



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-4105/1  
MES/PJK/RNK:cjs

## 2015 SENATE BILL 479

December 29, 2015 - Introduced by Senators S. FITZGERALD, OLSEN and NASS, cosponsored by Representatives RIPP, KLEEFISCH, JAGLER, BALLWEG, DUCHOW, HUTTON, JACQUE, JARCHOW, T. LARSON, SANFELIPPO and THIESFELDT. Referred to Committee on Insurance, Housing, and Trade.

1     **AN ACT** *to renumber and amend* 236.10 (1) (c); *to amend* 59.69 (3) (a), 59.69  
2           (3) (b), 59.69 (3) (e), 59.69 (5) (c), 60.62 (1), 60.62 (3) (a), 236.10 (1) (b) 3. and  
3           236.34 (1) (dm); and *to create* 59.69 (5m), 59.692 (1p), 60.23 (34), 60.62 (6),  
4           87.30 (1r), 91.36 (9), 236.10 (1m) and 236.34 (2m) of the statutes; **relating to:**  
5           authorizing towns located in populous counties to withdraw from county  
6           zoning; requiring certain towns to enact a zoning ordinance and a  
7           comprehensive plan; removing plat and certified survey map approval  
8           authority from a county if the town in which the subdivision or land is located  
9           has withdrawn from county zoning; farmland preservation ordinances of towns  
10          that withdraw from county zoning and eligibility in those towns for the  
11          farmland preservation tax credit; and prohibiting restrictions on land that is  
12          not shoreland or that is not within a floodplain.

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***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 enact zoning ordinances using the zoning

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statutes that are used by 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, except as it applies to Waukesha County.

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.

Under this bill, a town board that is located in a county with a population of at least 485,000 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 2017, or during the one-year period every three years after January 1, 2017. Such an ordinance may not take effect unless the town notifies the county clerk and one or more officials of the other towns in the county 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. The zoning ordinance that the town must enact must be either essentially identical to the county zoning ordinance that is in effect when the town begins its efforts to withdraw from county zoning, or it must be a model ordinance that is developed and recommended by a group of towns in a county that have all begun an effort to withdraw from county zoning. In addition, the ordinance must preserve nonconforming uses. A town that enacts an ordinance based on the county ordinance may amend it, and the model ordinance may be amended by a vote of the majority of the towns that have enacted the model ordinance. With regard to the type of zoning ordinance that applies in a town, the town may switch back and forth between having the ordinance that is essentially identical to the county zoning ordinance apply and having the model ordinance apply. County board approval of a town zoning ordinance is not required if the town has withdrawn from county zoning.

If a county clerk receives notice from a town before July 1 that the town intends to withdraw from county zoning, the bill authorizes a county board to enact an ordinance, before October 1, to repeal all of its zoning ordinances, other than shoreland and floodplain zoning ordinances. The county must notify all of the towns that are subject to its zoning ordinances that it intends to enact an ordinance to repeal those ordinances. The county ordinance to repeal its zoning ordinances 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.

Under current law, one of the eligibility requirements for the farmland preservation tax credit is that the claimant's farmland is either covered by a farmland preservation agreement or is in a farmland preservation zoning district under a farmland preservation zoning ordinance certified by the Department of Agriculture, Trade and Consumer Protection (DATCP). This bill provides that if a

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town that withdraws from county zoning adopts a farmland preservation zoning ordinance before it withdraws, the town's farmland preservation zoning ordinance is considered to be certified by DATCP until DATCP certifies, or denies certification of, the ordinance, but not for more than 18 months.

Current law specifies whether a city, village, town, or county has the right to approve or object to a plat (the map of a subdivision) or certified survey map. Generally, the location of the subdivision or land determines which local governmental unit or units have the right to approve the plat or certified survey map. The bill provides that if a subdivision or land is located in a town that has enacted an ordinance withdrawing from coverage of a county zoning ordinance, the county in which the subdivision or land is located has no authority to approve or object to a plat relating to the subdivision or to a certified survey map relating to the land, but may object to any portion of the subdivision or land that is shoreland, or that is in a 100-year floodplain, in the county.

