

# Nonstatutory Provisions

## What they are and how to find them

By Michael Keane

It is easy to answer the question, “What are the laws that govern Wisconsin?” by pointing to the *Wisconsin Statutes*. However, a significant body of law resides in non-statutory provisions enacted by the legislature, but not codified in the statutes.

### Joint Rule 53

Joint Rule 53 of the Wisconsin Legislature says that “law of continuing application” should be incorporated into the statutes. It states that “[t]he assignment of statute numbering to any part of a bill is indicative of legislative intent that this text will be incorporated into the statutes.” The rule specifies 13 types of legislative provisions that don’t need to be placed in the statutes:

- 1) An increase or decrease in the amount of an existing appropriation;
- 2) A conveyance of real property from the state or its subdivisions;
- 3) A declaration of intent or purpose;
- 4) A directive or request for a limited-term study;
- 5) A creation of a committee under s. 15.01 (3) of the statutes;
- 6) Ratification of a collective bargaining agreement;
- 7) A change in the state building program;
- 8) A position authorization;

- 9) A change in the authorized state trunk highway system;
- 10) An amendment to an existing non-statutory provision;
- 11) A temporary or transitional provision, not extending beyond July 1 of the even-numbered year of the next legislative session;
- 12) A provision affecting the timing of a law’s application or non-application, not extending beyond July 1 of the even year of the next legislative session; and
- 13) Any other provision that is narrow in scope and intended to be temporary.

Despite not appearing in the statutes, these types of provisions are enacted by the legislature and are law.

Most of these provisions may only be of interest to attorneys who specialize in government law. The first nine are obscure for most purposes. The last four, however, can be relevant to almost any area of the law. Temporary or transitional provisions may come into play in any case which involves the status of the law on a certain date.

### Effective Dates

The initial applicability or effective date clause of an act is the most commonly researched non-statutory provision. Every act of the legislature takes effect on the day after publication unless a particular effective



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date is cited in the act; this has been the case since 1941. Confirm the effective date by identifying the act that created the provision and checking for a specific non-statutory clause dealing with an effective date or initial applicability. These will be at the end of the act, following all statutory material.

### Private and Local Laws

There is another class of non-statutory law that comes into play much less frequently than the categories listed in Joint Rule 53. Many laws that preceded continuous revision of the statutes (mostly from the 19<sup>th</sup> century) did not modify a statute, but were still law. Acts in those days often involved legislative actions that became unnecessary in subsequent years because of the evolution of a more sophisticated administrative framework.

Such laws included municipal incorporations or annexations; business incorporations and amendments to incorporations; name changes; lake bed and real estate conveyances; the incorporation of charitable or educational institutions; or the right to erect milldams, operate ferries, and create toll bridges and roads. Laws like these can be difficult to find, and may play little role in the modern world. However, these obscure provisions remain valid law until repealed.

Countless non-statutory laws remain in effect, and may affect a case touching on a corporation or piece of real estate that was once the subject of legislation.

### Amended and Repealed Laws

There are several ways to find out if a non-statutory law affects a given piece of real estate, a named corporation, or a body of water.

If the year is known, search legislative acts by session on the legislature's website at [www.legis.wisconsin.gov/archive/law](http://www.legis.wisconsin.gov/archive/law).

If the name of an individual or body of water is known, but not the year, consult a print index. The *1970 Annotations* includes a subject index to special, private, or local laws, from the territorial period to 1970. (Page 2225) This can help identify any non-statutory laws relevant to a given subject or location.

Once a relevant session law has been identified it can be challenging to see if the law has been amended or repealed. The *1970 Annotations* include a list of Legislative Acts Repealed since 1836. (Page 2349) Check this list for the number of the original act. Amending acts will be listed under the same heading as the original act. To determine whether the act was repealed after 1970, a table in the 2015-2016 *Wisconsin Statutes* called Special Private or Local Laws Repealed lists all session laws repealed since 1971. Another table on the same page indicates which non-statutory laws enacted since 1971 have been repealed. (Page 825 of volume 6)

In order to determine if a non-statutory law has been amended since 1970, a researcher would have to consult the Sections Affected table in each set of *Laws of Wisconsin* from 1971 to the most recent edition.



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