview of employment laws that regulate employment practices.

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EMPLOYMENT RECORDS

Pursuant to Wis. Stat. § 103.13, an employer must permit an employee to inspect or copy any personnel documents that are used or that have been used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, termination or other disciplinary action, and medical records. The right to inspect or copy personnel documents does not apply to the following:

- Records relating to the investigation of possible criminal offenses committed by that employee.
- Letters of reference for that employee.
- Any portion of a test document, except that the employee may see a cumulative total test score for either a section of the test document or for the entire test document.
- Materials used by the employer for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments, or other comments or ratings used for the employer's planning purposes.
- Information of a personal nature about an individual other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other individual's privacy.
- An employer who does not maintain any personnel records.
- Records relevant to any other pending claim between the employer and the employee that may be discovered in a judicial proceeding.

If the employee disagrees with any information contained in the personnel records, a removal or correction of that information may be mutually agreed upon by the employer and the employee. If an agreement cannot be reached, the employee may submit a written statement explaining the employee's position. The employer is required to attach the employee's statement to the disputed portion of the personnel record. The employee's statement shall be included whenever that disputed portion of the personnel record is released to a third party as long as the disputed record is a part of the file.

Important: Documents containing an employee's medical information must be maintained in a separate file from the employee's personnel file. Any medical information should be disseminated to people only on a "need-to-know" basis. If there is no legitimate reason to disclose the information to a person, the information must remain confidential.

OVERTIME & FAIR LABOR STANDARDS ACT (FLSA)

The Fair Labor Standards Act (FLSA) has two primary requirements: (1) that employers compensate their hourly wage employees at no less than the prevailing minimum wage subject to any state or local minimum wage requirements; and (2) that employers pay overtime to their employees at the rate of one and one-half times the employee's normal hourly rate for all hours worked in excess of 40 in a week.

Under the FLSA, employees fall into two categories – those who are exempt from minimum wage and overtime pay requirements, and those who are not exempt. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all

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the requirements set forth by the Department of Labor. Non-exempt employees enjoy all of the protections provided by the FLSA, and generally are paid on an hourly basis. To qualify for an exemption, employees generally must: (1) meet certain tests regarding their job duties; and (2) be paid on a salary basis at not less than $684 per week.[1]

EXEMPT EMPLOYEES

There are several classifications of employees that fall under the FLSA exemptions. The most common exemptions are for employees whose job duties are executive, administrative, professional, and computer-related (i.e., IT/Technology). It is important that counties ensure the proper classification of employees as appropriate classification is the most common form of legal challenges under the FLSA.

Executive Employee Criteria. An "executive" exempt employee is one who:

- Primarily manages a department or subdivision;
- Directs the work of two or more full-time employees or the equivalent; and
- Has the ability to hire, fire, discipline, or recommend changes in status.

Examples of an executive employee may include department heads, such as land conservation director, child support director, forest administrator, zoning administrator, social services director, payroll manager, building & grounds director, human resources manager, business operations manager, or an accounting manager.

Administrative Employee Criteria. An "administrative" exempt employee is one who meets all of the following criteria:

- Primary duties consist of office or non-manual work;
- Duties are directly related to management policies or general business operations; and
- Performance of job duties customarily and regularly requires the exercise of discretion and independent judgment.

Examples of an administrative employee may include human resources generalist, internal auditor, budget analyst, grants specialist, office manager, deputy county clerk or deputy register of deeds.

Learned Professional Criteria. A "learned professional" exempt employee is one whose position:

- Requires advanced knowledge in a field of science or learning;
- Is predominantly intellectual; and
- Is acquired by a prolonged course of specialized instruction.

Examples of a learned professional may include a physician (M.D., D.D.S.), a certified nurse practitioner or registered nurse, an architect, a lawyer, a clinical social worker, or teachers & professors.

Computer Professional Criteria. A "computer professional" is someone employed as a computer systems analyst, programmer, software engineer, or similarly skilled worker whose primary duties consist of:

- Application of systems analysis techniques;
- Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs; or
- Design, documentation, testing, creation, or modification of computer programs related to machine operating systems.

Caution: The exemption does not apply to positions involving repair or maintenance of computer hardware, networks, or equipment. Also, general IT "help desk" employees are usually nonexempt under the FLSA because their primary duty is not design, development, testing, creation, etc.

NON-EXEMPT EMPLOYEES

Non-exempt employees are those whose job duties do not meet the executive, administrative, professional, computer professional, or any other exempt employee category under the FLSA.

Compensable Work Time. Non-exempt employees must be paid for all "hours worked." "Hours worked" means time suffered or permitted to work. The workweek may begin on any day and may be different for different employees. If the employer knows or has reason to believe that an employee is working, that time is work time. For example, the workweek for employees in the county clerk's office may begin on Sunday, whereas the workweek for human services employees may begin on Monday.

Partial Overtime Exemption for Law Enforcement Personnel Paid on a Work Period Basis.
The FLSA generally requires employers to pay employees overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rate of pay. However, Section 7(k) of the FLSA provides a partial overtime pay exemption for public employees engaged in law enforcement activities, including security personnel in correctional institutions, who are employed on a "work period" basis.

A "work period" may be from seven consecutive days to 28 consecutive days in length.[2] For work periods of at least seven but less than 28 days, overtime pay for law enforcement employees is required when the number of hours worked exceeds the number of hours that bears the same relationship to 171 as the number of days in the work period bears to 28.[3] For example, sheriff's deputies must receive overtime after 86 hours worked during a 14-day work period, or overtime after 128 hours in a 21-day work period.[4]

FLSA VIOLATIONS

Penalties. Employers are potentially subject to the following penalties for FLSA violations:

- Unpaid wages (two to three years of back wages).
- Fines of up to $10,000.
- Imprisonment of up to six months.
- Liquidated damages (two times the amount of actual damages).
- Attorney's fees and costs of litigation.

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FAMILY & MEDICAL LEAVE ACTS: STATE AND FEDERAL OBLIGATIONS

The Family and Medical Leave Act (FMLA) became law in 1993. The purpose of the FMLA is to provide certain types of employees with unpaid leave due to a serious health condition, or to care for a sick family member or a new child.

The Wisconsin Family and Medical Leave Act (WFMLA) exists for the same purposes as the FMLA. The requirements for covered employers and employees differ, however, and there are instances where an employee may be covered by one and not the other.

Where an eligible employee's leave qualifies under both the FMLA and WFMLA, the employer should run both leaves concurrently under both laws. The rules of the Act that provide greater leave rights always apply.

FEDERAL FAMILY AND MEDICAL LEAVE ACT (FMLA)

Covered Employees. An employee is covered by the FMLA if he/she:

- Has been employed by the employer for at least 12-months; and
- Has worked at least 1,250 hours during the previous 12-months preceding the leave.

Reasons for Leave. An eligible employee may take FMLA leave for the following reasons:

- The birth of a child and to care for that child;
- Placement of a child for adoption or foster care;
- To care for a spouse, child, or parent (parents-in-law not included) with a serious health condition;
- The employee's own serious health condition; or
- Due to any qualifying urgent need arising out of the fact that a child, spouse, or parent of the employee is on covered active duty, or has been notified of an impending call or order to covered active duty in the U.S. Armed Forces.

"Serious health condition" means an illness, injury, impairment, physical condition, or mental condition that involves:

- Inpatient care (i.e., an overnight hospital stay).
- Continuing treatment by a healthcare provider.

"Continuing treatment" includes:

- A period of incapacity that lasts three consecutive days and treatment two or more times OR one treatment followed by continuing treatment under the supervision of a healthcare provider.
- Incapacity due to pregnancy or prenatal care.
- Incapacity due to treatment for a chronic serious health condition (i.e., asthma, diabetes).

"Qualifying exigency" includes:

- Short-notice deployment;
- Military events and related activities;
- Childcare and school activities;
- Financial and legal arrangements;
- Counseling;
- Rest and recuperation;
- Post-deployment activities;
- Parental care; and
- Additional activities not encompassed by any of the above, but agreed to by the employer and employee.

Leave Available. An employee is entitled to 12 workweeks of unpaid leave in a 12-month period. The 12-month period, or "leave year," can be calculated using:

- Calendar year;
- A fixed 12-month period (i.e., fiscal year, employee's anniversary date, etc.); or
- A rolling 12-month period measured backward from the date the FMLA leave is taken by the employee.

Recent changes to the FMLA allow eligible employees who are family members of covered service members to take up to 26 workweeks of leave in a single 12-month period to care for a covered service member ("military caregiver leave").

If a husband and wife are employed by the same employer, they are entitled to a combined 12 weeks of leave if the leave is taken for:

- The birth of a child or to care for a child;
- The placement or care of a child for adoption or foster care; or
- The care of a parent with a serious health condition.

For military caregiver leave, a husband and wife employed by the same employer are entitled to a combined total of 26 weeks of leave.

Intermittent or Reduced Leave. Intermittent leave means leave that is taken in separate blocks of time. Reduced leave means leave that reduces the number of hours an employee can work in a day or week. Intermittent or reduced leave can be taken as follows:

- When medically necessary due to the serious health condition of the employee or the employee's immediate family member, or the serious injury or illness of a covered service member.
- For the birth of a child or the placement of a child for adoption or foster care only if the employer agrees.

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Substitution of Leave. Under the FMLA, an employee can request OR an employer can require an employee to substitute other paid leave for FMLA leave.

Notice/Designation Procedures. Pursuant to the FMLA, employers are required to make certain information available to their employees. In addition, an employee wishing to take FMLA leave must provide notice to his or her employer in the manner prescribed by the FMLA. Once an employee has requested FMLA leave, his or her employer must provide the employee with an eligibility notice and a designation notice, which is intended to let the employee know whether his or her leave qualifies for FMLA. The notice requirements for employers and employees are as follows:

- The employer must:
  - Post notice in a conspicuous place explaining an employee's rights and responsibilities;
  - Incorporate the FMLA information in its employee handbook or, if no handbook, provide written guidance on the FMLA when leave is requested; and
  - Provide written notice to the employee designating leave as FMLA leave.

  The eligibility notice and the designation notice should generally be given within five business days of an employee's request for leave, and the designation is to be made before the leave is taken unless there is insufficient information about the leave. An employer can designate leave as FMLA-qualifying after an employee returns if the employer:

  - Did not know the employee's leave was FMLA-qualifying until the employee returned; or
  - Knows of the reason for leave, but is unable to confirm that the leave is FMLA-qualifying.
- An employee desiring to take FMLA leave must:
  - Give 30-days' notice if leave is foreseeable, or give notice as soon as practicable if leave is unforeseeable (notice can be given verbally).

Continuation of Health Benefits. The employer must continue the employee's health benefits unless the employee elects to discontinue benefits. The employee must still pay required premiums, and the employer can discontinue coverage if the employee's premium payment is over 30 days late.

Job Restoration. After taking FMLA leave, an employee is generally entitled to the same or equivalent position (with equal pay, benefits, etc.). However, job restoration can be denied if:

- The employee would not otherwise have been employed at the time of return (i.e., layoff or shift elimination);
- The employee is unable to perform an essential function of the job; or
- The employee is a "key employee."

WISCONSIN FAMILY AND MEDICAL LEAVE ACT (WFMLA)

Covered Employees. An employee is covered by the WFMLA if he/she:

- Is employed by a covered employer;
- Has worked for the same covered employer for at least 1,000 hours in the last 52 consecutive weeks; and
- Has worked for at least 1,000 hours in the last 52 weeks for the covered employer.

Reasons for Leave. An eligible employee can take WFMLA leave for the following reasons:

- The birth of the employee's natural child (if leave begins within 16 weeks after the birth);
- The placement of a child for adoption with the employee (foster care is not covered);
- To care for a spouse, child, parent, or parent of a domestic partner with a serious health condition; or
- The employee's own serious health condition.

"Serious health condition" means a disabling physical or mental illness, injury, impairment, or condition involving any of the following:

- Inpatient care;
- Outpatient care that requires continuing treatment or supervision by a healthcare provider.

Leave Available. An employee is entitled to 10 weeks of unpaid leave during the calendar year, broken down as follows:

- 6 weeks for the birth or adoption of a child;
- 2 weeks to care for a child, spouse, domestic partner, parent, or parent of a domestic partner suffering from a serious health condition; and
- 2 weeks for the employee's own serious health condition.

Even if a husband and wife are employed by the same employer, there is no limitation on the amount of leave each spouse can take.

Intermittent and Reduced Leave. Intermittent and reduced leave is permitted for all types of leave recognized under the WFMLA.

Substitution of Leave. Under the WFMLA, an employee may substitute paid leave for WFMLA leave, but an employer cannot require the employee to do so.

Notice Procedures. Wisconsin employers are required to make WFMLA information available to their employees. In addition, an employee requesting leave must provide reasonable notice to his or her employer. The notice requirements for employers and employees are as follows:

1. The employer must:
    - Display the Department of Workforce Development (DWD) poster explaining an employee's rights and responsibilities under the WFMLA;

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- An employer with 25 to 49 employees must post its policy (even if the policy does not provide leave);
- An employer with 50 or more employees must post its policy or statement that it provides the same benefits as available under the WFMLA.

2. An employee desiring to take WFMLA leave must:
   - Give reasonable advance notice in a reasonable and practicable manner.

Continuation of Health Benefits. The employer must continue the employee's health benefits unless the employee elects to discontinue benefits. The employee must still pay required premiums, and the employer can discontinue coverage if the employee's premium payment is over 30 days late.

Job Restoration. After taking WFMLA leave, the employee must be:

- Returned to the same job, if vacant; or
- If the same job is not vacant, placed in an equivalent position.

AMERICANS WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act (ADA) is intended to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.

Title I: Regulation of Employment. Title I of the ADA provides that employers may not discriminate against a qualified individual with a disability in regard to job application procedures; employee compensation; job training; the hiring, advancement, or discharge of employees; other terms, conditions, and privileges of employment.

A "qualified individual with a disability" is "an individual with a disability who satisfies the requisite skills, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position."

Disability. "Disability" means a physical or mental impairment that substantially limits one or more of the major life activities including a person who has a record of such impairment, or is perceived to be disabled.

Disability does not include sexual behavior disorders, pregnancy, homosexuality/bisexuality, pyromania, compulsive gambling, or kleptomania.

"Physical or mental impairment" includes physiological disorders; disfigurement or anatomical loss that affects the neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, lymphatic, and skin or endocrine systems; mental or psychological disorders such as mental retardation, organic brain syndrome, emotional or mental illness, and special learning disabilities.

"Major life activities" means activities such as taking care of oneself, working, performing manual tasks, breathing, walking, speaking, seeing, and hearing.

"Essential functions" means the fundamental job duties of the employment position. It does not include the marginal functions of the position.

Reasonable Accommodation. Employers are required to make a "reasonable accommodation" for the known physical or mental limitations of a qualified applicant or employee with a disability, unless the employer can demonstrate that the accommodation would impose undue hardship.

The obligation to provide reasonable accommodation is ongoing and applies to all aspects of employment, including equal opportunity to the application process. Reasonable accommodations must be evaluated on a case-by-case basis focused on the following two factors:

- The specific abilities and functional limitations of a particular applicant or employee with a disability; and
- The specific functional requirements of a particular job.

Basic Principles. A reasonable accommodation must provide an opportunity for an individual with a disability to achieve the same level of performance, or to enjoy benefits or privileges equal to those of a similarly situated person without disabilities. However, an employer does not need to:

- Eliminate an essential function of the job (unless the claim is based upon the Wisconsin Fair Employment Act, which may require job restructuring).
- Lower production standards, whether qualitative or quantitative, that are applied uniformly to employees with and without disabilities. However, an employer may have to provide reasonable accommodations to enable an employee with a disability to meet the production standard.
- Provide an accommodation that is primarily for personal use.

An accommodation does not need to be the best accommodation available, as long as it is effective. Also, an employer may not require a qualified individual with a disability to accept an accommodation. If the employee, however, needs a reasonable accommodation to perform an essential function or to eliminate a direct threat and refuses to accept an effective accommodation, the employee may not be qualified to remain on the job.

Responding to Requests. An employer should respond to a request for a reasonable accommodation as quickly as possible because unnecessary delays can result in a violation of the ADA. Factors considered in determining whether a delay is unreasonable include the reason(s) for the delay, the length of the delay, how much the individual and the employer each contributed to the delay, what the employer was doing during the delay, and whether the required accommodation was simple or complex.

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Employer-Initiated Accommodation. An employer should initiate the reasonable accommodation process without being asked by the employee if the employer:

- Knows the employee has a disability;
- Knows, or has reason to know, that the employee is experiencing workplace problems because of the disability; and
- Knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation.

Undue Hardship. An employer is not required to make a reasonable accommodation if it would impose undue hardship on the operation of the employer's business. An undue hardship is an action that requires "significant difficulty or expense," including any accommodation that is unduly costly; extensive; substantial; disruptive; or would fundamentally alter the nature and operation of the business.

Factors to be considered in determining whether an accommodation would impose an undue hardship include:

- The nature and cost of the accommodation;
- The financial resources of the facility making the accommodation and the effect on expenses and resources of the facility;
- The size, number of employees, and type and location of the facilities of the employer; and
- The impact of the accommodation on the operation of the facility that is making the accommodation.

Examples of Reasonable Accommodations. The following are examples of accommodations that have been considered reasonable:

- Making facilities accessible to and usable by an individual with a disability;
- Restructuring a job by reallocating or redistributing marginal job functions;
- Altering when or how an essential job function is performed;
- Part-time or modified work schedules;
- Obtaining or modifying equipment or devices;
- Modifying examinations, training materials, or policies;
- Providing qualified readers and interpreters;
- Reassignment to a vacant position; and
- Permitting use of accrued paid leave or unpaid leave for necessary treatment.

Penalties Under the ADA. Employers who violate the ADA may be liable for compensatory punitive damages for intentional acts; back pay; interest on the judgment; attorney's fees and costs of litigation; and injunctive relief.

Pecuniary and future non-pecuniary losses are capped as follows:

- 15 – 100 employees: $50,000.00.
- 101 – 200 employees: $100,000.00.
- 201 – 500 employees: $200,000.00.
- More than 500 employees: $300,000.00.

FAIR EMPLOYMENT REGULATIONS

CIVIL RIGHTS ACT

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, religion, color, national origin, or sex.

Covered Employers. Title VII applies to all employers and employment agencies with 15 or more employees and unions with 15 or more members, as well as federal, state, and local government employers.

Limitations on Employers. Title VII prohibits discrimination by employers against employees or job applicants with regard to hiring; promotion; discharge; compensation; terms; conditions; privileges of employment; or classifying, limiting, or segregating employees or applicants.

Limitations on Labor Organizations. Title VII prohibits discrimination by labor organizations in:

- Limiting, segregating, or classifying membership or applicants for membership; and
- Referral of individuals for employment.

Unintentional Discrimination. This refers to an employer that has a policy or practice that is neutral on its face but impacts persons from a protected class. Examples include:

- Minimum height requirements (women, Hispanics, Asians).
- Certain educational requirements.
- Physical agility tests.
- "No beards" policies.
- Cognitive ability tests (****Subject to business necessity rule*).

Religious Practices. An employer must accommodate an employee's religious practices unless doing so would pose an undue hardship. "Religious practices" include moral or ethical beliefs as to what is right or wrong, which are sincerely held with the strength of traditional religious views.

Filing Charges. Charges must be filed within 180 days of the allegedly discriminatory act, or within 300 days if there is a state or local fair employment practice agency. In Wisconsin, charges must be filed within 300 days pursuant to the Wisconsin Fair Employment Act.

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Penalties Under Title VII. Employers who violate Title VII may be liable for injunction; reinstatement, hiring, promotion with back pay and benefits; front pay; attorney's fees and costs of litigation; compensatory damages; and punitive damages for unlawful intentional discrimination. Damages are capped at the same levels as the ADA.

WISCONSIN FAIR EMPLOYMENT ACT (WFEA)

The Wisconsin Fair Employment Act (WFEA) prohibits discrimination on the basis of age; race; religion; color; disability; marital status; sex (including sexual orientation); national origin or ancestry; arrest record or conviction record; membership in the National Guard, state defense force, or military reserve unit; and the use or nonuse of lawful products off the employer's premises during nonworking hours. The WFEA also restricts the use of lie detection and genetic testing.

Endnotes

1 The Department of Labor created new FSLA regulations that took effect on January 1, 2020, and increased the threshold from $455 per week to $684 per week.
2 29 C.F.R. § 553.201, § 553.224.
3 29 C.F.R. § 553.230.
4 Id.

