

1999 ASSEMBLY BILL 127

February 16, 1999 – Introduced by Representatives LADWIG, KLUSMAN, AINSWORTH, SKINDRUD, WARD, ALBERS, FREESE, HANDRICK, F. LASEE, OWENS, PORTER and SERATTI, cosponsored by Senator SCHULTZ. Referred to Committee on Rural Affairs and Forestry.

1 **AN ACT to amend** 60.61 (2) (intro.), 60.62 (1), 60.62 (2), 60.62 (3), 62.23 (7a) (a),
2 66.021 (2) (intro.), 66.024 (intro.), 66.025, 66.32 and 236.02 (5); and **to create**
3 60.10 (1) (g) and 60.225 of the statutes; **relating to:** the authority of certain
4 towns to become urban towns.

Analysis by the Legislative Reference Bureau

Under current law, if a town meeting authorizes a town board to do so, the town board may exercise powers that are related to villages and conferred on village boards by statute, except those powers that conflict with statutes relating to towns and town boards. For example, a town board exercising village powers may not create a tax incremental financing district, annex territory, exercise extraterritorial zoning jurisdiction over another town or, in counties that have adopted a county zoning ordinance, enact a town zoning ordinance unless it is approved by the county board. If a town board exercises village powers, the town is still subject to annexation by a city or village and may be subject to extraterritorial zoning powers exercised by a city or village.

Subject to several conditions, this bill authorizes a town board that is authorized to exercise village powers to adopt a resolution declaring that the town is an urban town. Under certain circumstances and subject to several limitations, the bill allows a town board that has adopted such a resolution to exercise any statutory power that a village may exercise, including the power to create a housing authority for the elderly. Before the town board may adopt a resolution declaring that the town is an urban town, the town must either: attempt, and fail, to

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consolidate with a city or village and have attempted to incorporate as a city or village between 1988 and 1998; or attempt to consolidate with a city or village and attempt, and fail, to incorporate as a city or village within three years after commencing the procedures that are required to become an urban town. The town board may adopt a resolution declaring that the town is an urban town only after its attempts to consolidate or incorporate fail. Once the town board adopts an urban town resolution, the resolution may take effect only after the resolution is approved by the electors of the town in a referendum.

The bill also allows the board of an urban town to exercise certain zoning powers and to remove the town from coverage of county zoning ordinances, other than a county shorelands zoning ordinance, and exempts the town from being subject to certain city and village annexation and extraterritorial powers. If the town is a party to a cooperative boundary plan or agreement on the date that it becomes an urban town, the terms of the plan or agreement remain in effect until the expiration of the plan or agreement. Also under the bill, town residents may attempt to enact direct legislation. This bill does not extend constitutional or statutory home rule powers to urban towns, nor does it allow such towns to create a tax incremental financing district, to adopt a village form of government, to annex territory or to engage in extraterritorial zoning or plat approval.

The powers granted to urban towns in this bill apply only if certain conditions are met on the date on which the town board adopts the resolution. Some of the conditions that must be satisfied include the following:

1. The population of the town must be at least 7,500.
2. The equalized value of the town must exceed \$360,000,000 and must be at least \$40,000 on a per person basis.
3. The town must provide law enforcement, fire protection and emergency medical services 24 hours a day.
4. At least 30% of the town residents must receive water supply and sewage disposal services from one of several entities, such as a town sanitary district, a town utility district, a metropolitan sewerage district or another city, village or town.
5. The town must adopt a comprehensive land use plan as part of a master plan.
6. The town board must consist of five supervisors.

The bill also contains a sunset provision, such that the provisions allowing the creation of an urban town remain in effect for only five years.

For further information see the *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.** 60.10 (1) (g) of the statutes is created to read:
- 2 60.10 (1) (g) *Approval of resolutions.* Approve a resolution adopted by the town
- 3 board under s. 60.225 (1).

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1 **SECTION 2.** 60.225 of the statutes is created to read:

2 **60.225 Urban towns. (1) PROCESS; REQUIREMENTS.** Subject to sub. (1m), if a
3 town board is authorized to exercise village powers under s. 60.10 (2) (c), and subject
4 to sub. (2), a town board may adopt a resolution declaring its town to be an urban
5 town that is subject to this section if, on the date of adoption of the resolution, all of
6 the following conditions are satisfied:

7 (a) The population of the town is at least 7,500.

8 (b) The equalized value of the town exceeds all of the following amounts:

9 1. According to the most recent assessment, \$360,000,000.

