Items in the State Budget Affecting Municipalities

Curt Witynski, Assistant Director, League of Wisconsin Municipalities

After nearly three months of legislative delay, Governor Walker signed the 2017-2018 state budget bill into law as Act 59 on September 21. Like all state budgets, Act 59 is a mixed bag for municipalities, although positive changes slightly outnumbered negative impacts.

The budget includes significant increases for cities and villages in the General Transportation Aids and Local Road Improvement programs. It makes no cuts to other key municipal programs like shared revenue, expenditure restraint, recycling grants, and payments for municipal services. In addition, it includes a change to levy limit law that the League sought allowing communities to shift from using the levy for paying the fire hydrant rental fee to directly charging utility customers without having to reduce the community's allowable levy.

Unfortunately, the budget contains two policy items that limit municipal powers. It prohibits local governments from using eminent domain to acquire land for bike and pedestrian paths and prohibits local bans on home rentals for seven consecutive days or longer.

This article describes these and other provisions in the state budget in more detail. All items described in this article took effect on September 23, unless otherwise indicated.

Shared Revenue and Levy Limits

Shared Revenue. The new state budget retains the same level of funding for the shared revenue program as the last state budget. Your municipality's 2018 and 2019 payments should closely match its 2016 and 2017 payments.

Levy Limits. The same strict levy limits that have been in place since 2011 remain. A municipality is allowed to increase its levy over the amount it levied in the prior year by the percentage increase in equalized value from net new construction. All of the exceptions and modifications to levy limits that exist in current law continue to apply, (e.g., debt service levy exempt from levy limits; municipalities can exceed limits if approved by referendum). Act 59 makes the following three changes to the levy limit law:

1. Negative levy limit adjustment when debt service is reduced on debt issued before 2005. The budget eliminates an exception to the requirement that communities reduce their allowable levy by any decrease in debt service for debt issued before July 1, 2005. Act 59 deletes language exempting a municipality from having to decrease its allowable levy when its debt service on pre 2005 debt is reduced if it does not carry forward unused levy capacity from a prior year. This modification to the levy limit program first applies to amounts levied in December 2017.

2. Levy limit adjustment for fire protection fees. Act 59 exempts water utility related fees for the production, storage, transmission, sale, and delivery of water for public fire protection purposes from the possibility under levy limit law that fee increases for "fire protection" services result in a reduction in the community's allowable levy. This change allows communities to shift from using the levy to pay the fire hydrant rental fee to directly charging utility customers without having to reduce the community's allowable levy.

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All municipalities with a public water utility must pay a public fire protection (PFP) fee to cover the utility's cost of providing for the excess capacity necessary to ensure sufficient water pressure to fight fires. When a water utility seeks approval for a water rate increase, the Public Service Commission (PSC) calculates the PFP fee and directs water utilities to increase their PFP fee. The PFP fee can be assessed through the tax levy or charged directly on the water bill to the consumer (direct charge), or it can be recovered through a combination of both mechanisms. Of the 582 municipal water utilities, 49 percent use only tax levy, 33 percent use only the direct charge (included on water utility bill), 15 percent use a combination, and 3 percent have no PFP charge.

DOR administers the levy limit program and had determined that the covered service adjustment for fire protection extends to public fire protection fees charged by water utilities and set by the PSC. When the PSC imposes a higher fee, a negative adjustment under the "fire protection" covered service provision of the levy limit law was triggered depending on how the water utility collected the fee. The budget change overrides the adjustment in such cases and allows a community to shift from using the levy for paying the fee to adding a fee onto the customer's water utility bill without needing to reduce its allowable levy. *(Note: The League joined with the Wisconsin Rural Water Association in advocating for this budget amendment. Sen. Howard Marklein (R-Spring Green) and Rep. Mark Born (R-Beaver Dam) authored the amendment on our behalf.)*

3. Municipal levy limit referendum ballot must include purpose of levy increase. The budget act requires that the ballot question in a municipal levy limit referendum must include the specific purpose for which the additional funds levied would be used. This provision would first apply to a resolution to exceed the levy limit that is adopted on the effective date of the state budget, September 2017. Under prior law it was impermissible for a municipality to indicate the purpose of the levy increase in the ballot question.

