LEGAL ISSUES
RELATING TO COUNTY GOVERNMENT

# The Innovation Fund Program

## AN UPDATE ON THE NEW LAW

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Created under 2023 Wisconsin Act 12, the Innovation Fund Program is designed to provide funds to local governments that transfer a service or duty to another entity (whether it be another county, a municipality, a nonprofit organization or other private entity).[1] The goal is to incentivize local governments to reduce spending by transferring and consolidating allowable services or duties.

In administering the program, the Wisconsin Department of Revenue must prioritize "innovation" plans that realize savings for public safety, fire protection, and emergency services. However, a wide range of services and duties qualify under the program, such as information technology, administration, public works, economic development, housing, parks, and more.[2]

Currently, the DOR is determining the schedule for awarding and distributing the Innovation Fund grants and will share more information as it becomes available.

### Act 15 updates to the Innovation Fund Program

2025 Wisconsin Act 15 (the 2025-27 state biennial budget) made some important changes to the program.

Act 15 clarified that the term of a contract subject to Innovation Fund support must be for at least three years. Additionally, Act 15 clarified that the annual grant award amount is equal to 25% of the total costs of performing the transferred service or duty in the year immediately preceding the transfer for nonprofit and private entities, as well as local governments, except as otherwise provided in the program requirements (e.g., as noted later in this article, local governments are still subject to a yearly cap of $10 million in total payment distributions received).

The penalty provisions for a proposed project's failure to meet targeted savings were significantly revised as well. The law no longer mandates that the DOR only grant awards to innovation plans expected to save at least 10% of the total cost of providing the service or duty; that applicants certify the local government will achieve half of the projected savings within 24-36 months of receiving the initial grant funds; or that the DOR notify the Department of Administration if any county or municipality fails to realize the projected savings, leading to a withholding of the next payment equal to the shortfall between the required savings and the actual savings achieved.

Instead, Act 15 requires reviewing the total amount spent on the service before and after consolidation. It eliminates grant funding only if the post-consolidation costs exceed pre-consolidation costs by at least 15% and allows the DOA to withhold payments for that grant in the following year.

The Innovation Fund Program was also extended by two fiscal years, lasting through "the end of the sixth fiscal year after Nov. 13, 2024," which is June 30, 2031. This gives additional time for counties to plan and for the DOR to issue grants. Grants may now be distributed in payments made each year starting with the 2025 fiscal year (July 1, 2025 – June 30, 2026), and the four following fiscal years. If awarded, local

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governments will receive the grant payments in up to five installments, one in each fiscal year.

### What remains unchanged?

Despite the many important changes made by Act 15, much of the program remains unchanged.

To participate, the local government must have provided the specific services or duties in the year immediately preceding the transfer.

The local government must provide a copy of the transfer agreement to the DOR that adheres to certain requirements, such as specifying the service or duty, the total cost of providing the service or duty in the prior year, the amount the entity transferring the service or duty will pay to the entity receiving it, and details on how the grant funds will be allocated to the parties.[3]

Priority is still given to public safety, fire protection, and emergency services plans. The method for determining the fair market compensation for services provided by volunteer firefighters or emergency medical services is determined by the rules promulgated by the DOR. The DOR has released a fact sheet with information on how to calculate this.[4]

After the DOR awards grants to the priority applicants, it may award other local governments a prorated share of the remaining amount allocated. The DOR may distribute a total of up to $300 million in payments statewide, with no local government receiving more than $10 million per year in payments.

The certification, audit and reporting requirements remain unchanged. The DOR must certify the amounts of grants awarded to the DOA, which shall pay the amount of the grants awarded. Each year, the DOR must audit at least 10% of awarded grants for which at least 24 months have passed since the first distribution under the grant. The DOR also must submit a report to the state Legislature's Joint Committee on Finance concerning all grants awarded no later than Dec. 31 of each year grants are awarded.

### Finalized administrative rules for the Innovation Fund Program

It should be noted that the DOR's administrative rules for the Innovation Fund Program were recently finalized and submitted for publication in the Wisconsin Administrative Register.[5] The rules do not take effect until the first day of the month following the publication date. The register currently shows a scheduled publication date of July 28, 2025, and a scheduled effective date of Aug. 1, 2025. While it remains uncertain as to the status of the rules given the DOR's intent to update the program guidelines following Act 15, there are two key points to highlight regarding record retention and DOR audits that the rules address.

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First, the rules require each local government participating in an approved innovation project to maintain detailed records for at least four years after receiving the first grant payment distribution.[6] Second, the rules authorize the DOR to take certain actions in relation to audits, which may require additional documentation to be submitted.[7]

The WCA and Attolles Law will keep counties apprised as the DOR works through the updated requirements related to the program, as well as the release of additional resources to assist counties. If you have any questions regarding the program or this article, please do not hesitate to contact the WCA or the authors. ■

*Attolles Law, s.c. works on behalf of Wisconsin counties, school districts and other public entities across the state of Wisconsin. Its president & CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for more than 20 years.*

1. Wis. Stat. § 79.038.
2. Wis. Stat. § 79.038(1)(b)1. The following services or duties are eligible for grants: public safety, including law enforcement, but not including jail; fire protection; emergency services; courts; jails; training; communications; information technology; administration, including staffing, payroll, and human resources; public works; economic development and tourism; public health; housing, planning, and zoning; parks and recreation.
3. Wis. Stat. § 79.038(1)(a)1.
4. Wisconsin Department of Revenue fact sheet for determining fair market compensation for volunteer firefighters and emergency medical services practitioners, bit.ly/DOR_FMC_Factsheet.
5. Wisconsin Department of Revenue, CR 24-090 Final Rule Order (June 4, 2024), relating to innovation grant programs pursuant to 2023 Wisconsin Act 12, bit.ly/DOR_CR24-090.
6. Wis. Admin. Code § Tax 21.05(3)(a).
7. Wis. Admin. Code § Tax 21.05(3)(b)-(e).