COUNTY BOARD OF SUPERVISORS

Milwaukee County

TO: Supervisor Eddie Cullen, Chairman, Intergovernmental Relations Committee
Members, Intergovernmental Relations Committee

FROM: Liz Stephens, Legislative Liaison, County Board of Supervisors

DATE: February 1, 2018

RE: Proposed Legislation Affecting County Government

Recently, legislation ("LRB-5135") began circulating—but has not been introduced—that would affect the balance of power between county executives/county administrators in nearly every county in the state.

According to the title of the bill, the legislation is intended to "increase[e] the authority of a county executive and reduc[e] the authority of a county board." As noted, the language of this bill is not specific to Milwaukee County; rather, it affects every county with an elected county executive and most counties with unelected county administrators.

The proposed legislation goes further in shifting the statewide balance of power in county government than prior legislative acts (*e.g.*, "Act 14" and "Act 55") that apply only to Milwaukee County. For instance, the legislation authorizes the following provisions:

- allows every county executive to exercise the powers of the Milwaukee County Executive, including, but not limited to, the sale of land without county board review or approval, the execution of most contracts without county board review or approval, and a prohibition on the board that it may not deal directly with county departments except through the county executive,
- allows the county executive to control all aspects of transportation in the county, including possibly all budgetary decisions, without county board review or approval,
- directs that all conflicts between a county executive/county administrator shall be resolved in favor of the county executive/county administrator,
- allows the county executive to determine compensation and benefits levels for all employees,
- allows the county executive to determine, without consultation from the county board, whether to utilize biennial budgeting,
- allows the county executive to unilaterally issue debt on behalf of the county without notification to or approval by the county board,

- allows the county executive to enter into all contracts (including procurement contracts) without county board county board approval,
- prohibits the county board from adopting a budget that includes any item other than: (a) the tax levy; (b) anticipated revenue amounts from all sources; and (c) appropriations for all departments, and for any other obligations of the county, and
- allows the county executive to unilaterally increase or decrease appropriation amounts, as he or she deems necessary, in the event revenues or expenses of the county are different from the amounts anticipated.

There are many other provisions of the legislation that substantially deviate from county operations as they currently exist. Following are the various subject areas—and the provisions applicable to each—included in the proposed legislation.

BALANCE OF POWER ISSUES

Provision: Allows all counties with a county executive to exercise the powers and duties that the Milwaukee County Executive may already exercise.
Implication: Allows county executives to sell land, execute contracts (in most instances), issue revenue bonds, and, among other authorities, make all orders concerning county property (excluding parkland) without county board approval.

Provision: Requires the courts to broadly construe the authorities of the county executive *or* county administrator.
Implication: In cases of statutory conflict or conflict in interpretation of the statutes, the courts would effectively be required to construe the statute in favor of county executives and county administrators.

Provision: In the event there is a conflict between county board and county executive or administrator action, the county executive prevails.
Implication: If the county executive/administrator disagrees with the county board's interpretation of its own authority, the county executive could automatically override and/or disregard county board action irrespective of corporation counsel advice (presumably) and without adjudication by the court.

COUNTY BOARD OPERATIONS

Provision: Provides that any expenditure related to costs associated with the operation and functioning of the county board or committees, including staff, may not be greater than 0.4 percent, with the exception of health care and pension benefits for retired county employees and officers, and salaries and benefits for any board member whose term begins before April 2018.
Implication: Potentially incorporates the costs of associated with the Comptroller's and Clerk's staff time devoted to serving the county board into the 0.4 percent budgetary cap.

Furthermore, the exemption from board members' salaries and benefits would expire in three months and therefore has little benefit to the county board budget.

Provision: Allows the county board to change its compensation only by enacting an ordinance for that purpose at least three months before, but not more than six months before, the next due date for filing nomination papers for the office of supervisor.
Implication: The provision micromanages the functions and oversight over the independently elected board of supervisors and creates a window of opportunity that includes the month during which the county board is deliberating on the county budget.

BUDGETARY AUTHORITY

Provision: Authorizes the county executive or a county administrator to unilaterally determine whether to adopt biennial budgeting.
Implication: Prevents the county board from participating in the decision to use biennial budgeting. Curtails the ability of the county board to adopt budget provisions because the levy has not been set and county residents' needs may change year over year.

Provision: Requires every county board budget amendment to be submitted to the Comptroller's office at least seven business days before it may be considered by the finance committee and requires that each amendment include an estimate of the costs that will be incurred, and the staffing changes that will be required, to implement the amendment during the next five fiscal years.
Implication: Prevents the county board from efficiently evaluating and modifying the budget within the one-month timeline during which the county board must adopt the budget. Requires the Comptroller's office to undertake significant efforts to determine the costs associated with programs that may already exist and make projections for new programs that are largely speculative. For instance, this is not practice that is not required during the state budget process that lasts several months.