Under current law, a county must enact a shoreland zoning ordinance for all shorelands in its unincorporated area. Current law defines a shoreland to be an area within a specified distance from the edge of a navigable water. Current law also requires a county, city, or village to adopt floodplain zoning ordinances within one year after certain hydraulic and engineering data becomes available. If no ordinance is adopted, the Department of Natural Resources, upon its own petition or upon the petition of an interested state agency or municipality, must adopt a floodplain zoning ordinance applicable to the county, city, or village.

This bill specifies that the law that requires a county to enact a shoreland zoning ordinance does not authorize the county to impose a requirement, condition, or restriction on land that is not shoreland within the county. The bill also provides that the law requiring a county to adopt a floodplain zoning ordinance does not authorize a county to impose a requirement, condition, or restriction on land that is not within any floodplain in the county.

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

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***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 (34), 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

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1 whole or in part and may be amended by the board and endorsed by the governing  
2 bodies of incorporated jurisdictions included in the plan. The county development  
3 plan, in whole or in part, in its original form or as amended, is hereafter referred to  
4 as the development plan. To the extent that the development plan applies to  
5 unincorporated areas of the county, it applies only to those unincorporated areas that  
6 are subject to county zoning. Beginning on January 1, 2010, or, if the county is  
7 exempt under s. 66.1001 (3m), the date under s. 66.1001 (3m) (b), if the county  
8 engages in any program or action described in s. 66.1001 (3), the development plan  
9 shall contain at least all of the elements specified in s. 66.1001 (2).

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

11 59.69 (3) (b) The development plan shall include the master plan, if any, of any  
12 city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any,  
13 of such city or village, that was adopted under s. 62.23 (6) in the county, without  
14 change. In counties with a population of at least 485,000, the development plan shall  
15 also include, and integrate, the master plan and the official map of a town that was  
16 adopted under s. 60.62 (6) (a) or (b), without change.

17 **SECTION 3.** 59.69 (3) (e) of the statutes is amended to read:

18 59.69 (3) (e) -A- Except for a town that has adopted a master plan and official  
19 map as described in par. (b), a master plan adopted under s. 62.23 (2) and (3) and an  
20 official map that is established under s. 62.23 (6) shall control in unincorporated  
21 territory in a county affected thereby, whether or not such action occurs before the  
22 adoption of a development plan.

23 **SECTION 4.** 59.69 (5) (c) of the statutes is amended to read:

24 59.69 (5) (c) A county ordinance enacted under this section shall not be effective  
25 in any town until it has been approved by the town board. If the town board approves

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1 an ordinance enacted by the county board, under this section, a certified copy of the  
2 approving resolution attached to one of the copies of such ordinance submitted to the  
3 town board shall promptly be filed with the county clerk by the town clerk. The  
4 ordinance shall become effective in the town as of the date of the filing, which filing  
5 shall be recorded by the county clerk in the clerk's office, reported to the town board  
6 and the county board, and printed in the proceedings of the county board. The  
7 ordinance shall supersede any prior town ordinance in conflict therewith or which  
8 is concerned with zoning, except as provided by s. 60.62. A town board may withdraw  
9 from coverage of a county zoning ordinance as provided under s. 60.23 (34).

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

11 59.69 (5m) TERMINATION OF COUNTY ZONING. (a) Subject to par. (b), if a county  
12 clerk receives a notice from a town under s. 60.23 (34) (b) 1. before July 1 of the year  
13 before a year in which a town may withdraw from county zoning under s. 60.23 (34),  
14 a county board may enact an ordinance, before October 1 of the year in which the  
15 county clerk receives the notice, to repeal all of its zoning ordinances enacted under  
16 this section if it so notifies, in writing, all of the towns that are subject to its zoning  
17 ordinances.

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

21 **SECTION 6.** 59.692 (1p) of the statutes is created to read:

22 59.692 (1p) This section does not authorize a county to impose a requirement,  
23 condition, or restriction on land that is not shoreland within the county.

