

2013 DRAFTING REQUEST

Assembly Amendment (AA-AB512)

Received: 12/10/2013 Received By: mshovers
Wanted: As time permits Same as LRB:
For: David Craig (608) 266-3363 By/Representing: Nathan
May Contact: Drafter: mshovers
Subject: Local Gov't - zoning Addl. Drafters:
Extra Copies: EVM; Mlsa Schmidt @ Leg. Council

Submit via email: YES
Requester's email: Rep.Craig@legis.wisconsin.gov
Carbon copy (CC) to: melissa.schmidt@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

County board approval of a town amendment of its zoning ordinances

Instructions:

See attached. Do not amend s. 62.62 (3) (a); ensure that par. (b) applies only to Waukesha Co. if the county zoning ord. does not apply to any town in the county

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	mshovers 12/12/2013	jdyer 12/11/2013	jfrantze 12/11/2013	_____	sbasford 12/11/2013		
/P2	mshovers 12/13/2013	jdyer 12/12/2013	jfrantze 12/12/2013	_____	sbasford 12/12/2013		
/1		jdyer	jfrantze	_____	lparisi	lparisi	

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		12/13/2013	12/13/2013	_____	12/13/2013	12/13/2013	

FE Sent For:

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/P2		jdyer 12/12/2013	jfrantze 12/12/2013	_____	sbasford 12/12/2013		

11/12/13
FE Sent For: *12/13/13*

[Signature]
12/13

<END>

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/P1	mshovers 12/10/2013	P2 12/11/2013 jdye	Bjd jfrantze 12/11/2013	Jb 12/12	sbasford 12/11/2013		

1/P2 ME S 12/12/13
FE Sent For:

<END>

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/P1	mshovers	12/10/13 jld	jd	Korj	12/11		

FE Sent For:

<END>

Shovers, Marc

From: Schacht, Nathan
Sent: Tuesday, December 10, 2013 9:11 AM
To: Schmidt, Melissa
Cc: Shovers, Marc
Subject: AB 512 review

Importance: High

Melissa,

The towns have discovered (with the help of Prof. Ohm) one of the problems you mentioned when reviewing the draft of this bill. As such, below is their suggested amendment. Can you tell me whether you think this will resolve the concern that this bill COULD have statewide impact?

If you could let me know ASAP as we'd like an amendment drafted in the next few days.

Best,
Nate

SECTION 1. 60.62 of the statutes is renumbered 60.62 (3) (a) and amended to
2 read:
3 60.62 (3) (a) ~~In Subject to par. (b), in~~ In counties having a county zoning
ordinance,
4 no zoning ordinance or amendment of a zoning ordinance may be adopted under this
5 section unless approved by the county board.
6 SECTION 2. 60.62 (3) (b) of the statutes is created to read:
7 60.62 (3) (b) ~~With~~ In addition to par.(a), with regard to a town to which all of
the following apply, the town
8 may not adopt or amend a zoning ordinance under this section without county board
9 approval:
10 1. The town is located in a county that has a population exceeding 380,000.
11 2. The county in which the town is located is adjacent to a county that has a
12 population exceeding 800,000.
13 3. The county in which the town is located has a zoning ordinance in effect on
14 January 1, 2013.

Nathan Schacht

Office of State Representative David Craig

83rd Assembly District

P: (608) 266-3363

E: nathan.schacht@legis.wi.gov

NOTE: Emails sent to and from this account may be subject to open records requests and should not be considered private.



JLD
fmr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT,
TO ASSEMBLY BILL 512

D-NOTE

*WANTED;
Wed.*

1 At the locations indicated, amend the bill as follows: ✓

2 1. Page ²1, line 1: delete lines 1 to 5 and substitute: ✓

3 2. Page 1, line 1: delete lines 1 to 5. ✓

4 "SECTION 1e. 60.62 (3) of the statutes is renumbered 60.62 (3) (a)." ✓

5 3. Page ²1, line 13: delete "on" and substitute ", but no towns within the county
6 are subject to the county zoning ordinance." ✓

7 4. Page ²1, line 14: delete that line. ✓

8 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1332/P1dn

MES ^{ms} [^] ^{....}

date

JLd

Representative Craig: ✓

I believe that this amendment[✓] is drafted according to your instructions. It seems to me, however, that if no town in a county is subject to a county zoning ordinance (either in Waukesha County or in any other county in the state), but the county zoning ordinance remains in effect, the plain language provisions of s. 60.62 (3) (a), as renumbered, would still require the town to obtain approval from the county board for changes to its zoning ordinances enacted under s. 60.62[✓].