ISSUE FOCUS
Wisconsin Retirement System

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Every county in Wisconsin is required to participate in the Wisconsin Retirement System (WRS) with the exception of Milwaukee County, which operates its own retirement system. Counties that participate in the WRS are required to enroll eligible employees into the retirement system. Generally, an employee is eligible to participate in WRS unless one of the following applies:

1. The employee was initially employed before July 1, 2011, and is not expected to work at least one-third of what is considered full-time employment (600 hours) by the Wisconsin Department of Employee Trust Funds (ETF). However, if the employee (initially employed before July 1, 2011) subsequently works 600 hours in a 12-month period, the employee automatically becomes eligible to participate in the WRS;
2. The employee was initially employed on or after July 1, 2011, and is not expected to work at least two-thirds of what is considered full-time employment by ETF (1,200 hours). However, if the employee (initially employed on or after July 1, 2011) subsequently works 1,200 hours in a 12-month period, the employee automatically becomes eligible to participate in WRS;
3. The employee's expected duration of employment is less than one year; or
4. The employee is not otherwise eligible to participate under Wis. Stat. § 40.22(2).

WRS employees who have retired and choose to return to work for a WRS employer have special rules pertaining to their WRS participation. Specifically, an employee may not receive both their WRS retirement benefits (e.g., annuity payment), and new coverage in the WRS.

For employees who retired prior to July 2, 2013, the employee must file a "Rehired Annuitant Election" form with the WRS employer and indicate the employee's decision to either remain an annuitant or elect coverage under the WRS. The employee's annuity will be suspended should the employee select coverage under the WRS.

For employees who retired after July 2, 2013, but is then rehired by any participating employer, the employee is no longer eligible for the employee's monthly annuity from WRS if they are expected to work at least two-thirds of full-time (1,200 hours). The employee must then be enrolled in the WRS. One of the following applies if the employee works less than two-thirds of full-time (1,200 hours):

1. If the employee first began work in a WRS position before July 1, 2011, and the new position is at least one-third of full-time (600 hours), the employee may choose between continuing their annuity, or electing for new coverage in the WRS; or

WRS

2. If the employee first began work in a WRS position on or after July 1, 2011, and the position is less than two-thirds of full time, the employee may not become a participating WRS employee, and their annuity will continue.

A retired employee must also satisfy a 75-day waiting period before being eligible to be returned to a WRS-covered position. If the employee does not satisfy the waiting period, the retirement will be considered invalid. The employee must also satisfy the waiting period prior to starting a non-WRS covered position with the same WRS employer that the employee retired from. The employee does not have to satisfy the waiting period prior to starting a position with a different WRS employer or with a non-WRS employer.

Participating employees generally fall into one of four categories:

1. General participants. These are employees who are not covered by any other category.
2. Protective occupation under Social Security. These are employees:
   a. Whose principal duties (51% or more) meet all of the following requirements as defined in Wis. Stat. § 40.02 (48)(a):
      - Involvement in active law enforcement or active fire suppression or prevention;
      - Frequent exposure to a high degree of danger or peril; and
      - A high degree of physical conditioning; or
   b. Who meet the principal duties test above and whose occupation is listed under Wis. Stat. § 40.02 (48)(am), including sheriffs and deputy sheriffs.
3. Protective occupation not under Social Security. These employees are firefighters who meet protective requirements.
4. Elected officials. This category includes local elected officials other than a county sheriff.

It is important to properly classify employees because the required employer and employee contributions are different depending on the employee's category. Also, employees' collective bargaining rights are determined by their WRS classification. Public safety employees (i.e., deputy sheriffs) with expanded collective bargaining rights under Wis. Stat. § 111.70 must meet the definition of a protective occupation participant under Wis. Stat. § 40.02(48) and be classified as such (see Wis. Stat. § 111.70(1)(mm)). Municipal employees who are not classified as protective occupation participants have limited bargaining rights under Wis. Stat. § 111.70 (see Wis. Stat. § 111.70(4)(mb)).

Retirement contributions and benefit payments vary depending on the category of the participating employee. General participants are required to pay one-half of the total actuarially-required contribution rate approved by the Wisconsin Employee Trust Funds Board (ETFB). The total actuarially-required rate for general participants in 2020 is 13.5%, meaning that the employee contributes 6.75% of their earnings (the gross amount paid to an employee as salary or wages) and the county contributes 6.75%.

Protective occupation participants with Social Security are required to pay the same employee contribution rates as general participants, although the total actuarially-required rate is higher. For example, the total actuarially-required rate for protective occupations with Social Security in 2020 is 18.4%, but the employee-required contribution is 6.75% (the amount paid by general participants) and the county contributes 11.65%.

Elected officials, other than a county sheriff, are required to pay one-half of the total actuarially-required contribution rate approved by the ETFB. The total actuarially-required rate for elected officials in 2020 is 13.5%. Therefore, the elected official contributes 6.75% and the county contributes 6.75%.

Generally, a municipal employer, such as a county, cannot pay the employee's required contribution to WRS. However, a municipal employer can pay the employee's contribution in the following circumstances:

- Certain protective occupations, such as deputy sheriffs and EMT workers, can bargain to have the county pay the employee's required contribution if the employee was hired before July 1, 2011.
- A municipal employer is required to pay on behalf of a "non-represented law enforcement managerial employee" the same WRS employee contributions that are paid by the municipal employer for "represented law enforcement personnel." There is no definition of "non-represented law enforcement managerial employee," but it is interpreted to mean a county sheriff, chief deputy, and other law enforcement supervisory personnel. The term "represented law enforcement employees" refers to represented public safety employees, such as deputy sheriffs and EMT workers. In other words, if the county pays the entire employee contribution to WRS on behalf of deputy sheriffs, then it will pay the entire employee contribution for the sheriff and other non-represented law enforcement managerial employees. This exemption only applies to non-represented law enforcement managerial employees who are initially employed by the county before July 1, 2011, or who are initially employed as represented law enforcement personnel before July 1, 2011 and subsequently become non-represented law enforcement personnel with the same employer.

ISSUE FOCUS
Employee Health Benefits

Michael Lamont, Director of Programs and Services, Wisconsin Counties Association

Health insurance in the United States dates back to the 1850s when coverage was offered for injuries from accidents. The 1920s introduced broader coverage for hospital and medical expenses ushering in pre-paid plans for health insurance. However, employee benefit plans became prevalent in the 1940s and 1950s. Wage freezes imposed by the Stabilization Act of 1942 forced employers to be creative with their benefit packages to attract workers. Healthcare coverage was an inexpensive option to attract and retain workers.

In the 1950s and 1960s, the government began to expand its healthcare coverage costs with the introduction of disability benefits being provided by the social security program in 1954, followed by the creation of Medicare and Medicaid in 1965. The 1980s and 1990s saw a rapid rise in the cost of healthcare due to many factors including aging of the population and new medical technologies so employers began looking for options to control this growing expense. The majority of employer-sponsored group insurance plans were fee-for-service arrangements, and as a result managed care plans became the accepted solution to the problem of rising healthcare costs. Managed care plans offer reduced costs through contracts with health care providers and medical facilities, including clinics and hospitals, that provide care for its members. Recent years have seen the rise of "consumerism" as the next potential solution to the growing problem. However, changes in health insurance trends, coupled with passage and implementation of the Patient Protection and Affordable Care Act (ACA) in 2010, and continuing legal challenges to the ACA have made it difficult for the average citizen to understand the health insurance marketplace.

This *Issue Focus* is intended to provide county officials with an overview of employee health benefits options and terminology. From basic acronyms to the more cutting-edge area of consumerism, this piece is meant to provide a foundation for understanding employee health benefits.

SELF-INSURED VS. FULLY INSURED

Counties have the option to either self-insure their employee health benefits liability or purchase a fully insured product. Self-insurance places the county in the position of being responsible for all costs associated with its health benefits. In contrast, the fully insured product passes the risk on to another entity. The option to self-insure becomes more viable as the number of county employees increases. Self-insuring requires more analysis and oversight on the part of the county as the county must manage the liability it is assuming.

Of significant importance to the financial health of a county that is self-insuring its employee health benefits liability is the maintenance of a loss reserve. A loss reserve is defined as the money held in an

account to be made available when the costs of health claims exceed the amount of money the county allocated for claims in any particular year. This money is also available in the event the county no longer wants to self-insure. If the county switches to a fully insured product, the county remains responsible for claims incurred before the fully insured product became effective. In simple terms, if an employee went to the doctor on December 31 and the county purchased a fully insured product effective January 1, the county is responsible for paying for that claim even though the claim will not be seen by the county until sometime after December 31. Claims that have been incurred, but not yet reported to the claims administrator, are referred to as IBNR (incurred but not reported). The delay between the incurred date and the paid date is referred to as claim lag.

The question of how much is enough to hold in reserve is up for debate. Generally, two to three months' worth of paid claims costs is an appropriate range; however, smaller counties generally need more than this because two to three months' of paid claims costs will be much smaller and may not cover increased future costs. Fewer employees does not mean a county will not experience consecutive years of severe claims, which are often caused by chronic illnesses or conditions.

Purchasing reinsurance is one tool to effectively manage the liability that self-insuring presents. Reinsurance can be purchased to cover the most severe claims and/or claim years. A 'specific stop-loss,' reinsurance policy covers an individual employee's claims once they exceed a certain amount for a year. This threshold is called the 'specific attachment point.' For example, if an employee's claims are $300,000 for a given year and a county purchased reinsurance with a $200,000 specific attachment point, the county would pay $200,000 and the reinsurance company would pay $100,000 to cover that individual's claims. An 'aggregate stop-loss' reinsurance policy covers the costs associated with all claims for all covered individuals during the entire plan year. For example, if a county typically experiences $4,000,000 in medical claims each year, it may purchase an aggregate stop-loss reinsurance policy to cover claims over some specified amount in excess of $4,000,000. The reinsurance carrier usually sets the aggregate limit at a percent of paid claims or total premium.

Self-funding has its advantages and disadvantages. In theory, self-funding is more cost-effective than a fully insured plan because in the long run the gains for better-than-expected claim years belong to the county and do not become profit for the third-party insurer. Another advantage is that the county retains control over the health benefit program because the county works directly with its vendors and not through an intermediary. Finally, self-insured groups are able to avoid some of the fees associated with the ACA.

That said, self-funding is not a good option for every county. In considering whether to self-fund, the first step is to assess the risk your county is willing to bear for your health benefit plan. A county must be comfortable in trading the security of a fully insured plan for the chance that actual costs could exceed the premium contributed in a given year. Associated with this is the long-term ability of your county to set aside dollars for years when claims and administrative expenses exceed premiums. Some counties have underfunded their health benefit reserve, which leaves them in an unsound financial position. Counties must also assess if self-funding will save them money.

Alternatively structured health benefit plans, such as not-for-profit options, are also available to counties today. These not-for-profit organizations do not seek profit from each county they insure; rather, they pool member liabilities and collectively balance good and bad claim years. Pooling can eliminate the need for certain vendors and increase the purchasing power of all of the counties, thus driving down administrative costs.

HEALTH BENEFIT CONSULTANTS

There are pros and cons for hiring health benefit consultants, who help clients select their health benefit plans, such as assisting in sorting through new products and services, as well as considering self-funded versus fully insured health benefit plans. There are a wide variety of types of health benefit consultants who may also take the name of agents and/or brokers. Knowing the difference and asking the right questions of a consultant is as important as knowing the premium and benefit variations between plans.

Many agents and brokers receive commissions for benefit placement services. Counties should know how agents, brokers, and consultants are paid for providing services. Some counties pay them directly for their knowledge and services; however, that does not prevent them from receiving a commission from a company for placement of the county's business with that company. Knowing how and from whom a health benefits consultant is paid allows the county to guard against any bias the consultant may have.

HEALTH BENEFIT PLANS

Employee health benefit plans have many moving parts. Understanding how each part works will help in understanding which changes will have the greatest impact on premium and utilization. Whether self-funded or fully insured, counties should closely manage claims experience to keep premiums down. Understanding utilization trends allows counties to not only stay ahead of cost drivers, but also allows fully insured counties to compare their claims experience with the amount they are paying in premium.

Deductibles, coinsurance, and co-pays are three tools used to share the cost of health benefit plans with employees. However, deductibles and co-pays should be looked at as more than just cost-sharing tools. Deductibles and co-pays can be used to shape certain behaviors, ultimately impacting health plan utilization.

Deductibles are an amount the policyholder must pay out-of-pocket for their healthcare before the health plan pays. A deductible is a way of reducing the cost of the health plan by making the policyholder pay out-of-pocket for their healthcare needs. Deductibles can be especially effective as the deductible amount goes up and is coupled with a health reimbursement account (see section on consumerism below).

Coinsurance is a tool used to get employees to contribute to their health benefit coverage. This can be used to steer employees to use providers in the network. With coinsurance, the employee often has a specified percentage contribution towards the cost of the premium. The advantage of coinsurance is that if the health plan premium increases 15%, the employees share in that increase. The disadvantage

of coinsurance is that once it is paid, the employee has little to no incentive to make health-spending decisions based on the price of the care.

Co-pays are amounts that a policyholder must pay before the health plan will pay the remaining balance. Co-pays can be on visits and services, as well as on prescription drugs. These must be paid each time a particular service or prescription drug is obtained. With co-pays, employees pay as they use the service, even if they have already met their deductibles. The ACA does not allow for co-pays once the policyholder has met their out-of-pocket maximum dollar amount.

How these tools interrelate is the key to shaping behavior in your county's health plan. For example, if an employee develops an illness on Sunday at 2:00 p.m. they must decide when to be seen by a doctor. Being seen Sunday evening by an emergency room doctor is more expensive than being seen Monday by appointment. If the health plan has only coinsurance, then there is no incentive for the employee to take cost into consideration and wait until Monday. Further, if a higher co-pay is in place for emergency room visits versus regular doctor appointments, the employee will have an incentive to wait until Monday if the illness does not require emergency care.

One concern with these cost-sharing tools is that it can become too burdensome on the employee. Employers provide a health benefit with the intention of it being a benefit, not something that costs the employee a significant portion of their earnings. For low-income employees this can be a significant concern. A tool for addressing this concern is the out-of-pocket maximum dollar amount. When the out-of-pocket maximum is reached, the health plan pays all further costs that are covered in network, and the employee's obligation to pay ends.

In addition to cost-sharing tools, adopting a managed care model is another method of reducing the county's health benefit costs. This model can take the shape of a health maintenance organization (HMO), preferred provider organization (PPO), or accountable care organization (ACO). An HMO and PPO are managed care trends from the 1980s and 1990s, while the ACO model was born from the ACA.

HMOs are organizations of doctors, hospitals, and other healthcare service providers who sign a contract with an HMO. Cost savings is realized by an HMO because once in the system, an employee's care will be managed and unnecessary services will be eliminated. The employee must stay within the system unless they are referred out to a specialist.

PPOs are networks of medical providers that charge a fee-for-service based upon a negotiated, discounted fee schedule. PPO discounts are provided based on the promise of a large volume of business. 'Steerage' is the term used to describe the practice of encouraging employees to use one provider over another. Employees can receive care outside the network but receiving care from an out-of-network provider can have costly consequences to the employee through increased coinsurance and co-pays.

Attempting to lower the national debt, lawmakers have become increasingly interested in the high cost of Medicare, which resulted in the birth of ACOs. ACOs are groups of doctors, hospitals, and other health care providers who come together to give coordinated high-quality care to their Medicare

patients. The purpose of ACOs is to ensure that patients get the right care at the right time, while avoiding duplication of services and preventing medical errors. The incentive for the ACOs success is to share in the savings it achieves for the Medicare program. This is accomplished by offering bonuses to ACOs for becoming more efficient and keeping provider costs down, while meeting specific quality benchmarks. ACOs are new to the health care system and will need to be evaluated moving forward. One area of concern is that consolidation of hospitals and providers could drive up health costs and limit patient choice.

With all of the moving parts of a health benefit plan, counties must be aware of adverse selection. Whether self-insured or fully insured, adverse selection occurs when more than one health plan exists in the same county. Specifically, this occurs when employees with low claims choose one plan, and employees with high claims choose another. The healthier employees choose a plan based on what will save them the most money, thereby making the other plan costlier due to the predominance of higher claims. Counties should structure their benefits so employees choose either "yes" or "no" to only one plan of health benefits so as to spread the risk over a greater pool of employees.

In order to counter adverse selection, counties should make benefit changes and offer plans based on pools of employees, such as the sheriff's office, highway department, human services, administration, etc. This ensures that the plan has a balance between employees with high and low claims.

CONSUMERISM

Consumerism in healthcare is based on the idea that individuals should have greater control over decisions affecting their healthcare. The idea is that giving individuals the tools and information they need to have more control over their healthcare will result in better treatment outcomes at a lower price. Increasing the awareness of the total cost of healthcare among engaged consumers will drive down costs through competition and informed decision-making.

At the heart of the consumerism trend are high-deductible health plans (HDHPs), health savings accounts (HSAs), and health reimbursement arrangements (HRAs). HDHPs generally result in lower insurance premiums with smaller future increases in premium. Often, HDHPs are coupled with either an HRA or HSA due to the financial strain HDHPs place on employees.

An HRA is a specified dollar amount that a county can pledge to an employee for the reimbursement of qualified medical expenses and insurance premiums. With an HRA, the county has greater leeway in defining how the funds will be utilized. Also, limits can be put in place for the amount available for carry-over each year.

Health Benefits

	HRA	HSA
Account owned by	Employer	Employee
Who maintains interest received on account	Employer	Employee
Benefits levels	Same as Current (Including Co-pays)	Need to Change Benefit Levels – Minimum Requirements (No Co-pays)
Funding	Employer	Employer and/or Employee
Unused benefit dollars	Employer Decides Rollover – Yes or No	Continuous Rollover of Funds

In addition to HSAs and HRAs, there are other critical components needed to gain the benefits of consumerism. Consumer-driven healthcare encourages healthy behavior. Employees should not pay out-of-pocket for items such as routine physicals, immunizations, prenatal care, etc. In the long term, these items are expected to save the health plan money through early detection and prevention of catastrophic claims. The ACA mandates that specific preventative care be paid for at 100%.

Wellness is another important piece of the consumerism trend and its popularity has grown. Healthy eating, walking programs, weight loss programs, health club memberships, and healthy living seminars have become a part of many workplaces. Employers see the benefits of healthy employees through increased productivity, as well as savings to the health plan.

Many counties have seen the benefits of consumerism through an increase in communication between employees and management. Not only has communication increased, but discussion is often more productive overall. This creates an environment where all of the stakeholders are eager to work together to find solutions in the development and implementation of the health benefit plan.

One approach to increasing communication has been the formation of an insurance committee made up of representation from both employees and management. Employee and management officials hear each other's perspectives as changes are brought forward for review. They also spend time educating themselves on overall claims experience and optional health benefits. It is common for insurance committees to create highly successful wellness programs, as individuals serving in this capacity are knowledgeable of the types of activities that will have the farthest-reaching impact in their workplace.

CONCLUSION

Employee health benefits have come a long way since the 1850s. As advancements in healthcare continue, so too does the increased cost for services. This escalation of cost makes it increasingly important to stay on top of the trends in employee health benefits.

Interacting with the Media

Michelle Gormican Thompson, Thompson Communications

As a county official, one of the most important responsibilities you have is to communicate with constituents. This communication can come in the form of newsletters, office hours, and public appearances. As important in getting your message out, is using local media to share your work and perspective, as well as to solicit ideas and feedback from the citizenry. This includes traditional media like newspapers, television and radio, in addition to the use of social media platforms such as Twitter and Facebook to reach today's audience.

TODAY'S CLIMATE

To say things have changed in recent years in the area of media relations and news consumption would be a gross understatement. With the explosion of electronic media and social media, coupled with the huge decline of print newspapers and reduction in newsroom staff, the landscape looks significantly different than it did just a few years ago.

But with great change comes great opportunity for you as county officials. The Pew Research Center stated, "Newsmakers and others with information they want to put into the public arena have become more adept at using digital technology and social media to do so on their own, without any filter from traditional media. They are also seeing more success in getting their message into the traditional media."

What does this all mean for you? Plenty. It puts more power into the hands of newsmakers like yourselves and gives you more opportunities to share your county's story with your local media outlets. It presents you with an opportunity to become a trusted source for your local print, radio, and/or TV reporter. With additional avenues like social media, there are more ways than ever to share your message.

MEDIA 101

With all the changes that have occurred in the area of media consumption, the core principles of media relations have not changed. Being open, up front, and respectful of deadlines creates a solid relationship with local media and that should always be a desired goal. While today you might be answering a question about an upcoming resolution before the county board, next week you may call the media to discuss a new initiative the board is working on to better serve the taxpayers.

Having an open channel of communication with media outlets should always be your goal and will allow you to help craft, as well as control, your message. When something big is coming before the board, pick up the phone or drop an email to the reporter that covers the board. This information is appreciated and when questions come up in the future, you want to be the source the media uses for answers.

Media

Remember, reporters have a job to do and should be viewed as a resource and not a threat. Simply not returning a phone call from a media outlet, saying "no comment," or speaking "off the record," is not advised. If you do not have an answer to a particular question, tell the reporter you will reply soon with an answer and give them a clear timeline of when you will contact them. Find out when their deadline is and be respectful of it.