Expenditure Restraint Program (ERP). Funding for this program essentially remains at $58 million, the same level it's been since 2003. However, the state budget actually increased funding to the ERP program by nearly $1.2 million annually in order to make a special non-formula ERP payment to two municipalities. The budget directs that the City of Janesville and the Village of Maine each receive a special payment of $583,000 annually for five years under the ERP program. These payments would be in addition to any formula amount the two communities receive under the program and would not be included in the total funding amount distributed to all municipalities under the ERP program formula.

Local Transportation Aids

General Transportation Aids. The general transportation aids (GTA) program is the second largest program in DOT's budget and represents 25 percent of all state transportation fund appropriations in 2016-17. The program helps cities, villages, and towns by helping to offset some of the costs of local road construction, maintenance, traffic enforcement, and other transportation-related costs. The 2017-2019 state budget increases funding for the GTA program for municipalities by $27 million or 8.5 percent. The prior budget set the annual GTA funding level for cities, villages, and towns at $321,260,500 for 2017 and thereafter. Act 59 increases that amount to $348,639,300 for 2018 and thereafter. The mileage aid rate would also increase by 8.5 percent (from its current level of $2,202 per mile) to $2,389 per mile for calendar year 2018 and thereafter.

All cities and most villages receive their GTA payments under the share of cost formula. Almost all towns are paid GTA on the rate per highway mile basis. The DOT is statutorily required to distribute GTA funds first to towns under the rate per mile component of the program. Then, the remainder is distributed to cities and most villages on a share of cost basis.

The state budget left intact a change made in the 2011-2013 state budget making 10 percent the maximum cut a community can experience in GTA payments from one year to the next. Prior to 2011, the maximum cut a community could experience from one year to the next was 5 percent.

An individual community's actual 2018 GTA payments will depend on application of the share of cost distribution formula. Municipalities on Share of Cost will receive a minimum 90 percent and maximum 115 percent of their 2017 GTA payment. The DOT calculates and mails to municipalities the estimate of their GTA payments by early October.

Local Road Improvement Program (LRIP). The budget provides an additional $5,000,000 annually for total annual funding of $32,832,200 for LRIP. This amount is shared between counties, cities, villages, and towns. The additional funding is to be allocated as follows: (a) $1,668,600 annually for the formula-based component of the program. Of the $1,668,600 annual funding increase, $475,000 goes to cities and villages. (b) $3,331,400 annually for the discretionary grant component of the program. Of the $3,331,400 annual funding increase for the discretionary component of the program, $266,400 would be provided to counties, $2,873,900 would be provided

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to municipalities (cities and villages), and $191,100 would be provided to towns.

The annual statutory distribution of discretionary LRIP funding in 2017-18, and thereafter is modified as follows: (a) the amount provided to counties from $5,127,000 to $5,393,400; (b) the amount provided to cities and villages from $976,500 to $3,850,400; and (c) the amount provided to towns from $5,732,500 to $5,923,600.

The table on the right reflects biennial funding for LRIP for 2015-17 and the 2017-19 funding level under the 2017-2019 state budget.

	2015-17	Act 59 2017-19	Difference	% Change
Formula-Based Allocation				
Counties (43%)	$13,756,732	$15,191,728	$1,434,996	10.4
Municipalities (28.5%)	9,117,834	10,068,936	951,102	10.4
Towns (28.5%)	9,117,834	10,068,936	951,102	10.4
Total Formula Funds	$31,992,400	$35,329,600	$3,337,200	
Discretionary Allocation				
Counties	$10,254,000	$10,786,800	$532,800	5.2
Municipalities	1,953,000	7,700,800	5,747,800	294.3
Towns	11,465,000	11,847,200	382,200	3.3
Total Discretionary Funds	$23,672,000	$30,334,800	$6,662,800	
Biennial Program Total	$55,664,400*	$65,664,400	$10,000,000	18.0

*Total, biennial LRIP funding was equal to $56,066,000. Of this amount, $401,600 from the formula-based allocation supports 3.0 positions in DNR for the environmental review of local road projects under current law and under the bill. This amount is deducted from the total prior to calculating the percentage-based formula allocations shown in the top section of the table.

