

2005 ASSEMBLY BILL 620

August 19, 2005 – Introduced by Representatives ALBERS, LOTHIAN, AINSWORTH, OWENS and BIES. Referred to Committee on Property Rights and Land Management.

1 **AN ACT** *to amend* 59.69 (5) (a), 59.69 (5) (e) 2., 60.61 (4) (b), 60.61 (4) (c) 1., 62.23
2 (7) (d) 1. a., 62.23 (7) (d) 1. b., 62.23 (7) (d) 2. and 66.1001 (6); and *to create* 59.69
3 (5) (f), 60.61 (4) (e), 62.23 (7) (d) 4. and 66.1001 (4) (f) of the statutes; **relating**
4 **to:** requiring notice to persons affected by zoning actions and comprehensive
5 plans that change the allowable use of their property.

Analysis by the Legislative Reference Bureau

Generally, under current law, if a city, village, town, or county (political subdivision) or a subunit of a political subdivision wants to propose a new zoning ordinance or if a political subdivision or a subunit of a political subdivision wants to amend an existing ordinance, the political subdivision or the subunit must first hold a public hearing on the proposed ordinance or amendment and provide notice that the hearing will be held.

This bill specifies that a town zoning committee must hold a public hearing and give notice of the hearing on a preliminary report on recommended zoning district boundaries and zoning regulations for such districts and that a town board give notice of a public hearing on a proposed zoning ordinance.

This bill also requires that, if a proposed zoning ordinance or amendment to a zoning ordinance, zoning district plan, or regulation has the effect of changing the allowable use of any property within the boundaries of the political subdivision, the political subdivision or subunit of the political subdivision must send a notice, which contains a copy of the proposed ordinance or amendment, to each person whose

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property, the allowable use of which, may be affected and who has previously notified the political subdivision in writing, of his or her desire to be placed on a list to receive such a notice. The notice shall also include either a map showing the property affected by the ordinance or amendment, or a description of the property affected and a statement that a map may be obtained from the political subdivision or subunit of the political subdivision. The political subdivision or subunit of the political subdivision may charge a fee for providing the notice. The fee may not exceed the approximate cost of providing the notice. Under the bill, an ordinance or amendment may take effect even if the political subdivision does not comply with the bill's notice requirements. In general, the bill does not apply to first class cities (presently only Milwaukee).

Under the current law commonly known as "Smart Growth," before a political subdivision may enact an ordinance adopting a comprehensive plan, the political subdivision must hold a public hearing and provide written notice of the hearing to certain persons, specified by statute, at least 30 days before the hearing.

This bill requires that, if the proposed ordinance has the effect of changing the allowable use of any property within the boundaries of the political subdivision, the political subdivision must send a notice at least 30 days before the hearing that contains a copy of the proposed ordinance to each person whose property the allowable use of which may be affected and who has previously notified the political subdivision in writing of his or her desire to be placed on a list to receive such a notice. The political subdivision may charge a fee for providing the notice. The fee may not exceed the approximate cost of providing the notice. Under the bill, an ordinance may take effect even if the political subdivision does not comply with the bill's notice requirements, unless the political subdivision intentionally fails to provide the notice.

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 (5) (a) of the statutes is amended to read:
2 59.69 **(5)** (a) When the county zoning agency has completed a draft of a
3 proposed zoning ordinance, it shall hold a public hearing thereon, following
4 publication in the county of a class 2 notice, under ch. 985. If the proposed ordinance
5 has the effect of changing the allowable use of any property, the notice shall include
6 either a map showing the property affected by the ordinance or a description of the
7 property affected by the ordinance and a statement that a map may be obtained from

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1 the zoning agency. After such hearing the agency may make such revisions in the
2 draft as it considers necessary, or it may submit the draft without revision to the
3 board with recommendations for adoption. Proof of publication of the notice of the
4 public hearing held by such agency shall be attached to its report to the board.

5 **SECTION 2.** 59.69 (5) (e) 2. of the statutes is amended to read:

6 59.69 (5) (e) 2. Upon receipt of the petition by the agency it shall call a public
7 hearing on the petition. Notice of the time and place of the hearing shall be given
8 by publication in the county of a class 2 notice, under ch. 985. If an amendment to
9 an ordinance, as described in the petition, has the effect of changing the allowable
10 use of any property, the notice shall include either a map showing the property
11 affected by the amendment or a description of the property affected by the
12 amendment and a statement that a map may be obtained from the zoning agency.

