



2005 ASSEMBLY BILL 326

April 15, 2005 - Introduced by Representatives KERKMAN, OWENS, AINSWORTH, ALBERS, BALLWEG, BIES, FREESE, GRONEMUS, HINES, KESTELL, F. LASEE, LEMAHIEU, LOTHIAN, MUSSER, NASS, PETTIS, VOS, VRUWINK and GARD, cosponsored by Senators A. LASEE and BRESKE. Referred to Committee on Rural Development.

1 **AN ACT to repeal** 60.62 (3); **to amend** 59.69 (3) (a), 59.69 (3) (b), 59.69 (5) (c),
2 60.62 (1), 60.62 (2) and 66.0307 (7m); and **to create** 59.69 (5m), 60.23 (32) and
3 60.62 (5) of the statutes; **relating to:** authorizing towns to withdraw from
4 county zoning and requiring certain towns to become subject to town or county
5 zoning and a comprehensive plan.

Analysis by the Legislative Reference Bureau

Under current law, if a town board has been granted the authority to exercise village powers, the town board may adopt zoning ordinances under the zoning statutes that apply to cities and villages, subject to a number of conditions. If the county in which the town is located has enacted a county zoning ordinance, town zoning ordinances may not take effect until such ordinances are approved either by a town meeting or by a referendum vote of the electors of the town and are approved by the county board. In addition, in counties having a zoning ordinance, no town zoning ordinance, or amendment of a zoning ordinance, may be adopted by the town unless approved by the county board; the bill repeals this provision.

Under the bill, beginning in 2011, a town board may adopt zoning ordinances under the city and village statutes without receiving approval for such zoning ordinances by the town meeting or by referendum.

Also under current law, a county zoning ordinance may not take effect in a town unless it has been approved by the town board. Once a town board has approved a county zoning ordinance, the town may not withdraw its approval.

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Under this bill, a town board may enact an ordinance withdrawing from coverage of a county zoning ordinance and a county development plan. A town board may enact the ordinance during 2011, or during the one-year period every five years after January 1, 2011. Such an ordinance may not take effect unless the town clerk notifies the county clerk of the proposed ordinance and the town enacts, and sends copies to the county clerk, a town zoning ordinance, a comprehensive plan, and an official map. County board approval of a town zoning ordinance is not required if the town has withdrawn from county zoning. The town zoning ordinance and comprehensive plan must be consistent with each other and the zoning ordinance must be at least as restrictive as the county zoning ordinance that applies to the town on January 1 of the year before the year in which the town board enacts the ordinance withdrawing from county zoning.

The bill authorizes a county board, anytime after December 31, 2010, to enact an ordinance to repeal all of its zoning ordinances, other than shoreland and floodplain zoning ordinances, if it notifies all of the towns that are subject to its zoning ordinances. Such a county ordinance must have a delayed effective date of one year. If a town is so notified, it must enact a zoning ordinance, comprehensive plan, and official map to take effect on the effective date of the county's repeal of its zoning ordinance. The town ordinance and comprehensive plan must be consistent with each other.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.69 (3) (a) of the statutes is amended to read:

2 59.69 (3) (a) The Subject to s. 60.23 (32), the county zoning agency may direct
3 the preparation of a county development plan or parts of the plan for the physical
4 development of the unincorporated territory within the county and areas within
5 incorporated jurisdictions whose governing bodies by resolution agree to having
6 their areas included in the county's development plan. The plan may be adopted in
7 whole or in part and may be amended by the board and endorsed by the governing
8 bodies of incorporated jurisdictions included in the plan. The county development
9 plan, in whole or in part, in its original form or as amended, is hereafter referred to
10 as the development plan. Beginning on January 1, 2010, if the county engages in any

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1 program or action described in s. 66.1001 (3), the development plan shall contain at
2 least all of the elements specified in s. 66.1001 (2).

3 **SECTION 2.** 59.69 (3) (b) of the statutes is amended to read:

4 59.69 (3) (b) The development plan shall include the master plan, if any, of any
5 city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any,
6 of such city or village, that was adopted under s. 62.23 (6) in the county, without
7 change. The development plan shall also include, and integrate, the master plan and
8 the official map of a town that was adopted under s. 60.62 (5) (a) or (c), without
9 change.

10 **SECTION 3.** 59.69 (5) (c) of the statutes is amended to read:

11 59.69 (5) (c) A county ordinance enacted under this section shall not be effective
12 in any town until it has been approved by the town board. If the town board approves
13 an ordinance enacted by the county board, under this section, a certified copy of the
14 approving resolution attached to one of the copies of such ordinance submitted to the
15 town board shall promptly be filed with the county clerk by the town clerk. The
16 ordinance shall become effective in the town as of the date of the filing, which filing
17 shall be recorded by the county clerk in the clerk's office, reported to the town board
18 and the county board, and printed in the proceedings of the county board. The
19 ordinance shall supersede any prior town ordinance in conflict therewith or which
20 is concerned with zoning, except as provided by s. 60.62. A town board may withdraw
21 from coverage of a county zoning ordinance as provided under s. 60.23 (32).