Mass Transit Aids. The 2017 -2019 state budget retained the same funding levels as the prior budget for the mass transit operating assistance program. The calendar year distribution amounts for each tier of systems remain the same as under the prior budget.

New Transit Capital Assistance Program Created. Act 59 uses money the state received from the Volkswagen settlement to create a new $32 million statewide transit capital assistance program.

The Department of Administration (DOA) is to solicit and accept applications for transit capital program funding and to award grants under the program on a competitive basis. DOA is directed to give preference to any community or route that is a critical route for purposes of connecting employees and employers.

The catch is that communities receiving the "grants" will have their shared revenue payments reduced by a certain percentage for 10 years. The percentage of reductions depends on what tier your transit system is in.

For Tiers A-1 and A-2 (Milwaukee and Madison), shared revenue payments are reduced by an amount equaling 75 percent of the amount of transit capital assistance program funding received.

For Tier B systems (serving populations between 50,000 and 200,000) shared revenue payments are reduced by an amount equal to 20 percent of the amount of transit capital assistance funding received.

For Tier C systems (serving a population of less than 50,000) shared revenue payments are reduced by an amount equal to 10 percent of the amount of transit capital assistance funding received.

The first shared revenue reduction would occur in 2019 for those communities or systems receiving transit capital assistance.

Other Local Aid, Grant, and Loan Programs

Recycling Grant Program. Funding for the municipal and county recycling grant program remains the same as the last year of the prior budget, $19 million annually.

Payments for Municipal Services Program. Funding for the payment for municipal services program was kept the same as under the prior budget, $18,584,200 annually. The state uses this money to reimburse municipalities for police, fire, and other services provided to tax-exempt, state-owned properties. The program continues to be administered by the department of administration, and is significantly underfunded.

State Aid for Tax Exempt Computers. This program reimburses municipalities for lost revenues caused by the creation of personal property tax exemptions for computers, cash registers, and fax machines. The 2017-2019 state budget made changes to calculating the computer aid payments. The prior formula for calculating aid payments is repealed. In July 2018, each municipality will receive an aid payment equal to the payment it received in July 2017, multiplied by 1.0147. In 2019 only, each community that received an aid payment in 2018 will receive an aid payment equal to that previous payment increased by the change in the inflation rate. Each year thereafter, those same communities will receive an amount equal to the 2019 aid payment amount.

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Under the budget changes, any payment made to a municipality on behalf of a tax increment district created by the municipality will continue to be made to the municipality after the tax increment district is terminated.

The budget repealed the requirement that owners of exempt computers, cash registers, and fax machines annually file a return with the local assessor or the Department of Revenue (DOR) reporting the estimated value of the exempt property.

Finally, the 2017-2019 state budget increases estimated payments by $3,257,800 in 2017-18 and $2,325,600 in 2018-19. Total aid payments are estimated at $94,270,000 in 2017-18 and $95,660,000 in 2018-19.

Clean Water Fund program loan interest rates. The state budget makes the following four changes to the Clean Water Fund program administered by DNR:

a. Lowers the interest rate for most loans provided under the program for the 2017-19 biennium or later, from 70 percent of the market interest rate to 55 percent of the market interest rate. This applies to the following types of projects: (1) compliance maintenance projects to prevent a significant violation of an effluent limitation by a municipal sewage treatment facility; (2) projects to achieve compliance with a new or changed effluent limit; (3) projects to prevent or treat nonpoint source pollution or urban storm water runoff; and (4) projects to provide treatment facilities and sewers for unsewered areas.