13 A copy of the notice shall be mailed by registered mail to the town clerk of each town
14 affected by the proposed amendment at least 10 days prior to the date of such
15 hearing. If the petition is for any change in an airport affected area, as defined in
16 s. 62.23 (6) (am) 1. b., the agency shall mail a copy of the notice to the owner or
17 operator of the airport bordered by the airport affected area.

18 **SECTION 3.** 59.69 (5) (f) of the statutes is created to read:

19 59.69 (5) (f) The county zoning agency shall maintain a list of persons who
20 submit a written request to receive notice of any proposed ordinance or amendment
21 that affects the allowable use of the property owned by the person. If the county
22 zoning agency completes a draft of a proposed zoning ordinance under par. (a) or if
23 the agency receives a petition under par. (e) 2., the agency shall send a notice, which
24 contains a copy of the proposed ordinance or petition, to each person on the list whose
25 property, the allowable use of which, may be affected by the proposed ordinance or

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1 amendment. The notice shall be by mail or in any reasonable form that is agreed to
2 by the person and the agency. The agency may charge each person on the list who
3 receives a notice a fee that does not exceed the approximate cost of providing the
4 notice to the person. An ordinance or amendment that is subject to this paragraph
5 may take effect even if the agency fails to send the notice that is required by this
6 paragraph.

7 **SECTION 4.** 60.61 (4) (b) of the statutes, as affected by 2005 Wisconsin Act ...
8 (Assembly Bill 399), is amended to read:

9 60.61 (4) (b) Before the town board may adopt an ordinance under sub. (2), the
10 town zoning committee shall recommend zoning district boundaries and appropriate
11 regulations and restrictions for the districts. In carrying out its duties, the town
12 zoning committee shall develop a preliminary report and hold a public hearing on the
13 report before submitting a final report to the town board. The town zoning committee
14 shall give notice of the public hearing on the preliminary report and of the time and
15 place of the public hearing on the report by a class 2 notice under ch. 985. The town
16 zoning committee shall consider any comments made, or submitted, by the
17 commanding officer, or the officer's designee, of a military base or installation, with
18 at least 200 assigned military personnel or that contains at least 2,000 acres, that
19 is located in or near the town. If the town zoning committee makes a substantial
20 change in its report following the public hearing, it shall hold another public hearing
21 on the report. After the final report of the town zoning committee is submitted to the
22 town board, the board may adopt an ordinance under sub. (2) following a public
23 hearing held by the board on the proposed ordinance. The town board shall give
24 notice of the public hearing on the proposed ordinance and of the time and place of
25 the public hearing on the ordinance by a class 2 notice under ch. 985. If the proposed

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1 ordinance has the effect of changing the allowable use of any property, the notice
2 shall include either a map showing the property affected by the ordinance or a
3 description of the property affected by the ordinance and a statement that a map may
4 be obtained from the town board. A copy of an adopted ordinance shall be sent to the
5 commanding officer, or the officer's designee, of any military base or installation,
6 with at least 200 assigned military personnel or that contains at least 2,000 acres,
7 that is located in or near the town.

8 **SECTION 5.** 60.61 (4) (c) 1. of the statutes, as affected by 2005 Wisconsin Act
9 (Assembly Bill 399), is amended to read:

10 60.61 **(4)** (c) 1. After the town board has adopted a town zoning ordinance, the
11 board may alter, supplement or change the boundaries or regulations established in
12 the ordinance if a public hearing is held on the revisions. The board shall give notice
13 of any proposed revisions in the zoning ordinance and of the time and place of the
14 public hearing on them by a class 2 notice under ch. 985. If the proposed amendment
15 would have the effect of changing the allowable use of any property, the notice shall
16 include either a map showing the property affected by the amendment or a
17 description of the property affected by the amendment and a statement that a map
18 may be obtained from the town board. The board shall allow any interested person
19 to testify at the hearing, and shall consider any comments made, or submitted, by
20 the commanding officer, or the officer's designee, of a military base or installation,
21 with at least 200 assigned military personnel or that contains at least 2,000 acres,
22 that is located in or near the town. If any proposed revision under this subdivision
23 would make any change in an airport affected area, as defined in s. 62.23 (6) (am) 1.
24 b., the board shall mail a copy of such notice to the owner or operator of the airport
25 bordered by the airport affected area.

