

COVID-19 Stalls Legislative Session with Key Bills Pending in Senate

Curt Witynski, Deputy Executive Director, League of Wisconsin Municipalities



The 2019-2020 legislative session is hopefully not over. The session started on January 4, 2019, and the Assembly met for the last time on February 20, 2020. The Senate planned to meet for the last time on March 24, but cancelled the floor session because of the COVID-19 pandemic. Senate leadership has indicated that it plans to convene the Senate once more to take up over 100 bills it was planning to act on in March, including several key municipal items. The Senate does not know when it will meet. It could be in the fall. As we wait to see if the Senate meets one more time, let us take a moment to review how municipalities have fared so far this session.

Even if the session has ended prematurely, it was generally positive for municipalities. The Legislature enacted dozens of bills beneficial to municipalities, some of which are highlighted below. No cuts were made to shared revenue, expenditure restraint, or other municipal aid programs, while transportation aids saw a 10% funding increase. Thanks to split party control of the state Capitol, few bills were introduced interfering with municipal powers. Like last session though, a major disappointment was the Legislature's failure to pass the dark store and Walgreens reversal bills, a top League priority.

A more detailed overview of how the Legislature treated municipalities during this stalled legislative session is provided below.

The 2019-2020 Session by the Numbers:

Number of Assembly bills introduced.....	1,037
Number of Senate bills introduced.....	932
Number of bills enacted into law as of 5/1.....	186
Number of bills the League followed.....	93
Number of bills League supported.....	69
Number of bills League opposed.....	12
Number of bills on which League was neutral.....	12

So far this session, of the 69 bills we supported, 24 were enacted into law. Of the 12 bills we opposed, only one became law. The number of bills we support that are enacted into law could change for the better if the Senate meets one more time. At this point, however, 35% of the bills we supported were enacted into law and 92% of the bills we opposed were not.

We were less successful getting bills we support signed into law this session than last, but more successful stopping bad bills from being enacted. Last session 52.5% of the bills we supported became law, while 80% of the bills we opposed did not. By comparison, in the 2015-2016 legislative session 58.5% of the bills we supported became law, while 70% of the bills we opposed did not.

Bills Enacted into Law that the League Supported

Act 151, Water quality trading. Authorizes water quality credit trades to be facilitated by a central clearinghouse. This bill creates another option for communities to use when attempting to find affordable ways to comply with phosphorus and other water pollution standards that apply to wastewater treatment plant effluent and stormwater. This bill was introduced by *Sen. Cowles (R-Green Bay)* and *Rep. Kitchens (R-Sturgeon Bay)*.

Act 166, Allowing municipal governing bodies to delegate to the clerk the authority to issue operator's (bartender's) licenses. This bill was introduced by *Sen. Kapenga (R-Delafield)* and *Rep. Knodl (R-Germantown)* at the request of the Village of Sussex.

Act 164, Making the process for filling vacancies in elective city and village offices clearer and easier to follow. This bill was introduced by *Rep. Brooks (R-Saukville)* and *Sen. Stroebel (R-Saukville)* at the request of Village of Fredonia Trustee Joshua Haas. The League worked with the authors to refine the language of the legislation.

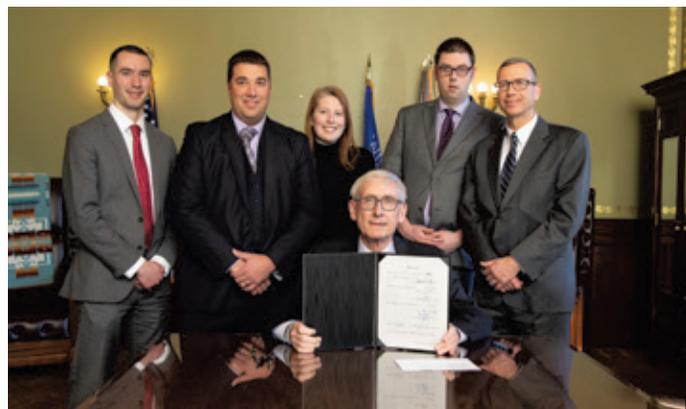


Photo credit: Joe Kosholek, Legislative Staff Photographer.

Act 126, **Timing of levy limit referendums.** Making it possible for a municipality or county to conduct a referendum to exceed levy limits earlier in the year than November, which was the earliest such a referendum could occur under prior law. The legislation allows communities to use an estimated net new construction number rather than the actual number determined by DOR each August. *Rep. Novak (R-Dodgeville), Rep. Shankland (D-Stevens Point), and Sen. Marklein (R-Spring Green)* introduced this legislation at the request of the League and the WI Counties Association.



Photo credit: Greg Anderson, Legislative Staff Photographer.