b. Provides a loan interest rate of 0 percent for the project types listed under a. above if the municipality has a: (1) population of less than 1,000; and (2) median household income of 65 percent or less of the median household income of the state.

c. Provides a loan interest rate of 33 percent of the market interest rate for the project types listed under a. above if the municipality has a: (1) population of less than 10,000; and (2) median household income of 80 percent or less of the median household income of the state.

d. Eliminates the financial hardship assistance program. Previously, municipalities were eligible for hardship assistance if: (1) the median household income in the municipality is 80 percent or less of the median household income of the state; and (2) the estimated annual wastewater treatment charges per residential user in the municipality would exceed 2 percent of the median household income in the municipality without hardship assistance.

Length of loan repayment schedule for Clean Water Fund loans extended to 30 years. The budget allows loans approved under the clean water fund program to be for up to 30 years, or the useful life of the project, whichever is less, as determined by the Department of Administration (DOA). The clean water fund loan would have to be fully amortized no later than 30 years after the original date of the financial assistance agreement. Under prior law, clean water fund loans could be no longer than 20 years, as determined by DOA, and has to be fully amortized no later than 20 years after the original date of the financial assistance agreement.

Non-Fiscal Policy Changes Affecting Municipalities

Prohibiting use of condemnation for bike paths. The state budget creates Wis. Stats. sec. 32.015, expressly prohibiting municipalities from acquiring property by condemnation to establish or extend a recreational trail, a bicycle way, a bicycle lane, or a pedestrian way. *(The Joint Finance Committee voted to insert this in the budget late in the process. We asked the governor to veto this provision, but he declined to do so.)*

Prohibiting municipalities from banning home rentals of 7 days or more. Act 59 creates Wis. Stat. sec. 66.0414 prohibiting municipalities from enacting an ordinance prohibiting the rental of a residential dwelling for seven consecutive days or longer.

Under the budget, a municipality is specifically allowed to limit the total number of days within any consecutive 365-day period that a dwelling may be rented to no fewer than 180 days, if a residential dwelling is rented for periods of more than six but fewer than 29 consecutive days. A municipality cannot specify the period of time during which the residential dwelling may be rented, but it may require that the maximum number of allowable rental days within a 365-day period must run consecutively. The budget requires persons who rent their residential dwelling to notify the municipal clerk in writing when the first rental within a 365-day period begins.

Act 59 also requires any person who maintains, manages, or operates a short-term rental (i.e., a residential dwelling offered for rent for fewer than 29 consecutive days), for more than 10 nights each year, to: (a) obtain from the Department of Agriculture, Trade and Consumer Protection a license as a tourist rooming house, as defined in s. 97.01(15k), and (b) obtain from a municipality a license for conducting such activities, if the municipality has enacted an ordinance requiring such a person to obtain a license.

The budget further specifies that if a municipality has in effect an ordinance that is inconsistent with this provision, the ordinance would not apply and could not be enforced. However, the budget also includes language stating that none of these provisions limit the authority

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of a municipality to enact an ordinance regulating the rental of a residential dwelling in a manner that is not inconsistent with this provision.

(**Note:** *This change was sought by the Wisconsin Realtors Association for several legislative sessions. Last session, the Assembly passed AB 583, but the Senate killed it due to local government opposition. We asked the governor to veto this provision, but he declined to do so.)*

Applying room taxes to short-term home rentals and enabling lodging marketplace room tax collections. The state budget adds language to the room tax law, Wis. Stat. sec. 66.0615, making it clear that a municipality may impose the tax on lodging marketplaces (e.g., Airbnb) and owners of short-term rentals.

