

STATE OF WISCONSIN  
DEPARTMENT OF REVENUE  
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SECRETARY OF REVENUE

Wisconsin Legislature  
Assembly Chamber

P.O. Box 8952  
Madison, Wisconsin 53708

January 4, 1995

Mr. Mark Bugher, Secretary  
Department of Revenue  
125 South Webster Street, 2nd Floor  
Madison, WI 53702

Dear Secretary Bugher:

We are writing to you in your capacity as Chairperson of the State Interagency Land Use Council, which was created by Executive Order #236. The Council has a daunting task, but this task is vitally important to preserve the characteristics and values that make Wisconsin unique and make it such a desirable place to work and live. We wish you and the other members of the Council well.

As the Council begins its deliberations, we would like to offer some thoughts about a way to approach this subject. Anyone who is familiar with state and local government can cite many current examples of Wisconsin statutes that require or authorize the state or local units of government to undertake planning or to regulate uses of land. In order to gain an understanding of current state statutes applicable to planning and land use regulation, we asked Mark Patronskey of the Legislative Council Staff to prepare a list, using a computer statute search, of statutes related to planning, zoning and land use. His list is enclosed with this letter.

We think you will be struck, as we were, with the number of statutes on the list. It is obvious that the current statutes cover a wide variety of land use issues.

A brief look at the list immediately raises fundamental questions about the current statutes:

**1. Should the current statutes be modified to coordinate state planning and land use regulation under a common set of state-level land use goals?**

Several state agencies administer programs with significant land use consequences, but these programs are not coordinated in any meaningful way. The current piecemeal approach by

the state to land use issues results in a great deal of conflict in state policies and confusion about the real intent of state land use policies. This lack of coordination can result in costly infrastructure demands and easily avoided environmental damage. Further, coordination could not only harmonize the state efforts at planning and land use control, but could also save scarce administrative resources by using the state goals as a starting point for agency planning and sharing common elements of agency plans.

**2. What are the gaps in the current statutes?**

The current statutes have evolved on an issue-by-issue basis, rather than as the result of comprehensive land use policy development. Obviously, there are likely to be critical resources that are key to preserving the inherent values of this state, but that are not addressed in the current statutes. A set of state land use goals would help to identify these critical resources and formulate policies for their protection.

**3. Is the proper emphasis given to the various subjects of state land use statutes?**

Without a clearly articulated set of land use goals, the emphasis given to the separate land use statutes is often not in proportion to the importance of the issue. For example, a substantial effort is put into transportation planning for highways, but relatively little effort is put into planning for farmland preservation.

**4. What should be the nature of the partnership between the state and local units of government regarding land use decisions?**

The current statutes provide a framework, as well as guidance and directives, for many aspects of local land use decisions. However, because local units of government have such wide latitude in determining their own land use policies, the local policies may be at odds with state land use policies. If the state develops a set of land use goals, these goals could be extended to and made a part of local land use decisions.

**5. What can be done to secure better coordination in local land use decision-making that has regional consequences?**

Under the current statutes, there is considerable overlap in the jurisdiction of local governmental units and agencies, without any requirements for coordination. The current statutes do not provide efficient mechanisms to take into account the regional effects of land use decisions. Within the context of clearly articulated state land use goals, the state could take a stronger role in assuring coordination in land use decisions among local units of government.

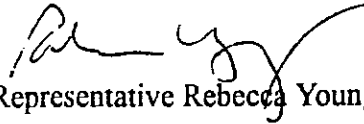
Secretary Mark Bugher  
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We trust that the enclosed list and the questions raised in this letter will assist you and the Council in deliberations on this issue.

Sincerely,



Representative Alvin Ott



Representative Rebecca Young

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Enclosure



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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: November 7, 1994  
TO: REPRESENTATIVES ALVIN OTT AND REBECCA YOUNG  
FROM: Mark C. Patronsky, Senior Staff Attorney  
SUBJECT: List of Planning, Zoning and Land Use Statutes

This memorandum, prepared at your request, contains a list of statutes, and a brief description of each, that relate to planning, zoning and land use. The list was prepared using the WisLaw Data Base, which is current through 1993 Wisconsin Act 125. The key words used for the statutory data base searches are indicated at the beginning of each section of this memorandum.

Obviously, judgment is necessary to determine whether or not a statute should be included on this list. When in doubt, I included an item on this list, even if it appeared to be only tangentially related to land use. I have undoubtedly missed some items or decided not to include items that another person might have included on the list. Also, I did not include statutes that provide financial assistance for planning. Nevertheless, this list should provide a basis for discussing how the various state land use policies might be integrated and harmonized.