Provision: Prohibits the county board from adopting a budget that includes any item other than: (a) the tax levy; (b) anticipated revenue amounts from all sources; and (c) appropriations for all departments, and for any other obligations of the county.
Implication: These restrictions presumably prevent the county board from initiating any new programs, creating new positions, and, possibly, allocating resources among specific programs. The provision constrains the county board's budget-making authority and effectively allows the county executive's budget to become law, except in limited circumstances.

Provision: Allows the county executive to increase or decrease appropriation amounts, as he or she deems necessary, in the event revenues or expenses of the county are different from the amounts anticipated.

Implication: Allows the county executive to increases or decrease funding to *any* program or appropriation authorized by the board through its budget, at his or her discretion, if *any* county revenue expenditure differs *in any amount* (including as little as $0.01) from the amounts projected in county budget and regardless of whether the program or appropriation is actually affected by the difference in revenues or expenditures. Because all or most budget provisions are merely estimates, this provision would affect virtually every provision of the budget.

Provision: Requires Milwaukee County to following generally accepted accounting principles (GAAP) for government and authorizes fund accounting, which would be exclusively controlled by the county executive.
Implication: The county board would have no control or oversight over, for instance, the creation of a rainy day account or any other special fund, nor would the county board have authority to determine the amount of the funds to be devoted to such accounts or the manner in which the funds may be used.

COUNTY EXECUTIVE APPOINTMENTS

Provision: Appoints the county executive to exclusively supervise corporation counsel without county board review and allows the county executive to dismiss corporation counsel with county board approval.
Implication: Allowing the county executive to supervise corporation counsel would create a conflict of interest since both the county board and the county executive are corporation counsel's clients.

Provision: Eliminates the requirement that the county board reconfirm all of the county executive's appointments and newly allows the county executive to appoint interim appointees without county board approval.
Implication: Eliminates any recourse for executive appointees who are not performing in their jobs, are mismanaging public resources or have made significant errors in the performance of their duties.

EMPLOYEE STAFFING AND COMPENSATION

Provision: Allows the county executive to hire as many employees as he or she deems necessary for him or her to carry out the duties of the office. In addition, the county board would be prevented from reducing or eliminating staff in the office of the county executive or to affect appropriations for the county executive's office.
Implication: The county board would have no budgetary authority over the office of the county executive leaving the county executive to, theoretically, hire an infinite number of staff at an unknown cost at the expense of other county programs and services.

Provision: Allows the county executive to determine compensation and benefits for all employees, including both classified and non-classified employees.
Implication: The county board's ability to manage and implement county budget priorities would be significantly constrained since the costs associated with employee compensation would be unknown and, therefore, allocating resources to other county programs or services would be difficult if not impossible. Additionally, the provision would not cap the amount of compensation the county executive could award to an employee and, if he or she chose to, could allocate a salary of $1,000,000 or more to a county employee.

Provision: Gives the county executive sole authority over the establishment and governance of the civil service.
Implication: Removes the county board from any and all oversight functions over the civil service system, including employee disputes.

Provision: Allows the county executive, through the appointment of a commission, to set the compensation level for every elective officer, except county board supervisors and circuit judges. The provision requires the county board to enact an ordinance setting the salaries as determined by the commission and may not adopt salaries different than those proposed by the commission.
Implication: The provision micromanages the compensation process and further constrains the county board's ability to reasonably and rationally budget given the unpredictability of the compensation levels proposed by the commission.

CONTRACTING AUTHORITY

Provision: Gives the county executive exclusive authority over procurement and contracting decisions without county board review.
Implication: Takes away the county board's oversight authority over all contracts regardless of size or length. For instance, the provision would allow the county executive to enter into a lease agreement with a private entity for county parks, county buildings, including the courthouse, for any amount and for up to 99 years.

Provision: Increases the threshold required for letting a public contract from $25,000 to $50,000.
Implication: Allows the county executive to exclusively award more sole-source contracts regardless of the merits or qualifications of the contractor.

PUBLIC RECORDS

Provision: Gives the county executive exclusive authority to keep public records, establish parking areas, accept gifts and grants, and transportation, in general.

Implication: The county executive would presumably have control over county board supervisors' public records and appears to remove the ability of the county board from making any programmatic decisions regarding the transportation budget. It also appears that the county executive would be empowered to unilaterally increase (or decrease) the vehicle registration fee as he or she deems fit.

DEBT ISSUANCE

Provision: Exclusively allows the county executive to issue debt on behalf of the county.
Implication: The county executive could unilaterally bind county taxpayers for the repayment of debt subject only to the county's debt limit. For instance, the county executive could issue debt, without county review or taxpayer input, for the proposed County Courthouse Complex.

Provision: The county board is prohibited from issuing municipal obligations in an amount that is higher than the amount initially proposed by the county executive in his or her proposed budget and the county executive is allowed to issue additional debt, with county board approval.
Implication: Reduces oversight over the issuance of taxpayer-backed county debt and potentially creates significant difficulty in reacting quickly to unforeseen circumstances that frequently occur during the structuring of debt, such as interest rates increases.