24 **SECTION 7.** 60.23 (34) of the statutes is created to read:

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1           60.23 (34) TOWN WITHDRAWAL FROM COUNTY ZONING. (a) Subject to pars. (b) and  
2 (c), after December 31, 2016, and before January 1, 2018, and during the one-year  
3 period every 3 years after January 1, 2017, enact an ordinance withdrawing the town  
4 from coverage of a county zoning ordinance that had previously been approved under  
5 s. 59.69 (5) (c) and from coverage by a county development plan that has been enacted  
6 under s. 59.69 (3) (a), except that a town board may act under this paragraph only  
7 if the town is located in a county with a population of at least 485,000.

8           (b) Subject to pars. (c) and (d), an ordinance enacted under par. (a) may not take  
9 effect until all of the following occur:

10           1. Not later than 180 days before enacting an ordinance under par. (a), the town  
11 notifies the county clerk and one or more officials of every other town in the county,  
12 in writing, of the town's intent to enact an ordinance under par. (a).

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

16           (c) 1. The zoning ordinance that the town enacts under s. 60.62 must be  
17 essentially identical to either the county zoning ordinance that is in effect when the  
18 town issues the written notification described in par. (b) 1., or to the model ordinance  
19 described in subd. 2. A town that enacts an ordinance that is essentially identical  
20 to the county ordinance may amend the ordinance following the procedures specified  
21 in s. 60.62.

22           2. All towns in a county that issue a written notification described in par. (b)  
23 1. shall work together to develop a model zoning ordinance. The model ordinance  
24 may be recommended for enactment by a majority vote of the towns that participate  
25 in drafting the model ordinance in that county. Once the model ordinance is

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1 recommended, a town may enact the ordinance under s. 60.62. The model ordinance  
2 may be amended by a majority vote of the towns that have enacted the model  
3 ordinance in that county.

4 3. A town which enacts either an ordinance that is essentially identical to a  
5 county ordinance, as described in subd. 1., or a model ordinance, as described in subd.  
6 2., may switch at any time from having one type of ordinance apply in the town to  
7 having the other type of ordinance apply in the town.

8 4. The zoning ordinance that the town enacts under s. 60.62 may not prohibit  
9 the continued use of any building, premises, structure, or land that is lawful under  
10 the county zoning ordinance that is in effect when the town issues the written  
11 notification described in par. (b) 1. With regard to the continued nonconforming use  
12 of any building, premises, structure, or land that is lawful under that county zoning  
13 ordinance, the town ordinance may not prohibit the nonconforming use even if the  
14 building, premises, structure, or land is not in continuous use.

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

20 **SECTION 8.** 60.62 (1) of the statutes is amended to read:

21 60.62 (1) Except as provided in s. 60.23 (33) and subject to subs. (2),~~(3)~~ and (4),  
22 if a town board has been granted authority to exercise village powers under s. 60.10  
23 (2) (c), the board may adopt zoning ordinances under s. 61.35.

24 **SECTION 9.** 60.62 (3) (a) of the statutes is amended to read:

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1           60.62 (3) (a) In counties having a county zoning ordinance, no zoning ordinance  
2 or amendment of a zoning ordinance may be adopted under this section unless  
3 approved by the county board. This paragraph applies only in counties with a  
4 population of less than 485,000, and does not apply to a town that has withdrawn  
5 from county zoning.

6           **SECTION 10.** 60.62 (6) of the statutes is created to read:

7           60.62 (6) (a) Not later than 60 days before a town board that wishes to withdraw  
8 from county zoning and the county development plan may enact an ordinance under  
9 s. 60.23 (34), the town board shall enact a zoning ordinance under this section, an  
10 official map under s. 62.23 (6), and a comprehensive plan under s. 66.1001.

11           (b) If a town receives notification under s. 59.69 (5m) that the county board has  
12 repealed its zoning ordinances, the town board shall enact a zoning ordinance under  
13 this section, an official map under s. 62.23 (6), and a comprehensive plan under s.  
14 66.1001, all of which take effect on the effective date of the county's repeal of its  
15 zoning ordinance.

16           **SECTION 11.** 87.30 (1r) of the statutes is created to read:

17           87.30 (1r) LAND OUTSIDE OF FLOODPLAINS. This section does not authorize a  
18 county to impose a requirement, condition, or restriction on land that is not within  
19 any floodplain in the county.