### **A. LOCAL PLANNING**

[Key words: plan; plans]

s. 27.04 (1)	County park commissions authorized to plan for county parks.
s. 28.11 (5) (a)	County forest committees required to develop county forest land use plan every 10 years.
s. 33.457	Dane County Lakes and Watershed Commission required to develop an implementation plan.
s. 59.07 (71)	Milwaukee County Board authorized to develop transportation plan.

s. 59.07 (135) (a)	County solid waste management boards authorized to develop plans for a solid waste management system.
s. 59.965 (2) (a)	Milwaukee County Board required to adopt an expressway plan.
s. 59.97	Counties authorized to undertake comprehensive planning and zoning including airport areas and historic preservation.
ss. 60.61 to 60.65	Town boards authorized to undertake comprehensive planning and zoning.
s. 60.66 (4) (c)	Town park commissions required to prepare comprehensive town park plan.
s. 62.23	Cities and villages authorized to undertake comprehensive planning and zoning, including airport areas and historic preservation.
s. 66.023	Cities, villages and towns authorized to adopt cooperative annexation plans.
s. 66.24 (1) (b)	Metropolitan sewerage districts authorized to adopt sewer service plan.
s. 66.406 (1)	Cities authorized to adopt urban redevelopment plans. [See, also, ss. 66.43 (4) (a) and 66.431 (5) (a).]
s. 66.46 (3) (b)	Cities and villages authorized to prepare tax incremental district plans.
s. 66.608 (2) (b)	Business improvement districts authorized to adopt operating plan.
s. 66.609 (1) (f)	Architectural conservancy districts authorized to adopt operating plan.
s. 66.610 (5) (a)	City of Milwaukee authorized to adopt pedestrian mall plan.
s. 66.89 (1)	Milwaukee Metropolitan Sewerage District authorized to adopt sewer service plan.
s. 66.945 (9)	Regional planning commissions required to adopt master plan for the physical development of the region.
s. 91.55	Counties authorized to adopt agricultural preservation plans.
s. 92.10	Counties in priority areas required to adopt erosion control plans.
s. 119.497	City of Milwaukee School Board required to develop a 10-year facility plan.
s. 144.3712	Employers in certain areas required to adopt employe trip reduction plan.

s. 144.437 (1)	County boards authorized to adopt a county solid waste management plan.
s. 236.46	County planning agencies authorized to develop subdivision plan.

**B. STATE PLANNING**

[Key words: plan; plans]

s. 16.11 (4)	Midwest Interstate Low-Level Radioactive Waste Commission required to adopt regional management plan.
s. 16.31	Department of Administration (DOA) required to prepare a five-year state housing strategy plan.
s. 16.95	DOA required to develop long-range energy plan.
s. 16.99	DOA required to develop telecommunications plan for state telecommunications facilities.
s. 23.091 (2)	Department of Natural Resources (DNR) required to develop master plan for each state recreation area.
s. 23.092 (2)	DNR required to prepare plan for habitat restoration areas.
s. 23.18 (1) (b) 4	DNR required to develop Milwaukee River riverway plan.
s. 23.30 (1)	DNR required to develop long-range plan for acquisition of public land.
s. 33.05 (2)	Inland Lakes Protection and Rehabilitation Council required to recommend guidelines for lake rehabilitation plans for public inland lake districts.
s. 36.11 (8m)	University of Wisconsin (UW) required to develop a transportation plan for each campus.
s. 38.12 (6)	Technical College System district required to develop transportation plan for students.
s. 44.34 (5)	State Historical Society required to prepare a state preservation plan.
s. 85.02	Department of Transportation (DOT) authorized to undertake transportation planning.
s. 85.063 (2)	DOT required to develop urban rail transit plan.
s. 114.31 (2)	DOT required to prepare airport development plan.
s. 144.025 (2) (a)	DNR required to prepare water quality plan.
s. 144.026 (8)	DNR required to prepare water quantity resources plan.
s. 144.25 (4) (g)	DNR required to prepare implementation plan for priority watershed or priority lake.
s. 144.266 (2)	DNR required to prepare stormwater management plan.

s. 144.31 (1) (f)	DNR required to prepare air pollution abatement plan.
s. 196.491 (2)	Public Service Commission (PSC) required to approve public utility advanced plan.
s. 196.492	Lower Wisconsin State Riverway Board required to approve public utility advanced plan.

**C. LINKAGES: STATE REGULATION; LOCAL PLANNING AND ZONING**

[Key words: plan; plans]

s. 13.48 (13)	Facilities constructed for the benefit of the state are subject to local zoning.
s. 23.09 (19) (h)	No Stewardship funding for green space unless the area is identified in local master plan.
s. 23.09 (20) (a)	DNR local park aids based on comprehensive local plan.
s. 33.14 (1)	No state funding unless public inland lake district develops a lake rehabilitation plan.
s. 62.175 (2)	A city, village or town may not connect to a first- or second-class city sewer system unless the first- or second-class city approves the connecting municipality's sewer plan.
s. 62.23 (6) (b)	A city or village may only include a waterway on the official map if the official map includes a comprehensive surface water drainage plan.
s. 66.24 (1) (b)	Metropolitan sewerage district plans must be consistent with regional plans.
s. 85.243 (2) (c) 2	No DOT surface transportation grant unless the project is in a local transportation improvement plan.
s. 91.59 (3)	County agricultural preservation plan must show how it compares to the regional plan.
s. 144.437 (1)	County solid waste plan must be consistent with state criteria.
s. 144.85 (5) (a)	DNR may not issue a mining permit unless the mine conforms with all local zoning.
s. 218.22 (1) (b) 2	DOT will not issue a salvage dealer license unless the site complies with all zoning ordinances.
s. 301.046 (1)	Community residential confinement facilities are not subject to local zoning.
s. 301.048 (4) (b)	Intensive sanctions facilities are not subject to local zoning.