FIRST STEPS

The foundation of your communication effort is your media list. As a newly elected or even veteran supervisor, the first thing to do in office is take the time to create a list of all media outlets and reporters in your district. Be sure to include both the traditional media – print, radio, and TV – as well as online or specialty publications.

The list should include the media outlet name, reporter's name, email, phone, website address, and deadlines. Also find out and note which contact methods they prefer, as some reporters appreciate a quick email, while others prefer to talk on the phone. If you do not know when a deadline is, call the newspaper, radio, or television station and ask. Several times a year, be sure to review your list to ensure it is up-to-date, as it is not uncommon that reporters or assignment areas change.

In addition to creating a traditional media list, you should set up a Facebook page and Twitter account (see relevant sections below). Once this is done, "like" or "follow" all your local news outlets with the goal of the media following you back. That way, when you post your story on social media, the story will be "pushed" into their news feed.

CRAFTING A MEDIA RELEASE

So, you have a story idea to share. Now what? You can call reporters directly to pitch the story, focusing on key points. You can also kick off the conversation with a brief media release, no more than two pages long, with one page being ideal. Each media release should include the following:

- Your name and/or your spokesperson's name, affiliation, and contact information at the top, along with the date of release.
- The statement, "For Immediate Release" on your document. If you give the release to a reporter ahead of its release date as a courtesy, be sure to include "Embargo Until December 1" or whatever date the information is being released.
- A short headline that succinctly summarizes your news.
- A lead paragraph that grabs the attention of the readers, so they continue reading the release. The body of the release will build on the lead with additional details of your news.
- A brief description of you and your county board, known as the "boilerplate," at the end of the release.

TALKING POINTS

In addition to a media release, determine the three-to-five main messages you want to convey about your topic and prepare talking points for the reporter. These should be very brief, affirmative sentences that are intended to persuade an audience to understand your point of view. Keep talking points free of jargon, always be consistent, and stick to the main message you want to convey in the talking points. Make sure everyone involved in media relations in the county has a copy of the prepared talking points and understands the importance of consistency and staying on message.

BE A RESOURCE

Sometimes it is useful to provide the media with fact sheets. Unlike a news release or talking points, fact sheets are not used to announce news. They provide information and data that saves research time for media representatives. In today's climate of dwindling newsroom staff, this effort is greatly appreciated. By providing these facts, you also help ensure that the media has accurate information.

Finally, call your local reporters regularly. Check in, give them updates on what your county has been working on and what might be coming up in the future. This will go a long way in establishing strong relationships with the media.

SOCIAL MEDIA

Without a doubt, message delivery has changed. Historically, a media release was written and then faxed out or emailed, then you would wait to see if the story was picked up and published or broadcast. While this distribution channel continues to be used today in some iteration, there is another significant player in the media game: social media. The biggest change for digital public relations is this – you no longer need the traditional media as your only megaphone. If you are not using social media, you are missing a mainstream and accepted vehicle to reach your constituents.

According to the Pew Research Center, in 2019 "Seven-in-ten Americans use social media to connect with one another, engage with news content, share information and entertain themselves."

You can now go directly to your audience via Twitter, Facebook, LinkedIn, or various other social media sites, email, text, and your website. Even if the media does not run your story, you can still push your media release or news to your readers/constituents by posting it on your social media accounts.

By nature, what makes social media "social" is the ability for people to comment and share posts with followers. Suddenly, your message can be in front of hundreds of people at their computers, tablets, or phones. While there are many social media sites out there today, with even more on the horizon, the focus of this article will be on utilizing the most popular platforms - Facebook and Twitter.

Media

FACEBOOK

Facebook is a popular *free* social networking website that allows registered users to create profiles, upload photos and videos, send messages, and keep in touch with friends, family, and colleagues. It can help you connect with people of all ages in your community and puts a friendly, personal face on you and your county board.

As a county official, you can use Facebook to post photos, stories of recent events, project updates, videos, links to organizations or agencies, and positive and inspiring stories. You can also use your Facebook page to post questions and to otherwise engage your audience in a virtual conversation. Even if you have a personal page, be sure to create a separate "Richmond County Board Supervisor Jane Doe" page.

Familiarize yourself with Facebook and its associated apps to take advantage of all of the features the platform has to offer. If you establish a page, start by visiting Facebook's nonprofit advice page. To launch your Facebook page, simply go to *www.facebook.com*. You will need an email address, an interest in learning, patience, and some free time.

TWITTER

Twitter is a *free* micro blog where you can post very short pieces of information. Each "tweet," or post you write, can only be 280 characters or less. You can send out updates and news on your county's activities and resources. You may find it useful to post brief comments and links to your photos, videos, website, and to tweet about other agencies and organizations.

Through your tweets, re-tweets, and mentions, you can grow your Twitter followers and help drive Facebook fans, blog readers, and traffic to your website, keeping your constituency that much more informed.

To create your Twitter account, simply go to *www.twitter.com*. You will need an email address and again, a desire to learn. It should be noted that on both Facebook and Twitter, there are security and privacy settings you control, so you can decide the level of interaction users can have when on your page.

CONCLUSION

Interacting with the media involves so much more than answering a few questions in the back of the county boardroom. You should view proactive media relations as an important part of your role as a county official. It is an opportunity to share the latest news and updates on what your county is doing and what you as an elected official are doing for your constituents. Counties have amazing stories to tell and with some simple planning and a dedication to working with the media, you will yield great results.

ONLINE RESOURCES

There is a wealth of resources available to county officials from local, state, and federal websites. From in-depth research to the status of legislation, the information available to you as a county official through the web is truly limitless. Below is a sampling of the websites that have proven to be beneficial to county officials.

NATIONAL

National Association of Counties - *www.naco.org*

National Conference of State Legislatures - *www.ncsl.org*

The United States House of Representatives - *www.house.gov*

The United States Senate - *www.senate.gov*

The White House - *www.whitehouse.gov*

STATE

State of Wisconsin - *www.wisconsin.gov*

> *Note: All state departments, such as the Wisconsin Department of Revenue and the Wisconsin Court System, can be accessed through this site.*

Wisconsin State Legislature – *www.legis.wisconsin.gov*

Legislative Fiscal Bureau – *www.legis.wisconsin.gov/lfb*

Legislative Council – *www.legis.wisconsin.gov/lc*

Division of Extension, UW-Madison - *www.extension.wisc.edu*

UW-Extension Local Government Center - *lgc.uwex.edu*

Wisconsin Technical College District Boards Association - *www.districtboards.org*

STATE & COUNTY ASSOCIATIONS

Wisconsin Counties Association - *www.wicounties.org*

> *Note: All 72 counties' websites can be accessed through www.wicounties.org > "County Directory."*

Aging and Disability Professionals Association of Wisconsin - *www.adpaw.org*

Association of Wisconsin Regional Planning Commissions - *www.awrpc.org*

Badger State Sheriffs' Association, Inc. - *www.badgersheriff.com*

County Veterans Service Officers Association of Wisconsin - *www.wicvso.org*

League of Wisconsin Municipalities - *www.lwm-info.org*

Transportation Development Association of Wisconsin - *www.tdawisconsin.org*

Wisconsin Association of Local Health Depts & Boards - *www.walhdab.org*

Online Resources

STATE & COUNTY ASSOCIATIONS (CONT.)

Wisconsin Chapter, National Emergency Numbers Association (911) - *www.wipscom.com*

Wisconsin Child Support Enforcement Association - *www.wcsea.org*

Wisconsin Coroner and Medical Examiners Association - *www.wcmea.com*

Wisconsin County Clerks Association - *www.wisconsincountyclerks.org*

Wisconsin County Code Administrators - *www.wccadm.com*

Wisconsin County Forests Association - *www.wisconsincountyforests.com*

Wisconsin County Highway Association - *www.wiscohwy.org*

Wisconsin County Human Service Association - *www.wchsa.org*

Wisconsin County Treasurer's Association - *www.wicountytreasurers.com*

Wisconsin District Attorney's Association - *www.thewdaa.org*

Wisconsin Emergency Management Association - *http://wema.us*

Wisconsin Government Finance Officers Association – *www.wgfoa.com*

Wisconsin Land and Water Conservation Association - *www.wisconsinlandwater.org*

Wisconsin Land Information Association - *www.wlia.org*

Wisconsin Register in Probate Association - *www.wripa.org*

Wisconsin Register of Deeds Association - *www.wrdaonline.org*

Wisconsin Policy Forum - *www.wispolicyforum.org*

Wisconsin Towns Association - *www.wisctowns.com*

Wisconsin Victim-Witness Professionals - *www.wvwp.net*

NEWS SERVICES

Governing Magazine - *www.governing.com*

The Wheeler Report - *www.thewheelerreport.com*

NACo County News – *www.naco.org/news*

WisPolitics - *www.wispolitics.com*

Wisconsin Eye - *www.wiseye.org*

"Call to Order"

The following articles, the *Call to Order* column published in *Wisconsin Counties* magazine, were written by former WCA Chief of Staff J. Michael Blaska on a wide variety of topics on parliamentary procedure and were published from 2015 to 2017.

Call to Order
Columns

J. Michael Blaska, Chief of Staff, Wisconsin Counties Association (retired)

EVERYBODY APPRECIATES A WELL-RUN MEETING

I am fond of saying everyone appreciates a well-run meeting. Meetings guided by a specific set of rules are more efficient, cordial and effective.

I learned very quickly serving ten years on the Sun Prairie Town Board and eighteen years on the Dane County Board of Supervisors that understanding the rules of order of a given body gives you an edge in advancing your position and establishing yourself as an authority, which could lead to leadership positions.

Understanding rules of order can be used in many facets of civil society, not only at county board or committee meetings. Many of us are involved in civic organizations, church boards, sport associations, farm groups and other governmental entities.

Rules of order are necessary to conduct any type of meeting. The object of rules of order is to facilitate the smooth functioning of an assembly and to provide a firm basis for resolving questions of procedure. It is unwise for any assembly to function without formally adopted rules of order.

We can find rules for conducting meetings in the Wisconsin State Statutes, local rules and *Robert's Rules of Order*. The statutes state that a majority vote is needed to conduct business; however, state statute may require two-thirds vote in some circumstances.

The usual method by which an organization provides itself with suitable rules of order is to include in the organization's bylaws or ordinances a provision prescribing that the current edition of a specified and generally accepted manual of parliamentary law be the organization's parliamentary authority. The organization then adopts only such special rules of order as it finds are needed to supplement or modify rules contained in that manual.

It is presumed that any organization that has not formally adopted rules of procedure will follow *Robert's Rules of Order*.

Where did *Robert's Rules of Order* come from? It was written by Henry Martyn Robert (1837-1923) and was originally published as the *Pocket Manual of Rules of Order for Deliberative Assemblies* in 1876. Mr. Robert was an engineering officer in the United States Army who attained the rank of Brigadier General. He was also active in educational work, church and civic organizations.

During the American Civil War, Robert was asked without advanced notice to preside over a meeting on developing a defense strategy in preparation for a confederate attack on the city of New Bedford, Massachusetts. That meeting lasted 14 hours and he admitted to being totally unprepared and embarrassed. Robert declared then and there that he would never again preside over a meeting without knowing parliamentary law – the terms originally given to the rules and customs for carrying out business in the English Parliament.

Call to Order

For the next several years, Robert gathered information and read books on decisions and procedural policy made by the English Parliament and the United States Congress. Due to a severe Wisconsin winter while stationed in Milwaukee, Robert was unable to continue the Army's engineering project along the Lake Michigan shore. During the resulting respite, he began writing the manual that today is *Robert's Rules of Order*. In its 11th edition, *Robert's Rules of Order* is recognized as the premier authority on rules of procedure.

Running effective meetings is no small task and *Robert's Rules of Order* is a great place to start. Not only is it important to understand motions, when they are appropriate, whether they need a second, whether they are debatable and when a simple majority to approve is appropriate, it is also important to understand meeting etiquette. How members of a body behave during a meeting, such as a member's motives and germane debate, are as critical to running meetings as points of procedure.

These items and more will be discussed right here in *Wisconsin Counties'* newest feature column, *Call to Order*. Stay tuned to the February installment for a review of the most commonly misused motions in the "not" so well run meetings.

THE MOST COMMONLY MISUSED MOTION

Very often a member of a body will move to *Table* an item when they want to kill or delay indefinitely. The motion is out of order. The correct terminology is to *Lay on the Table*. It is the most misused of all motions.

The motion to *Lay on the Table* temporarily sets the matter aside with the intent to take the matter up later in the meeting.

When you are in the middle of debate on a motion and a question is asked of a department head that needs time to get the information, rather than wait, move to *Lay on the Table*. Or, if you are in the middle of debate and reach the hour where you have a public hearing scheduled, move to *Lay on the Table*. In both situations the intent is to take the matter up later in the meeting.

Before the chair accepts a motion to *Lay on the Table*, the chair must fully understand the intent. If it is to kill or delay indefinitely then the chair must rule the motion out of order.

The motion to *Lay on the Table* is out of order when someone else has the floor, must be seconded, is not debatable, is not amendable and requires a majority vote.

When the body is ready to resume discussion on the matter, the proper motion is to *Take from the Table* with the same rules applying as *Lay on the Table*.

If the intent is to kill or delay indefinitely then the proper motion is to *Postpone Indefinitely*. The motion to *Postpone Indefinitely* kills the motion and avoids the members taking a direct vote on the matter. It can be used to dispose of poorly drafted, ill-advised, or embarrassing motions where members would rather not be recorded as voting aye or nay on the matter.

The *Postpone Indefinitely* motion can also be used to test the strength of a proposal. Say you are debating a motion that is divisive, you do not know where the votes are, you have amendments to

make it more acceptable but you do not want to make the amendments because you are opposed, move to *Postpone Indefinitely*. If the motion passes, the matter is dead and you have won. If it does not pass, you now know where the votes are and can decide if you want to make your amendments.

The motion to *Postpone Indefinitely* is out of order when someone else has the floor, must be seconded, is debatable, is not amendable and requires a majority vote

If the intent is to delay action on a main motion then the proper motion is to *Postpone to a Certain Time*. The motion just to *Postpone* is out of order. The motion must be to a time specific, such as a definite day, meeting, hour or until after a certain event. For example, a proper motion would be to *Postpone until the next meeting*, *Postpone until after the finance committee has acted*, or *Postpone after June 1*.

The motion to *Postpone to a Certain Time* is out of order when someone else has the floor, must be seconded, is debatable, is amendable and requires a majority vote.

Adopting a motion to *Lay on the Table* when the intent is to kill or delay deprives the body of its most basic right to debate the matter, which is allowed with the motions to *Postpone Indefinitely* and *Postpone to a Certain Time*. It also deprives the body of the ability to *Amend*, which is allowed with the motion to *Postpone to a Certain Time*.

I now move to *Postpone discussion on parliamentary procedure until the March 2015 edition of Wisconsin Counties magazine*; do I hear a second?

THE MAIN MOTION

During the course of a meeting we may hear reports, hold public hearings, listen to presentations and conduct business. In order to bring business before the assembly, a member of the assembly is required to make a motion. A motion is a formal proposal by a member to take certain action.

There are many parliamentary motions that can be offered during a meeting but there is only one that brings business before the assembly and that is the main motion. Motions to *Amend*, *Lay on the Table*, *Refer*, etc. are procedural in nature and cause a certain action to take place, but it is the main motion that brings business before the assembly.

A main motion is in order when no other question is pending; it is out of order when another member has the floor, or a motion must be seconded, is debatable, is amendable and requires a majority vote unless otherwise specified.

There are four steps by which a motion is brought before the assembly. The first is to obtain the floor. This can be done in a variety of ways depending on the circumstances. It may involve raising your hand, standing, pushing a button or in some cases catching the chair's eye. A member has not obtained the floor until recognized by the chair.

Once the member is recognized by the chair, the member then states the motion, "I *Move to adopt the resolution to increase supervisor's salaries by 10%* or *Move to adopt resolution...*"

A second to the motion is now in order. A member does not need to be recognized or obtain the floor to second the motion – you can just shout out, "I *second the motion*." If no one volunteers to

Call to Order

second then the chair should ask, "Is there a *second to the motion?*" A member does not have to support the motion to second, but may second to allow the matter to be debated. If there is no second, the motion dies.

After receiving a second, the chair then restates the motion, "The motion before the body is to *Adopt resolution...to increase supervisor's salaries by 10%.*" Neither the making nor the seconding of a motion places it before the assembly; only the chair can do that by restating the motion. The question (motion) is now said to be "pending" or "ready for debate." If the assembly votes in the affirmative, the motion is said to be "approved," "adopted" or "carried." If the assembly votes to deny, the motion it is said to be "denied," rejected" or "lost."

Members should avoid negative statements in a motion where the effect is calling for a position to be taken; a negative statement may confuse members as to the effect of voting *for* or *against* the motion. For example, instead of moving the county take a position *not in support of the assembly bill to eliminate county government*, move to *oppose the assembly bill....* It should be noted that if the motion is voted down then no opinion has been expressed.

Sometimes during debate the maker of the motion realizes the motion was in poor taste or was not what was intended. Can the maker of the motion withdraw the motion? No, because it no longer belongs to the member that made the motion. Once the chair restates the motion, it becomes the property of the assembly. However, if the chair feels the body supports withdrawal, the chair can state, "If there are no objections to withdrawal" and there are no objections, the chair then states, "the motion is withdrawn." You can always take action with unanimous consent, which will be discussed in more detail in a future article.

The (main) motion before the readership is, *keep reading Call to Order.*

THE MOTION TO AMEND

Very often members find the need to revise the motion once it is introduced and debated, especially the motions that are complex and controversial. The motion to change the wording, and with some limits the meaning of the main motion, is called the motion to *Amend*. It is the most used of all the motions that affect or dispose of the main motion.

The adoption of the subsidiary motion to *Amend* does not adopt the main motion. The main motion is still pending as modified. If the motion to *Amend* is rejected, the main motion is pending in its original form.

The motion to *Amend* takes precedent over the main motion and the motion to *Postpone Indefinitely*. The motion to *Amend* also

1. Can be applied to itself;
2. Is out of order when another has the floor;
3. Must be seconded;
4. Is generally amendable;

5. Requires a majority vote;
6. Can be reconsidered;
7. And, is generally debatable.

The motion to *Amend* is debatable when the motion to be amended is debatable; however, debate must be limited to the merits of the amendment and must not extend into the merits of the motion to be amended. If the motion to be amended is not debatable, the amendment is also not debatable.

There are two types of amendments– primary and secondary amendments. The primary amendment applies directly to the pending question. The secondary amendment applies to the primary amendment. A primary amendment must be germane to the main motion to be in order. A secondary amendment must be germane to the primary amendment, not just to the motion the primary amendment attempts to amend. No more than one primary amendment or one secondary amendment are allowed at one time, therefore the secondary amendment is not amendable.

An amendment must always be germane, meaning that it must be closely related to or have bearing to the subject matter to be amended. When the presiding officer is in doubt of whether an amendment is germane, the amendment should be allowed.

If the main motion is to purchase five new squad cars, an amendment to strike out "squad cars" and add "snow plow trucks" is out of order. This action would completely change the meaning of the motion. Further, a motion to add "not" between "to purchase" is also out of order, since the same can be accomplished by defeating the main motion.

However, if the body has a motion to support a particular assembly bill, an amendment to strike-out "support" and add "oppose" is in order because the body is expressing an opinion.

Amendments are made by adding or striking words or a combination of both. If the amendment involves significant change by adding and striking out words and paragraphs, it is referred to as a motion to S*ubstitute*. The motion to *Substitute* is a primary amendment and can only be offered when no other amendment is pending. Remember, if the primary amendment to *Substitute* is adopted, then the main motion as amended is still pending subject to more amendments or a vote.

Sometimes a member will propose a very simple amendment and ask, "Will the maker of the motion accept a *friendly amendment*?" The presiding officer will then ask the maker and the second of the motion if they will accept the amendment. There is no such thing as a friendly amendment. The amendment must be treated as any other motion. However, if the presiding officer believes that everyone is supportive, then it can be adopted by unanimous consent.

As always, keep the discussion friendly and read *Call to Order* to avoid mistakes!

THE RULES OF DEBATE

Very often when we mention *Robert's Rules of Order,* we think of it as a guide to what motions are in order, i.e., Is a second required? Is the matter debatable? Can the matter be amended and the vote required? *Robert's* does all of that and much more. Rules governing *Debate* and *Rules of Decorum* are a

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major component to rules of order and running effective meetings. In this month's *Call to Order*, I will review the rules associated with *Debate*.

The ability to debate is a basic right of every member of a body and is limited only by parliamentary law or the rules of the body. However, until a matter is brought before the assembly, it cannot be debated. The general rule against discussion without a motion is one of parliamentary procedure's most powerful tools for keeping business on track.

Again, until a matter has been brought before the assembly in the form of a motion, it cannot be debated. A member who has obtained the floor when no other action is pending can make the motion. The motion must be seconded and restated by the chair before it is ready for debate.