10 2. On a per person basis, \$40,000 according to the most recent assessment.

11 (c) The town provides law enforcement services, 24 hours a day, by establishing
12 a town police department, by creating a joint police department with another city,
13 village or town under s. 60.56 or by contracting with another person under s. 60.56.

14 (d) The town provides fire protection services, 24 hours a day, by establishing
15 a town fire department or by creating a joint fire department with another city,
16 village or town under s. 60.55.

17 (e) The town provides emergency medical technician services, 24 hours a day,
18 by an emergency medical technician, as defined in s. 146.50 (1) (e).

19 (f) The town board adopts a comprehensive land use plan as part of a master
20 plan under s. 62.23 (2) and (3) that is administered by a planner who is employed by
21 the town.

22 (g) At least 30% of the town residents receive water supply and sanitary sewage
23 disposal services from one of the following:

24 1. A town sanitary district created by the town under subch. IX.

25 2. A town utility district created under s. 66.072.

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1 3. A metropolitan sewerage district created under ss. 66.20 to 66.26 or under
2 ss. 66.88 to 66.918.

3 4. A public utility created under s. 196.01 (5).

4 5. A town sanitary district created by another town under subch. IX.

5 6. A city or village.

6 7. A city–owned treatment works or village–owned treatment works in which
7 the town has an interest under an intergovernmental cooperation agreement under
8 s. 66.30.

9 (h) The town board consists of 5 supervisors.

10 **(1m)** PROCEDURE. (a) Subject to par. (c) and except as provided in par. (b), a town
11 board may proceed under sub. (1) only if the town board adopts a resolution declaring
12 its intent to proceed under this paragraph and only if the town board institutes
13 proceedings under s. 66.02 to consolidate the town with a city or village on or after
14 the effective date of this paragraph [revisor inserts date], and if, between 1988 and
15 1998, the town board has done one of the following:

16 1. Instituted proceedings to incorporate the town as a city under s. 66.012.

17 2. Instituted proceedings to incorporate the town as a city or village under ss.
18 66.013 to 66.019.

19 (b) Subject to par. (c), if a town board has not instituted one of the proceedings
20 under par. (a) 1. or 2. between 1988 and 1998, the town board may proceed under sub.
21 (1) only if the town board adopts a resolution declaring its intent to proceed under
22 this paragraph and only if the town board, within a 3–year period beginning on the
23 date of the adoption of the resolution declaring its intent to proceed under this
24 paragraph, institutes proceedings under s. 66.02 to consolidate the town with a city
25 or village and the town board institutes proceedings described under par. (a) 1. or 2.

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1 (c) The town board may adopt a resolution under sub. (1) only if the town board
2 institutes the proceedings under par. (a) or under par. (b) and the proceedings do not
3 result in either a consolidation under s. 66.02 or the incorporation of the town as a
4 city under s. 66.012 or as a city or village under ss. 66.013 to 66.019.

5 **(2) RATIFICATION.** (a) If a town board adopts a resolution under sub. (1), the
6 town board shall call a referendum to approve the resolution adopted under sub. (1).
7 The referendum shall be called for that purpose at the next spring primary or election
8 or September primary or general election, or the town board may call and conduct
9 a special referendum under s. 8.55, to be held not sooner than 45 days after the
10 referendum is called by the town board. The town board shall call for a referendum
11 under this subsection not later than 90 days after the adoption of a resolution under
12 sub. (1). The referendum question shall be: “Do you approve the town board’s
13 adoption of the resolution declaring the Town of [insert name of town] to be an
14 urban town?”

15 (b) A resolution adopted by a town board under sub. (1) may not take effect until
16 the resolution is approved in a referendum called for by the town board under par.
17 (a). If the referendum is approved by the electors of the town, the town clerk shall
18 certify that fact to the secretary of state. The secretary of state shall issue a
19 certificate of urban town status and shall record that status in a book kept for that
20 purpose.

21 **(3) POWERS.** (a) A town that is subject to this section may exercise any statutory
22 power that a village may exercise, except as follows:

23 1. A town acting under this section does not have home rule powers under
24 article XI, section 3, of the constitution or under s. 61.34 (5).

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1 2. A town acting under this section may not exercise extraterritorial zoning
2 powers under s. 62.23 (7a) or 66.32, offensive industry regulation under s. 66.052 (1),
3 extraterritorial plat approval under s. 236.10 or wetlands in shorelands zoning
4 authority under s. 61.351.

5 3. A town acting under this section may not exercise annexation of territory
6 powers under s. 66.021, 66.024 or 66.025.