20           **SECTION 12.** 91.36 (9) of the statutes is created to read:

21           91.36 (9) TOWN WITHDRAWAL FROM COUNTY ZONING. If a town located in a county  
22 that has a certified farmland preservation zoning ordinance withdraws from county  
23 zoning under s. 60.23 (34) and adopts a farmland preservation zoning ordinance  
24 before it withdraws from county zoning, the town's farmland preservation zoning  
25 ordinance is considered to be a certified farmland preservation zoning ordinance

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1 until the department grants or denies the town's application for certification under  
2 sub. (5), but not for longer than 18 months from the day on which the town's farmland  
3 preservation zoning ordinance takes effect.

4 **SECTION 13.** 236.10 (1) (b) 3. of the statutes is amended to read:

5 236.10 (1) (b) 3. The Subject to sub. (1m), the county planning agency if such  
6 agency employs on a full-time basis a professional engineer, a planner or other  
7 person charged with the duty of administering zoning or other planning legislation.

8 **SECTION 14.** 236.10 (1) (c) of the statutes is renumbered 236.10 (1) (c) (intro.)  
9 and amended to read:

10 236.10 (1) (c) (intro.) If outside the extraterritorial plat approval jurisdiction  
11 of a municipality, ~~the~~:

12 1. The town board; and ~~the~~

13 2. Subject to sub. (1m), the county planning agency, if there is one.

14 **SECTION 15.** 236.10 (1m) of the statutes is created to read:

15 236.10 (1m) (a) Except as provided in par. (b), a county planning agency under  
16 sub. (1) (b) 3. or (c) 2. has no authority to approve or object to the preliminary or final  
17 plat of a subdivision that is located in a town that has, before the preliminary plat  
18 is submitted for approval, or before the final plat is submitted for approval if no  
19 preliminary plat is submitted, enacted an ordinance under s. 60.23 (34) withdrawing  
20 the town from county zoning and the county development plan.

21 (b) A county planning agency under sub. (1) (b) 3. or (c) 2. may object to any of  
22 the following portions of a subdivision that is located in a town described in par. (a):

23 1. Any portion of the subdivision that is shoreland, as defined in s. 59.692 (1)

24 (b), in the county.

25 2. Any portion of the subdivision that is in a 100-year floodplain in the county.

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1           **SECTION 16.** 236.34 (1) (dm) of the statutes is amended to read:

2           236.34 (1) (dm) A certified survey map that crosses the exterior boundary of  
3 a recorded plat or assessor's plat shall apply to the reconfiguration of not more than  
4 4 parcels, or such greater maximum number specified by an ordinance enacted or  
5 resolution adopted under par. (ar) 1., by a single owner, or if no additional parcels are  
6 created. ~~Such~~ Subject to sub. (2m), such a certified survey map must be approved  
7 in the same manner as a final plat of a subdivision must be approved under s. 236.10,  
8 must be monumented in accordance with s. 236.15 (1), and shall contain owners' and  
9 mortgagees' certificates that are in substantially the same form as required under  
10 s. 236.21 (2) (a).

11           **SECTION 17.** 236.34 (2m) of the statutes is created to read:

12           236.34 (2m) COUNTY APPROVAL AUTHORITY. (a) Except as provided in par. (b), a  
13 county planning agency under s. 236.10 (1) (b) 3. or (c) 2. has no authority to approve  
14 or object to a certified survey map that divides land that is located in a town that has,  
15 before the certified survey map is submitted for approval, enacted an ordinance  
16 under s. 60.23 (34) withdrawing the town from county zoning and the county  
17 development plan.

18           (b) A county planning agency under s. 236.10 (1) (b) 3. or (c) 2. may object to  
19 any of the following portions of a certified survey map that divides land located in  
20 a town described in par. (a):

21           1. Any land shown on and subject to the certified survey map that is shoreland,  
22 as defined in s. 59.692 (1) (b), in the county.

23           2. Any land shown on and subject to the certified survey map that is in a  
24 100-year floodplain in the county.

25           **SECTION 18. Initial applicability.**