The budget requires a lodging marketplace to register with the Department of Revenue (DOR) for a license to collect taxes imposed by the state related to a short-term rental and to collect room taxes imposed by a municipality. Under the budget, a lodging marketplace must, after applying for and receiving a license, do all of the following if a short-term rental is rented through the lodging marketplace: (a) collect sales and use taxes from the occupant and forward such amounts to DOR; (b) if the rental property is located in a municipality that imposes a room tax, collect the room tax from the occupant and forward it to the municipality; and (c) notify the owner of the rental property that the lodging marketplace has collected and forwarded the sales and room taxes described in (a) and (b). A municipality would not be allowed to impose and collect a room tax from the owner of a short-term rental if the municipality collects the room tax on the residential dwelling from a lodging marketplace. These provisions first apply to a lodging marketplace that registers with DOR on the effective date of the budget bill.

Repealing local authority to license soda water beverages. Act 59 repeals Wis. Stat. sec. 66.0433 allowing a municipality to grant licenses and assess a $5 licensing fee to sellers of soda water beverages (i.e., soda and soft drinks) to be consumed on or off the premises where sold.

Prohibiting Milwaukee TIF Districts from incurring expenses related to operating the Milwaukee street car. The budget expressly prohibits any Milwaukee TIF district from incurring direct or indirect expenses related to the operation of the Milwaukee streetcar.

Litigation Expenses in Condemnation Awards. The state budget increases the current threshold for condemnation awards under which property owners may recover litigation expenses. The budget increases the current law threshold from $700 and 15 percent of the previous offer or award to $2,700 and 15 percent of the previous offer or award. In addition, the budget calls for the Department of Administration to annually index the amount of the dollar threshold for inflation beginning in 2018.

Preventing BID assessments on apartment components of mixed use buildings in the city of Milwaukee. The budget restricts assessments that a Business Improvement District (BID) in the City of Milwaukee may levy on "mixed use" properties. The BID special assessment may be imposed only on the percentage of mixed use property that is not tax exempt or residential.

Personal Property Tax Exemptions; Property Tax Administration

Personal property tax exemption created. Exempts machinery, tools, and patterns, other than items considered manufacturing property under current law, effective January 1, 2018. Creates a state aid program to reimburse municipalities for the lost tax revenue. The amount of the reimbursement for each community is based on the amount of property taxes levied in 2017 and collected in 2018 on the personal property exempted by the budget motion. Payments will remain at the initial payment amount in future years. Estimated total payments for the reimbursement program equal $74,400,000 annually. *(While the Legislature decided against fully repealing the personal property tax, it took this first step toward incrementally repealing the tax over several budgets.)*

Direct payment of property tax credits to municipalities. The state budget modifies the process by which

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a municipality with total school levy, lottery and gaming, and first dollar property tax credits of at least $3,000,000 may request the Department of Administration (DOA) to distribute the credits directly to the municipality rather than to the county. Beginning in 2018, a municipality may adopt an ordinance to receive the distribution directly. The municipality must provide a copy of the ordinance to DOA and DOR. DOA must distribute the property tax credit amounts to the municipality for the year in which the municipality enacts the ordinance and in all subsequent years. This practice remains in effect until the municipality notifies DOA and DOR that it has repealed the ordinance or until the total amounts of the annual property tax credits to be distributed to the municipality are less than $3,000,000.

This proposal would eliminate the requirement for municipalities that receive total credits of at least $3,000,000 to annually notify DOA of their approval to receive the property tax credit directly.

Public Employee Benefits

Authorize public employer health cost sharing payments. The budget authorizes the state or a local government to pay not only premiums but also cost sharing amounts for hospital, surgical, and other health and accident insurance and life insurance for employees and officers as well as their spouses and dependent children. It also authorizes a local government to provide for the payment of not only premiums but also cost sharing for hospital and surgical care for its retired employees. This provision takes effect the first day of the seventh month after publication of the bill (April 1, 2018).

Eliminates extending retirement and health benefits to domestic partners. The budget discontinues providing an option to state and local public employees covered under the Wisconsin Retirement System or participating in a group health insurance plan offered through the Department of Employee Trust Funds (ETF) to enter into a domestic partnership for the purpose of extending related employee benefits to partners and dependents of partners. Under prior law, programs for which domestic partners were provided certain benefits included: the Wisconsin Retirement System; the state group health insurance program; the state group life insurance program; duty disability benefits; and the deferred compensation program.