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1 **SECTION 6.** 60.61 (4) (e) of the statutes is created to read:

2 60.61 **(4)** (e) The town board shall maintain a list of persons who submit a
3 written request to receive notice of any proposed ordinance or amendment that
4 affects the allowable use of the property owned by the person. If the town zoning
5 committee completes a final report on a proposed zoning ordinance and the town
6 board is prepared to vote on the proposed ordinance under par. (b) or if the town board
7 is prepared to vote on a proposed amendment under par. (c) 1., the town board shall
8 send a notice, which contains a copy of the proposed ordinance or amendment, to each
9 person on the list whose property, the allowable use of which, may be affected by the
10 proposed ordinance or amendment. The notice shall be by mail or in any reasonable
11 form that is agreed to by the person and the town board. The town board may charge
12 each person on the list who receives a notice a fee that does not exceed the
13 approximate cost of providing the notice to the person. An ordinance or amendment
14 that is subject to this paragraph may take effect even if the town board fails to send
15 the notice that is required by this paragraph.

16 **SECTION 7.** 62.23 (7) (d) 1. a. of the statutes, as affected by 2005 Wisconsin Act
17 (Assembly Bill 399), is amended to read:

18 62.23 **(7)** (d) 1. a. Upon the request of the city council, the city plan commission,
19 the board of public land commissioners, or if the city has neither, the city plan
20 committee of the city council shall prepare and recommend a district plan and
21 regulations for the city. Following the formulation of tentative recommendations a
22 public hearing shall be held by, at the council's option, the council, the plan
23 commission, the board of public land commissioners or the plan committee. The
24 entity holding the hearing shall consider any comments made, or submitted, by the
25 commanding officer, or the officer's designee, of a military base or installation, with

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1 at least 200 assigned military personnel or that contains at least 2,000 acres, that
2 is located in or near the city. At least 10 days' prior written notice of any such
3 hearings shall be given to the clerk of any municipality whose boundaries are within
4 1,000 feet of any lands included in the proposed plan and regulations, and to the
5 commanding officer, or the officer's designee, of any military base or installation,
6 with at least 200 assigned military personnel or that contains at least 2,000 acres,
7 that is located in or near the city, but failure to give such notice shall not invalidate
8 such district plan or regulations. Publication of a class 2 notice, under ch. 985, of the
9 tentative recommendations and hearings thereon must be made once during each of
10 the 2 weeks prior to such hearing. If the proposed district plan and regulations have
11 the effect of changing the allowable use of any property within the city, the notice
12 shall include either a map showing the property affected by the plan and regulations
13 or a description of the property affected by the plan and regulations and a statement
14 that a map may be obtained from the city council.

15 **SECTION 8.** 62.23 (7) (d) 1. b. of the statutes, as affected by 2005 Wisconsin Act
16 (Assembly Bill 399), is amended to read:

17 62.23 (7) (d) 1. b. The council may make changes in the tentative
18 recommendations after first submitting the proposed changes to the plan
19 commission, board of public land commissioners or plan committee for
20 recommendation and report and after publishing a class 2 notice, under ch. 985, of
21 the proposed changes and hearings thereon as well as the notice to the clerk of any
22 contiguous municipality and to the commanding officer, or the officer's designee, of
23 any military base or installation, with at least 200 assigned military personnel or
24 that contains at least 2,000 acres, that is located in or near the city, as required in
25 subd. 1. a. Hearings on the proposed changes may be held by, at the council's option,

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1 the council, the plan commission, the board of public land commissioners or the plan
2 committee. The entity holding the hearing shall consider any comments made, or
3 submitted, by the commanding officer, or the officer's designee, of a military base or
4 installation, with at least 200 assigned military personnel or that contains at least
5 2,000 acres, that is located in or near the city. If the proposed changes to the proposed
6 district plan and regulations have the effect of changing the allowable use of any
7 property within the city, the notice shall include either a map showing the property
8 affected by the changes or a description of the property affected by the changes and
9 a statement that a map may be obtained from the city council.