Act 133, **Levy limit exception for joint EMS.** Treats joint emergency medical services districts the same as joint fire departments under the levy limit law. *Rep. Loudenbeck (R-Clinton) and Sen. Nass (R-Whitewater)* introduced this bill.

Act 45, **Levy limit exception for reduced utility aid.** Allows a political subdivision to exceed its levy limit to replace revenue lost due to a reduction in utility aid payments because of closure or decommissioning of a power plant. *Rep. Kerkman (R-Powers Lake) and Sen. Wanggaard (R-Racine)* introduced this bill at the request of Pleasant Prairie.

Act 5, **Immobilizing vehicles owned by habitual parking violators.** Expands the type of immobilization devices that local governments may use to immobilize either an

unregistered motor vehicle or a motor vehicle owned by a habitual parking violator. Specifically, the act allows a local governmental unit to immobilize such motor vehicles with either: (1) a “boot”; or (2) a device that immobilizes a motor vehicle by being placed upon the front windshield to obstruct the driver’s view through the windshield. This bill was introduced by *Sen. Cowles (R-Green Bay) and Rep. Spiros (R-Marshfield)* at the request of the City of Milwaukee.

Act 146, **Due dates for paying property taxes.** Provides that if the due date for paying property taxes falls on a Saturday or Sunday, the five working day grace period ends at the close of business on the first Friday following the due date. The act also provides that, regardless of when it is received, a payment is timely if it is mailed in a properly addressed envelope, postmarked before midnight on the due date with postage prepaid, and is received by the proper official. *Rep. Ballweg (R-Markesan) and Sen. LeMahieu (R-Oostburg)* introduced this legislation.

Act 175, **Nonconforming homes in floodplains.** Allows for the reconstruction of or improvements to nonconforming homes in a floodplain even if costs exceed 50% of the property’s assessed value if certain conditions apply and the municipality approves. *Sen. Marklein (R-Spring Green) and Rep. Pronschinske (R-Mondovi)* authored this bill.

Act 101, **Regulating fire fighting foam containing PFAS.** Prohibits using or discharging, including for training purposes, Class B fire fighting foam containing intentionally added PFAS. Two exemptions from that prohibition are: (1) use of such foam as part of an emergency fire fighting or fire prevention operation; and (2) use of such foam for testing purposes, if the testing facility has implemented appropriate containment, treatment, and disposal or storage measures to prevent discharges of the foam to the environment. The Act requires a person to notify DNR of the use or discharge of fire fighting foam under the exemption for emergency situations and to notify DNR if foam is discharged into the environment under the testing exemption. *Rep. Nygren (R-Marinette) and Sen. Cowles (R-Green Bay)* introduced this bill.

▶ p.21

Crack Filling Service Corp.
Pioneers in crack routing and rubberized sealants
1-800-732-4379
 Jeff Herrling Jim Herrling Scott Herrling Greg Herrling
 4033 Barlow Rd., Cross Plains, WI 53528

Batterman
 engineers surveyors planners
 2857 Bartells Drive
 Beloit, Wisconsin 53511
 608.365.4464
 www.rhbatterman.com

5G Small Cell Legislation: A Preemption Bill Modified

One piece of legislation interfering with local control that was of concern to municipalities early in the legislative session was Act 14, the 5G small cell bill sought by the telecommunications industry. League staff successfully worked with the authors and proponents of the bill to make the impact on municipalities less onerous.

Act 14 mirrors limitations placed on municipal regulatory powers by the September 2018 Federal Communications Commission 5G ruling. It creates a uniform regulatory framework for: 1) deployment by wireless service providers of wireless equipment and facilities for 5G service, including the placement of such items in municipal rights-of-way; 2) the local permitting process for certain activities by wireless providers; 3) the regulation of access to municipal poles by wireless providers; and 4) the resolution of disputes.

During the legislative process, the League and other local government associations successfully negotiated with the cell phone industry to obtain the following changes to an early version of the bill:

1. Provide an annual 2% escalator to the maximum allowable pole rental fees municipalities may charge.
2. Allow municipalities to adjust any fee caps imposed by the bill whenever the FCC adjusts its determination of what fee amounts are presumptively reasonable.
3. Restore municipal authority to impose setback limits on macro cell towers placed on any parcels in which single family residential is a permitted use, regardless if it is the actual current use.
4. Expand ability of municipalities to recommend a different location than the wireless provider's proposed placement of small cell facilities in the right-of-way by deleting the following language "within 50 feet of the proposed location."
5. Clarify what constitutes "Technically feasible" as allowing a wireless provider to reject a municipal suggestion for placing facilities in a different location only if the alternative is not technically feasible or "material" additional costs would be incurred by the wireless provider.
6. Allow communities to regulate the aesthetics of small cell facilities and support structures placed in the right-of-way to the same degree communities have such authority under the FCC ruling.
7. Clarify that, consistent with the FCC ruling, a municipality may charge fees for each small cell device located on a pole

not just one fee for the pole regardless of number of antennas placed on it.