Act 59 eliminates all health insurance coverage for domestic partners, effective January 1, 2018. For employees or retirees whose date of death is January 1, 2018, or later, it eliminates domestic partner survivorship benefits under the duty disability program (available only to protective occupation category employees and their survivors). It discontinues offering long-term care insurance policies through the Group Insurance Board (GIB) to domestic partners of eligible employees or state annuitants.

Local Governments Prohibited from Extending Benefits to Domestic Partners. The state budget created Wis. Stat. sec. 66.0510, which provides that if a local government provides an employee benefit plan to its officers and employees, the plan may cover only such officers, agents, and employees and their spouses and dependent children.

Economic Development

Historic Rehabilitation Tax Credit. The budget, as line-item vetoed by the governor, imposes a new per parcel limit of $500,000 annually on use of the historic rehabilitation tax credit. Governor Walker's original budget bill recommended limiting the total tax credits under this program to $10 million annually. The Legislature amended the bill to delete the $10 million annual cap and instead imposed a $5 million per parcel tax credit limit. The governor used his veto pen to reduce the $5 million per parcel limit to $500,000 per parcel.

Conclusion

The GOP leaders in control of both houses of the Legislature were unable to agree on how to solve the shortfall in the state's transportation fund, resulting in a delay in passing the state budget until late September. The 2017-2019 state budget had both positive and negative impacts on municipalities. The budget includes significant increases for cities and villages in the General Transportation Aids and Local Road Improvement programs. Moreover, it makes no cuts to key municipal programs like shared revenue, expenditure restraint, and payments for municipal services.

Unfortunately, the budget also includes several limits on municipal powers, including a prohibition on using eminent domain powers for bike paths and pedestrian ways.

Thanks to your lobbying efforts, however, there were more positives than negatives for cities and villages in Act 59.

About the author:

Curt manages the League's lobbying program, representing the League before the Legislature, the governor's office, and state agencies. He writes the *Legislative Bulletin* and *Capitol Buzz* newsletters, organizes legislative material and the Budgeting Toolkit for the League's web page, and answers questions from the media and members about legislation that the League is lobbying. Additionally, he helps plan League conferences and meetings. Curt joined the League staff as assistant legal counsel in 1987.
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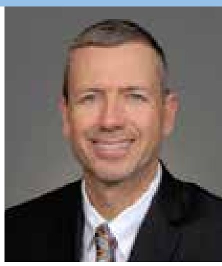

Items Vetoed, Removed, or Never Included

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Many changes were made to the 2017-2019 state budget bill between the time Governor Walker introduced it in February and when he signed Act 59 into law on September 21. Unless you kept close watch, like the League did, it was difficult to keep track of what remained in the budget and what was removed.

I've listed below seven items affecting municipalities that were either under consideration for inclusion in the budget or were added and then removed from the budget. **None of the items listed below are in Act 59**, but you may have seen references to them as the budget worked its way through the legislative process.

- Full repeal of the personal property tax. *(However, a partial repeal was included in the budget by exempting a portion of personal property from the tax. Essentially, the Legislature took the first step toward incrementally repealing the personal property tax over several budgets.)*
- Making a local vehicle registration fee (wheel tax) conditioned on voter approval in a referendum. *(Never added to the budget, though such an amendment was seriously promoted by legislators.)*
- Language codifying case law standards for determining when a local ordinance conflicts with state law. *(Line-item vetoed.)*
- Limits on local regulation of quarry operations. *(Line-item vetoed.)*
- New process for locating a residential placement for recently released violent sex offenders under ch. 980. *(Line-item vetoed.)*
- Allowing municipalities to publish legal notices on the community's website in lieu of paying for newspaper publication. *(Legislature removed this from the budget as a non-fiscal policy item.)*
- Converting the state's group health plan for local governments into a self-insurance program. *(The Legislature rejected the governor's recommendation and removed it from the state budget.)*