7 4. A town acting under this section may not create a tax incremental financing
8 district under s. 66.46.

9 5. A town acting under this section may not adopt a village form of governance
10 by acting under ss. 61.19 to 61.325.

11 (b) 1. Except for a wetlands in shorelands zoning ordinance, no town may be
12 subject to any county zoning ordinance that is enacted by a county board after a town
13 board adopts a resolution under sub. (1) unless the town board approves the
14 ordinance or until the resolution adopted by the town board under sub. (1) is defeated
15 in a referendum that is held under sub. (2).

16 2. If a town board adopts a resolution under sub. (1) and the resolution is
17 ratified under sub. (2), a town board may adopt a resolution revoking its approval of
18 any county zoning ordinance, other than a wetlands in shorelands zoning ordinance,
19 if the town board notifies the county board in writing at least 60 days before the
20 resolution revoking approval of a county zoning ordinance takes effect.

21 3. Beginning on the effective date of the resolution revoking town approval of
22 a county zoning ordinance, a town that is subject to this section may enact zoning
23 ordinances only under s. 62.23.

24 (c) No town territory may be annexed by a city or village under s. 66.021, 66.024
25 or 66.025 during the 3-year period described under sub. (1m) (b), during the period

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1 beginning after a town board adopts a resolution under sub. (1) and before a
2 ratification vote under sub. (2) or at any time after the electors of the town approve
3 such a resolution under sub. (2), unless the town board approves the proposed
4 annexation or unless the land proposed to be annexed is less than 300 acres and at
5 least 85% of the border of such land is contiguous to the annexing city or village.

6 (d) No town may be subject to the extraterritorial zoning jurisdiction or
7 extraterritorial plat approval jurisdiction of a city or village during the period
8 beginning after a town board adopts a resolution under sub. (1) and before a
9 ratification vote under sub. (2) or at any time after the electors of the town approve
10 such a resolution under sub. (2).

11 (e) 1. If a town is a party to a cooperative boundary plan under s. 66.023 or
12 similar cooperative boundary agreement under s. 66.30 on the date on which the
13 town becomes an urban town, the terms of the plan or agreement, or any approved
14 amendments to the plan or agreement, shall remain in effect until the expiration of
15 the planning period that is specified in the plan or the expiration of the agreement.

16 2. A town may become a party to a cooperative boundary plan under s. 66.023
17 any time before the first day of the 24th month beginning after the effective date of
18 this subdivision [revisor inserts date]. If a town becomes a party to such a plan
19 under this subdivision, the terms of the plan, or any approved amendments to the
20 plan, shall remain in effect until the expiration of the planning period that is
21 specified in the plan.

22 3. Except as provided in this paragraph and in par. (c), the boundaries of an
23 urban town may not be changed under s. 66.02 or 66.022, or by the acquisition or
24 disposal of territory by any means, unless the town agrees to the change.

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1 **(4) SUNSET.** This section does not apply on or after the first day of the 60th
2 month beginning after the effective date of this subsection [revisor inserts date].

3 **SECTION 3.** 60.61 (2) (intro.) of the statutes is amended to read:

4 **60.61 (2) EXTENT OF AUTHORITY.** (intro.) Subject to subs. (3) and (3m), if a town
5 is located in a county which has not enacted a county zoning ordinance under s. 59.69,
6 the town board of a town that is not subject to s. 60.225, by ordinance, may:

7 **SECTION 4.** 60.62 (1) of the statutes is amended to read:

8 **60.62 (1)** Subject to subs. (2), (3) and (4) and to s. 60.225 (3) (b) 3., if a town board
9 has been granted authority to exercise village powers under s. 60.10 (2) (c), the board
10 may ~~adopt~~ enact zoning ordinances under s. 61.35.

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

12 **60.62 (2)** If the county in which the town is located has enacted a zoning
13 ordinance under s. 59.69, the exercise of the authority under sub. (1) is subject to
14 approval by the town meeting or by a referendum vote of the electors of the town held
15 at the time of any regular or special election, except that this subsection does not
16 apply if a town board revokes its approval of a county zoning ordinance under s.
17 60.225 (3) (b) 2.

18 **SECTION 6.** 60.62 (3) of the statutes is amended to read:

19 **60.62 (3)** In counties having a county zoning ordinance, no zoning ordinance
20 or amendment of a zoning ordinance may be ~~adopted~~ enacted under this section
21 unless it is approved by the county board, except that this subsection does not apply
22 if a town board revokes its approval of a county zoning ordinance under s. 60.225 (3)
23 (b) 2.