8. Make it clear that municipalities may rely on existing authority to reasonably regulate cable and wireless service providers' use of the right-of-way.

As a result of these changes, the League shifted its position on the bill from opposed to neutral.

Municipal Bills Pending in the Senate that the Assembly has Passed

If the Senate meets one last time in 2020 to take up the bills it was planning to act on in March, we are hopeful that it will pass the following bills helpful to municipalities that the Assembly passed in February.

AB 620, Personal property aid after TIF district closes. This League bill makes it clear that personal property aid payments being made to a TIF district transfer to the municipality and other taxing jurisdictions after the district closes.

AB 753, Correcting miscalculation of 2019 personal property aid distributions. Fixes the incorrect personal property aid payment amounts the department made to TIF districts, municipalities, and other taxing jurisdictions in 2019.

AB 683, Updating the room tax law to help municipalities collect from online lodging reservation services. The amended version of this bill makes the following helpful changes to the room tax law:

- Requires an online marketplace provider, like Airbnb or Expedia, to collect the room tax and file it with the municipality, on a form specified by DOR, on a quarterly basis.
- Specifies that a municipality may not impose the room tax on a marketplace seller, like a hotel, if it collects the tax from a marketplace provider.
- Specifies that the form prepared by DOR shall contain at least the following:

1. Total sales for properties located in a municipality with a room tax.
 2. Total number of nights properties were rented.
 3. The rate of the room tax applied to total sales.
 4. Total tax collected for properties located in a municipality with a room tax.
- Directs DOR to create a website, by July 31, 2020, containing contact information and the room tax rates for each municipality that imposes a room tax.

AB 859, **Expanding the use of TIF for workforce housing.**

AB 203, **Allowing communities the option of using an electronic voting machine to cast in-person absentee ballots.**

Municipal Bills Dead for the Session:

AB 146/ SB 130, **Darkstore/Walgreens fix.**

SB 96, SB 97, SB 98, **Legislative council dark store study committee bills.**

SB 560/AB 623, **Limiting municipal TIF powers, including capping cash grants to developers at 20% of total TIF project costs.**

AB 285, **Increasing the competitive bidding threshold for public construction projects from \$25,000 to \$50,000.**

AB 283/SB 282, **Requiring a referendum to enact a local vehicle registration fee.**

SB 71/AB 64, **Providing state aid to local governments to cover the cost of conducting special elections to fill vacancies in state or federal offices.**

SB 105/AB 90, **Exempting local governments from the Fair Dealership Act.**

SB 365/AB 450, **Prohibiting local governments from excluding from consideration certain plastic piping materials for public construction contracts.**

AB 87/SB 92, **Allowing municipalities to impose residency requirements on city or village managers.**

SB 612/AB 670, **Increasing the minimum retirement age under the Wisconsin Retirement System from 55 to 59.5.**

AB 843/SB 772 , **Bipartisan compromise PFAS legislation.**

Conclusion

So far, the 2019-2020 legislative session has been positive for municipalities and it could be even better if the Senate reconvenes and passes several municipal bills it has pending before it.

Your advocacy efforts make a difference. Thank you for participating in the League's lobbying efforts. Only by working together can we have an impact. Your continued engagement in lobbying is critical to the League's success next session. As state legislators campaign for office in your community this summer and fall, thank them for the bills they passed that help municipalities. But also remind them about the importance of preserving local control. Emphasize that local elected officials are in the best position to decide local policy matters.

To read about provisions in the State Budget that impacted municipalities, see Curt's article in the September 2019 *The Municipality* magazine. You can read it, and other past issues, online at <https://lwm-info.org/828/The-Municipality-Magazine>

About the Author:

Curt Witynski is the Deputy Executive Director for the League of Wisconsin Municipalities. He manages the League's lobbying program, representing the League before the Legislature, the governor's office, and state agencies. Curt joined the League staff as assistant legal counsel in 1987. Before becoming Deputy Executive Director, Curt served as the League's Legal Counsel for eight years. Contact Curt at witynski@lwm-info.org



**Building Communities.
It's what we do.**

- Debt Issuance & Management
- Financial Management Planning
- Economic Development & Redevelopment
- Investment & Treasury Management
- Arbitrage Consulting



EHLERS
LEADERS IN PUBLIC FINANCE

✉ info@ehlers-inc.com ☎ 1 (800) 552-1171 🌐 www.ehlers-inc.com



Excellence in Engineering
Since 1946.

Madison
608.251.4843
Milwaukee
414.271.0771
www.strand.com