

TO: Chairman Theodore Lipscomb Sr.
FROM: Liz Stephens
DATE: March 7, 2017
RE: 2015 Motion #999

You requested information related to Motion #999. As you know, Motion #999 was initially adopted by the Legislature's Joint Finance Committee as an amendment to the 2015-17 biennial budget, but the provisions discussed in this memorandum were later rejected by the full Legislature. Following is an overview of select provisions included as part of Motion #999.

On July 2, 2015, the Legislature's Joint Finance Committee adopted Motion #999, which amended the 2015-17 biennial state budget and modified the balance of power between the County Executive and the County Board in certain key respects. Although these amendments were ultimately *not* adopted and were *rejected* by the full Legislature as part of Senate Amendment 2 to Senate Substitute Amendment 1 (the 2015-17 biennial state budget), Motion #999 would have given the Milwaukee County Executive sole authority over the following administrative actions without review or approval by the County Board:

1. Procurement, including requests for proposals or information, negotiation, approval, amendment, execution, administration, and payment.
2. Contracting, including negotiation, requests for proposals or information, approval, amendment, execution, administration, and payment.
3. Administrative review of appeals of the denial in whole or in part of a contract award, an initial permit, license, right, privilege, or authority, except an alcohol beverage license, for which a person applies through the county.
4. Actions taken under the administrative manual of operating procedures related to the authority and powers granted to a County Executive under the statutes and under county ordinances. If an action taken by the County Board conflicts with an action taken by a County Executive under this subdivision, the County Executive's action shall prevail over the County Board's action to the extent that the County Executive's action and the County Board's action conflict. (Emphasis added.)

Item #4 would have exclusively provided the County Executive with rulemaking authority on any issue related to his powers as County Executive. In general, rules have the full force of law and, in that respect, are similar to ordinances. Unlike state agencies, however, which must have a specific grant of authority from the Legislature to engage in rulemaking, (*see Wisconsin Administrative Rulemaking*), this provision would have authorized county agencies to engage in rulemaking on almost any subject matter, regardless of whether a county ordinance or policy had been duly adopted by the County Board, at the sole discretion of the County Executive. This

extraordinary grant of power could have effectively enabled county agencies to set county policy without legislative oversight from the County Board.

On July 7, 2015, the State Senate adopted Senate Amendment 2 to Senate Substitute Amendment 1, which amended the biennial budget and removed the provisions noted above. The full Legislature subsequently adopted the 2015-17 biennial budget (2015 Act 55) as amended by Senate Amendment 2.

Despite the Legislature's express rejection of this grant of authority, Section 1.01 of the *Administrative Manual of Operating Procedures* (AMOP) has nonetheless authorized "[a]ny employee or department [to] request that a Procedure (sic) be created, amended or removed..." Section 1.01, ¶ 3(A). If approved by the AMOP Committee, which is comprised exclusively of administration officials, "[n]ew or revised procedures do not require legislative review..." Section 1.01, ¶ 2(E). In essence, Section 1.01 of the AMOP attempts to authorize what the Legislature did not.

By initially adopting the provisions described above, the Legislature apparently believed that Wis. Stat. § 59.17(2) (2015-16) did not provide the County Executive with rulemaking authority outside those specific grants of authority authorized by statute or by the County Board. When the Legislature declined to adopt the language of Motion #999 described above, so too did it withdraw any purported authority for the County Executive to unilaterally engage in county rulemaking activities. Despite the Legislature having declined to extend these powers to the County Executive, Section 1.01 of the AMOP now purports to derive its authority from Wis. Stat. Wis. Stat. § 59.17(2), the very same statute the Legislature apparently determined did not extend this broad rulemaking authority. Thus, it is unclear under what authority the AMOP Committee derives its power to unilaterally develop and approve *any* procedure proposed by county employees or departments since such wide-ranging authority is apparently not authorized by ordinance or by statute.

I hope this information is helpful. Please let me know if I can provide additional information.