The maker of the motion is entitled to debate first. Once debate has concluded the chair should ask, "Are you ready for the question?" After a reasonable pause, the chair may put the question to a vote. However, if someone rises to speak, it must be allowed. The chair cannot end debate by putting the question.

No member can speak more than twice on a matter or for longer than ten minutes. Some believe this is unreasonable in that members should be allowed to speak as often as they want. This rule, however, is important in running effective meetings as it forces members to think about what they are going to say and to plan their debate.

Some also say that this rule is unreasonable when it comes to debating important or comprehensive motions such as adoption of the budget. Keep in mind that this rule applies to every single motion. You can speak twice and ten minutes on the motion to *Adopt*, twice and ten minutes on each and every amendment, twice and ten minutes on a motion to *Postpone to a Certain Time*, *Refer* to a committee or *Adjournment*. Remember, that giving a report, asking a question, responding to a question or offering a suggestion is not counted as debate. For those of you who watch C-SPAN, you are not allowed to yield your unused time to another member as Congress does.

Every member should be allowed to speak once before allowing a member to speak a second time. If possible, the chair should alternate between those for and against the matter if known. This is especially important when holding a public hearing in which speakers should be required to register. This allows the chair to alternate between those for and those against the matter at hand.

Members must confine their remarks to the merits of the question. In debate, a member's remarks must be germane to the question before the body. Statements made during debate must have bearing on whether the pending question should be adopted or defeated. Debate unrelated to the subject matter should not be allowed.

Robert's also suggests that no one speaks while seated except in committees and small boards. Many boards allow members to be seated while speaking, which is fine. Standing makes it clear who has the floor, especially on larger boards where members may whisper or talk to each other during the meeting.

Remember, just because you are not following the rules as specified in *Robert's Rules of Order*, does not mean you are doing it wrong; however, it is always better to adhere to your local rules and *Robert's* as much as possible.

Stay tuned for the next month's *Call to Order* to review the *Rules of Decorum* and keep on the right side of debate ... and who knows, maybe your mother too!

THE RULES OF DECORUM

As was discussed in last month's column, *Robert's Rules of Order* does much more than provide guidance on the handling of motions. It provides guidance on how we conduct ourselves at meetings by providing rules of decorum.

Members may discuss the consequences of a proposal but must avoid personalities and never question a member's motives. Members must refrain from attacking another member's motives. The proposal, not the member, is the subject of the debate.

While serving on the town board, I supported a conditional use permit for a blacktop plant and a rezone for a mineral extraction site. Another member accused me of supporting the proposal because my brother owned a trucking company. That member was out of order. The question before the town board was whether this project was good for the town, not why I supported it. The member questioned my motives. If the member thought I had a conflict of interest, they should have raised that as a separate issue.

A member may disagree with a statement made by another member but should never use the words "is false," "liar," "fraud," or "lie."

Members of an assembly must address all remarks through the chair and cannot address one another directly. If a member has a question of another member, they must address the chair and the chair must ask the other member if they want to respond. It is improper to address the television cameras when televised; or, when sitting in the front row of a large board, to turn around and address the body or to address the gallery when there is a large citizen attendance. A member should always address the chair.

Avoid the use of member's names during debate. Whenever possible, refer to other members as supervisor (last name), or *the supervisor from district one*, or *the previous speaker* or *the chair of the finance committee*. Using first names can personalize the debate when the discussion gets heated and can create a public appearance of a "good old boys club." Maintaining a sense of formality increases the stature of the body.

Always refer to the presiding officer as Mr. or Madame chair. The chair should refer to themselves in the third person such as *the chair rules* or *the chair is of the opinion*, etc. The chair should never refer to a member by using *you*.

Members must refrain from speaking adversely on prior action not pending. Debate must be germane or related to the topic at hand.

Call to Order

Sometimes after debate, the maker of the motion changes his mind and now opposes. A member may vote against his own motion but may not speak against it.

A member has no right to read from any paper or book as part of their speech without permission from the assembly. Members are permitted to read short, pertinent, printed extracts in debate as long as they do not abuse the privilege. If there is a need, the member should ask the chair, "If there is no objection, I would like to read this short excerpt or paragraph."

If at any time the presiding officer addresses the body to make a ruling, give information or otherwise speak within his privilege, any member who is speaking should be seated or step back from the microphone until the presiding officer has finished. The member may resume his speech once the chair has finished.

No member is permitted to disturb the assembly by whispering, walking across the floor or in any other way. The key words are "disturbing the assembly." If members have the need to talk to others during a meeting or need to use the facilities they should move for a short recess.

The presiding officer should relinquish the chair when participating in debate. The chair is presumed to be impartial while presiding over the meeting. If the chair wishes to participate in the debate, they must relinquish the chair to the vice chair or second vice chair. They may not return until the matter is disposed of because they are no longer considered to be impartial. In small boards and committees the chair may speak as often as they want without relinquishing his position.

Normally debate is not permitted unless a formal motion is before the body. However, it is permissible for the chair to assist a member in framing the proper motion. It is also permissible to provide a brief explanation before making a motion. If a member wishes to make a motion such as *Lay on the Table,* it may be necessary to provide a brief explanation as to the purpose in order to get a second.

Most bodies do not follow *Robert's* to the letter of the law, but the more you can the more effective and efficient your meetings will become.

DUTIES OF THE CHAIR

One of the basic provisions of any body or assembly is to elect a presiding officer or chair. It is the chair's job to conduct the business and enforce the rules of the assembly.

Once a member assumes the position of chair it is important for the chair to maintain a position of impartiality and help to preserve an objective and impersonal approach.

Past articles have referenced some duties and responsibilities; this article attempts to quantify the duties and responsibilities as listed in *Robert's Rules of Order*.

It is the duty of a presiding officer to:

1) open the meeting at the appointed time by taking the chair and calling the meeting to order and determine whether a quorum is present

2) announce in proper sequence the business that comes before the assembly or becomes in order in accordance with the prescribed order of business, agenda or program, and with the existing orders of the day
3) recognize members who are entitled to the floor
4) state and put to vote all questions that legitimately come before the assembly as motions or that otherwise arise in the course of proceedings, and to announce the result of each vote; or if a motion that is not in order is made, to rule it out of order
   - restate the motion placing it before the body and for clarity
   - relinquish the chair when participating in debate and not return until the pending question is disposed of (except in small committees)
5) protect the assembly from obviously dilatory motions by refusing to recognize them
6) enforce the rules relating to debate and those relating to order and decorum within the assembly
   - remind members to confine remarks to the merits of the question
7) expedite business in every way compatible with the rights of members
8) decide all questions of order, subject to appeal, unless when in doubt, the presiding officer prefers initially to submit the question to the assembly for decision
9) respond to inquiries of members relating to parliamentary procedure or factual information bearing on the business of the assembly
10) authenticate by his or her signature, when necessary, all acts, orders and proceedings of the assembly
11) declare the meeting adjourned when the assembly so votes or where applicable at the time prescribed in the program, or at any time in the event of a sudden emergency affecting the safety of those present

The statutory duties of the board chair are found under s. 59.12 Wis. Stats., which state, "The chairperson shall perform all duties required of the chairperson until the board elects a successor. The chairperson may administer oaths to persons required to be sworn concerning any matter submitted to the board or a committee of the board or connected with their powers or duties. The chairperson shall countersign all ordinances of the board, and shall preside at meetings when present. When directed by ordinance the chairperson shall countersign all county orders, transact all necessary board business with local and county officers, expedite all measures resolved upon by the board and take care that all federal, state and local laws, rules and regulations pertaining to county government are enforced."

Additional duties of the chair, such as making committee appointments, setting agendas and serving on committees, should be codified in county ordinance as part of the board's rules.

Call to Order

POINT OF ORDER

The duties of the chair are numerous. They include announcing issues, recognizing members, restating the motion, calling for and announcing the vote, just to name a few. Paramount in those responsibilities is enforcing the rules relating to debate, order and decorum. It is the chair's job to make sure the meeting runs smoothly and fairly.

However, keeping the peace is not limited to the chair, everyone in the meeting shares in that responsibility. When a member feels the rules of the assembly are being violated, he or she can make a *Point of Order.* Making a *Point of Order* is calling upon the chair for a ruling and enforcement of the rules.

A member makes the *Point of Order* by simply rising and addressing the chair by stating, "I rise to a *Point of Order*" or "*Point of Order* Mr. or Madame chair." A member need not be recognized by the chair and may interrupt a speaking member. It does not require a second and cannot be amended.

The motion takes precedence over any pending issue. No other subsidiary motion can be made, except the motion to *Lay on the Table,* until the *Point of Order* is disposed of. It can be applied to any violation of the body's rules. It is not debatable, however the member making the *Point of Order* must be allowed to explain his point.

Once the member has provided an explanation, the chair must rule on the matter. The chair can agree with the member and state, "The Point of Order is well taken" or "is not well taken," briefly stating the reasons. The chair may consult a parliamentarian or more experienced members of the board. If the chair is in doubt, the matter can be referred to the body where the matter is decided by a majority vote. If referred to the body the matter becomes debatable. No one has the right to express their opinion unless requested by the chair.

Every member who feels a rule has been violated has the right to insist on its enforcement. If a member is unsure if there is a violation, he or she may make a *Parliamentary Inquiry* of the chair. A *Parliamentary Inquiry* may be requesting information from the chair on the body's rules. Members should be careful not to raise *Points of Order* on minor infractions when no one's rights are being violated and no real harm is being done to the transaction of business.

A *Point of Order* should be raised at the time the violation occurs. As an example, if debate has begun on a motion where there was no second, it is too late to raise a *Point of Order*. Once debate has begun it is assumed that a second was not necessary because no one raised the issue at the time. By consensus, the body allowed the motion to move forward without a second.

However, it is never too late to raise a *Point of Order* if the infraction violates federal state and/or local laws, constitution or bylaws, previously adopted motions or a fundamental principle of parliamentary law.

Stay tuned for next month's *Call to Order,* which will address the process for appealing the decision of the chair.

APPEAL THE RULING OF THE CHAIR

It is clearly the duty of the presiding officer to enforce the rules of parliamentary law. Last month's article outlined a role for members in enforcing the rules relating to debate, order and decorum.

So what recourse does a member have, if in your opinion, the chair is clearly not enforcing the rules after you have made a *Point of Order*? A member can move to *Appeal* the decision of the chair. By moving to *Appeal*, and securing a second the question is taken from the chair and vested in the assembly for final decision.

Some of the characteristics of the motion to *Appeal* are:

- It takes precedence over any question pending at the time the chair makes the ruling, meaning the motion must be dealt with immediately
- It can be applied to any ruling of the chair, unless the motion is done for dilatory purposes the motion can be ruled out of order
- It must be made immediately after the ruling, if debate has intervened it is too late
- It must be seconded
- It is debatable, unless it relates to indecorum or a transgression of the rules of speaking; relates to the priority of business; is made when an undebatable question is immediately pending
- When debatable, no member is allowed to speak more than once, except the chair
- The chair is allowed to speak as often as needed, does not have to leave the chair and is entitled to preference over other members seeking recognition
- Even when the *Appeal* is undebatable, the chair may explain the reasoning for the decision
- It is not amendable
- A majority or tie vote sustains the decision of the chair on the principle that the chair's decision stands until reversed by a majority

A member wishing to *Appeal*, rises, without waiting to be recognized and addresses the chair by stating, "I appeal from the decision of the chair." After a second the chair states, "The decision of the chair is appealed from." The chair should then clearly state what is at issue and provide an explanation if warranted. The chair then states the question before the body, "Shall the decision of the chair stand as the judgment of the assembly?" or "Shall the decision of the chair be sustained?" Note, the motion is stated in the affirmative as opposed to, "Shall the decision of the chair be overturned." After debate, prior to the vote, the chair states, "Those in favor of sustaining the chair say aye, those oppose say no." A simple majority or tie vote sustains the ruling of the chair.

Members need to distinguish from a ruling of the chair and a response rendered from a parliamentary inquiry or other query. A member may not *Appeal* from a response to a parliamentary inquiry, which is just an opinion, which is different from a ruling on a question. For example, if a member asks the chair if a motion to *Amend* is in order and the chair states it is not, the chair has rendered an opinion. The opinion is not appealable. However, if the member moves to *Amend* and the chair rules the motion out of order, the ruling is appealable.

Call to Order

Members should not hesitate to *Appeal* a ruling of the chair if they disagree. It is no different then disagreeing with a member on a pending question during debate. There are times when the chair may welcome an *Appeal*, if the members appear to be equally divided, especially on a controversial matter. It is one way of maintaining good relationships between the body and the chair.

My appeal to your sense of parliamentary etiquette? Keep reading *Call to Order*.

SUSPEND THE RULES

It is unwise for an assembly or society to function without formally adopted rules of order. Every government body or societal organization should adopt rules of procedure or agree to follow *Robert's Rules of Order*. Rules are important to the smooth functioning of the assembly and to provide a firm basis for resolving questions of conflict. However, there are occasions where it may be prudent to suspend the rules. Whenever a body wants to do something that is prohibited by its rules it may adopt a motion to *Suspend the Rules.*

The motion to *Suspend the Rules* can be made at any time when no question is pending. It can also be made when business is pending if it directly affects the business at hand.

The motion is out of order when another member has the floor, must be seconded, is not debatable and is not amendable. The motion requires a two-thirds vote and may not be reconsidered.

Reasons for suspending the rules might include taking up agenda items out of their proper order, allowing members to speak again if they have exceeded their allotted time and allowing members of the public to address the board that otherwise might be prohibited from doing so.

A member wishing to suspend the rules simply obtains the floor, moves to suspend the rules and states the purpose. There is no need to state the rule that is being suspended. If the chair feels that everyone is in support, the chair can state, "If there is no objection?" and if there is none then the action is allowed.

All procedural rules can be suspended with unanimous consent with some exceptions. Under no circumstances can rules contained in bylaws or a constitution be suspended. No applicable procedural rule prescribed by federal, state or local law can be suspended unless the prescribed law provides for it. Additionally, fundamental principles of parliamentary law, such as the rule that permits only one question (the main motion) to be considered at one time, cannot be suspended.

It is a good idea to incorporate all procedural rules into county ordinance and then include a provision for all other rules the body will follow *Robert's Rules of Order*. The county ordinance should also include, among other things, how the board is organized, naming the officers and committees and their duties and responsibilities.

Can procedural rules of order, incorporated into county ordinance be suspended? Yes, if clearly stated that the motion to *Suspend the Rules* is incorporated as one of the rules or if there is a provision that states for all other procedural rules the body will follow *Robert's Rules of Order*.

There are times when the rules are suspended without going through the formal process. Sometimes a body will adopt a motion then realize after the fact that the motion was never seconded.

Does not seconding the motion invalidate the action? No, because no one raised the issue at the time, not the chair nor the members, so it must be assumed that it was okay.

Another rule that cannot be suspended? Reading *Call to Order*.

DIVISION OF THE ASSEMBLY

One of the most common methods of voting is the voice vote. Many governmental bodies are using electronic voting where each member presses a button and the votes are displayed on a board for all to see. In most situations where there are no electronic devices, the voice vote is used or the roll call vote if requested.

Whenever a member doubts the results of a voice vote, the member can ask for a *Division of the Assembly*. It may be because the vote was close or the member feels that not all the members had a chance to vote.

Requesting a *Division of the Assembly* means the vote will be taken again by a different method. *Robert's Rules of Order* suggests that the vote be taken by the members rising. Historically, the members moved to one side of the room – hence the term "division." The more practical method for resolving a difference of opinion for county boards, is the roll call vote.

A voice vote can be deceiving where it appears the measure was defeated only because the minority was much louder. Alternately, a chair may call the vote based upon the result they favor. Calling for a *Division of the Assembly* allows for a clear, accurate vote count.

When members are ready to vote the chair states, "All those in favor say aye." The chair then waits for the response and states, "All those opposed say nay." The chair announces the result of the vote by saying, "The ayes (or nays) have it." At this point, a member may call for *Division of the Assembly* before the chair states the effect of the vote, such as "The motion is carried." In close votes, the chair should allow time for members to request a *Division of the Assembly*. Once the chair states the motion is carried or defeated, it is too late. If the chair feels the vote was too close to call or the vote is unrepresentative, the chair can simply state, "*Division of the Assembly*" and order the roll call vote.

A *Division of the Assembly*:

- Takes precedence over any motion on which a vote has been taken. It may be called for from the moment the negative votes have been cast until the announcement of the result is complete.
- Can be applied to any motion by which the assembly is called upon to vote.
- Is in order when another has the floor and is called for without obtaining the floor.
- Does not require a second.
- Is not debatable.
- Is not amendable.
- Does not require a vote, since a single member can demand a division.
- Cannot be reconsidered.

Call to Order

When the result of a vote is clear, everyone has voted, and there can be no reasonable doubt as to which side prevailed, a call for a *Division of the Assembly* can be ruled as dilatory.* The chair should not allow requests whose sole purpose is to annoy the membership.

Robert's Rules of Order suggests that a motion is needed to request a roll call vote; however, it also states that the method of voting can be decided informally. In county government, the roll call is considered standard practice since citizens have the right to know how their elected members voted.

Remember, any member can call for a *Division of the Assembly*, you need not be recognized and do not need a second or a vote – simply shout it out. Stay tuned for another parliamentary procedure *shout out* in next month's edition of *Call to Order*.

** Dilatory is defined as a motion or request that seeks to obstruct or thwart the business of the assembly. Any motion or request that is frivolous or absurd or that contains no rational proposition is considered dilatory and should not be allowed.*

NOMINATIONS

When voters go to the polls for a general election they are not limited to voting for the candidates on the ballot. The electorate can vote for whomever they choose by simply writing in a name. When an organization convenes for the purpose of electing their officers, the members can also vote for whomever they wish. However, in most cases there is no ballot and a nomination process is initiated.

Once the election of officers comes up on the agenda, the chair opens the meeting for nominations by declaring, "I will now accept nominations from the floor for chairman of the board (or whatever the office)." If the existing chair expects to be a candidate for the office, he or she should step aside and allow the vice-chair or someone else not likely to be a candidate to conduct that portion of the meeting.

To make a nomination, unlike making a motion, a member need not be recognized by the chair. The member simply shouts out the name by stating, "I nominate John Doe." If the chair does not state, "John Doe has been nominated," the person should continue to shout out their nominee until the chair restates the name. It is permissible for a member to nominate him or herself. A second is <u>not</u> required. Very often nominations are confused with motions, nominations do not require a second, as do motions. For those of you who watch the political conventions, it is common practice for a delegate to make a nominating speech and for another delegate to second the nomination with another speech. Nominating and seconding speeches are a way of showing support for a particular candidate.

The chair should continue to accept nominations until everyone has had a chance to nominate. Does the chair have to ask three times, "Are there any more nominations?" No, this is a misconception. When the chair feels that everyone has had a chance to nominate and there are no more nominations, he or she can declare that nominations are closed.

The chair can accept a motion to close nominations with a second. This motion is not debatable, is amendable, requires a two-thirds vote and is out of order when a member is attempting to make a nomination. Motions to determine the method of nominations and to reopen nominations only require a simple majority.

In situations where there is only one nominee and everyone is supportive, it is common practice for a member to move to close nominations and cast a unanimous ballot for the nominee.

In larger societies, it is not unusual to create a nominating committee. The nominating committee should be elected by the organization or its executive board. It is their job to find qualified members that are interested in serving and are electable. The nominating committee may submit the nominees in advance of the election depending on the committee's instructions when it was created. At the appropriate time, the committee submits its report by placing the names in nomination. The chair must then ask for nominations from the floor.

A nominating ballot can also be used. It is conducted in the same way an electing ballot except that each member receiving a vote is nominated, votes are not counted. The nominating ballot gauges the sentiment of the body by showing preferences without electing someone. A nominating ballot should never be used as an electing ballot.

Remember, an official nomination "process" is not required because, as was pointed out earlier, members can vote for whomever they wish even if they have not been nominated.

Now that we have a nominee, next month we will move on with the election.

ELECTIONS

Organizations should specify the method of elections in their rules or bylaws. Elections can be conducted by a voice vote, roll call and ballot. Voice vote is often used in large membership organizations especially when an election is uncontested. Roll calls are more common in large organizations when a member represents a delegation of votes, like a political party convention election where the states are called upon to announce their votes. The most common method in smaller membership organizations is the ballot. If a method is not prescribed then a motion is in order.

When an organization has an election on its agenda, it is generally taken up early in the meeting. The first order of business is to determine who is going to chair the meeting during the election process. Let us assume the positions of chair, vice-chair and 2nd vice chair are scheduled for election. If the incumbent chair is up for election he or she should step aside and allow the vice-chair to run that portion of the meeting. Any member who is considering running for the office of chair should not be allowed to chair the meeting for that portion of the election.