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1332/P1dn
MES:jld:jf

December 11, 2013

Representative Craig:

I believe that this amendment is drafted according to your instructions. It seems to me, however, that if no town in a county is subject to a county zoning ordinance (either in Waukesha County or in any other county in the state), but the county zoning ordinance remains in effect, the plain language provisions of s. 60.62 (3) (a), as renumbered, would still require the town to obtain approval from the county board for changes to its zoning ordinances enacted under s. 60.62.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov



2
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 512

today

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: delete lines 1 to 5 and substitute:

3 **"SECTION 1e.** 60.62 (3) of the statutes is renumbered 60.62 (3) (a)."

4 **2.** Page 2, line 13: delete "on" and substitute ", but no towns within the county
5 are subject to the county zoning ordinance."

6 **3.** Page 2, line 14: delete that line.

7 (END)

Shovers, Marc

From: Schacht, Nathan
Sent: Friday, December 13, 2013 12:26 PM
To: Shovers, Marc
Cc: Schmidt, Melissa
Subject: RE: FW: Draft review: LRB a1332/P1 Topic: County board approval of a town amendment of its zoning ordinances

Marc,

Go ahead and put stripes on the P2. If I could have it by Monday morning it would be appreciated.

Thanks for all the help.

-Nate

Nathan Schacht
Office of State Representative David Craig

From: Shovers, Marc
Sent: Thursday, December 12, 2013 2:47 PM
To: Schmidt, Melissa
Cc: Schacht, Nathan
Subject: RE: FW: Draft review: LRB a1332/P1 Topic: County board approval of a town amendment of its zoning ordinances

Hi Melissa:

I talked to John Macy and we've come up with another solution. If I understand everyone's concerns, I think this solution should satisfy all the parties involved. The /P2 version of the amendment will simply renumber s. 60.62 (3) to be (3) (a), as is the case in section one of the current amendment, and that would be the all there is.

Essentially, there will then be 2 rules; the rule in s. 60.62 (3) (a), as renumbered, and the rule in s. 60.62 (3) (b), as created in the bill. In effect, par. (b) would say "if a town is in Waukesha County, it may not act under s. 60.62 without county board approval." There would be no mention of whether the county in which the town is located has a zoning ordinance in effect, had such an ordinance at one time, has an ordinance in effect that applies to no towns in the county, is subject to a shoreland zoning ordinance, etc.; if the town is in Waukesha County, it must have county board approval to act under s. 60.62.

I'll redraft this right away and try to get it out today so all the interested parties may review it. Please let me know if you have any comments, concerns, or questions. Thanks.

Marc

Marc Shovers
Managing Attorney
Legislative Reference Bureau
608-266-0129

From: Schmidt, Melissa
Sent: Thursday, December 12, 2013 2:26 PM
To: Shovers, Marc
Cc: Schacht, Nathan
Subject: FW: FW: Draft review: LRB a1332/P1 Topic: County board approval of a town amendment of its zoning ordinances

Marc,

I am in the middle of an Assembly Criminal Justice hearing that is probably not going to be done until after 4:00 or 5:00 p.m. I had emailed him, per Nathan's request, to review the amendment. I am forwarding you Brian's email. For what it's worth I understand his concerns but have been told that historically, when the statutes refer to "county zoning ordinance", people interpret this as referring to a county's GENERAL zoning, not specific zoning like shoreland zoning. However, I think referring to s. 59.69(5)(c), Stats., would be more specific and clarify a lot.

Would you please take a look at his comments? Representative Craig wants an amendment tomorrow but I might not have time to respond today.