24 **SECTION 7.** 62.23 (7a) (a) of the statutes is amended to read:

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1 62.23 (7a) (a) Extraterritorial zoning jurisdiction means the unincorporated
2 area, except as provided in s. 60.225 (3) (d), within 3 miles of the corporate limits of
3 a first, second or third class city, or 1 1/2 miles of a fourth class city or a village.
4 Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.32
5 shall apply and any subsequent alteration of the corporate limits of the city by
6 annexation, detachment or consolidation proceedings shall not affect the dividing
7 line as initially determined under s. 66.32. The governing body of the city shall
8 specify by resolution the description of the area to be zoned within its extraterritorial
9 zoning jurisdiction sufficiently accurate to determine its location and such area shall
10 be contiguous to the city. The boundary line of such area shall follow government lot
11 or survey section or fractional section lines or public roads, but need not extend to
12 the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption
13 of the resolution the governing body shall declare its intention to prepare a
14 comprehensive zoning ordinance for all or part of its extraterritorial zoning
15 jurisdiction by the publication of the resolution in a newspaper having general
16 circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The
17 city clerk shall mail a certified copy of the resolution and a scale map reasonably
18 showing the boundaries of the extraterritorial jurisdiction to the clerk of the county
19 in which the extraterritorial jurisdiction area is located and to the town clerk of each
20 town, any part of which is included in such area.

21 **SECTION 8.** 66.021 (2) (intro.) of the statutes is amended to read:

22 66.021 (2) METHODS OF ANNEXATION. (intro.) Subject to s. 66.023 (7) and except
23 as provided in s. 60.225 (3) (c), territory contiguous to any city or village may be
24 annexed thereto in the following ways:

25 **SECTION 9.** 66.024 (intro.) of the statutes is amended to read:

ASSEMBLY BILL 127**SECTION 9**

1 **66.024 Annexation by referendum; court order.** (intro.) As a complete
2 alternative to any other annexation procedure, and subject to s. 66.023 (7) and except
3 as provided in s. 60.225 (3) (c), unincorporated territory which contains electors and
4 is contiguous to a city or village may be annexed thereto in the manner hereafter
5 provided. The definitions in s. 66.021 (1) shall apply to this section.

6 **SECTION 10.** 66.025 of the statutes is amended to read:

7 **66.025 Annexation of owned territory.** In addition to other methods
8 provided by law and subject to ss. 59.692 (7) and 66.023 (7) and except as provided
9 in s. 60.225 (3) (c), territory owned by and lying near but not necessarily contiguous
10 to a village or city may be annexed to a village or city by ordinance enacted by the
11 board of trustees of the village or the common council of the city, provided that in the
12 case of noncontiguous territory the use of the territory by the city or village is not
13 contrary to any town or county zoning regulation. The ordinance shall contain the
14 exact description of the territory annexed and the names of the towns from which
15 detached, and shall operate to attach the territory to the village or city upon the filing
16 of 6 certified copies thereof in the office of the secretary of state, together with 6 copies
17 of a plat showing the boundaries of the territory attached. Two copies of the
18 ordinance and plat shall be forwarded by the secretary of state to the department of
19 transportation, one copy to the department of natural resources, one copy to the
20 department of revenue and one copy to the department of public instruction.

21 **SECTION 11.** 66.32 of the statutes is amended to read:

22 **66.32 Extraterritorial powers.** The extraterritorial powers granted to cities
23 and villages by statute, including ss. 30.745, 62.23 (2) and (7a), 66.052, 236.10 and
24 254.57, may not be exercised within the corporate limits of another city or village and
25 may not be exercised within the corporate limits of a town during the period

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1 beginning after the town board has adopted a resolution under s. 60.225 (1) and
2 before a ratification vote under s. 60.225 (2) or at any time after the electors of the
3 town approve such a resolution under s. 60.225 (2). Wherever these statutory
4 extraterritorial powers overlap, the jurisdiction over the overlapping area shall be
5 divided on a line all points of which are equidistant from the boundaries of each
6 municipality concerned so that not more than one municipality shall exercise power
7 over any area.

8 **SECTION 12.** 236.02 (5) of the statutes is amended to read:

9 236.02 (5) “Extraterritorial plat approval jurisdiction” means the
10 unincorporated area, except as provided in s. 60.225 (3) (d), within 3 miles of the
11 corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city
12 or a village.

13

(END)