What if all of the past officers are considering running for chair? Who should chair the meeting? In one county the previous chair was defeated for his election to the board and returned to the board to conduct the election of the chair. The newly elected chair then took over the remainder of the election process. If there are no returning officers or they are all interested in the position, then the body needs to nominate another member who has no interest in the office. You need not be a member of the body to conduct the election, the county clerk or anyone the body trusts can be chosen.

Once a temporary chair has been chosen to conduct the election, the chair should appoint tellers, who need not be members of the body, to distribute, collect, count the ballots and report the vote.

Call to Order

Tellers should be chosen for their accuracy and dependability, should have the confidence of the membership and should not have a direct personal involvement in the result of the vote.

If only one member has been nominated for an office, the chair can simply declare the nominee is elected. If there are more than two candidates for the position there is a possibility that no one achieves a majority. The balloting is repeated, as often as necessary, until such time as a single candidate reaches a majority.

It is improper to limit the voting to the two leading candidates. Often the two leading candidates will represent two different factions. A division within the organization may be worsened by limiting the election to the top two candidates. On the other hand, it may be possible to unite the organization with a compromise candidate.

It is also improper to remove the lowest vote getter. Individuals are never removed from the ballot unless they volunteer; however, they are under no obligation to do so. The candidate in the lowest place may be a "dark horse" on whom all factions may agree upon.

Several years ago, a county board voted over forty times, which took all day, before one candidate received a majority for chair. That is exactly the way it should be done. When no one receives a majority, continue to vote. The body can take recesses, allow members to confer with each other, allow the candidates to address the body, allow the candidates to seek the support of other candidates, allow members to speak on behalf of a particular candidate, but never limit the election to the top two vote getters or remove the lowest vote getter.

Good luck with your elections. What is the old saying? "Vote early and vote often." Wink, wink.

VOTING I

The basic requirement of approval for any action is the majority vote unless otherwise stated. A majority means more that half of the votes cast by those entitled to vote excluding abstentions. In some cases state statute, bylaws or local rules may require a super majority such as two thirds or three fourths. A plurality vote should only be used when specified in bylaws or other rules.

A plurality vote is the largest number of votes garnered when there are more than two choices. It is sometimes used to elect officers or directors when balloting is done by mail. In a situation where four candidates are running for board chair on a twenty-member board and *Candidate A* received seven votes; *Candidate B*, six votes; *Candidate C*, four votes; and *Candidate D*, three votes. *Candidate A* would be the winner if a plurality was required; under a majority vote rule there would be no winners. Generally, a rule that allows for a plurality vote is not usually in the best interest of an organization.

That said, the Wisconsin Counties Association recently amended its constitution to allow for the election of the Wisconsin director for the National Association of Counties Board of Directors by a plurality vote. An election will be conducted at each of the seven district meetings and the candidate with the most votes will be the winner, which may not be a majority. It was not practical to require a majority when the election process takes place on different days and locations.

In determining the vote total for approval, such as a majority, two thirds or three fourths, it must be based on the size of the group, which can vary depending on how it is defined. If the group has no specific rule it is always the number of members *present and voting*, but could be based on the *number of members present*, *total membership* or some other grouping.

If an organization with a membership of 20 convenes a meeting where 18 are in attendance but only 15 vote, then a majority vote would be 8 using the rule *present and voting*. A majority vote based on the *number of members present* would be 10. A majority vote based on *total membership* would be 11.

Robert' Rules of Order suggests that voting requirements based on the *number of members present* is generally undesirable. When someone abstains, it has the same effect as voting no and thus deprives a member the right to maintain a neutral position by abstaining.

Wis. Stat. § 59.02(3) states in part "… All questions shall be determined by a majority of the supervisors who are present unless otherwise provided." A Wisconsin Appeals Court ruled that a supervisor who is required to abstain is not "present" for calculating the number of votes required for passage.

Ethics laws prohibit elected officials from using their office or position to obtain gain for the private benefit of themselves, immediate family or for an organization for which the official is a member. *Robert's Rules of Order* also states that no member should vote on a question on which a member has a direct personal or pecuniary interest not common to other members of the organization. However, a member is free to vote for his or herself for an office or position of the body.

Every member of a body has a right to abstain from voting whether they have a conflict of interest or not. A member of a government body has a duty and obligation to vote but cannot be compelled to vote.

Some organizations are under the impression that the chair should not vote unless there is a tie. As a member of the body, the chair has every right to vote and should vote especially if serving on a governmental body.

A motion is lost on a tie vote when a majority is required. It should be noted that a tie vote sustains the decision of the chair in an *Appeal* of the decision of the chair.

Once the voting process has begun, the vote cannot be interrupted. Debate on the question cannot be reintroduced unless there is a suspension of the rules. Members are not allowed to explain their vote during the voting process, which would be the same as debate. A member has the right to change their vote right up to the time the result is announced. Once the result is announced, a member's vote can only be changed with unanimous consent of the body. In addition, a member can still take action that may change the outcome of the vote by calling for a *Division of the Assembly* or move to take the vote under a different method.

I would be remiss in writing a column about voting without reminding you to vote on April 5th.

Call to Order

VOTING II

There are many methods of voting including *voice vote*, *rising* (members are asked to stand), *show of hands*, *ballot*, *roll call* or *electronic voting systems*.

The *voice vote* is the most popular form for voting on motions as long as a super majority vote is not required. Remember, once the vote is announced, members may ask for a *Division of the Assembly* if members are not in agreement with the outcome as announced by the chair. According to *Robert's Rules of Order* whenever a *Division of the Assembly* is requested it must be resolve with a *rising vote* unless otherwise specified.

A *rising vote* is often used when a voice vote is inconclusive, or for voting on motions that require a supermajority. The chair may ask for a *rising vote* if the vote is expected to be close. A *rising vote* is the preferred method in large assemblies when the vote is expected to be close.

A *show of hands* is the common voting method in small boards and committees. It is sometimes used to verify inconclusive voice votes. Voting by a *show of hands* should be limited to very small meetings where members can very clearly see all the other members. It is sometimes difficult to get accurate counts when used in larger assemblies. Members often lower their hands before the count is complete because of the time it takes to complete the count.

Voting by ballot is used when the secrecy of members' vote is desired. A ballot can be a simple piece of paper or can be prepared in advance if the exact question is known. Wisconsin's Open Meetings Law does not allow governmental bodies the use of secret ballots except for the elections of officers.

I was recently at an annual business meeting of an organization where five candidates were vying for three positions on a board of directors. The members were given directions to vote for three candidates or their ballots would be disqualified. Members must be allowed to vote for one, two or three candidates. If a member actively supports one candidate or does not care about the rest and want to make sure the candidate is elected, the member should vote for one candidate. If the member votes for more than one, it is actually a vote against the member's chosen candidate. The directions at this annual business meeting were quickly corrected to allow the members to vote for one, two or three candidates. Ballots with more than three votes would then be disqualified.

Roll call votes are generally used in governmental bodies when the vote may be close and when it is desirable to have each member's vote recorded. When a *voice vote* is inconclusive a *roll call vote* is often used to resolve the question. The roll is called in alphabetical order except that the presiding officer's name is called last. *Robert's Rules of Order* suggests that the presiding officer's name should not be called if their vote will not affect the result; however, all elected officials should vote. *Roll call votes* should be taken in rotating alphabetical order per meeting. In the absence of a rule, a motion is required, with a majority vote, to order a *roll call vote*. All governmental units should allow any member to request a *roll call vote* whether for an inconclusive *voice vote* or to get a member's vote on record. Even if it is clear that a motion will pass by a huge majority on a *voice vote*, a member should be allowed to request a

roll call vote if for no other purpose then to get a member's vote on the record. It is too late to resume debate once a member has responded to a *roll call vote.* If a member is not ready to vote when their name is called, they can "pass" and then be called upon when everyone else has voted.

Many governmental bodies are installing *electronic voting systems*, which negates the need for the options reviewed.

Most organizations specify the method of voting in their rules or bylaws. If not specified, then any member can make a motion to determine the method of voting.

BASIC INFORMATION ON MOTIONS

Keeping track of all the characteristics of all the motions can be a daunting task. Knowing when a motion is in order, whether it requires a second, is debatable, requires a simple majority vote are all questions that come up.

Finding the answers in *Robert's Rules of Order* can be time consuming, especially at the time motions are being made and votes taken. A summary, entitled *Basic Information on Motions,* can be found in Appendix II on page 235. It is a quick reference tool that can provide the answers in short order.

Thirteen ranking motions are listed in reverse order starting with thirteen (13) – *Fix the Time to Which to Adjourn* – descending to one (1) – *Main Motion*.

The chart explains which motions are in order depending on which motion is before the assembly. Whichever motion is before the assembly, the motions that appear numerically above that motion are allowed, or *in order*. The motions that appear numerically below the motion before the assembly are not in order. When no other business is pending the *Main Motion* is in order. Once a member moves the *Main Motion*, it is seconded, and the chair places it before the body by restating the motion and asking discussion. At that time, all other motions are in order.

For example, Supervisor Blaska moves, when no other business is pending, to adopt resolution 001; Supervisor O'Connell seconds the motion. The chair then states, "We have a motion by Supervisor Blaska to adopt resolution 001; it was seconded by Supervisor O'Connell. The motion before us is adoption. Discussion is now in order." Adoption of resolution 001 is now the *Main Motion,* or number one (1) in the chart to the right. The *Main Motion* is the only motion that brings business before the assembly. All motions numerically above the *Main Motion* – two (2) through thirteen (13) are now in order. Note that the *Main Motion* is no longer in order because you can only have one *Main Motion* on the floor at a time.

Once the *Main Motion* is on the floor, a member could move to *Adjourn* (12). If a member moves to *Postpone to a Certain Time* (5), all motions that appear above five (5) are in order; those numerically below are not in order. A motion to *Amend* (3) resolution 001 would be out of order since it appears lower in rank than the motion to *Postpone to a Certain Time* (5). However, a motion to *Amend* the motion to *Postpone to a Certain Time* is in order.

Call to Order

On the bottom half of the adjacent page is a chart of non-ranking motions [*see Appendix II on page 235*]. These motions have their own set of circumstances and may be related to a motion or point in time.

The chart also provides guidance on whether a second is required, it is debatable, it can be amended, and a vote is required.

Remember, whatever motion is on the floor with the ranking motions, one through thirteen, the motions above are in order the ones below are not.

DISCIPLINARY PROCEDURES

There is an expectation that public officials adhere to high moral and ethical standards. Elected officials are expected to carry out their roles with integrity, diligence, and collegiality. Generally, public officials take an oath of office to "faithfully discharge the duties of the office," as well as to "perform to the best of their ability."

For the most part, county board supervisors are cordial, polite, respectful, dedicated, honorable, and well behaved. Did I miss anything? As many of you may already know, this may not always be the case. Occasionally, for whatever the reason, a member says or does something that is inappropriate and requires corrective action.

If an employee does not conduct him or herself in a professional manner, the employee's supervisor will take disciplinary action. It may be a verbal warning, a letter of reprimand, or a dismissal. That said, what if an elected official, specifically a county board supervisor, does not conduct him or herself in a manner deserving of the public trust? County board supervisors technically answer to the electorate. Is there anything that can be done at the board level?

This article identifies procedures for neglect of duty and managing rude, abusive, unethical, disrespectful, unruly and inefficient supervisors. The suggested course of action is listed in order, starting from the appropriate response for a minor infraction to the most egregious.

Every county board should adopt a set of rules for the board to follow that are incorporated into the county ordinance. The county board rules, or ordinance, should include *Robert's Rules of Order Newly Revised*, 11th Edition, which also addresses rules of decorum. If those rules are then violated with respect to behavior, the offending member now has violated a county ordinance.

If a member is rude or disrespectful to a department head, an employee, a member of the public, or another member of the board, the chair should respond. The chair should send the member, copying the rest of the board, a sharply worded letter admonishing the member for their behavior. No member wants to receive a letter of sanction, which becomes part of the public record that could show up during a campaign or in the newspaper.

If an incident occurs during a meeting, it is the chair's responsibility to gavel the member down and rule them out of order. This also applies when a member questions the motives of another member, when their comments are not germane, and when the member is not speaking to the merits of the question.

If a member continues to misbehave, the chair should ask the sergeant of arms to remove the member, or threaten to call the sheriff, and have the member removed from the meeting. Oftentimes, it is prudent to just pound the gavel and declare a ten-minute recess until the proceedings calm down.

If a member is misbehaving at the committee level, the chair of the board should remove that member from the committee. If the chair appointed them to the committee, the chair should be able to remove them, however this should be spelled out in the board rules.

In the case of an ethical violation, the chair should refer the member to the county's ethics board. If the county has not done so, create one. Further, if the county does not have a code of ethics, create and adopt one. Give the ethics board the tools they need to manage ethical violations.

To further manage disciplinary issues, the county should create a disciplinary committee or specify in the county rules the duties and responsibilities of an existing committee that will manage disciplinary issues when they arise.

One of the more extreme responses to a disciplinary issue is for the county board to introduce a resolution of censure. Basically, the county board takes a vote of no confidence of the offending member. This action is embarrassing and renders the member ineffective. The entire county board is now on record signifying its disapproval of such behavior.

In addition, the Wisconsin State Statutes offers remedies to address recalcitrant members. Wis. Stats. S. 59.11(4) specifies, "The board shall sit with open doors, and all persons conducting themselves in an orderly manner may attend. If any supervisor misses or leaves a meeting of the board without good cause or without being first excused by the board, the chairperson may issue a warrant requiring the sheriff or some constable immediately to arrest and bring the supervisor before the board. The expenses of the arrest shall be deducted from the pay of the member unless otherwise directed by the board. The board may punish its members for infraction of its rules by imposing the penalty provided in the rules."

The statutes also address neglect of duty. Wis. Stats. S. 59.15 states that, "Any supervisor who refuses or neglects to perform any of the duties which are required of the supervisor by law as a member of the board, without just cause therefor, shall for each refusal or neglect forfeit not less than $50 nor more than $200."

As a last resort, Wis. Stat. S. 17.09 allows for the removal of a board member for "cause" by a two-thirds vote of the members. "Cause" is defined as inefficiency, neglect of duty, official misconduct or malfeasance in office.

Ultimately the electorate determines the representation on the county board of supervisors with the exception of the aforementioned statute. Following a specific set of procedures will leave a paper trail or record that may be difficult to overcome in an election.

So behave yourself; I don't want to read about you in the newspaper. My hope is that this article proves to be unnecessary.

Call to Order

BRING A QUESTION BEFORE THE ASSEMBLY AGAIN

A county board takes action on a question and decides later in the meeting or at the next meeting that it may not be the right decision. What can you do? In this situation, there are three motions available to the assembly: *Reconsider, Rescind,* or *Amend Something Previously Adopted.*

The motion to *Reconsider* allows an assembly to bring back a question that has already been voted on for more discussion. The purpose of this motion is to correct hasty, ill-advised, or an erroneous action. It may also be used when new information is obtained or circumstances have changed since the vote was taken.

The motion to *Reconsider* has unique characteristics. Only a member that voted on the prevailing side can make the motion. Only a member that voted aye if the motion passed, or no if the motion failed can make the motion to *Reconsider*. Any member, on either side of the vote, can second the motion. The motion to *Reconsider* must be made at the same meeting the motion that is to be reconsidered was acted on. The motion to *Reconsider* can be made and seconded at any time during the meeting, but the discussion of the motion must be done when it is in order, which could be later in the meeting when no other business is pending or at the next meeting.

Standard characteristics of the motion to *Reconsider* are as follows:

1. The making of the motion takes precedence over any other motion; consideration of the motion is in order when the motion that is being reconsidered is in order.
2. The making of the motion is in order even after another person has been assigned the floor so long as they have not begun to speak.
3. The motion must be seconded (a member does not have to be on the prevailing side).
4. The motion is debatable if the motion to be reconsidered is debatable and can go into the merits of the question to be reconsidered.
5. The motion is not amendable.
6. Its adoption requires only a majority vote.
7. The motion cannot be reconsidered.
8. The motion can be applied to the vote on any motion with a number of exceptions, which can be found in *Robert's Rules of Order*.

The rules for the motion to *Reconsider* are different for a standing committee or special committee. A motion to *Reconsider* in committee can be made and taken up regardless of the time elapsed since the vote was taken. There is no limit to the times a question can be reconsidered. The motion can be made by any member regardless how they voted on the question including one who did not vote or was absent.

The motion to *Rescind* is used if the intent is to cancel or void the previous action. This motion effectively cancels the entire main motion, resolution, or action. The motion to *Amend Something Previously Adopted* is used if the intent is to change only a part of the text or substitute a different version of the proposal.

The motions to *Rescind* or *Amend Something Previously Adopted* have the same characteristics. The motions:

- take precedence over nothing and therefore can be moved only when no other business is pending;
- can be applied to any rule, policy, resolution, decision, or choice;
- are out of order when another has the floor;
- must be seconded;
- are debatable (debate can go into the merits of the question to be rescinded or amended);
- are amendable; and
- can be reconsidered only if there was a negative vote.

Robert's Rules of Order states that a two-thirds vote is required if no notice was given. A simple majority is required if previous notice was given. Wisconsin's Open Meetings Law requires public notice; therefore, a simple majority will suffice. These motions can be made and seconded at a meeting where no notice has been given but they cannot be acted on. They would have to be put on the agenda for the next meeting.

Unlike the motion to *Reconsider*, there is no time limit on making these motions after the adoption of the question. Further, any member can make these motions unlike the motion to *Reconsider*, which has to be made by someone who voted on the prevailing side.

The motions to *Rescind* or *Amend Something Previously Adopted* are out of order:

- when the measure has previously been *Reconsidered* and can be *Reconsidered* again (must be within the time limits);
- when something has been done and it is impossible to undo (the contract has been signed or the project is underway); and
- when a resignation has been acted on or a person has been elected to or expelled from membership or office.

The motions to *Rescind* and *Amend Something Previously Adopted* are fairly straightforward. The motion to *Reconsider* can be complicated. There are many more special and unique characteristics that have not been detailed in this article. Its application should be addressed in each county's rules or ordinance.

When my wife is chastising me for a poor decision, *Reconsideration* is not the answer. I just ask for forgiveness.

PUBLIC COMMENT

County boards are charged with making decisions on many controversial issues such as iron and frac sand mines, new taxes and multi-million dollar structures to name a few. These types of issues often stir the emotions of the general public.

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Members of the public have called and complained that their county board would not allow them to speak at the county board meeting. The obvious response is, "well of course you can't speak at the board meeting, you are not a member of the board."

I am unable to speak on the floor of the Wisconsin State Assembly or Senate. If I have an issue with a particular bill or legislation, then it is my job to contact my representative or any state elected representative.

The county board is under no obligation to allow public comment at a county board or committee meeting. Wisconsin has a representative form of government in that citizens elect county board supervisors to represent us. If someone has an issue, they can contact their elected representative. In Wisconsin, there are large boards of supervisors compared to other states that have a commission form of government with five or seven members. The average size of Wisconsin boards is twenty-two with the smallest at seven and the largest at thirty-eight members. With larger boards, the public has access to more county board supervisors.

I have never been a strong advocate for allowing public comment at board meetings. It sends the wrong message. It gives the public a false sense that they are contributing to the outcome at that meeting. By the time a resolution or ordinance gets to the board, the details have been worked out, a solution has been found or a compromise has been reached. If the board is interested in public comment and value the public's input, it occurs at the committee level.

A good process is to refer all resolutions and ordinances to the appropriate standing committee. Wisconsin counties utilize a strong committee structure to conduct their business. The majority of the policy formation work is done at the committee level. Committees may hold hearings, consider input from county staff and the public, debate and amend as appropriate. It is at the committee level where public comment can have the most impact prior to the committee making a recommendation to the full board.

The public should be required to register when public comment is allowed. A registration form should require a name, address, subject matter, and whether they are for, against or speaking for informational purposes only.

County board rules should specify the time allotted for each member of the public – two, three or five minutes. The rules should also specify if public comment is an agenda item and whether comments are limited to items on the agenda or on any subject matter. Some counties allow the public to comment on every item on the agenda when the agenda item is up for discussion. When that is allowed, I would argue the only difference between a board member and the public is that the board member can vote and receive per diem.

When public comment is allowed, members of the board should not be allowed to ask questions of the speakers. When an exchange of questions is allowed, it could be considered debate, which should be limited to board members. In addition, open meetings law violations could occur if dialogue is allowed with questions back and forth between board members and the general public when commenting on a matter not on the agenda.

Holding a public hearing is different then allowing public comment. Wisconsin State Statute requires counties to hold public hearings prior to adopting certain policies. A registration process should also be used for public hearings and it is permissible for board members to ask questions of the speaker.

Public comment is very important to the legislative process. I prefer it be done at the committee level and through letters, phone calls, questionnaires, and constituent meetings.

That said, public comment on *Call to Order* is always welcome.