22 **SECTION 4.** 59.69 (5m) of the statutes is created to read:

23 59.69 (5m) TERMINATION OF COUNTY ZONING. (a) Subject to par. (b), at any time
24 after December 31, 2010, a county board may enact an ordinance to repeal all of its

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1 zoning ordinances enacted under this section if it so notifies, in writing, all of the
2 towns that are subject to its zoning ordinances.

3 (b) An ordinance enacted under par. (a) shall have a delayed effective date of
4 one year. No county board may repeal under this subsection a county shoreland
5 zoning or floodplain zoning ordinance.

6 **SECTION 5.** 60.23 (32) of the statutes is created to read:

7 60.23 (32) TOWN WITHDRAWAL FROM COUNTY ZONING. (a) Subject to pars. (b) and
8 (c), after December 31, 2010, and before January 1, 2012, and during the one-year
9 period every 5 years after January 1, 2011, enact an ordinance withdrawing the town
10 from coverage of a county zoning ordinance that had previously been approved under
11 s. 59.69 (5) (c) and from coverage by a county development plan that has been enacted
12 under s. 59.69 (3) (a).

13 (b) Subject to par. (c), an ordinance enacted under par. (a) may not take effect
14 until all of the following occur:

15 1. Not later than 60 days before enacting an ordinance under par. (a), the town
16 clerk notifies the county clerk, in writing, of the town's intent to enact an ordinance
17 under par. (a).

18 2. The town enacts a zoning ordinance under s. 60.62, a comprehensive plan
19 under s. 66.1001, and an official map under s. 62.23 (6), and the town clerk sends
20 certified copies of such documents to the county clerk.

21 (c) A zoning ordinance enacted under s. 60.62, a comprehensive plan enacted
22 under s. 66.1001, and an official map established under s. 62.23 (6), that are enacted
23 in conjunction with an ordinance enacted under par. (a), shall all take effect on the
24 first day of the 3rd month beginning after certified copies of the documents are sent
25 to the county clerk under par. (b) 2.

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1 **SECTION 6.** 60.62 (1) of the statutes is amended to read:

2 60.62 (1) Subject to subs. (2),~~(3)~~ and (4), if a town board has been granted
3 authority to exercise village powers under s. 60.10 (2) (c), the board may adopt zoning
4 ordinances under s. 61.35.

5 **SECTION 7.** 60.62 (2) of the statutes is amended to read:

6 60.62 (2) If the county in which the town is located has enacted a zoning
7 ordinance under s. 59.69, the exercise of the authority under sub. (1) before January
8 1, 2011, is subject to approval by the town meeting or by a referendum vote of the
9 electors of the town held at the time of any regular or special election. The question
10 for the referendum vote shall be filed as provided in s. 8.37.

11 **SECTION 8.** 60.62 (3) of the statutes is repealed.

12 **SECTION 9.** 60.62 (5) of the statutes is created to read:

13 60.62 (5) (a) Subject to par. (b), not later than 60 days before a town board that
14 wishes to withdraw from county zoning and the county development plan may enact
15 an ordinance under s. 60.23 (32), the town board shall enact a zoning ordinance
16 under this section, an official map under s. 62.23 (6), and a comprehensive plan under
17 s. 66.1001.

18 (b) The zoning ordinance and comprehensive plan enacted under par. (a) shall
19 be consistent with each other and the zoning ordinance shall be at least as restrictive
20 as the county zoning ordinance that applies to the town on January 1 of the year
21 before the year in which the town board enacts the ordinance under s. 60.23 (32).

22 (c) If a town receives notification under s. 59.69 (5m) that the county board has
23 repealed its zoning ordinances and development plan, the town board shall enact a
24 zoning ordinance under this section, an official map under s. 62.23 (6), and a
25 comprehensive plan under s. 66.1001, all of which take effect on the effective date

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1 of the county's repeal of its zoning ordinance and development plan. An ordinance
2 and comprehensive plan enacted under this paragraph shall be consistent with each
3 other.

4 **SECTION 10.** 66.0307 (7m) of the statutes is amended to read:

5 66.0307 **(7m)** ZONING IN TOWN TERRITORY. If a town is a party to a cooperative
6 plan with a city or village, the town and city or village may agree, as part of the
7 cooperative plan, to authorize the town, city or village to adopt a zoning ordinance
8 under s. 60.61, 61.35 or 62.23 for all or a portion of the town territory covered by the
9 plan. The exercise of zoning authority by a town under this subsection is not subject
10 to s. 60.61 (3) ~~or 60.62 (3)~~. If a county zoning ordinance applies to the town territory
11 covered by the plan, that ordinance and amendments to it continue until a zoning
12 ordinance is adopted under this subsection. If a zoning ordinance is adopted under
13 this subsection, that zoning ordinance continues in effect after the planning period
14 ceases until a different zoning ordinance for the territory is adopted under other
15 applicable law. This subsection does not affect zoning ordinances adopted under ss.
16 59.692, 87.30 or 91.71 to 91.78.

17 **(END)**