10 **SECTION 9.** 62.23 (7) (d) 2. of the statutes, as affected by 2005 Wisconsin Act ...

11 (Assembly Bill 399), is amended to read:

12 62.23 (7) (d) 2. The council may adopt amendments to an existing zoning
13 ordinance after first submitting the proposed amendments to the city plan
14 commission, board of public land commissioners or plan committee for
15 recommendation and report and after providing the notices as required in subd. 1.
16 b. of the proposed amendments and hearings thereon. In any city which is not located
17 in whole or in part in a county with a population of 500,000 or more, if the proposed
18 amendment amendments would make any change in an airport affected area, as
19 defined in sub. (6) (am) 1. b., the council shall mail a copy of such notice to the owner
20 or operator of the airport bordered by the airport affected area. A hearing shall be
21 held on the proposed amendments by, at the council's option, the council, the plan
22 commission, the board of public land commissioners or the plan committee. The
23 entity holding the hearing shall consider any comments made, or submitted, by the
24 commanding officer, or the officer's designee, of a military base or installation, with
25 at least 200 assigned military personnel or that contains at least 2,000 acres, that

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1 is located in or near the city. If the proposed amendments have the effect of changing
2 the allowable use of any property within the city, the notice shall include either a map
3 showing the property affected by the amendments or a description of the property
4 affected by the amendments and a statement that a map may be obtained from the
5 city council. If the council does not receive recommendations and a report from the
6 plan commission, board of public land commissioners or plan committee within 60
7 days of submitting the proposed amendments, the council may hold hearings without
8 first receiving the recommendations and report.

9 **SECTION 10.** 62.23 (7) (d) 4. of the statutes is created to read:

10 62.23 (7) (d) 4. The city council shall maintain a list of persons who submit a
11 written request to receive notice of any proposed zoning action that may be taken
12 under subd. 1. a. or b. or 2. that affects the allowable use of the person's property.
13 If the plan commission, the board of public land commissioners, or city plan
14 committee of the city council completes action on any tentative recommendations
15 that are noticed under subd. 1. a., proposed changes to a proposed district plan and
16 regulations that are submitted under subd. 1. b., or proposed amendments that are
17 submitted under subd. 2., and the city council is prepared to vote on the tentative
18 recommendations, proposed changes to a proposed district plan, and regulations or
19 proposed amendments, the city council shall send a notice, which contains a copy of
20 the tentative recommendations, proposed changes to a proposed district plan, and
21 regulations or proposed amendments, to each person on the list whose property, the
22 allowable use of which, may be affected by the tentative recommendations or
23 proposed changes or amendments. The notice shall be by mail or in any reasonable
24 form that is agreed to by the person and the city council. The city council may charge
25 each person on the list who receives a notice a fee that does not exceed the

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1 approximate cost of providing the notice to the person. An ordinance or amendment
2 that is subject to this subdivision may take effect even if the city council fails to send
3 the notice that is required by this subdivision.

4 **SECTION 11.** 66.1001 (4) (f) of the statutes is created to read:

5 66.1001 (4) (f) A political subdivision shall maintain a list of persons who
6 submit a written request to receive notice of any proposed ordinance, described
7 under par. (c), that affects the allowable use of the property owned by the person. At
8 least 30 days before the hearing described in par. (d) is held a political subdivision
9 shall provide written notice, including a copy of the proposed ordinance, to all such
10 persons. The notice shall be by mail or in any reasonable form that is agreed to by
11 the person and the political subdivision. The political subdivision may charge each
12 person on the list who receives a notice a fee that does not exceed the approximate
13 cost of providing the notice to the person.

14 **SECTION 12.** 66.1001 (6) of the statutes is amended to read:

15 66.1001 (6) COMPREHENSIVE PLAN MAY TAKE EFFECT. Notwithstanding sub. (4),
16 a comprehensive plan, or an amendment of a comprehensive plan, may take effect
17 even if a local governmental unit fails to provide the notice that is required under
18 sub. (4) (e) or (f), unless the local governmental unit intentionally fails to provide the
19 notice.

20 (END)