Melissa Schmidt

Senior Staff Attorney
Wisconsin Legislative Council
Ph: (608) 266-2298
Fax: (608) 266-3830

From: Brian W. Ohm [<mailto:bwohm@wisc.edu>]
Sent: Thursday, December 12, 2013 11:21 AM
To: Schmidt, Melissa
Subject: Re: FW: Draft review: LRB a1332/P1 Topic: County board approval of a town amendment of its zoning ordinances

Hello Melissa:

The members of the Wisconsin County Planning Directors and the Wisconsin County Code Administrators brought this to my attention and I agreed that someone could interpret the bill in a way that is not intended. They are the ones in the trenches who have to interpret and defend the statutes on a day to day basis. First of all, many of them do not believe this bill is necessary, though they understand the intent to clarify the town/county zoning relationship for Waukesha County. What becomes problematic is the inclusion of "Subject to par. (b)" on p. 2, line 3. It seems to be saying that only towns in those counties that meet the requirements in the new section 60.62(3)(b) are required to have their zoning ordinances approved by the county board. This interpretation appears to be supported by the Legislative Reference Bureau analysis on p. 1 that states the bill *modifies current* law (last sentence in paragraph 1) and then in paragraph 2 seems to state that only towns that meet certain conditions need to have the county board approve the ordinance. The concern comes from those counties that currently have a county zoning ordinance with some towns under county zoning and some towns having their own zoning ordinances. They fear that with the change to current law, someone will challenge a county's approval or denial of a town's rezoning a parcel of land somewhere arguing that the legislature took away the approval requirement with this bill. The concern is not about counties that have a zoning ordinance but do not have any towns under county zoning. Is there a rule of statutory interpretation or something that would not make 60.62(3)(a) subservient to ("subject to") 60.62(3)(b)? Is it necessary to change current law to add the "subject to" provision? "Would it work to say in lines 3 and 4: "In counties having a county zoning ordinance, including counties that meet the

requirements of 60.62(3)(b), no zoning ordinance or amendment may be adopted . . ."

In terms of the language in the amendment, adding "but not towns within the county are subject to the county zoning ordinance" seems problematic for Waukesha County because all towns are "subject to" county shoreland zoning and county floodplain zoning." In counties that also have general county zoning, these state mandates are part of the "county zoning ordinance." The towns in Waukesha County would still be subject to the county zoning ordinance. Things are further complicated by the recent Wisconsin Court of Appeals case, *Hegwood v. Town of Eagle* 2013 WI 118 (the Town of Eagle is in Waukesha County) in which the court held that towns have no authority to zone land in the state mandated shoreland area. These towns are "subject to" county zoning. Perhaps say "no towns within the county that have approved county zoning under s. 59.69(5)(c)"??

Hope this helps and I hope your child is doing ok.

Brian

On 12/12/13, "**Schmidt, Melissa**" <Melissa.Schmidt@legis.wisconsin.gov> wrote:

Good morning Brian,

Nathan Schacht in Rep. Craig's office asked me to show you this draft amendment to AB 512. I have a hearing this morning and then will be out of the office in the afternoon because my 8 month old has a stomach virus. However, Rep. Craig needs to finalize an amendment by tomorrow, so if you are able to review this and have thoughts or comments, please email me as I am checking my emails. I hope this addresses your concerns.

Sincerely,

Melissa Schmidt

Senior Staff Attorney
Wisconsin Legislative Council
Ph: (608) 266-2298
Fax: (608) 266-3830

From: LRB.Legal
Sent: Wednesday, December 11, 2013 9:12 AM
To: Schmidt, Melissa
Subject: Draft review: LRB a1332/P1 Topic: County board approval of a town amendment of its zoning ordinances

Draft Requester: Rep. David Craig

Following is the PDF version of draft LRB a1332/P1 and drafter's note.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBa1332
MES:jld:ff

RMR

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ASSEMBLY AMENDMENT,
TO ASSEMBLY BILL 512

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- 2 **1.** Page 2, line 1: delete lines 1 to 5 and substitute:
- 3 “SECTION 1e. 60.62 (3) of the statutes is renumbered 60.62 (3) (a).”.
- 4 (END)