REPORTS

Many organizations have reports from officers on their meeting agendas, for example a *President's Report* or *Treasurer's Report*. It is also not uncommon to have reports from committees such as a *Report of the Audit Committee* or *Report of the Special Committee on Siting a New Jail*. Further, a consultant may provide a *Space Needs Study Report* or an auditor, the *Audit Report*. What is the common mistake made at these meetings with reports on the agenda? *Adopting the Report*.

Reports from officers, department heads, committees, and consultants should not be approved or adopted. The report may make policy statements or recommendations that are not the position of the board and the board is in no position to amend the report because the report is just that – a report. Adopting a report leads to confusion. The expectation is that the body is in agreement with everything stated in the report and that recommendations may be enacted. The appropriate action is for the presiding officer to simply acknowledge the report and thank the presenter. The minutes can reflect the report was given.

The expressions "adopt," "accept" and "agree" are all equivalent in terms of parliamentary procedure and should be avoided. Adopting a report has the effect of the body endorsing every word of the report, every fact, the reasoning, every conclusion, and every recommendation.

Another common mistake is to move that the report "be received" after it is given. This motion is meaningless since the report has already been received. The same can be said for a motion "to accept," which further implies that the body has endorsed or agrees with the entire report.

Audit Reports are detailed reports conducted by certified public accountants. Board members cannot be expected to know if the report is accurate when the report is presented. Therefore, the board should not be expected to vote on adopting the report.

The purpose for having the audit report is for the auditor to provide the financial statements so that board members are apprised of the financial condition of the entity. The *Audit Report* may lead to motions or resolutions such as revising the investment policy, adding more controls, layoffs, etc. Reports often lead to motions or resolutions enacting recommendations from the report.

The only justification for adopting an entire report is if the report is to be published in the name of the whole organization.

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Do not confuse informational reports with reports that require action. A *Claims Report* may be claims against the county for cracked windshields resulting from mowing operations or for tire damage due to potholes, or any other request for damages. These types of reports require action.

I am not asking anyone to adopt my report or article, just to read it.

APPROVE THE AGENDA

Many organizations and county boards establish an order of business as part of their bylaws or rules. The order of business specifies the sequence business items are taken up. The order of business might include such items as roll call, special matters and announcements, approval of payments, reports, ordinance amendments, award of contracts, resolutions, etc. But how does an item get on the agenda? There is no simple answer as *Robert's Rules of Order* conflicts with the Wisconsin State Statutes.

Robert's Rules of Order states that for a proposed agenda to become the official agenda for the meeting, it must be adopted by the assembly at the outset of the meeting. A draft agenda is sent to the members who then can add or delete items or make any other change.

Wisconsin's Open Meeting Law renders this motion impractical because governmental bodies must give public notice at least 24 hours prior to the commencement of the meeting. In fact, it would be illegal to add items to the agenda.

Many boards, at the beginning of the meeting, entertain a motion to adopt or approve the agenda. This is a practice that is not necessary and should be eliminated.

This process is also used by some county boards to remove items that are not ready for approval, remove items placed on the agenda inadvertently, to honor a member's request to delay action, or to change the order. There are several motions that can address those situations during the meeting. If a resolution is not ready for approval it can be *Postponed* to a specific time, *Indefinitely Postponed* if the intent is to kill, or *Referred* back to a committee. The chair can honor requests to take items out of order if there is no objection and if there is objection, a motion to *Suspend the Rules* is in order. There is no need for a motion to adopt the agenda.

The board is not required to dispose of every item on the agenda. If unable to finish, the remaining items can be placed on the next regularly scheduled meeting or the board can *Adjourn* to a special date and time to finish their business.

So how do items get on the agenda? The county board rules should specify how and who is responsible for placing items on the agenda. In some counties, the board chair has the responsibility, in others it is done in collaboration with the county administrator, administrative coordinator, or county clerk. Still others require all resolutions and ordinance amendments to go through a standing committee; when the committee or committees act, the item is placed on the agenda and the chair has no say.

Robert's Rules of Order suggests that the president or chair may assist in preparing the agenda, but it is wrong to assume that they set the agenda.

However, Wisconsin's Open Meetings Law states that the chief presiding officer or designee is responsible for insuring public notice is given for meetings. It is then assumed, without any other county board rule, that it is the chair's responsibility for setting the agenda.

I hope reading *Call to Order* is on everyone's agenda.

PREVIOUS QUESTION

We have all been to meetings where the debate seems to go on and on. Everybody wants to speak. The same thing is said over and over again and the same point is made several times. Is there anything that can be done to end this seemingly endless debate?

If a member wants to end debate and bring the question to an immediate vote, the proper motion to use is to move the *Previous Question.* Its adoption immediately ends debate, stops the amendment process, and prevents the making of any other subsidiary motions except for the higher-ranking motion of *Lay on the Table.* The motion name is somewhat misleading, as it has nothing to do with the question previously considered by the body.

Standard characteristics of the *Previous Question* are as follows:

1. Takes precedence over all debatable or amendable motions to which it is applied
2. Can be applied to any immediately pending debatable or amendable motion
3. Is out of order when another has the floor
4. Must be seconded
5. Is not debatable
6. Is not amendable
7. Requires a two-thirds vote

Further, an affirmative vote can be reconsidered before the vote on the question has been taken. A negative vote can be reconsidered only until such time has elapsed to make it a new question (essentially meaning after more debate the motion can be made again).

How often have you been at a meeting where someone calls for the question?

A call for the question is often made with the expectation that it will end debate and the chair will call for an immediate vote. The ability to debate a question or subject matter is one of a member's most basic rights. No one member can end debate by simply calling for the question. A member calling for the question from their seat without having attained the floor or interrupting a speaker is considered to be disorderly. A call for the question is in order if it is understood to mean the *Previous Question*. The presiding officer cannot close debate as long as any member wants to speak and has not exhausted their right to speak. If the chair feels the debate is about finished and a member calls for the question, the chair, without objection or with unanimous consent, can end debate and call for the vote. The *Previous Question* is not allowed in committee.

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Debate can be limited by following *Robert's Rules of Order*, which specifies members may speak no more than two times for a total of ten minutes on a motion. This rule is an important tool for running efficient and effective meetings. It forces members to be strategic about their debate instead of responding to everything that is said. Some will argue that speaking two times for no more than ten minutes is too limiting. However, this rule applies to each motion. If the main motion is to *Adopt* the budget, a member may speak two times for a total of ten minutes and two times ten minutes for every other debatable motion offered that applies to the main motion. This includes motions such as *Amend*, *Refer*, *Postpone*, *Indefinitely Postpone*, etc. Of course, assemblies can adopt their own rules regarding debate.

I served ten years on the Sun Prairie Town Board, eight years as chair and eighteen years on the Dane County Board, four years as chair. We had many evening meetings that went well into the morning. The longest county board meeting started at 7:00 p.m. and adjourned at 5:00 a.m. Throughout the meeting, there were several votes to end debate; however, in all my years of public service, I never voted to end debate. As long as members wanted to speak, I was willing to stay.

The ability to debate a question is an inherent right in a deliberative assembly. Public officials must be willing to listen to their constituents when they call and their colleagues when they debate.

DISCHARGE THE COMMITTEE

County boards in Wisconsin are considered a legislative body and use a strong committee structure much like the state Legislature. However, sometimes a committee of the board does not respond when a resolution or ordinance is referred to it. What can be done, if anything? Move to *Discharge the Committee.*

Wisconsin State Statutes state that the powers of the county board are exercised by adopting resolutions and enacting ordinances. Resolutions and ordinances can be introduced in many different ways. A common practice is to allow a member of the board to introduce a resolution and the board chair then refers it to the appropriate committee. If a resolution or ordinance originates from a committee, the board itself may refer the matter back to committee or even another committee.

It is a common occurrence for a bill in the state Legislature to die in committee because the committee fails to act. The same thing can happen in a county committee. It could be because the chair will not schedule the matter or the committee cannot agree.

Some boards have a rule that if a committee chair fails to schedule the matter within a certain time period, a specific number of members can demand in writing that the matter be scheduled.

If the members of the county board want to deliberate the matter and it is stuck in committee, the board can adopt a motion to *Discharge the Committee.*

The adopted motion to *Discharge the Committee* removes the matter from the committee's consideration and allows the board to consider the matter.

The motion to *Discharge a Committee*:

- Takes precedence over nothing and therefore can only be moved when no other question is pending;
- Can be applied to any main motion or any other matter that has been referred to committee;
- Is out of order when another has the floor;
- Must be seconded;
- Is debatable and debate can go into the merits of the question in the committee;
- Is amendable (the motion can be amended as to the time the body will consider the matter or can direct the committee to act);
- Requires a majority vote (*Robert's Rules of Order* states a two-thirds vote is required if no notice is given but Wisconsin's Open Meetings Law requires notice); and
- Can be reconsidered on a negative vote, but not on an affirmative vote.

A member of the board may move to *Discharge a Committee* when the committee fails to act on a matter introduced by the member and referred to committee by the board chair. Similarly, a member may move to *Discharge a Committee* when the matter was sent to committee by board adoption of the motion to *Refer* or *Commit*.

In order to make the motion to *Discharge a Committee*, the item must be placed on the board agenda or a member can obtain the floor when no other business is pending and make the motion. As an example, if not on the agenda, a member would move to *Discharge the Finance Committee of Resolution XYZ*. Once a second is obtained, the motion would be placed on a subsequent meeting agenda. The motion cannot be discussed or acted upon at the time because it was not noticed and would violate Wisconsin's Open Meetings Law.

Sometimes referring the matter to committee and the committee not acting is another way of killing the measure without the board having to take a direct vote.

ABSTENTION

Every member of a governmental body has a duty and obligation to vote. Budgets are approved, ordinances enacted, and resolutions adopted by members casting their votes. If a member of a body has a conflict of interest, then that member needs to abstain from voting. In fact, if a member has a conflict of interest they should not participate in debate, or even be in the room where the discussion is occurring.

What if a member does not wish to vote? The member may have no conflict of interest, but may believe the issue is too controversial, may feel the matter should not be before the body, or does not have enough information. Can a member abstain for these reasons, or no reason at all?

The Madison City Council had a rule that required every member to vote on every issue unless they had a conflict of interest. One of its members did not have a conflict of interest but chose not to vote, that he did not have enough information to cast an intelligent vote. Enforcing council policy, the

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mayor issued a reprimand and levied a small fine. The alderman took the city to court. The court, in *Wrzeski v. City of Madison*, ruled in favor of the alderman. The court ruled the body could not compel a member to vote. This is in effect compelling a person to speak, which violates their freedom of speech protected by the First Amendment.

Robert's Rules of Order also recognizes the right of members to abstain by stating, that while it is the duty of every member to express their opinion by voting, they cannot be compelled to vote. It should also be noted that when an office or position is being filled by a number of candidates, it is permissible to partially abstain by voting for less candidates then entitled to. As an example, in an election for a board of directors where members are entitled to vote for three candidates and five are running, the member may vote for one, two, or three. In fact, if a member feels strongly about one candidate then they should vote for only one. By voting for more than one, you are helping to defeat the candidate you support.

Wisconsin law requires members to abstain when they have a conflict of interest. *Robert's Rules of Order* also states that no member should vote on a question in which the member has a direct personal or pecuniary interest. A member voting on a contract with an organization of which the member is an officer would have a conflict of interest. It should be understood, that the rule on abstaining from voting on a question of direct personal interest does not mean that a member cannot vote for him or herself for an office or position which members are generally eligible.

Robert's clarifies that the chair should not call for abstentions in taking a vote, since the number of members who respond to such a call is meaningless. To "abstain" means not to vote at all and a member who makes no response if "abstentions" are called for abstains just as effectively as one who responds. In a roll call vote, if a member does not wish to vote the member answers "present" or "abstain."

Wis. Stats. 59.02(2) states that, "Ordinances may be enacted and resolutions may be adopted by a majority vote of a quorum or by such larger vote as may be required by law." Wis. Stats. 59.02 (3) states that, "A majority of the supervisors who are entitled to a seat on the board shall constitute a quorum. All questions shall be determined by a majority of the supervisors who are present unless otherwise provided."

A majority vote is "more than half, "which means more than half the votes cast by persons entitled to vote excluding blanks or abstentions. In addition, a quorum of the body must vote, meaning the aye and nay votes must add up to a quorum.

There was a situation in Wisconsin, where 33 members of a 36-member board were present. The vote was 15 ayes, 10 nays, and 8 abstentions. Does the matter pass? Yes, there was a quorum present and voting (25) and a majority of the members voted aye (15 of the 25). Let us assume in this same situation there were 10 ayes, 8 nays, and 15 abstentions. Does the matter pass? No, the members voting aye and nay total 18, one short of a quorum, which is 19 for a 36-member board.

Sometimes statute or local rules may require a majority of the entire body to determine an issue. With that rule, in the situation described above, 19 members of the 36-member body would have to vote in the affirmative for the matter to pass.

The power to express one's opinion by casting a vote should not be taken lightly. Every vote is important and could be the decisive vote. Use the right of abstention judiciously.

DILATORY & IMPROPER MOTIONS

The object of rules of order is to facilitate the smooth functioning of the assembly, to assist in the transaction of business, and to provide a firm basis for resolving questions of procedure. Sometimes a member may use the rules of order for disruptive purposes or to impede the transaction of business. Activities and motions used for this purpose are considered *dilatory*.

Any main motion or other motion that is frivolous, absurd, or contains no rational business or purpose is *dilatory* and should not be allowed. Some examples of *dilatory* motions include the following:

- An appeal from the ruling of the chair on a question where there could not possibly be two reasonable opinions.
- A motion to lay on the table a matter for which a special meeting had been called.
- Repeatedly raising points of order.
- A motion to adjourn again and again when no significant progress has been made on the meeting's business.
- Referral of a matter to committee that defeats the purpose of the main question due to time limits.

If these *dilatory* tactics are allowed, one or two members could bring business to a standstill.

A motion to *Commit* or *Refer* to committee a matter the body would rather not take a vote on, should not be considered *dilatory*. Letting a matter die in committee is another way of disposing of an inappropriate or irrelevant question.

It is the duty of the chair to prevent members from misusing legitimate forms of parliamentary procedure to obstruct business. The chair should not recognize members who are repeatedly using parliamentary procedure for *dilatory* purposes or rule their motions out of order.

Improper motions are those that conflict with an organization's charter, constitution, or bylaws. Motions that conflict with federal, state, or local laws are also improper and should be ruled out of order. If an improper or conflicting motion of this type is adopted, it is null and void.

A motion that conflicts with a previously adopted motion is also improper. A motion to *Reconsider*, *Rescind*, or *Amend Something Previously Adopted* should be used for making changes or voiding a previously adopted motion. A motion that presents practically the same question as a motion previously decided upon or one still under consideration, is also improper. No motion should be introduced that is outside the object or purpose of the organization.

The chair should never let their personal feelings affect their judgment in ruling on such cases. If the chair only suspects that a motion is not made in good faith, the maker of the motion should be given the benefit of the doubt. The chair should always be courteous and fair, but at the same time, firm in protecting the body from imposition.

Call to Order

Remember, parliamentary procedure was designed to improve the transaction of business, not thwart the will of the people.

COMMIT, REFER

As stated in a *Call to Order* article, county boards in Wisconsin are considered a legislative body and use a strong committee structure much like the Wisconsin State Legislature. A county board exercises its powers by adopting resolutions and ordinances. Upon introduction, depending on the county's process, the chair refers the matter to the appropriate committee. The board then considers the matter once the committee has acted upon it. If the board considers the matter and it appears more study is needed, the body can *Commit* or *Refer* the matter to committee.

The motion to *Commit* or *Refer* should specify the committee and could attach instructions. The instructions can specify when the committee should meet, when to report back, if experts should be consulted, or any other orders.

It is important to remember that committees are a subunit of the board and therefore take direction from the parent body. The committee should consider all questions raised by the main body. Once the matter has been referred to committee, the committee is free to make amendments as well as recommendations regarding approval or denial of the matter. The committee is not bound by any amendments or debate that occurred at the board meeting.

The motion to *Commit* or *Refer*:

- Takes precedence over the main motion, *Postpone Indefinitely* and to *Amend* (the main motion);
- Yields to *Postpone Definitely*, *Limit or Extend Limits of Debate*, *Previous Question*, *Lay on the Table*, and *Amend* (when applied to it);
- Can be applied to main motions with any amendments that may be pending;
- Cannot be *Postponed Indefinitely*;
- Is out of order when another member has the floor;
- Must be seconded;
- Is debatable; however, debate must be limited to the advisability of referring the matter to committee and cannot go into the merits of the main question;
- Is amendable;
- Requires a majority vote;
- Can be *Reconsidered* if approved and can be *Reconsidered* or *Renewed* if defeated, only after significant progress in debate has occurred.

Robert's Rules of Order suggests that a motion to *Commit* or *Refer* that is obviously absurd or unreasonable, should be ruled out of order as dilatory. Such might be the case if the pending question is time sensitive or would have the effect of defeating the purpose of the main motion.

If the committee fails to act and the board wants to take action on the matter, the board can bring the matter back with a motion to *Discharge the Committee*.

Generally speaking, when a resolution or ordinance makes its way through the committee process, the board adopts the committee recommendation. When that does not happen and the board performs committee work on the board floor, it is time to send it back to committee. The motion to *Commit* or *Refer* allows a committee to discuss the matter more freely without adhering to all of the rules governing the main body.

SESSION

Wisconsin county boards are required to meet the third Tuesday in April after the election to organize and transact business. This generally includes taking the oath of office, electing officers, and adopting procedural rules for the two-year term. Most boards adopt their own procedural rules and then adopt the latest edition of *Robert's Rules of Order (Robert's)* as their parliamentary authority. In order to enforce or implement procedural rules, it is important to define a "session."

It is important because *Robert's* states that it is improper to *Postpone* something beyond the next regular session. It also states that a motion that was defeated, or *Postponed Indefinitely*, cannot be brought up a second time during the same session.

To define a session, it is also important to define a "meeting," "recess," and "adjournment." *Robert's* defines a "meeting" of an assembly as a single official gathering of its members to transact business for a length of time where there is no cessation of proceedings unless for a short recess.

A "recess" is a short intermission or break that does not end the meeting. Proceedings are immediately resumed at the point they were interrupted.

And finally, an "adjournment" terminates the meeting and may terminate the session. If another meeting has been set for a definite time to continue the same business or order of business, the motion to *Adjourn* does not end the session.

Have you heard the term *Adjourn Sine Die* (pronounced "sign-ee dye-ee)? The translation is "adjourn without day." In practice, this means a group adjourns without the expectation of meeting again. For example, after several months of meeting, a task force or commission created for a special, specific purpose might *Adjourn Sine Die* when they have completed their work and there is no need to meet again.

A session of an assembly, unless otherwise defined by the bylaws or governing rules of the organization, is a meeting or series of connected meetings devoted to a single order of business, program, agenda, or announced purpose. When there is more than one meeting, each meeting is scheduled for the purpose of continuing business at the point where it was left off at the previous meeting.

Robert's goes on to state that in a "permanent society whose bylaws provide for regular weekly, monthly, or quarterly meetings that go through an established order of business in a single afternoon or evening, each meeting of this kind normally completes a separate session…"

With this explanation and the definition, one could easily come to the conclusion, as some do, that each county board meeting constitutes a session. They reason that county board meetings are not

scheduled for the purpose of continuing business at the point where it left off at the previous meeting. There is a whole new agenda for each meeting, which does not fall into the definition of session.

If each county board meeting is a session, then it would be out of order to *Postpone* something to the next meeting. Further, every time a question was defeated, it could be brought up at the next meeting and this is not practical.

The *Robert's* definition of session is easily applied to state or national organizations that hold annual or biennial conventions. Each convention, which may have several meetings for several days, is considered a session.

It is easy to argue that a session should coincide with the term of the county board members. Members gather on the third Tuesday of April to elect officers and procedural rules for their term of office, which is two years. Furthermore, resolutions are often numbered numerically with the calendar year for the two-year period. Motions are often *Postponed Definitely* to the next meeting or subsequent meetings. In addition, once an item has been defeated, members should not be able to renew the motion at the next or subsequent meeting, which they could do if each meeting was a session.

Robert's is designed to apply to all types of meetings, but its application is not always suitable for governmental meetings. The term session is subject to interpretation and *Robert's* acknowledges that any organization has the right to determine what constitutes a session. Every board, in adopting their procedural rules, should define a session. County boards have defined a session as one year. They also could define it as each meeting, the two years coinciding with the term of the members, or whatever the board determines.

In my opinion, a one-year or two-year session makes the most sense for county boards in Wisconsin.

COMMITTEE DECORUM

State statute requires the establishment of specific committees to address specific issues. It further states that the county board may establish as many standing and advisory committees as it deems necessary to conduct its business. With the potential number of committees, it is important for the county board to adopt procedural rules and policies regarding seating, public comment, and debate to ensure the smooth functioning of all committees.