s. 301.13	Minimum security correctional institutions are not subject to local zoning.
s. 301.16 (3)	Medium and maximum security institutions are not subject to local zoning.
s. 700.41	Construction of a solar or wind energy system freezes the current zoning of nearby property.
s. 703.27	Zoning may not prohibit condominiums or impose different requirements on condominiums.
s. 703.365 (2) (d)	Commercial activity is permitted in condominiums with four or fewer units to the extent permitted under local zoning.
s. 707.10	Zoning ordinances may not prohibit time-share projects or impose different requirements on time-share projects.

**D. ENCOURAGEMENT OF PLANNING**

[Key words: plan; plans]

s. 23.17 (3) (c)	DNR required to encourage municipalities to develop land use plans that preserve rights-of-way for the Ice Age Trail.
s. 23.175 (2) (e)	DNR required to encourage municipalities to develop land use plans that preserve rights-of-way for state trails.
s. 27.015 (3)	Department of Agriculture, Trade and Consumer Protection (DATCP) must cooperate with county rural planning committee.
s. 30.275	DNR required to seek cooperation of municipalities and private landowners to implement land use practices consistent with the scenic urban waterways program.
s. 44.34 (8)	State Historical Society required to cooperate with local governments in land use planning.
s. 44.34 (9)	State Historical Society required to cooperate with local landmarks commissions and historical societies in coordinating their activities with the state preservation plan.
s. 85.023	DOT required to provide assistance regarding bikeways and draft model zoning ordinances for bikeways.
s. 85.24 (2) (a) 4	DOT required to address appropriate land use planning in technical assistance to reduce automobile trips.
s. 92.05 (3) (h)	DATCP required to prepare model soil and water conservation ordinance.

**E. ZONING-RELATED STATUTES**

[Key words: zone; zoned; zones; zoning]

s. 23.17 (5g)	Construction of the Ice Age Trail on land designated by DNR is a permitted use under any local zoning ordinance.
s. 27.08 (4)	A city may give the city park board planning authority.
s. 28.11 (3) (e)	County boards may establish aesthetic management zones in county forests.
s. 30.27 (2) and (3)	DNR required to adopt standards for local zoning ordinances adjacent to the lower St. Croix River and counties and municipalities are required to adopt the ordinances.
s. 46.03 (22) (e)	Department of Health and Social Services (DHSS) authorized to approve or disapprove community living arrangements that are required to obtain special zoning permission.
s. 59.971	Counties required to adopt shoreland zoning ordinances.
s. 59.974	Counties authorized to adopt stormwater management ordinances.
s. 61.351	Villages required to adopt wetlands protection ordinances.
s. 61.354	Villages authorized to adopt stormwater management ordinances.
s. 62.231	Cities required to adopt wetlands protection ordinances.
s. 62.234	Cities authorized to adopt stormwater management ordinances.
s. 66.021 (11) (c) 1	Which municipality can better provide zoning services is a factor in DOA decision on whether annexation is in the public interest.
s. 66.03 (1)	Counties and municipalities may not adopt regulations that restrict solar or wind energy systems.
s. 66.032	Property owners may obtain solar and wind access permits to assure access to those energy sources.
s. 66.058 (2) (c)	Towns may adopt mobile home park ordinance standards that are more restrictive than a county zoning ordinance.
s. 66.304	Counties and municipalities may not prevent a family day care home from being located in a single-family district.
s. 66.31	Counties and municipalities may jointly establish an airport affected area.
s. 66.40 (12)	Housing authority projects are subject to zoning laws.

s. 66.894 (5)	Milwaukee Metropolitan Sewerage District generally subject to local zoning but may deviate from the ordinances if it determines public necessity.
s. 71.59 (1) (d)	Cross-compliance certification required by zoning authority for an individual's farmland preservation tax credit claim.
s. 84.30 (3)	Signs regulated along interstate and federal aid highways.
s. 84.31	Junkyards regulated.
s. 87.30	Counties, cities and villages required to adopt floodplain zoning ordinances.
s. 94.701	Zoning with respect to pesticide manufacturing, distribution and disposal authorized.
s. 114.136 (1)	Cities and municipalities authorized to protect airport approaches.
s. 144.26	DNR authorized to adopt shoreland preservation and stormwater management rules.
s. 144.445 (3) (d)	Negotiation and arbitration regarding solid waste or hazardous waste facilities may override local zoning.
s. 144.46	Solid waste facilities are prohibited in shoreland or floodplain zones except as individually approved by the DNR.
s. 144.839	Counties and municipalities may enter agreements with mine operators regarding zoning with respect to mining.

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