



2011 ASSEMBLY BILL 562

February 13, 2012 – Introduced by Representatives STEINEKE, JACQUE, LEMAHIEU and STROEBEL. Referred to Committee on Housing.

- 1 **AN ACT** *to create* 66.1002 of the statutes; **relating to:** limiting the authority of
2 a city, village, or town to enact a development moratorium ordinance.

Analysis by the Legislative Reference Bureau

Under current law, a county board may engage in zoning and land use planning by creating a county planning agency or by designating a previously constituted county committee or commission as the county planning agency. If a county board creates or designates such an agency, the agency is required to direct the preparation of a county development plan for the physical development of the towns within the county and for the cities and villages within the county whose governing bodies agree to have their areas included in the county plan.

Also under current law, a city or village, or certain towns that exercise village powers, may create a city, village, or town plan commission to engage in zoning and land use planning. If a city, village, or town creates such a commission, the commission is required to adopt a master plan for the physical development of the city, village, or town, including in some instances, in the case of a city or village, unincorporated areas outside of the city or village that are related to the city's or village's development.

Under the current law commonly known as the "Smart Growth" statute, if a city, village, town, county, or regional planning commission creates a development plan or master plan (comprehensive plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; land use; and intergovernmental cooperation.

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Subject to a number of limitations and conditions, this bill authorizes a city, village, or town (municipality) to enact a development moratorium ordinance if the municipality has enacted, is in the process of enacting or amending, or is exempt from having to enact, a comprehensive plan. The municipality may enact a development moratorium ordinance (moratorium) only if its governing body adopts a resolution stating either that a moratorium is needed to prevent a shortage in or the overburdening of its public facilities or that a moratorium is needed to address a significant threat to the public health or safety. In either case, the municipality must obtain a written report from a professional engineer stating that the possible effect on public facilities, or the possible threat to public health or safety, justifies the need for a moratorium. In the case of a possible health or safety threat, the report may also be from a physician or registered nurse.

The moratorium must contain a number of elements, including a statement describing the problem giving rise to the need for the moratorium, the actions the municipality intends to take to address the problem, and the length of time the moratorium will apply. The moratorium may remain in effect only until the municipality addresses the problem giving rise to the need for the moratorium, or for 12 months, whichever occurs first. The bill also authorizes the municipality to extend the moratorium for another six months if the problem is not addressed. In addition, a municipality may not enact a moratorium unless it first holds a public hearing at which the proposed ordinance is discussed.

The bill first applies to a land development plan that is submitted to a municipality on the effective date of the bill, although the municipality and the developer could agree to apply the moratorium retroactively.

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.** 66.1002 of the statutes is created to read:
- 2 **66.1002 Development moratoria. (1) DEFINITIONS.** In this section:
- 3 (a) “Comprehensive plan” has the meaning given in s. 66.1001 (1) (a).
- 4 (b) “Development moratorium” means a moratorium on land development,
- 5 rezoning, issuing conditional use permits, or on any subdivision or other division of
- 6 land by plat or certified survey map that is authorized under ch. 236.
- 7 (c) “Land development” has the meaning given in s. 66.0617 (1) (d).
- 8 (d) “Municipality” means any city, village, or town.

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1 (e) "Public health professional" means any of the following:

2 1. A physician, as defined under s. 48.375 (2) (g).

3 2. A registered professional nurse, as defined under s. 49.498 (1) (L).

4 (f) "Registered engineer" means an individual who satisfies the registration
5 requirements for a professional engineer as specified in s. 443.04

6 **(2) MORATORIUM ALLOWED.** Subject to the limitations and requirements
7 specified in this section, a municipality may enact a development moratorium
8 ordinance if the municipality has enacted a comprehensive plan, is in the process of
9 preparing its comprehensive plan, is in the process of preparing a significant
10 amendment to its comprehensive plan in response to a substantial change in
11 conditions in the municipality, or is exempt from the requirement as described in s.
12 66.1001 (3m), and if at least one of the following applies:

13 (a) The municipality's governing body adopts a resolution stating that a
14 moratorium is needed to prevent a shortage in, or the overburdening of, public
15 facilities located in the municipality and that such a shortage or overburdening
16 would otherwise occur during the period in which the moratorium would be in effect,
17 except that the governing body may not adopt such a resolution unless it obtains a
18 written report from a registered engineer stating that in his or her opinion the
19 possible shortage or overburdening of public facilities justifies the need for a
20 moratorium.

21 (b) The municipality's governing body adopts a resolution stating that a
22 moratorium is needed to address a significant threat to the public health or safety
23 that is presented by a proposed or anticipated land development, except that the
24 governing body may not adopt such a resolution unless it obtains a written report
25 from a registered engineer or public health professional stating that in his or her

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1 opinion the proposed or anticipated land development presents such a significant
2 threat to the public health or safety that the need for a moratorium is justified.

3 **(3) ORDINANCE REQUIREMENTS.** (a) An ordinance enacted under this section
4 shall contain at least all of the following elements:

5 1. A statement describing the problem giving rise to the need for the
6 moratorium.

7 2. A statement of the specific action that the municipality intends to take to
8 alleviate the need for the moratorium.

9 3. Subject to par. (b), the length of time during which the moratorium is to be
10 in effect.

11 4. A statement describing how and why the governing body decided on the
12 length of time described in subd. 3.

13 5. A description of the area in which the ordinance applies.

14 6. An exemption for any land development that would have no impact, or slight
15 impact, on the problem giving rise to the need for the moratorium.

16 (b) 1. A development moratorium ordinance may be in effect only for a length
17 of time that is long enough for a municipality to address the problem giving rise to
18 the need for the moratorium but, except as provided in subd. 2., the ordinance may
19 not remain in effect for more than 12 months.

20 2. A municipality may amend the ordinance to extend the moratorium for not
21 more than 6 months if the municipality's governing body determines that such an
22 extension is necessary to address the problem giving rise to the need for the
23 moratorium.

24 (c) A municipality may not enact a development moratorium ordinance unless
25 it holds at least one public hearing at which the proposed ordinance is discussed. The

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1 public hearing must be preceded by a class 1 notice under ch. 985, the notice to be
2 at least 30 days before the hearing. The municipality may also provide notice of the
3 hearing by any other appropriate means. The class 1 notice shall contain at least all
4 of the following:

5 1. The time, date, and place of the hearing.

6 2. A summary of the proposed development moratorium ordinance, including
7 the location where the ordinance would apply, the length of time the ordinance would
8 be in effect, and a statement describing the problem giving rise to the need for the
9 moratorium.

10 3. The name and contact information of a municipal official who may be
11 contacted to obtain additional information about the proposed ordinance.

12 4. Information relating to how, where, and when a copy of the proposed
13 ordinance may be inspected or obtained before the hearing.

14 **(4) APPLICABILITY.** A development moratorium ordinance enacted under this
15 section applies to any of the following that is submitted to the municipality on or after
16 the effective date of the ordinance:

17 (a) A request for rezoning.

18 (b) An application for a building permit or a conditional use permit.

19 (c) A plat or certified survey map.

20 (d) A land development plan.

21 **SECTION 2. Initial applicability.**

22 (1) This act first applies to any land development plan that is submitted to a
23 municipality on the effective date of this subsection, unless the municipality and a

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1 developer agree to apply the municipality's development moratorium ordinance
2 retroactively.

3 (END)