Robert's Rules of Order does not specifically address committee room seating and public comment. However, proper committee room set-up is essential to improving meeting decorum. A number of guidelines are as follows:

1. Only members of the committee, and the department staffing the committee (if applicable), should be allowed to sit at the table;
2. Other seating should be provided for members of the public, vendors, department heads, the press, and other board members;
3. County board members, not members of the committee, should not be allowed to sit with committee members.

Counties are not required to allow public comment at their board or committee meetings. However, if allowed, members of the public should be encouraged to speak at the committee meeting, where it can have the most impact, as opposed to the board meeting. It is at the committee level where all the details are worked out and recommendations are adopted.

There are several rules to consider when allowing public comment, such as:

- Set time limits, e.g., two, three, or five minutes.
- Determine if public comment is limited to items on the agenda, or if the speaker can address any issue they desire.
- Determine if public comment is allowed only during a designated place on the agenda, or is allowed under each agenda item.

Members of the public should not be allowed to discuss, debate, or ask questions. Committee members can ask speakers questions but members of the public, ordinarily, should not be allowed to ask questions unless it is part of their comments.

There has been a lot of debate on whether county board members, not members of the committee, should be allowed to address the committee. It has been argued that they cannot as they are not members of the committee. It has also been argued that county board members cannot speak during the public comment period as they are no longer considered members of the public by virtue of their position. One way or another, they should be allowed to address the committee, if not during the public comment period, then under a specific agenda item (especially when it is an item that affects their district or a resolution they have sponsored). However, they should not be allowed to sit at the table with the committee members and discuss or debate the matter.

A designated place set apart from the committee table should be made available to attendees to address the committee. A stand-alone lectern is ideal, but a table-top also suffices. Attendees addressing the committee should be allowed to sit at the table only when no other options exist.

Robert's Rules of Order does address rules of debate in committee, which is different from that of a board. The general rule of a governmental body is to have a motion first, then discussion. However, in committee, it is acceptable to have discussion first, then a motion. Committee members may raise a hand instead of standing when seeking the floor and remain seated during debate and discussion. Members may speak as often and as long as they like unless otherwise specified. The chair may vote on all questions and need not step down when debating or discussing a matter.

A few simple rules and policies will improve the decorum and functioning of committee meetings. In addition, they will reduce the risk of open meetings law violations as it relates to other county board member participation.

Call to Order

AGENDA

A previous *Call to Order* article discussed the process of setting the agenda. However, questions are often raised regarding how specific an agenda item must be. Further, what is the proper wording of common agenda items.

Wisconsin Open Meetings Law requires that the subject matter of agenda should be described in a way that is "reasonably likely to apprise the members of the public and the news media thereof." In other words, the general topic of the subject to be discussed should be clear in the agenda item.

The Attorney General advises against a generic notice that contains "reports" or "comments" by an official, member, or department head. The topics to be addressed in the report should be clearly stated.

It follows that an agenda item such as "Highway Commissioner's Report" may not be sufficient. If the highway commissioner is reporting on a controversial construction of a new highway garage, the public has a right to know well in advance. There could be other public officials, contractors, and interested citizens that would attend the meeting if that agenda item were known. A proper agenda item for that example might read, "Highway Commissioner's Report–New Highway Garage." In this situation, the highway commissioner is free to report on other routine issues, but has made it clear that the highway garage will be part of the report.

A common practice in preparing the agenda is to number and title resolutions and ordinance amendments. They are numbered in order of introduction along with the year, such as 001-17. The title should be specific enough for the public to discern the subject matter to be discussed. An agenda item such as "Resolution 001-17 New Highway Garage" may be sufficient; however, "Resolution 001-17 Authorizing the Construction of a New Highway Garage" is preferable. It is also wise to include the action to be taken, such as "Consideration of…" or "Adoption of…" The term "Consideration of" is less presumptive than "Adoption of…" when the body may prefer to defeat or deny the proposal.

Many agenda include the phrase "Discussion and Action of" prior to the subject matter. In this situation, it is not necessary to include the word "Discussion" because the body always has the right to discuss the matter. If the intent is to just discuss the matter and not take a vote then the agenda item should only read "Discussion of…" An interested party may not attend the meeting if the body will only discuss the matter as opposed to taking-action.

Many counties include the action of the committee and the vote as part of the agenda item. For example, "Consideration of Resolution 001-17 Authorizing the Construction of a New Highway Garage (Highway Committee recommends adoption 5-2)." Some counties have a policy that the motion before the body is the recommendation of the committee; this effectively negates the need for a member to make a motion.

The Attorney General strongly advises against vague agenda items such as "Old Business," "New Business," and "Such other Business as Allowed by Law." The terms are generic and do not provide the specific topic of the subject to be discussed.

Placing one of these terms or phrases, such as "Such other Business as Allowed by Law," on the agenda does not violate the law, but what is discussed under the item may. For example, discussing the construction of a new highway garage would be a clear violation of the law. That said, it is not a violation to request the distribution of a report, suggest a speaker for the next meeting, or thank a department head for a job well done.

One of the stated purposes of the Open Meetings Law is to ensure the public has "the fullest and most complete information regarding the affairs of government…" The subject matter on an agenda should provide the public with a reasonable description of the business at hand.

Is this on your agenda? "Always read *Call to Order.*" Is that specific enough?

EX OFFICIO

Senator John McCain announced in a press conference that he had several questions for fired FBI director, James Comey who was to appear before the Senate Intelligence Committee. A CNN article reported that the Senator could question Comey even though McCain "is not a full member" of the Senate Intelligence Committee, "thanks to quirky Senate rules." Senator McCain is chair of the Armed Services Committee. While McCain was not appointed to the Intelligence Committee, he can question Comey because the chair of the Armed Services Committee is an *ex officio* member of the Intelligence Committee. So, what does it mean to be an "*ex officio* member" of a committee?

An *ex officio* member is a member that serves on a body based on a position of authority or office held. Generally, an *ex officio* member has all the privileges of membership, but not the obligation to participate as other members. For example, it is not uncommon for the county board chair to serve on some or all of the standing committees of the board as an *ex officio* member.

Ex officio is defined in *Black's Law Dictionary (8th ed.)* as: "By virtue or because of an office; by virtue of the authority implied by office. The term is often misused as a synonym for 'nonvoting.'" A common mistake is to assume *ex officio* members cannot vote, but absent a specific rule they certainly can.

When the rules provide that a chair is an *ex officio* member of a board committee or committees, and do not otherwise define what *ex officio* means, the chair has the right to discuss, debate, make motions, vote on all matters before the committee, and seek committee office. All members of a committee have a duty and obligation to attend committee meetings. However, the chair, as an *ex officio* member, is not obligated to participate or attend.

Robert's Rules of Order states that the chair, as an *ex officio* member, does not count towards reaching a quorum. In other words, if two members of a five-member committee as well as the chair, as an *ex officio* member, are in attendance, the committee has not reached a quorum. However, in this last example, Wisconsin's Open Meetings Law may supersede given that the WI Department of Justice has advised that the attendance of an *ex officio* member should be counted in determining if a quorum is present.

If the *ex officio* member is elected as an officer of the committee, then the member is obligated to serve as other members. Membership on the committee terminates when the *ex officio* member no longer holds the office that entitled them to membership.

Call to Order

Two main points to remember about *ex officio* members. First, they can vote. Second, they are not obligated or expected to attend meetings as other members are.

Just as board rules may modify and supersede other rules of parliamentary procedure in *Robert's Rules of Order*, so to may the board rules define what *ex officio* status means. For example, the rules may specify the *ex officio* member cannot vote, limit his or her participation, or attend only in the absence of another member.

Given the confusion surrounding the status of *ex officio* members of a committee, a county would be wise to specify the role of an *ex officio* member in the board rules.

MINUTES

Wisconsin's Open Meetings Law requires governmental bodies to give notice of all its meetings. A notice must include the date, time, place, and subject matter of the meeting. Governmental bodies are also required to keep an official record of the meeting's proceedings, often referred to as the "minutes." Members often ask, how specific should the minutes be? *Robert's Rules of Order* (*Robert's*) and the Wisconsin State Statutes provides guidance.

The statutes require the county clerk, "Record at length every resolution adopted, order passed, and ordinance enacted by the board," and to "keep and record true minutes of all the proceedings of the board in a format chosen by the clerk, including all committee meetings…"

Just as the agenda should include the date, time, place, subject matter, and name of the body, so should the minutes. *Robert's* also suggests the minutes should include whether the meeting is a regular, special, adjourned regular, or adjourned special meeting.

Robert's says nothing about recording attendance; however, all governmental bodies need to record the members in attendance and not in attendance. An accurate count of attendees is important in establishing per diems and determining quorums, majority votes, and super majority votes. Furthermore, the public has a right to know if its elected officials are in attendance.

It is a good practice to have a corresponding account in the minutes of every item on the agenda. If the agenda items are numbered or listed by topic, then the minutes should reflect the same numbering system or list of topics. If the first item on the agenda is "Call to Order," then the first item in the minutes should be "Call to Order" and state, "Chair John Doe called the meeting to order at (state the time)." If the last item on the agenda is "Adjournment," then the minutes should state, "Adjournment" with the time the chair declared the meeting adjourned. Alternatively, if a motion was made, then the name of the maker and second of the motion, the outcome of the motion, and the time of adjournment, should be recorded in the minutes.

When adopting or approving the minutes, corrections should be made in the text of the minutes being approved. The minutes of the meeting making the correction should simply state the minutes were approved "as corrected" without specifying what the correction was.

All motions, the maker of the motion, and disposition of the motion should be entered into the minutes. Including the name of the motion's second is not technically required, but is a good practice. There is no requirement to summarize the discussion; in fact, it is discouraged. When a count of the votes has been taken, the number of votes on either side should be recorded. On a roll call vote, the names of how each member voted should be included.

The name and subject matter of a guest speaker should be recorded but no attempt should be made to summarize their comments. However, the substance of reports by department heads, constitutional officers, consultants, and committee reports should be recorded. Requiring presenters to submit their own summary, especially for lengthy reports, ensures accuracy.

Robert's suggests that the proceedings of a committee of the whole need not be recorded, but the statutes dictate otherwise. The fact that the body convened as a committee of the whole and any committee report or action should be recorded.

Robert's suggests the minutes be signed by the secretary, and if the body wishes, by the president. However, the county board or committee may approve the minutes with or without the clerk's signature. The term "respectfully submitted" is an older practice that is not necessary.

The purpose of minutes is to reflect what was done at the meeting, not what was actually said verbatim. Occasionally a member will make a statement and say, "I want that recorded in the minutes." The clerk is not required to do so, and attributing statements or points of discussion to individual members should be avoided. Accurately recording members' comments would require a recording device or enlisting the services of a stenographer. Without such devices, it is too easy to record it incorrectly.

The minutes should never reflect the minute takers opinion and should be a record of the business transacted at the meeting and not what was said. Ensure your county board rules specify the content of the minutes, which may be more or less than what is included in *Robert's*.

THE MOST COMMONLY MISUSED MOTION

Very often a member of a body will move to *Table* an item when they want to kill or delay indefinitely. This motion is out of order. The correct terminology is to *Lay on the Table*. It is the most misused of all motions.

The motion to *Lay on the Table* temporarily sets the matter aside with the intent to take the matter up later in the meeting.

When you are in the middle of debate on a motion and a question is asked of a department head that needs time to get the information, rather than wait, move to *Lay on the Table*. Or, if you are in the middle of debate and reach the hour where you have a public hearing scheduled, move to *Lay on the Table*. In both situations the intent is to take the matter up later in the meeting.

Before the chair accepts a motion to *Lay on the Table*, the chair must fully understand the intent. If it is to kill or delay indefinitely then the chair must rule the motion out of order.

Call to Order

The motion to *Lay on the Table* is out of order when someone else has the floor, must be seconded, is not debatable, is not amendable and requires a majority vote.

When the body is ready to resume discussion on the matter, the proper motion is to *Take from the Table* with the same rules applying as *Lay on the Table*.

If the intent is to kill or delay indefinitely then the proper motion is to *Postpone Indefinitely*. The motion to *Postpone Indefinitely* kills the motion and avoids the members taking a direct vote on the matter. It can be used to dispose of poorly drafted, ill-advised, or embarrassing motions where members would rather not be recorded as voting aye or nay on the matter.

The *Postpone Indefinitely* motion can also be used to test the strength of a proposal. Say you are debating a motion that is divisive, you do not know where the votes are, you have amendments to make it more acceptable but you do not want to make the amendments because you are opposed, move to *Postpone Indefinitely*. If the motion passes, the matter is dead and you have won. If it does not pass, you now know where the votes are and can decide if you want to make your amendments.

The motion to *Postpone Indefinitely* is out of order when someone else has the floor, must be seconded, is debatable, is not amendable and requires a majority vote.

If the intent is to delay action on a main motion then the proper motion is to *Postpone to a Certain Time*. The motion just to *Postpone* is out of order. The motion must be to a time specific, such as a definite day, meeting, hour or until after a certain event. For example, a proper motion would be to *Postpone* until the next meeting, *Postpone* until after the finance committee has acted, or *Postpone* after June 1.

The motion to *Postpone to a Certain Time* is out of order when someone else has the floor, must be seconded, is debatable, is amendable and requires a majority vote.

Adopting a motion to *Lay on the Table* when the intent is to kill or delay deprives the body of its most basic right to debate the matter, which is allowed with the motions to *Postpone Indefinitely* and *Postpone to a Certain Time*. It also deprives the body of the ability to *Amend*, which is allowed with the motion to *Postpone to a Certain Time*.

I now move to *Postpone* discussion on parliamentary procedure until the next edition of *Wisconsin Counties* magazine; do I hear a second?

DUTIES OF THE CHAIR

One of the basic provisions of any body or assembly is to elect a presiding officer or chair. It is the chair's job to conduct the business and enforce the rules of the assembly.

Once a member assumes the position of chair it is important for the chair to maintain a position of impartiality and help to preserve an objective and impersonal approach.

Past *Call to Order* articles have referenced duties and responsibilities; this article attempts to quantify the duties and responsibilities as listed in *Robert's Rules of Order*.

It is the duty of a presiding officer to:

1) Open the meeting at the appointed time by taking the chair and calling the meeting to order and determine whether a quorum is present.
2) Announce in proper sequence the business that comes before the assembly or becomes in order in accordance with the prescribed order of business, agenda or program, and with the existing orders of the day.
3) Recognize members who are entitled to the floor.
4) State and put to vote all questions that legitimately come before the assembly as motions or that otherwise arise in the course of proceedings, and to announce the result of each vote; or if a motion that is not in order is made, to rule it out of order.
    - Restate the motion placing it before the body and for clarity.
    - Relinquish the chair when participating in debate and not return until the pending question is disposed of (except in small committees).
5) Protect the assembly from obviously dilatory motions by refusing to recognize them.
6) Enforce the rules relating to debate and those relating to order and decorum within the assembly.
    - Remind members to confine remarks to the merits of the question.
7) Expedite business in every way compatible with the rights of members.
8) Decide all questions of order, subject to appeal, unless when in doubt, the presiding officer prefers initially to submit the question to the assembly for decision.
9) Respond to inquiries of members relating to parliamentary procedure or factual information bearing on the business of the assembly.
10) Authenticate by his or her signature, when necessary, all acts, orders and proceedings of the assembly.
11) Declare the meeting adjourned when the assembly so votes or where applicable at the time prescribed in the program, or at any time in the event of a sudden emergency affecting the safety of those present.

The statutory duties of the county board chair are found in Wis. Stats. 59.12, which states, "The chairperson shall perform all duties required of the chairperson until the board elects a successor. The chairperson may administer oaths to persons required to be sworn concerning any matter submitted to the board or a committee of the board or connected with their powers or duties. The chairperson shall countersign all ordinances of the board, and shall preside at meetings when present. When directed by ordinance the chairperson shall countersign all county orders, transact all necessary board business with local and county officers, expedite all measures resolved upon by the board and take care that all federal, state and local laws, rules and regulations pertaining to county government are enforced."

Additional duties of the chair, such as making committee appointments, setting agendas and serving on committees, should be codified in county ordinance as part of the board's rules.

Basic Information on Motions

RANKING MOTIONS

These motions are listed in order of rank. When any one of these motions is pending, those above are in order and those below are not in order.

Privileged Motions:	Require second?	Can debate?	Can be amended?	Vote required.
13. Fix the Time to Which to Adjourn	yes	no	yes	majority
12. Adjourn	yes	no	no	majority
11. Recess	yes	no	yes	majority
10. Raise a Question of Privilege	no	no	no	chair
9. Call for the Orders of the Day	no	no	no	chair
Subsidiary Motions:				
8. Lay on the Table	yes	no	no	majority
7. Previous Question	yes	no	no	2/3
6. Limit or Extend Limits of Debate	yes	no	yes	2/3
5. Postpone to a Certain Time	yes	yes	yes	majority
4. Commit or Refer	yes	yes	yes	majority
3. Amend	yes	yes	yes	majority
2. Postpone Indefinitely	yes	yes	no	majority
1. Main Motion	yes	yes	yes	majority

NON-RANKING MOTIONS

Incidental Motions:	Require second?	Can debate?	Can be amended?	Vote required.
Appeal	yes	yes*	no	majority
Close Nominations	yes	no	yes	2/3
Consider by Par. or Seriatim	yes	no	yes	majority
Division of the Assembly	no	no	no	no
Division of a Question	yes	no	yes	majority
Objection to Consideration of Question	no	no	no	2/3
Point of Order	no	no	no	chair
Reopen Nominations	yes	no	yes	majority
Suspend the Rules	yes	no	no	2/3
Requests & Parliamentary Inquiries	no	no	no	chair
Motions bringing a question before assembly again:				
Reconsider	yes	yes	no	majority
Rescind	yes	yes	yes	majority
Amend Something Previously Adopted	yes	yes	yes	majority
Take from the Table	yes	no	no	majority

** May be discussed but each member may only speak once.*

Source: Robert's Rules of Order, Newly Revised, 11th Edition

County Services

For additional reference, the following pages include a comprehensive list of services grouped by county department.

County Services

CIRCUIT COURTS

Clerk of Circuit Court

- Collection of fees, fines, and forfeitures
- Court administration
- Custodian of court records – civil, family, criminal, ordinance violations, and miscellaneous
- Jury management
- Court finances

Circuit Court Commissioner

- Handle probate, guardianship, and mental commitment proceedings
- Hear small claims trials
- Conduct initial appearances and set bail on traffic and ordinance civil cases, misdemeanors, and felonies
- Conduct preliminary hearings in felony matters to determine whether the case shall proceed
- Handle juvenile hearings that are not open to the public

District Attorney

- Prosecute all criminal cases – misdemeanors and felonies
- Prosecute all criminal traffic cases
- Prosecute all Wisconsin Department of Natural Resources cases
- Prosecute juvenile delinquency cases and children in need of protection and services (CHIPS) cases
- Prosecute termination of parental rights (TPR) cases
- Prosecute ordinance traffic cases from the county sheriff's office and Wisconsin State Patrol
- Provide crime victim and witness services
- Provide Deferred Prosecution and Domestic Violence Intervention Programs
- Represent the county in the prosecution of county ordinance violations
- Payment of witness fees, including expert witness fees

Family Court Commissioner

- Grant divorces to parties who have appropriate written agreements
- Conduct court hearings and render decisions on issues in family court cases (except a final, contested divorce trial, which must be held before a judge), including:
  - Paternity, custody, and placement of children
  - Support for children, including responsibility for health insurance, medical expenses, and other related financial issues
  - Assignment of tax dependency exemptions between the parents
  - Use of and division of property
  - Responsibility for payment of debts
  - Maintenance (alimony)
- Administrative responsibilities to ensure efficient yet fair administration of justice

Register in Probate

- Custodians of the record – probate, guardianship, mental commitment, adoption, and in many counties, juvenile records
- Court finances
- Court administration
- Collection of fees

Other services

- Court reporters
- Guardians ad litem
- Indigent counsel
- Judicial assistants
- Law clerks
- Law library
- Mediation
- Forms
- Interpreters

CORPORATION COUNSEL

- Prosecute and defend civil legal actions involving the county; coordinate and supervise outside counsel, including counsel assigned by insurance carriers; assist the treasurer in the foreclosure of tax liens; prosecute violations of health, zoning and other ordinances
- Research and provide advice on civil matters, including ethics, open meetings, parliamentary procedure, and public records issues; draft and issue legal opinions; draft and review ordinances and resolutions; prepare or review contracts, deeds, leases, real estate documents, and other legal papers
- Work with county departments to secure reimbursement of government expenditures, protect county subrogation rights, and collect delinquent accounts
- Prosecute mental health, alcohol, and drug commitments
- Provide legal services in certain cases relating to guardianships for minors and in certain cases relating to guardianship and protective placement that arise because of degenerative brain disorders, serious and persistent mental illness, mental retardation, other developmental disabilities, or similar incapacities incurred at any age
- Prosecute or assist with the prosecution of certain matters relating to the determination of paternity and the establishment, modification, and enforcement of court-ordered child support obligations
- Provide legal services in certain cases arising under the Children's Code (Wis. Stats. Ch. 48) for children who are in need of protection and services. (Note: In some counties these duties are performed by the district attorney.)
- Prosecute certain actions to terminate parental rights when it is in the best interests of the child to do so. (Note: In some counties these duties are performed by the district attorney.)

COUNTY CLERK

Election Administration

- Filing officer - county candidates
- Publish election notices
- Layout/printing/delivery of ballots and supplies to municipal clerks
- Election equipment programming
- Statewide voter registration services
- Election night - election results/reporting
- Canvass board - conduct County Board of Canvassers and recounts
- Election training for municipal clerks and school districts

Financial Functions

- Budgets
- Tax apportionment
- Borrowing
- General accounting
- Central purchasing
- Payroll

Licenses & Permits

- Marriage licenses and docket
- Domestic partnerships and docket
- Domestic partnership terminations and docket
- Distribution of state dog license supplies to municipal treasurers; administer dog license fee accounts
- Passport agent
- Wisconsin Department of Natural Resources issuing agent
- Hayrack and sleigh ride permits
- Pawnbroker and secondhand dealer licenses
- DMV issuing agent - temporary and/or permanent vehicle license plates and registration renewals

County Services

- ❏ Work permits
- ❏ Purchasing liability, property, and other insurances
- ❏ Insurance maintenance
- ❏ Bonding
- ❏ GASB reporting
- ❏ Asset inventory
- ❏ Sale of tax deed property

Services to the County Board
- ❏ Recording secretary
- ❏ Prepare and publish agendas and minutes
- ❏ Committee meeting minutes
- ❏ Certification of county board actions
- ❏ Publish official proceedings
- ❏ Open meetings law compliance
- ❏ Maintain records
- ❏ Compile/publish/maintain current county directory
- ❏ Sign contracts, deeds, and agreements as approved by county board
- ❏ Website maintenance

Other Statutory Duties
- ❏ Zoning issues
- ❏ Farmland preservation
- ❏ Library funding
- ❏ Wood cutting notices
- ❏ Highway department records
- ❏ Keeper of all contracts, leases, and agreements
- ❏ Filing agent for all claims against county

COUNTY TREASURER

Cash Management
- ❏ Keep a true and correct account of all receipts and expenditures
- ❏ Reconcile bank accounts
- ❏ Maintain balances in bank accounts
- ❏ Report and publish unclaimed funds
- ❏ Maintain collateral, insurance, or other to secure all county funds
- ❏ Negotiate and seek highest interest rates following Wisconsin State Statutes and county investment policy
- ❏ Determine and maintain cash flow
- ❏ Oversee separation of duties with cash
- ❏ Invest excess funds/invest in programs
- ❏ Serve as treasurer for the Land Council
- ❏ Prepare financial reports for the finance committee/county board

Receipting & Disbursements
- ❏ Property tax collection
- ❏ Prepare and disburse all county settlements with taxing jurisdictions
- ❏ Receipt and deposit all county monies
- ❏ Pay out all monies belonging to the county, imprint signatures, and mail or electronically prepare disbursements, including payrolls for all county employees
- ❏ Distribute national forest income to municipalities
- ❏ Prepare, file, and pay sales and use tax
- ❏ Forward court fines and forfeitures, court fees, real estate transfer fees, and Wisconsin Land

Information Program (WLIP) recording fees to the appropriate state department
- Forward probate and vital records fees to the state
- Act as the treasurer for drainage districts
- Deposit and pay out all monies for the county jail assessment fund

Taxation
- Prepare and/or assist municipal staff with tax settlements
- Prepare and distribute April and August settlement for all taxing jurisdictions
- Maintain records of all paid and delinquent taxes
- Maintain at least 15 years of all tax information
- Process personal property chargebacks and assessor error chargebacks
- Prepare and mail delinquent tax notices
- Issue tax lien certificates
- Prepare and maintain tax sale book
- Provide completed and balanced tax settlement forms to the state
- Administer the lottery and gaming credits for both real and personal property
- Administer the first dollar credit
- Administer the ag-use conversion charge
- Maintain records of property owners in bankruptcy
- Process tax deeds or assist county clerk with the same
- Report and pay managed forest land and private forest crop settlement to the Wisconsin Department of Natural Resources
- Certify and sign off that there are no unpaid taxes on properties for purpose of recording plats
- Certify and sign off that there are no unpaid taxes on properties for timber cutting permits
- Collect tax payments for municipalities as contracted
- Research tax and property information for the public upon request

HEALTH & HUMAN SERVICES

Aging
- Provide access to information, services, and opportunities provided through the aging unit
- Provide a visible access point of contact for individuals to obtain accurate and comprehensive information about public and private community resources that can meet the needs of older adults
- Provide Elder Benefit Specialist services
- Organize and administer congregate programs – nutrition, senior centers, adult day care, respite, evidence-based prevention programs
- Provide information to the public about the aging experience and about resources for and within the aging population
- Assist in representing the needs, views, and concerns of older individuals and assist older individuals in expressing their views
- Advocate on behalf of older individuals to assist in enabling them to meet their basic needs
- Aging and Disability Resource Centers
- Transportation
- Volunteer recruitment, training, and management
- Community organizing to address unmet needs

Child Support
- Establishment of paternity
- Establishment and enforcement of court-ordered child support and medical support obligations
- Establishment and enforcement of support orders when children are placed out of the home

County Services

<u>Human Services</u>

- Juvenile Justice
  - Intake
  - Assessment
  - Court-ordered supervision
  - Case management
  - Foster care
  - Group care
  - Residential treatment
  - Restitution
  - Public service
  - Juvenile detention
- Child Protective Services
  - Access
  - Initial assessment
  - Court-ordered supervision
  - Case management
  - Foster care
  - Termination of parental rights
  - Income assignment
  - Pre-adoption planning
  - Shelter care
- Mental/Behavioral Health
  - Outpatient counseling
  - Emergency detentions
  - Court commitment
  - Case management
  - Community-Based Residential Facilities (CBRF) placement
  - Intoxicated driver program
  - Community support program
  - Comprehensive community services
  - Detoxification
  - State institutional placements
  - Alcohol and other drug abuse (AODA) assessment funding and counseling
  - AODA prevention services
- Children with Disabilities
  - Birth to Three
  - Family Support
  - Children's Long Term Support
- Adult & Disability Services
  - Intake and assessment
  - Guardianships
  - Case management
  - Personal care
  - Home care
  - Adult family home
  - Community-Based Residential Facilities
  - Day services
  - Court-ordered protective services
  - Vulnerable adult services
  - Elderly and disabled transportation
  - Aging and Disability Resource Centers
  - Disability Benefit Specialist services
- Economic Support
  - FoodShare
  - Medical Assistance
  - Energy assistance
  - Child care
- Nursing Homes
  - Provide 24/7 skilled nursing care with an emphasis on serving residents with special care and/or behavioral needs. Provide a range of services including respite care, short-term rehabilitative care with physical, speech, and occupational therapies, long-term care, end-of-life care, palliative care, and memory care for those with Alzheimer's disease and other dementias. Nursing homes can address a variety of conditions from basic activities of daily living to post-acute care, brain injuries, respiratory (tracheotomy) care, wound care, dialysis, IVs, tube feedings, etc.
  - Payments for services include: Wisconsin Medical Assistance, Wisconsin Family Care programs, Medicare, Medicare Advantage plans, insurance (including auto, liability, workman's comp and medical), HMOs and private pay.

- Public Health
  - Childhood and/or adult immunizations
  - Communicable disease follow-up
  - Women, Infants and Children (WIC) nutrition services
  - Well-child and well-baby programs
  - Prenatal care coordination
  - Tobacco education and cessation classes
  - Community assessment and health improvement planning
  - Health education
  - Emergency planning and response efforts
  - Restaurant and hotel inspections (food and recreational licensing program, retail ag. program)
  - Lead poisoning screening and education
  - Public health nursing
  - Sanitarians – human health hazards
  - Public health policy development and enforcement
  - Oral health care
  - Injury prevention program
  - Chronic disease prevention
  - School nursing
  - Reproductive health

LAND SERVICES

Forestry

- Coordinate county ATV/UTV trail program (1,700 miles)
- Coordinate county snowmobile program (9,000 miles)
- Conduct sales of county tax-delinquent lands in some counties
- Develop and maintain county park, wayside, and beach facilities
- Develop and maintain county campground facilities (3,300 campsites)
- Develop and maintain cross-country ski trails
- Establish forest compartments and stands
- Reconnaissance of forest lands
- Implement forest certification standards
- Monitor and control invasive species
- Maintain lake and river access throughout the county
- Oversee and coordinate maintenance and development of horse trails (370 miles)
- Oversee and coordinate maintenance and development of mountain bike trails (390 miles)
- Promote soil and water stewardship by following Best Management Practices (BMPs) for water quality
- Provide nature and hiking trails
- Establish, administer, and create a bid process for timber sales
- Tree planting on county forest lands
- Develop, maintain, and improve wildlife habitat on county forest lands for a variety of game and non-game species
- Work with Ice Age Trail Alliance
- Provide access to nearly 2.4 million acres for citizens of Wisconsin and beyond
- Work with Wisconsin's forest products industry to maintain and grow our state's second largest industry ($24 billion)
- Work with a wide variety of recreational user groups and actively promote Wisconsin's tourism industry

County Services

Land Conservation

- Develop county-based land and water resource management plans
- Provide cost-sharing, technical, and planning assistance to land users
- Distribute and allocate funds for conservation activities
- Actively solicit public participation in planning and evaluation of soil and water conservation programs
- Develop and implement watershed management programs, including working with municipalities to reduce phosphorus runoff
- Adopt and administer soil and water conservation standards
- Provide nutrient management planning assistance
- Agriculture runoff control
- Groundwater quality management
- Lakefront and riparian area management
- Urban storm water runoff management
- Forestry management projects
- Invasive species awareness and control
- Working lands preservation and program support
- Household hazardous waste programs
- Large livestock siting ordinance development and implementation
- Non-metallic mining reclamation
- Pollution prevention programs
- Preservation of open space
- Tree sales and planting assistance
- Wildlife damage claim and abatement program
- Participate on County Deer Management Councils
- Wildlife habitat preservation

Land Information, Planning, Zoning

- Boards of Adjustment
- General zoning, shoreland zoning, and floodplain zoning
- Global positioning systems
- Land division and subdivision review and approval
- Land use planning
- Large livestock siting
- Mapping
- Non-metallic mining reclamation
- Private sewage system monitoring
- Remonumentation
- Wisconsin Land Information Program
- Comprehensive planning
- Telecommunication tower siting
- Airport zoning
- Economic development
- Demographics/statistical management
- Site plan review
- Stormwater management planning & zoning
- Erosion control
- Addressing
- Recreation planning
- Transportation planning
- Energy/sustainability planning

Sanitation/Solid Waste/Recycling

- Operate as enterprise funds
- Own and/or operate landfills
- Own and/or operate landfill, gas-to-energy production facilities
- Own and/or operate landfill gas bio-CNG (compressed natural gas) production facility
- Operate a port authority
- Own and/or operate a waste-to-energy solid waste incinerator
- Own and/or operate material recovery facilities
- Broker recyclable materials
- Serve as responsible unit for recycling, meeting all facets of NR 544
- Provide or contract for collection services
- Provide or contract for facility operational services
- Operate special/universal waste programs (e.g., oil filters, electronics, fluorescent lighting)
- Conduct recycling and waste reduction education
- Promote product stewardship as a means of reducing waste
- Advocate for local, state, and federal policies that promote environmental protection, sustainability, waste reduction, and increased recycling
- Own and operate yard materials site, producing and retailing compost and mulch
- Sell compost bins and provide composting education
- Operate continuous (full-time) household hazardous materials programs (Clean Sweep)
- Conduct annual Clean Sweep events
- Provide environmental education and outreach to schools

Surveyor

- Remonumentation of Public Land Survey System corners
- Preservation/maintenance of all established Public Land Survey System corners
- Preservation of other geodetic monuments
- Index, file, and maintain all survey records
- Certified survey map review/subdivision plat review
- Provide support and assistance to other county departments
- Conduct surveys for other county departments
- Accident and reconstruction surveys
- Prepare legal descriptions
- Testify in court as an expert witness
- Volumes and quantities acquisition and construction staking
- Oversight of/assistance with GIS development
- Assist and prepare parcel mapping
- Provide ground control for orthophotography and LiDAR projects
- May serve as the LIO (Land Information Officer) for the Land Records Modernization Program
- Assist the public and other entities with land surveying and land ownership questions

PUBLIC SAFETY SERVICES

Coroner/Medical Examiner

- Complete reports of inquests and investigations
- Investigate deaths per Wis. Stats. Ch. 979
- Interact with next of kin of deceased, including notification of death and follow-up information, and with law enforcement personnel, attorneys, and physicians
- Interview witnesses
- Obtain lab samples for testing or screening by a laboratory
- Order medicolegal autopsies
- Record facts and conclusions concerning a death and testify regarding such information if requested
- Sign death certificates, cremation permits, and any other necessary paperwork

County Services

Emergency Management

- ❑ Administer state and federal grants (EMPG, EPCRA, Homeland Security Grants, etc.)
- ❑ Prepare and administer the department's budget
- ❑ Develop plans for emergency operation/response and for facilities with extremely hazardous substances
- ❑ Develop public education programs on emergency preparedness
- ❑ Develop training programs for emergency response personnel
- ❑ Develop tabletop, functional, and full-scale exercises to test the response capabilities of local responders
- ❑ Provide guidance for Emergency Communications Systems (e.g., outdoor warning sirens)
- ❑ Keep an inventory of public and private resources that would be available during a disaster
- ❑ Provide mitigation preparedness, response, and recovery activities for the county and its municipalities
- ❑ Establish, maintain, and operate the county's Emergency Operations Center (EOC)

Public Safety Answering Points

- ❑ Answer 911 calls
- ❑ Answer non-emergency calls
- ❑ Provide pre-arrival instruction
- ❑ Record phone and radio conversations
- ❑ Dispatch appropriate services (police, fire, EMS)
- ❑ Operate state TIME system for police
- ❑ Operate Computer Aided Dispatch (CAD) system
- ❑ Work with GIS information
- ❑ Use electronic investigation to assist police
- ❑ Maintain and verify warrants, stolen property, and missing persons records
- ❑ Provide public education

Sheriff

- ❑ Coordinate accident reduction project
- ❑ Dive rescue
- ❑ Dog handlers
- ❑ Drug and crime prevention
- ❑ Holding of state and local prisoners
- ❑ Prisoner law library
- ❑ School liaison officers
- ❑ Tactical teams
- ❑ Transport of adult prisoners
- ❑ Transport of juvenile prisoners
- ❑ Water patrol
- ❑ Snowmobile patrol
- ❑ ATV patrol
- ❑ Keep and preserve the peace
- ❑ Conduct criminal investigations
- ❑ Provide traffic enforcement
- ❑ Respond to citizen calls for service – emergency and non-emergency
- ❑ Courthouse security
- ❑ Maintain and operate the county jail
- ❑ Attend upon the circuit courts
- ❑ Serve and execute all processes, writs, subpoenas, and orders from the courts issued or made by lawful authority and delivered to the sheriff
- ❑ Maintain and operate Public Safety Answering Points (depending on county)
- ❑ Assist municipal law enforcement agencies with professional and technical assistance, as well as mutual aid resources to other counties upon request
- ❑ Provide resources for response to statewide emergencies
- ❑ Provide emergency management assistance and resources (depending on county)

REGISTER OF DEEDS

- Examine, record, index, archive, and maintain:
  - All instruments authorized by law and return them as designated
  - All certified survey maps, subdivision plats, condominium plats, county plats, cemetery plats, and transportation project plats as required by Wisconsin State Statutes
  - Federal tax liens, real estate related Uniform Commercial Code documents, articles of incorporation, and firm names
  - Military discharge papers and issue certified copies as requested by the veteran or veteran service office
  - Vital Records (birth, death, marriage, and domestic partnership), and issue certified copies
  - Issue copies of recorded and filed records upon demand and collect required fees
- Accurate bookkeeping practices to ensure monies received from vital records, recordings, and real estate transfer fees are dispersed in the correct amount to the appropriate county and state agencies
- Provide safe archival storage and convenient access to public records
- Use technologically advanced electronic programs to become more efficient in the duties of the register of deeds office to provide fast and accurate information
- Implement statutory changes, system modernization, programs, procedure evaluation, disaster recovery, and staff development to assure a high level of timely customer service for Wisconsin citizens
- Provide public education and assistance

TRANSPORTATION

- Airport operation and maintenance
- Assistance to rail and harbor infrastructure
- Assistance to docks and harbors operations
- Transportation services for elderly and disabled
- Mass transit operations and maintenance
- Maintenance and repair of all state and interstate roads through contract with DOT
- Maintain and repair park and ride lots
- Maintain several waysides of the State Trunk Highway System
- Highway and street maintenance for all county roads and several local roads by contract
- Own and maintain bike trails
- Patching, crack filling, and seal coating of pavement surfaces
- Maintenance, repair, and construction of parking facilities
- Pavement resurfacing and marking
- Road construction, re-construction, and rehabilitation
- Planning and engineering
- Plowing, de-icing, shoveling, and hauling snow
- Installation and removal of snow fence, application of salt and sand
- Bridge and culvert installation/maintenance
- Guard rail installation and repair
- Litter and trash pick-up
- Shoulder maintenance
- Vegetation control
- Street lighting
- Signing
- Traffic control

County Services

VETERANS SERVICES

- Advise persons living in the service officer's county who served in the U.S. armed forces on any benefits to which they may be entitled, and assist in any complaint or problem arising out of such service and render to veterans and their dependents all possible assistance
- Make reports to the county board as the county board requires
- Cooperate with federal and state agencies that serve or grant aids and benefits to former military personnel and their dependents
- Furnish information about veterans' burial places within the county
- Apply and manage case files for federal and state veterans' service programs which may include compensation, pension, education, burial, survivor benefits, VA loans, grants, insurance, and Dependency Indemnity Compensation (DIC)
- Work independently to apply state and federal policy and procedures to dynamic situations to ensure accurate benefit determinations
- Work in a fast-paced environment handling multiple interactions daily, covering a wide variety of topics and benefits
- Handle urgent inquiries relating to health, home, and family needs in a time sensitive manner
- Assist with application for the Veterans Service Commission emergent needs program
- Assist with applications for Wisconsin G.I. Bill education benefits for veterans and eligible dependents
- Assist with vocational rehabilitation benefits for disabled veterans
- Assist with federal VA home loan Certificate of Eligibility (COE)
- Assist with application for burial benefits (e.g., cemeteries, markers, burial flags, funeral honors, etc.)
- Assist dependents and survivors in applying for benefits (e.g., healthcare, education, pensions, etc.)
- Assist with the enrollment of veterans into the VA healthcare system
- Register discharge papers/DD-214 with county register of deeds
- Assist military retirees and their surviving families with U.S. Department of Defense (DOD) benefits and services
- Assist with the transportation of veterans to and from medical care
- Help determine eligibility and complete paperwork for veterans' homes and long-term care
- Provide and/or refer veterans to appropriate federal, state, and non-governmental emergency financial aid
- Assist homeless veterans and those at risk of becoming homeless
- Assist with applications for WDVA benefits
- Assist with applications and verification for 100% disabled veterans and surviving spouses to receive their property tax credit
- Assist with applications and approve the Wisconsin Department of Natural Resources Veterans Free State Park/Forest/Trail Pass
- Assist with applications and approve the Wisconsin Department of Motor Vehicle WI/ID License Veterans Identifier
- Apply for and administer the CVSO Grant program

CULTURE, RECREATION, EDUCATION & HOUSING

UW Cooperative Extension

- Engage in transforming lives and communities by connecting people with research and resources of the University of Wisconsin
- Work with local, state, and federal partners to offer educational programs that address the important issues of individuals, families, and communities
- Educational programs include the following: 4-H, Master Gardeners, FoodWise, Leadership Wisconsin, and hundreds of programs in the areas of agriculture, natural resources, community development, health and well-being, human development and relationships

County Libraries

- Encourage citizens to be knowledgeable about and actively involved in all levels of their government
- Assist citizens in obtaining information in various formats on various topics
- Inform citizens of all aspects of issues relating to social, political, and economic concerns
- Provide community centers to support discussion among citizens
- Support the development of general library services for all ages
- Support life-long learning for all county residents

Other Services

- Beaches, campgrounds, golf courses, recreation facilities, recreational trails, and parks
- Economic development and regional planning commissions
- Fairs and exhibits
- Historical societies, museums and zoos
- Public housing, two-year UW-system
- Appoint members to Wisconsin Technical College District Boards

EXTENSION
IS PART OF UW–MADISON

CHANGING LIVES & COMMUNITIES